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SC Court of Appeals

Ms. J. Kitchings,

Please find in close all necessary documents you are asking for to correct any deficiencies.

- Please find enclosed copies of order or judgment challenged on appeal
- Appellant received a letter of written order or judgment on Aug. 2, 2017 from MCI mail room
- Appellant would like to know what to he have to do or what form he must fill out if he is indigent and can't afford the \$100.00 filing fee.
- Appellant didn't know he was to suppose to serve Administrative Law Court with a proof of service. I thought I was only suppose to serve office of General office ~~att~~ of the South Carolina Dept. of Corr. and the S.C. Court of Appeal
- If the Appeal Court can please tell me how can I attach a Form 1 of the appendix C to part II of the SCAR Form

Form appellant will appreciate all of your assistance.

Unfortunately we don't have a Law Library Clerk here at Manning Corr. Inst. to help guide / walk us through on how to prepare any kind of Motion or Appeal nor do I have legal Counsel's to help me file my appeal.

So any ~~for~~ forms or documents you can provide me with to correct any deficiencies will be very much appreciate....

Respectfully Yours

Keith R. Myers
Keith R. Myers

CC: Keith Myers

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Keith R. Myers, #250863,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 17-ALJ-04-0127-AP
Grievance No.: ECI 128-17

ORDER **RECEIVED**

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed March 20, 2017, by Keith R. Myers (“Appellant”), an inmate in the custody of the South Carolina Department of Corrections (“SCDC” or “Department”).

Appellant challenges the decision of the SCDC in his Step Two Grievance, in which Appellant contended that his conviction did not require him to serve 85% of his sentence. Appellant argues that his sentence should be reclassified after the decision in *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016).

STANDARD OF REVIEW

The ALC’s jurisdiction to hear this matter derives 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 ALC’s appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.*

When reviewing the SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not reverse or modify an agency’s decision

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unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2016).

DISCUSSION

On September 17, 2015, Appellant was convicted of Possession with Intent to Distribute Cocaine Base Crack, third offense, and sentenced to a term of imprisonment of ten (10) years.

Appellant argues that his sentence should be recalculated because of *Bolin*. Although *Bolin* involved interpretation of S.C. Code Ann. § 44-53-375(B) (Supp. 2016), its application is limited to an inmate convicted of a first or second offense. Based on its interpretation of S.C. Code Ann. § 44-53-375(B), the Court of Appeals concluded that “a second offense under Section 44-53-375(B) is no longer a no-parole offense.” *Bolin* at 286, 781 S.E.2d at 919. Here, Appellant was convicted and sentenced for Possession with Intent to Distribute Cocaine Base Crack, third offense. In addition, Appellant has two prior convictions for distribution of cocaine and a conviction for distribution of crack.

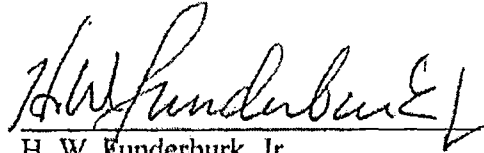
Appellant, in his brief, argues that the Department should not have changed his sentence from non-violent to violent. Whether it is a violent offense is not relevant for its classification for sentencing purposes. Further, SCDC acknowledges that Appellant’s conviction is for a non-violent offense.

S.C. Code Ann. § 24-13-100 (2007) states that a no-parole offense “means 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.” Possession with Intent to Distribute Cocaine Base Crack, third offense, is a Class A felony. *See* S.C. Code Ann. § 16-1-90 (Supp. 2016). Therefore, Appellant’s conviction for Possession with Intent to Distribute Cocaine Base Crack, third offense, is a no-parole offense. Pursuant to S.C. Code Ann. § 24-13-150(A) (Supp. 2016), a person convicted of a no-parole offense must serve at least 85% of his sentence. Appellant must serve at least 85% of his ten-year sentence. It is therefore,

ORDERED that the decision of SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
August 1, 2017




H. W. Funderburk, Jr.
Administrative Law Judge

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 1st day of August 2017

By: 
Judicial Law Clerk

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SC ADMIN. LAW COURT

Keith R. MYERS, #250863
Manning ReEntry & Work Release Ctr.
502 Beckman Dr. W-7-C1B
Columbia, SC. 29203



South Carolina Court of
Appeal
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
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