STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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| Vincent Rice, #316178,<br><br>Appellant,<br><br>vs.<br><br>South Carolina Department of Corrections,<br><br>Respondent. | Docket No.: 16-ALJ-04-0869-AP<br>Grievance No. LCI 0455-16<br><br>**ORDER** |

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## STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Vincent Rice (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant seeks review of the Department's decision to calculate his sentence as a no parole, or eighty-five percent, sentence. Upon careful consideration of the briefs of the parties and the relevant law, the Court affirms the Department's decision.

## BACKGROUND

The Department determined that Appellant must serve eighty-five percent of his sentence prior to release, based upon his prior convictions. The Department recalculated Appellant's sentence shortly before his previously planned release date. The recalculation of his sentence under the eighty-five percent rule was done following an audit and a due process hearing.

The record on appeal contains sentencing sheets for the following convictions:

- Seven years (concurrent) for "Drugs/Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam, w.i.t.d.—3rd or sub. offe[nse]" pursuant to Section 44-53-370(b)(2) on December 3, 2013;
- Seven years (concurrent) for "Drugs/MDP, poss. of Marijuana w.i.t.d.—3rd or sub. offense" pursuant to Section 44-53-370(b)(2) on December 3, 2013;
- Seven years (concurrent) for "Drugs/Possession of less than one gram of[]cocaine base, 3rd or sub. offense" pursuant to 44-53-375(A) on December 3, 2013;
- Seven years (concurrent) for "Drugs/MDP. poss. Cocaine w.i.t.d.—2nd offense" pursuant to Section 44-53-370(b)(1) on December 3, 2013;
- Seven years (concurrent) for "Drugs/Distribute, sell, purchase, manuf. Drug, or pwid, near school" pursuant to Section 44-53-445(B)(1) on December 3, 2013;
- Seven years (concurrent) for "Drugs/Distribute, sell, purchase, manuf. drug, or pwid, near school" pursuant to Section 44-53-445(B)(1) on December 3, 2013;
- Two years (concurrent) for "Drugs/Poss. of other controlled sub. in Sched. I to V—2nd or sub. offense" pursuant to Section 44-53-370(d)(2) on December 3, 2013;

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- Seven years (concurrent) for "Drugs/MDP, PWID Cocaine—2nd offense" pursuant to Section 44-53-370(b)(1) on December 3, 2013; and
- Two years (concurrent) for "Drugs/Poss. of other controlled sub. in Sched. I to V or sub. offense" pursuant to Section 44-53-370(d)(2) on December 3, 2013.

The sentences at issue in this appeal are the two Section 44-53-370(b)(2) sentences. The record reflects that the Department has calculated the most distant max-out for these sentences, making them the dominant sentences for calculation purposes.

## ISSUE ON APPEAL

Whether the Department erred in calculating Appellant's sentences under Section 44-53-370(b)(2).

Whether the Department provided Appellant with due process when recalculating Appellant's sentence.

## 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. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). The Court's jurisdiction in inmate appeals includes cases in which an inmate believes prison officials have erroneously calculated his sentence. Al-Shabazz, 338 S.C. at 369, 526 S.E.2d at 750. ). "There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." Tant v. S.C. Dept. of Corrs., 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. Id., 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

Appellant argues that the Department misinterprets the statutes applicable to his case and the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016). The Court disagrees. A review of the relevant statutes and Appellant's prior convictions supports the Department's determination that Appellant must serve eighty-five percent of his sentence.

In determining what portion of his sentence an inmate must serve and whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole eligibility are contained in Title 24 of the South Carolina Code. Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. See S.C. Code Ann. § 24-21-610 (2007). However, these baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses." Id. at § 24-13-100.[1] When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. Id. at § 24-21-30; see also Bolin, 415 S.C. at 283, 781 S.E.2d at 917 ("It is without doubt that the statutory definition for the term 'no-parole offense' in section 24-13-100, i.e., 'a class A, B, or C felony . . . ,' simply describes the types of offenses for which the offender is not eligible for parole."). Instead, the inmate must complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. Id. at § 24-13-150(A) (Supp. 2016).

However, the rules regarding no parole offenses have been modified for certain offenses. In particular, the part of the sentencing statute under which the Appellant was convicted provides:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item 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

[1] Offenses classified as Class A, B, and C felonies are listed in Section 16-1-90.

> conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), 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. In all other cases, the sentence must not be suspended nor probation granted[.]

