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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dion Taylor, #335089,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0513-AP
Grievance No. KRCI 185-16

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed June 27, 2016, by Dion Taylor (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). In this appeal, the Appellant argues the Department has miscalculated his prison sentence.

BACKGROUND

The Appellant was committed to the custody of the Department for the service of three sentences:

- Ten (10) years, concurrent, for Armed Robbery, pursuant to code section 16-11-0330;
- Three (3) years, concurrent, for Criminal Domestic Violence—3rd, pursuant to code section 16-25-0040; and
- Two (2) years of a suspended sentence on a probation revocation (original offense: Failure to Stop for a Blue Light).

The sentencing for all of these offenses occurred on June 3, 2009. However, the Appellant was arrested for each one on a different date. The Appellant's jail time report shows that he was arrested for the Armed Robbery on September 24, 2008, the CDV charge on September 25, 2008, and the probation violation on September 29, 2008. Internal Department records show projected completion dates for the probation violation and CDV charge in 2009 and 2010 respectively. Thus, the Appellant's remaining sentence, for armed robbery, is the one he is currently serving. The Appellant argues that the Department has miscalculated credit for time served on his sentences.

ISSUE ON APPEAL

1. Whether the Appellant has been correctly credited for time served prior to his sentencing.

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SC ADMIN. LAW COURT

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. 2016). 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

Inmates who spend time in jail prior to sentencing are entitled by South Carolina law to credit for the time served. Section 24-13-40 of the South Carolina Code mandates that a prisoner receive credit for all time served prior to trial and sentencing unless one of two exceptions exists: either the prisoner was an escapee or the prisoner was already serving a sentence on one offense while awaiting trial or sentencing for a second. *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000); *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (citing *State*

v. McCord, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002).¹ Specifically, section 24-13-40 provides that “in every case . . . full credit against the sentence must be given for time served prior to trial and sentencing. . . .” S.C. Code Ann. § 24-3-40 (Supp. 2016). The application of time served in accordance with section 24-13-40 is mandatory and not within the discretion of the sentencing judge. *Hayes v. State*, 413 S.C. 553, 559, 777 S.E.2d 6, 10 (Ct. App. 2015), *reh’g denied* (Oct. 8, 2015), *cert. dismissed as improvidently granted*, 418 S.C. 362, 792 S.E.2d 907 (2016); *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598 (citation omitted); *McCord*, at 349 S.C. at 487, 562 S.E.2d at 696 (citing *Allen*, 339 S.C. at 395, 529 S.E.2d at 542). The denial of credit for time served where no exception applies is an error of law. *See Boggs*, 388 S.C. at 316, 696 S.E.2d at 598.

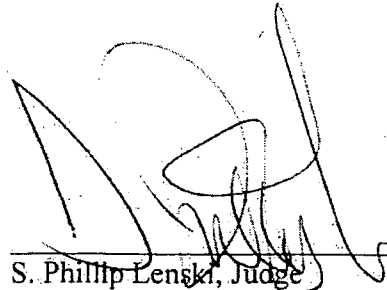
In this case, the Appellant argues that the Department has not adequately credited him for time served. The Appellant focuses particularly on the unsuspended, or “split,” sentence he received for the probation violation. Because the Appellant has already completed two of his sentences, the matter of credit for time served for those sentences is moot. *Wachesaw Plantation E. Cmty. Servs. Ass’n, Inc. v. Alexander*, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015) (citation omitted) (“A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court.”). As to the sentence for armed robbery: the Appellant was arrested on September 24, 2008, sentenced on June 3, 2009, and transferred to Department custody on June 4, 2009. Based on these dates, the Appellant spent 252 days in jail before sentencing. The Department accurately accounted for this time by back-dating the Appellant’s sentence to start on September 24, 2008. Because the Appellant receives only the time he served on the individual charge when calculating the sentence for that charge, the record shows that the Department has correctly calculated the Appellant’s remaining sentence.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Department’s decision is **AFFIRMED**.

¹ The Court notes that Section 24-13-40 was amended in 2010 and 2013. The amendments had no substantive effect on the language at issue in these cases.

AND IT IS SO ORDERED.



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

March 24, 2017
Columbia, South Carolina

FILED
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SC ADMIN. LAW COURT

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 hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 24th day of March 2017
By: [Signature]
JUDICIAL LAW CLERK