

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Court Judge

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Lower Court Case No. 16-ALJ-04-0767-AP
Court of Appeals Case No. 2017-000914

JUN 12 2017

SC Court of Appeals

Andra B. Jamison, # 337461.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

June 12, 2017

South Carolina Department of Corrections

Melissa J. Arnold
Staff Attorney
S.C. Dept. of Corrections
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Columbia, South Carolina 29221
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STATEMENT OF THE ISSUE ON APPEAL

- I. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Andra B. Jamison (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Respondent). Appellant is currently committed to SCDC with an eighteen-year sentence for Felony Driving Under the Influence Resulting in Death (R.p. ____)

Appellant filed a Step One Grievance on October 14, 2016, challenging his “violent” classification and SCDC’s calculation of his sentence. This grievance was investigated and denied. (R.p. ____). Further, the Institutional Grievance Coordinator informed Appellant that the offense he was charged with carried a “violent” classification by statute, therefore the issue was non-grievable. (R.p. ____). Appellant then filed a notice of appeal with the Administrative Law Court on August 30, 2013. (R.p. ____).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding that SCDC correctly interpreted Appellant’s sentence and under the statute that governs his conviction, Appellant is required to serve at least 85% of his sentence. (R.p. ____).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

ARGUMENT AND CITATION OF AUTHORITY

I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those 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, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). 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, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented during Appellant's appeal supports SCDC's decision. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. Appellant's sentencing sheet demonstrates that Appellant was sentenced to eighteen years for Felony Driving Under the Influence Resulting in Death, pursuant to S.C. Code Ann. § 56-05-2945(A)(2).¹ (R.p. ____). Felony Driving Under the Influence Resulting in Death is, by statute, a Class B felony because its penalty is "not more than twenty-five years" in prison. S.C. Code Ann. §§ 56-05-2945(A)(2), 16-1-

¹ The 2010 Omnibus Crime Reduction and Sentencing Act updated S.C. Code Ann. § 16-1-60 to include § 56-05-2945(A)(2) Felony Driving Under the Influence Resulting in Death as a "violent" crime. AS Appellant was convicted in October 2009, SCDC has classified Appellant's conviction as "non-violent."

20(A)(2). S.C. Code Ann. 24-13-100 defines a no parole offense, in relevant part, as “a class A, B, or C felony...” S.C. Code Ann. § 24-13-150 requires anyone convicted of a no parole offense to serve at least 85% of their sentence before they are eligible for release. This requirement is a result of the statute, not an SCDC policy.² Accordingly, SCDC is correct in calculating Appellant’s sentence to require that he serve 85% of his sentence before he is eligible for release.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm’n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC’s decision should be upheld.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections’ decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS
Attorney for Respondent



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June 12, 2017

See <http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=00337461>.

² Appellant incorrectly argues that because he was not convicted of a “violent” crime, he should not be required to serve 85% of his sentence. Appellant misunderstands the law requiring certain offenses to be classified as “no parole” offenses. S.C. Code Ann. § 24-13-100 defines “no parole” offenses as Class A, B, or C felonies, and makes no mention of “violent” crimes.

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Andra B. Jamison, # 337461.....Appellant,

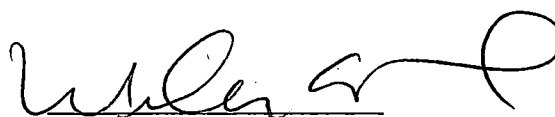
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief
by depositing a copy of same in the United States Mail, postage prepaid, June 12, 2017,
addressed to the Appellant as follows:

Andra B. Jamison, #337461
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512



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South Carolina
Department of
Corrections

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

June 12, 2017

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Reference: App. Case No.: 2017-000914 (*Andra B. Jamison, # 337461*
v. South Carolina Department of Corrections)

Dear Madam Clerk:

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,

Melissa J. Arnold, Esquire

Enclosure

cc: Andra B. Jamison, # 337461
Evans Correctional Institution