Id. at § 44-53-370(b)(2) (Supp. 2016). The Court of Appeals has held this language repeals the no-parole offense statute insofar as there is a conflict. Bolin, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) ("The legislature's use of the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370." (emphasis in original)). The holding of the Court of Appeals in Bolin is very specific. The "notwithstanding any other provision of law" language included by the legislature does repeal Section 24-13-100 in regards to a second offense under subsection (b)(2). S.C. Code Ann. § 44-53-370(b)(2) ("Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense . . . is eligible for parole . . . ."). However, the case at hand involves a third offense. For a third or subsequent offense, all previous drug offenses must have been "for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370.

The Court rejects Appellant's somewhat inverse interpretation of this language for third offenses. Appellant argues that a sentencing judge is only restricted in regards to suspending a sentence or granting probation. This is based on an inference created by the lack of an explicit statement regarding lack of parole eligibility for the third offense with disqualifying priors. However, the language need not explicitly restate that Appellant is not eligible for parole because the law regarding parole ineligibility still controls. The law contained in 24-13-100 still applies in all cases unless there is specifically expressed legislative intent to the contrary. See Bolin, 415 S.C. at 283, 781 S.E.2d at 917 (quoting Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981)) ("Statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein."). The sentences beginning "notwithstanding" express such intent. However, Appellant does not fall into the parameters set by those sentences

(first or second offense, or third with only Section 44-53-370(c) and (d) priors). Rather, Appellant falls into the category for whom Section 24-13-100 is still binding.

Appellant also argues that he was denied due process during the recalculation of his sentence. After review of the record, the Court concludes that Appellant received ample due process, including a hearing. In a 2014 case, the South Carolina Supreme Court ruled "the Department must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing." Tant, 408 S.C. at 346, 759 S.E.2d at 404. However, in that case, the Department altered its recordation of the actual term of imprisonment imposed by the judge, changing Tant's term of incarceration from fifteen to forty years. Id., 408 S.C. at 337–40, 759 S.E.2d at 399–401. In this case, the Department's recalculation does not change in any way the original term of imprisonment imposed by the sentencing judge and recorded by the Department, but merely corrects a record-keeping error concerning what portion of the original term of imprisonment Appellant must serve. In adjusting Appellant's sentence to an eighty-five percent, or "no parole," calculation, the Department merely corrects an administrative error and does not reinterpret Appellant's sentencing sheet. Nonetheless, it appears that the Department provided Appellant with a hearing when the error was corrected. He has also been afforded the opportunity to file and argue this grievance appeal. Appellant, therefore, received any required due process in this matter.[2] See Tant v. S.C. Dept. of Corrs., 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) ("Based on the foregoing, we hold the Department must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing.").

In conclusion, Appellant's prior drug offenses are not limited to the qualifying offenses under Subsections (c) and (d). Because Appellant does not qualify for the parole eligibility exception for a third offense, the "no parole" or "eighty-five percent" rule remains in place. Under this rule, a Section 44-53-370(b)(2) offense, such as the Appellant's, is classified as a Class C felony, and is thus a no-parole offense. S.C. Code Ann. § 24-13-100 (2007) and § 16-1-90(C) (2015). Therefore, the Department did not err in determining that eighty-five percent of

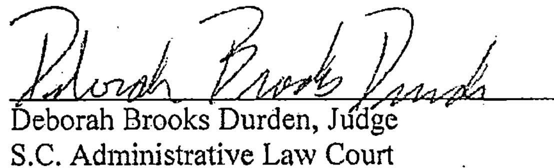
[2] The Court notes that the Wolff factors cited by Appellant are intended for disciplinary hearings and not for a Tant hearing. See Wolff v. McDonnell, 418 U.S. 539, 563–72, 94 S.Ct. 2963, 2978–82 (1974). This matter is not about the loss of previously accrued sentencing credit.

Appellant's sentence must be served, based upon his prior drug convictions. Assuming the Department has correctly applied any available credit for time served by utilizing a "start date" of December 3, 2012, the calculation is as follows: seven years is 365 days times seven: 2,555 days; 2,555 days times .85 is 2,171.75 days; adding 2,171.75 days to December 3, 2012 results in an earliest possible[3] release date of November 13, 2018. This is the date calculated by the Department in its decision; therefore, the Court affirms.

## ORDER

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

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 19, 2017
Columbia, South Carolina

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 19th day of June 2017
By [signature]
Judicial Law Clerk

[3] It should be noted that Appellant has committed several disciplinary offenses which may result in an adjustment to his max-out date based on lost good time credit.