

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jimmy D. Meggs, #277400,

) Docket No.: 16-ALJ-04-0550-AP
)

) Appellant,
)

) ORDER
)

) vs.
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) South Carolina Department of Corrections,
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) Respondent.
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FEB 09 2017

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (court) pursuant to the Notice of Appeal filed by Jimmy Meggs ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). The Appellant appeals the decision of the Department denying his grievance in which he contends the Department has incorrectly calculated his sentence-related credits, and appeals the Department's determination that he is not entitled to jail time credit for time he spent under Monitored House Arrest from April 3, 2000, to on or about August 9, 2001. The Department investigated and denied the Appellant's Step One Grievance on May 25, 2016. The Appellant timely filed a Step Two Grievance, which the Department also denied on June 30, 2016. The Appellant timely filed an appeal with this court on July 15, 2016.

As background, the Appellant was arrested and placed in pretrial confinement on January 10, 2000, in Florence County, South Carolina. Eighty-four days later, on April 3, 2000, the Appellant was released on a \$100,000 surety bond and, as part of the conditions of his release, he was placed on monitored house arrest. Approximately sixteen(16) months later, a jury found the Appellant guilty of Engaging a Child for Sexual Performance, among other things, and the court sentenced him to twenty (20) years in prison with eighty-four (84) days of jail time credit for time he served prior to his release on bond. At the time the Appellant was sentenced, the trial court did not credit the Appellant for any time spent on monitored house arrest.

ISSUE ON APPEAL

Whether the Department erred in calculating the Appellant's sentence under the relevant statutes.

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STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted): "Such as a liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); see also *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

South Carolina Code Annotated Section 24-13-40 "mandates prisoners receive full credit for the time they served prior to trial," unless one of the two exceptions exist, either (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense. *State v. Boggs*, 388 S.C. 314, 696 S.E. 2d 597, 598 (Ct. App. 2010). At his sentencing on August 9, 2001, the Appellant received eighty-four (84) days credit for time served in pretrial confinement. The Appellant is now seeking credit for an additional sixteen (16) month period he spent on monitored

house arrest at his parent's home after he was released on bond, and is arguing that a 2013 amendment now allows him to receive that credit.

At the time of the Appellant's sentencing, Section 24-13-40 was silent concerning sentence credit for house arrest. The sentencing court properly credited the Appellant with eighty-four (84) days of jail time credit for his time served in confinement from his arrest date until his release on bond, on April 3, 2000, however, the court did not credit the Appellant with his time spent on house arrest as part of his conditions of release from confinement. In *State v. Higgins*, 357 S.C. 382, 593 S.E. 2d 180 (Ct. App. 2004), the Court of Appeals specifically held that when house arrest was a condition of release on bond, it "would be illogical to credit [an inmate] for the time he served while he was 'released' on bond." *Id.* at 386. The Court construed "time served" as time served in a penal institution, and not on home detention.

Over a decade after the Appellant was sentenced, in June 2013, Section 24-13-40 was amended to allow the sentencing court discretion as to whether to grant credit for time spent on house arrest. The statute now reads: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." S.C. Code Ann. § 24-13-40 (Supp. 2013).¹ The Appellant believes this amendment should be applied retroactively, and that he should be awarded with credit for his house arrest.

The cardinal rule of statutory construction is to ascertain and effectuate legislative intent whenever possible. *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). The court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989). With regard to whether a statute is retroactive, the statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent. *Pulliam v. Doe*, 246 S.C. 106, 110, 142 S.E.2d 861, 863 (1965). The only exception to this rule is a statutory enactment that effects a change in remedy or procedure. *Jenkins v. Meares*, 302 S.C. 142, 146, 394

¹ The Appellant argues that another inmate received the benefit of this amendment, however, this court also notes that it is possible that a criminal defendant could receive the benefit of this legislative amendment if the amendment became effective prior to his sentencing. See *State v. Anthony*, 2014-UP-388, 2014 WL 5777394.

S.E.2d 317, 319 (1990) (“A savings clause is a restriction in a repealing act, intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted appeal. *Pierce v. State*, 338 S.C. 139, 146 n. 3, 526 S.E.2d 222, 225 n. 3 (2000) (quoting Black’s Law Dictionary 1343 (1990)).

Here, it is clear that the amendment to Section 24-13-40 did not expressly make retroactive the changes regarding credit for time spent on house arrest. Likewise, this court also finds that there is no evidence of legislative intent that would allow a retroactive application of this statute. “[p]rospective application is presumed absent a specific provision or clear legislative intent to the contrary.” See *State v. Varner*, 310 S.C. 264, 265, 423 S.E. 2d 133, 133-134 (1992). Additionally, since the amendment merely grants the trial judge discretion to grant sentence credit for house arrest, it is evident that this change would be difficult, if not impossible, to apply retroactively.² Even if this court were to find that Section 24-13-40 should be applied retroactively, despite all evidence to the contrary, this court is without authority to assume the role of the Appellant’s sentencing court and determine whether to allow him credit for his time served on house arrest. In sentence calculation cases, this court’s review is limited to the record, and it may not substitute its judgment for the judgment of the agency, much less the judgment of the sentencing court. S.C. Code Ann. § 1-23-380(4) (Supp. 2016).

THEREFORE, IT IS HEREBY ORDERED the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy heretofore in the United States Mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26th day of JAN 2017

Judicial Law Clerk

S. Phillip Lenski, Judge
S.C. Administrative Law Court

January 26, 2017
Columbia, South Carolina

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² The Appellant paradoxically argues that the term “may” found in the 2013 amendment “is not left without interpretation to be deemed discretionary by judicial review” and is “to be held synonymous with ‘Shall’ or ‘Must’....” The court rejects this argument.