

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

NOV 14 2016

S.C. SUPREME COURT

Appeal from the Administrative Law Court  
Shirley C. Robinson, Administrative Law Judge  
ALC Case No. 15-ALJ-04-0078-AP

Opinion No. 2016-UP-281 (S.C. Ct. App. filed 6/8/16)  
Appellate Case No. 2016-002143

---

JAMES A. SELLERS, # 243348,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Christina Catoe Bigelow**  
Deputy General Counsel  
Office of General Counsel  
South Carolina Dept. of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

**ATTORNEY FOR RESPONDENT**

## INDEX

INDEX .....	i
QUESTION PRESENTED .....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW .....	3
ARGUMENT .....	4
CONCLUSION .....	5

**QUESTION PRESENTED**

**Did the Court of Appeals properly affirm the Administrative Law Court's finding that Petitioner's sentence under S.C. Code § 16-3-20 was a day-for-day sentence?**

## STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of James A. Sellers (Petitioner), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Petitioner filed a Step One Grievance on January 16, 2014, arguing that SCDC was incorrectly calculating his sentence for accessory before the fact to murder. Petitioner contended that the sentence should not be considered a mandatory minimum “day-for-day” sentence. This grievance was investigated and denied, and Petitioner filed a Step Two Grievance on February 27, 2014. The Step 2 was denied on January 22, 2015, on the ground that the statute under which Petitioner was convicted required a day-for-day sentence. Petitioner appealed to the Administrative Law Court (“ALC”) on February 11, 2015, and the ALC affirmed the Department’s final decision on June 12, 2015. Petitioner subsequently appealed to the South Carolina Court of Appeals, and on June 8, 2016, the Court of Appeals issued an opinion affirming the ALC’s order. See James A. Sellers v. South Carolina Department of Corrections, Op. No. 2016-UP-281 (S.C. Ct. App. filed 6/8/16). Petitioner’s request for rehearing was denied on September 23, 2016, and Petitioner now seeks review of the Court of Appeals’ decision.

## STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

## ARGUMENT

**The Court of Appeals properly affirmed the Administrative Law Court's finding that Petitioner's sentence under S.C. Code § 16-3-20 was a day-for-day sentence.**

Petitioner's argument that the Department of Corrections is miscalculating his sentence for accessory before the fact to murder is without merit. The statute in effect at the time of Petitioner's sentencing is currently located at S.C. Code § 16-1-40 and reads: "A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, *must be punished in the manner prescribed for the punishment of the principal felon.*" (emphasis added). Since the principal felony in this case is murder, Petitioner was sentenced under S.C. Code § 16-3-20. Although Petitioner's sentencing judge departed from the statutory language requiring at least a thirty-year sentence, and instead gave Petitioner five years less than the statute required, this does not change the fact that Petitioner is serving a sentence under S.C. Code § 16-3-20, and such a sentence, if not a death sentence, must be served day-for-day.<sup>1</sup> See S.C. Code § 16-3-20 (A) ("No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct

---

<sup>1</sup> Obviously, the legislature did not contemplate that a trial judge would depart from the language in the statute and issue a nonconforming sentence. The fact that this was done in Petitioner's case, however, does not alter the Department's duties in applying the plain language of the murder statute.

credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.”). Therefore, the Court of Appeals correctly concluded that the legislature intended to bar persons sentenced under S.C. Code § 16-3-20(A) from receiving sentence-reduction credits. Furthermore, the Court of Appeals properly found that allowing Petitioner “to manipulate the trial court’s imposition of a sentence below the mandatory minimum term and receive sentence-reduction credits” would lead to a plainly absurd result that could not possibly have been intended by the legislature. Sellers v. South Carolina Department of Corrections, Op. No. 2016-UP-281 (S.C. Ct. App. filed 6/8/16); see, e.g., Lancaster County Bar Ass’n v. South Carolina Com’n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (“In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” (citation omitted)). Accordingly, the opinion of the Court of Appeals should be upheld.

### **CONCLUSION**

The Court of Appeals properly affirmed the decision of the Administrative Law Court, and the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



**CHRISTINA CATØE BIGELOW**  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

November 14, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

NOV 14 2016

S.C. SUPREME COURT

Appeal from the Administrative Law Court  
Shirley C. Robinson, Administrative Law Judge  
ALC Case No. 15-ALJ-04-0078-AP

Opinion No. 2016-UP-281 (S.C. Ct. App. filed 6/8/16)  
Appellate Case No. 2016-002143

---

JAMES A. SELLERS, # 243348,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

---

**CERTIFICATE OF SERVICE**

---

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Return to Petition for Writ of Certiorari** to Petitioner, addressed as follows: James A. Sellers, # 243348, Wateree River Correctional Institution, Post Office Box 189, Rembert, South Carolina 29128.



Christina Catoe Bigelow  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-8508

November 14, 2016