STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

JIMMY D. MEGGS, JR., # 277400,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT APPELLANT WAS NOT ENTITLED TO CREDIT FOR TIME HE SPENT ON HOUSE ARREST IN 2000 AND 2001 WHERE THE AMENDMENT ALLOWING A SENTENCING JUDGE, IN HIS DISCRETION, TO AWARD CREDIT FOR MONITORED HOUSE ARREST WAS NOT ENACTED UNTIL JUNE OF 2013, AND WHERE THE DEPARTMENT HAS NO AUTHORITY TO UNILATERALLY AWARD HOUSE ARREST CREDIT SINCE THE POWER TO GRANT OR DENY HOUSE ARREST CREDIT IS VESTED SOLELY IN THE SENTENCING JUDGE.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Jimmy D. Meggs, Jr., an inmate in the custody of the South Carolina Department of Corrections. On May 11, 2016, Appellant submitted a Step 1 Grievance complaining that the Department of Corrections should give him credit for time he spent on house arrest in 2000 through 2001. The grievance was denied on May 25, 2016, and Appellant filed a Step 2 Grievance on that same day. The Step 2 was denied on June 30, 2016, and Appellant appealed to the Administrative Law Court. On January 26, 2017, Judge S. Phillip Lenski filed an order affirming the decision of the Department of Corrections. This appeal follows.

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 ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT APPELLANT WAS NOT ENTITLED TO CREDIT FOR TIME HE SPENT ON HOUSE ARREST IN 2000 AND 2001 WHERE THE AMENDMENT ALLOWING A SENTENCING JUDGE, IN HIS DISCRETION, TO AWARD CREDIT FOR MONITORED HOUSE ARREST WAS NOT ENACTED UNTIL JUNE OF 2013, AND WHERE THE DEPARTMENT HAS NO AUTHORITY TO UNILATERALLY AWARD HOUSE ARREST CREDIT SINCE THE POWER TO GRANT OR DENY HOUSE ARREST CREDIT IS VESTED SOLELY IN THE SENTENCING JUDGE.

Appellant claims that he is entitled to jail time credit for time he spent on house arrest in 2000 and 2001. To the contrary, the Administrative Law Court properly concluded that Appellant was not entitled to such credit where the amendment allowing a judge the discretion to grant such credit was not enacted until June of 2013, and where the Department of Corrections has no authority to unilaterally award an inmate with such credit in any event.

S.C. Code § 24-13-40, "Computation of time served by prisoners," states as follows:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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**. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense (emphasis added).

The provision allowing a judge to grant credit for time spent under monitored house arrest

was added to the statute with an effective date of June 7, 2013.

At the time Appellant was sentenced, S.C. Code § 24-13-40 was silent on the issue of credit for time spent on monitored house arrest. The sentencing judge gave Appellant credit for eighty-four days of time spent in the county detention center, but did not give credit for any time spent on monitored house arrest. This was entirely proper, since in State v. Higgins, 357 S.C. 382, 385, 593 S.E.2d 180, 182 (Ct. App. 2004), this Court held that the "time served" referenced in S.C. Code § 24-13-40 meant time served in a penal institution, not time spent at home on house arrest. This Court specifically held that "[b]ecause Higgins was on house arrest as a condition of his release, we believe it would be illogical to credit him for the time he served while he was 'released' on bond." Higgins at 385, 593 S.E.2d at 182.

Furthermore, as the Administrative Law Court properly concluded, the 2013 amendment to S.C. Code § 24-13-40 allowing judges the discretion to award credit for time spent on monitored house arrest is not retroactive. See State v. Varner, 310 S.C. 264, 265, 423 S.E.2d 133, 133-34 (1992) ("[P]rospective application is presumed absent a specific provision or clear legislative intent to the contrary."). Even if it were somehow retroactive, the Department of Corrections is required to follow Appellant's clear and unambiguous sentence sheet, which awarded only eighty-four days of jail time credit. The Department of Corrections cannot unilaterally provide Appellant with credit for time spent on house arrest absent a valid sentencing order from an appropriate judge. See Tant v. South Carolina Dept. of Corrections, 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) ("[T]he Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence."); see also id. at 347, 759 S.E.2d at 405 ("The Department has no independent sentencing authority

and nothing in our opinion indicates otherwise."). Accordingly, the Administrative Law Court properly affirmed the Department's denial of Appellant's grievance.

CONCLUSION

For reasons discussed above, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

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May 11, 2017

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JIMMY D. MEGGS, JR., # 277400,

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Jimmy D. Meggs, Jr., # 277400,** Turbeville Correctional Institution, 1578 Clarence Coker Highway, Turbeville, South Carolina, 29162.

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May 11, 2017

South Carolina Department of Corrections

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

May 11, 2017

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **Jimmy D. Meggs, Jr., # 277400, v. South Carolina Department of Corrections**
Appellate Case No. 2017-000232

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Jimmy D. Meggs, Jr., # 277400
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