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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Samuel Brown, Jr., #254907,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 16-ALJ-04-0806-AP

ORDER AFFIRMING DECISION

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed November 21, 2016, by Samuel Brown, Jr. ("Inmate"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Inmate filed his Step One and Step Two Grievances arguing that his sentence should be reclassified after the decision in Bolin v. S.C. Dept of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), reh'g denied (Feb. 24, 2016).

STANDARD OF REVIEW

The ALC'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 ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2015). The ALC will not disturb the findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which,

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considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)).

LAW/ANALYSIS

Inmate was sentenced on September 12, 2013, to a ten (10) year sentence for Trafficking in Cocaine, in violation of S.C. Code Ann. § 44-53-370(e)(2)(a)(2), which reads:

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten grams or more, but less than twenty-eight grams:

(2) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]

S.C. Code Ann. § 24-13-100 states that a no-parole offense "means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more." Trafficking in Cocaine, 10 grams or more but less than 28 grams, is a Class A felony. See S.C. Code Ann. § 16-1-90. Therefore, Inmate's conviction for violation of S.C. Code Ann. § 44-53-370(e)(2)(a)(2) is a no-parole offense. Pursuant to S.C. Code Ann. § 24-13-150, a person convicted of a no-parole offense must serve at least 85% of their sentence. Inmate must serve at least 85% of his ten-year sentence.

Inmate argues that the decision in Bolin renders him eligible for early release, discharge, or community supervision. Bolin involved an inmate who "pled guilty to possession of

methamphetamine, second offense (possession), possession of methamphetamine with intent to distribute, second offense (intent to distribute), conspiracy to manufacture methamphetamine, second offense (conspiracy), and unlawful possession of a pistol.” Bolin at 278, 781 S.E.2d at 915. The case in Bolin involved interpretation of S.C. Code Ann. § 44-53-375(B), which is not at issue here. S.C. Code Ann. § 44-53-375(B) reads, in part, “[n]otwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.” Based on its interpretation of S.C. Code Ann. § 44-53-375(B), the Court of Appeals concluded that “a second offense under Section 44-53-375(B) is no longer a no-parole offense.” Bolin at 286, 781 S.E.2d at 919. The language of S.C. Code Ann. § 44-53-370(e)(2)(a)(2) does not mirror the amended language of S.C. Code Ann. § 44-53-375(B); therefore, Bolin is not pertinent here.¹

Inmate makes the argument that by not applying the rule in Bolin to his sentence, SCDC is violating his rights under the Equal Protection Clause of the 14th Amendment to the United States Constitution. First, as discussed above, Bolin involved possession, possession with intent to distribute, and conspiracy to manufacture methamphetamine, while the case here involves Trafficking in Cocaine. Also, the Court in State v. Kiser, 288 S.C. 441, 343 S.E.2d 292 (1986), found that Section 44-53-370 did not violate equal protection for imposing mandatory minimum sentences for those convicted of drug trafficking offenses. Kiser at 443, 343 S.E.2d at 293. The case in Kiser involved an individual convicted for trafficking marijuana, the Court stated, “[i]t is abundantly clear that the State has a vital interest in protecting its citizens from the “grave public health threat” of large scale marijuana trafficking.” Id. Similarly, here the state has a vital interest in protecting its citizenry from the threat of cocaine trafficking. Further, as discussed above, there is a distinction between possession and trafficking illicit drugs. Therefore, there is no violation of the Equal Protection Clause.

Inmate has failed to establish that SCDC is incorrectly calculating his sentence. Because

¹ In Bolin, the Court of Appeals noted that the Omnibus Crime Reduction and Sentencing Reform Act of 2010 significantly amended S.C. Code Ann. § 44-53-375(B). Bolin at 282, 781 S.E.2d at 917. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 did amend portions of S.C. Code Ann. § 44-53-370. 2010 Act No. 273, § 37. However, Section 44-53-370(e)(2)(a)(2) was unchanged. See S.C. Code Ann. § 44-53-370(e)(2)(a)(2) (2002).

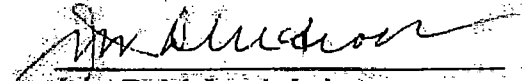
SCDC's decisions is supported by substantial evidence, I affirm.

Based upon the foregoing,

IT IS HEREBY ORDERED that the final decision of the SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.

Columbia, S.C.
March 24, 2017



John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

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

This 24 day of March, 2017

By: A. D. [Signature]
Judicial Law Clerk