

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-04-0513-AP
Appellate Case No. 2017-001061

RECEIVED

JUL 24 2017

SC Court of Appeals

DION TAYLOR, # 335089,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Kensey E. Collins

Staff Attorney

Office of General Counsel

South Carolina Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1943

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED RESPONDENT'S FINAL DECISION THAT APPELLANT'S JAIL TIME CREDIT HAS BEEN PROPERLY APPLIED AND THAT COMPLETION OF TWO SENTENCES RENDERED ANY QUESTIONS REGARDING THEM MOOT.

STATEMENT OF THE CASE

This case comes before the Court of Appeals following the appeal of Dion Taylor (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant filed a Step One Grievance on February 3, 2016, claiming his jail time credit was not being properly applied to his sentence. This grievance was properly investigated, and it was determined that SCDC had properly applied Appellant’s jail time credit for each charge. Therefore, the grievance was denied. Appellant filed a Step Two Grievance on March 25, 2016, which was also investigated and denied. Appellant then filed a Notice of Appeal in the Administrative Law Court on June 24, 2016. On March 24, 2017, the Honorable S. Phillip Lenski issued an order affirming the final decision of the Department. 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 (S.C. 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 AFFIRMED RESPONDENT'S FINAL DECISION THAT APPELLANT'S JAIL TIME CREDIT HAS BEEN PROPERLY APPLIED AND THAT COMPLETION OF TWO SENTENCES RENDERED ANY QUESTIONS REGARDING THEM MOOT.

The jurisdiction of the Administrative Law Court ("ALC") to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

On June 3, 2009, Appellant was sentenced to three (3) years for Criminal Domestic Violence- Third, and ten (10) years for Armed Robbery. See R. at 2. In addition, Appellant's probation was revoked on a previous Failure to Stop for an Officer charge and he was sentenced to serve two years. Id. The sentences for Failure to Stop for an Officer and Criminal Domestic Violence- Third have since expired and Appellant is only currently serving the sentence for Armed Robbery. Id. Regarding his Armed Robbery sentence, he was given

252 days of jail time credit, making the sentence start date September 24, 2008. See R. at 4. This corresponds with the judge's order on the sentencing sheet. R. at 10.

Appellant argues that he is entitled to credit for jail time served prior to his original conviction for Failure to Stop for an Officer, for which he was given a probationary sentence in 2004. App. Initial Brief, p. 3. Appellant then violated his probation and was sentenced to SCDC in 2009. Id. Because Appellant has already satisfied this sentence, the Honorable Judge Lenski found this issue moot. R. at 4 (ALC order citing Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015)).¹

Appellant also argues that his 146 days of previous time served for his Failure to Stop for an Officer offense should be applied to his Armed Robbery conviction. App. Initial Brief, p. 5. Appellant is not entitled to have his 2004 jail time added to the Armed Robbery offense which he committed in 2008. S.C. Code Ann. § 24-13-40 states:

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. [. . .] 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.

Appellant's Armed Robbery sentence ran concurrently to his other convictions. R. at 10.

Appellant has received the jail time credit to which he is entitled. Appellant was arrested on September 24, 2008 and sentenced on June 3, 2009 for Armed Robbery, giving him 252 days

¹ Please note, on March 16, 2017, Respondent added 146 days of jail time credit to Appellant's probation revocation sentence in accordance with Hayes v. State, 413 S.C. 553, 777 S.E.2d 6

of jail time credit, which has been applied. R. at 4. Appellant is not entitled to any other jail time credit against his Armed Robbery conviction. See S.C. Code Ann. § 24-13-40 (an inmate is not entitled to jail time credit when serving time for another sentence).

Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision of March 24, 2017.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



KENSEY E. COLLINS

Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1943

July 24, 2017

(Ct. App. 2015), reh'g denied (Oct. 8, 2015).

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she 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: Dion Taylor #335089, Evans Correctional Institution, 610 Highway 9 W, Bennettsville, SC 29512.



Kensey E. Collins

Staff Attorney

Office of General Counsel

South Carolina Department of Corrections

Post Office Box 21787

Columbia, S. C. 29221

(803) 896-1943

July 24, 2017



South Carolina
Department of
Corrections

OFFICE OF GENERAL COUNSEL

HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

July 24, 2017

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

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SC Court of Appeals

RE: Dion Taylor, # 335089, v. South Carolina Department of Corrections
Appellate Case No. 2017-001061

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,

Kensey E. Collins
Staff Attorney
South Carolina Department of Corrections

cc: Dion Taylor, # 335089
Evans Correctional Institution
610 Highway 9 W
Bennettsville, SC 29512