STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andra B. Jamison, #337461, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 16-ALJ-04-0767-IJ ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by Andra Jamison, the Appellant, who is incarcerated with the South Carolina Department of Corrections (SCDC).

On October 14, 2016, the Appellant filed a Step 1 Grievance challenging his classification, and arguing that the Department should reclassify him as a non-violent offender. As background, on October 15, 2009, the Appellant was convicted of Felony Driving Under the Influence Resulting in Death, in violation of S.C. Code Ann. § 56-6-2945(2), and he was sentenced to eighteen (18) years in confinement. The Appellant requested that the Department classify him as a "non-violent" offender, rather than a "violent" offender, and also argues that his crime of conviction should not be classified as a "no parole" offense, requiring him to serve eighty-five (85) percent of his actual term of imprisonment.

The Department returned the Step 1 Grievance to the Appellant on October 21, 2016, and informed him that it was "State Law that the offense you are charged with, carry a violent classification. Therefore, your grievance is being returned and you will not be allowed to file on this issue again." On November 1, 2016, the Appellant filed a Notice of Appeal with this 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

Because this court exists to review the actions of administrative agencies and not the actions of circuit court judges, this court cannot rule on the validity of the Appellant's sentence. *See Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259–60, 531 S.E.2d 507, 508–09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al-Shabazz*). Instead, this court reviews the Appellant's case to determine if the Department is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007).

In this case, the Appellant's offense of conviction (Felony DUI resulting in death) is characterized as a Class B Felony, under the provisions of S.C. Code Ann. § 16-1-90(B). A Class B Felony is plainly considered a "no-parole" offense. Under § 24-13-100, a "no parole offense" is defined as "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." Moreover, § 24-13-150(A) provides that "[n]otwithstanding any other provision of law, . . . an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eight-five percent of the actual term of imprisonment." Therefore, an inmate serving a no-parole sentence must be incarcerated at least 85% of the total sentence imposed.

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The Appellant was sentenced on October 15, 2009, to eighteen (18) years confinement, with a sentence start date of October 9, 2009, which amounted to six thousand five hundred and seventy (6,570) days. Eighty-five (85) percent of six thousand five hundred and seventy (6,570) days is five thousand five hundred eighty-five (5,584) days. Running the sentence from October 9, 2009, the earliest possible date the Appellant could be released from confinement is January 22, 2025. The Record on Appeal (Conviction Summary) reflects that the Department reached the same conclusion and the Appellant has established no reason to differ from that conclusion, therefore, this court affirms the Department's decision.

Based upon the foregoing, the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

S. Phillip Lenski
Administrative Law Judge

March 16, 2017
Columbia, South Carolina

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 addressed to the party(ies) or their attorney(s).

This 16th day of March 17

Judicial Law Clerk

HAIR V STATE 305 S.C. 77
PAROLE EL.
DETERMINES IF VIOLENT OR NOT.
BOLIN FOUND THAT 24-13-100 UNCONSTITUTIONAL OR PREEMPTED RECONIZED AS REPEALED BY IMPLICATION BOLIN