

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Braxton, #119081,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
)

Docket No.: 17-ALJ-04-0154-AP
Grievance No.: KRCI 1769-16

ORDER
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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed March 30, 2017, by Michael Braxton (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). In this appeal, Appellant argues the Department has miscalculated his prison sentence. After review of the record and briefs, the Court affirms.

ISSUE ON APPEAL

Whether the Department erred in calculating Appellant’s sentence under the relevant statutes.

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. Dep’t of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such as a liberty interest is at stake in the calculation of an inmate’s sentence. *Tant v. S.C. Dep’t of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) (“There can be no doubt the length of an inmate’s incarceration implicates a constitutional liberty interest.”); *see also Sullivan v. S.C. Dep’t of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

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In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 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 has not correctly applied credit for time served prior to his sentencing. The calculation and application of mandatory credit for time served is the administrative duty of the Department. *See* S.C. Code Ann. § 24-13-40 (Supp. 2016). In the event an inmate disagrees with the Department’s calculation and application, or lack thereof, he or she files a grievance and the actions of the Department are reviewed by the ALC. *See Cooper v. State*, 338 S.C. 202, 525 S.E.2d 886) (2000) (distinguishing non-collateral, administrative pre-trial credit matters heard by the ALC from collateral PCR cases heard by circuit court judges); *State v. McCord*, 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002) (citing *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000)) (pre-trial credit is not discretionary with the sentencing court).

Section 24-13-40 requires that a prisoner receive credit for time served prior to trial and sentencing unless one of two exceptions exists: “(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.” S.C. Code Ann. § 24-13-40 (Supp. 2016) (emphasis added). It therefore follows that credit for time served must be applied any time a prisoner spends time in jail during which he is neither already serving a sentence nor

currently an escapee. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542; *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (citing *McCord*, 349 S.C. at 487, 562 S.E.2d at 694).

Appellant pled guilty to first degree criminal sexual conduct on October 24, 1983 and was sentenced to thirty (30) years on November 17, 1983. On March 31, 1994, after serving ten (10) years and four (4) months, Appellant was conditionally released to the state of Tennessee on parole. After approximately two years on parole, Appellant was arrested in Tennessee for two separate counts of rape and placed in the custody of the Davidson County Criminal Justice Center. While Appellant was in the custody of the Davidson County Criminal Justice Center, a parole violation hold was placed on Appellant for violating his South Carolina parole. When Appellant was transferred to the Tennessee Department of Corrections, the South Carolina parole violation hold was reestablished for Appellant. Appellant served nineteen (19) years and five (5) months in the custody of the Tennessee Department of Corrections for the two counts of second degree rape that he plead guilty to in Tennessee. After serving his time in Tennessee for the two rape counts, Appellant was transferred back to South Carolina, where he was returned to the custody of the Department pursuant to the direction of the full parole board on January 20, 2016.

Appellant now argues he must be credited with time he was on parole in Tennessee before being arrested and the time he served in Tennessee for the two, second degree rape convictions. Section 24-13-40 provides that, "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." S.C. Code Ann. § 24-13-40 (Supp. 2016). Appellant believes this statute entitles him to additional time served for the period he was on parole but still monitored. This Court disagrees. First, the statute refers to credits given for time spent to prior to trial or sentencing, not to time spent on parole. Secondly, the statute affords the Department deference by stating that credit "may" be given for time spent under house arrest and, thus, the Department is not obligated to credit Appellant for any time spent on house arrest, if Appellant was under house arrest at any point.

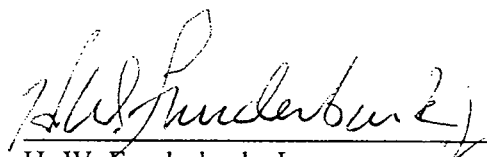
Further, the Court disagrees that Appellant is entitled to credit for time served on his parole revocation for any time served in Tennessee for the two rape convictions. The record supports the conclusion that Appellant was serving time for two separate and unrelated sentences. Appellant argues the hold placed on him for violating his South Carolina parole prevented him from having

the option to bond out in Tennessee and attributed to him having a higher security classification. Appellant believes that because there was a hold in place for violating his South Carolina probation while he was serving his time for the rape charges, he is currently entitled to credit for the nineteen (19) years and five (5) months he served in Tennessee. This Court disagrees. A hold for violating parole is merely a warrant issued upon reasonable cause to believe that a subject has violated parole and it is executed when the subject is returned to the custody of the original jurisdiction. *See Sartain v. Pitchess*, 386 F.2d 806, (9th Cir. 1966); *Cook v. U.S. Atty. Gen.* 488 F.2d 667, 671 (5th Cir. 1974). As explained above, Section 24-13-40 explicitly states that a prisoner cannot receive credit for time served prior to sentencing while serving time for another offense. In this case, Appellant was serving time for another offense and is not entitled to credit for that time on his current sentence.

* Appellant additionally argues that the Department failed to apply credit for time served for the period he was held in Anderson County before returning to the custody of the Department. However, Appellant did not specifically raise this issue in his Step One or Step Two¹ grievance, and therefore, this issue is not preserved for appellate review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

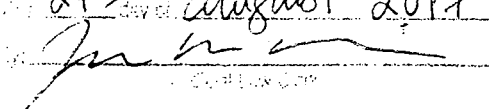
AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

August 24, 2017

Columbia, South Carolina

By the Court, I have reviewed this order and the above stated facts and find it to be in accordance with the law. I hereby certify this order to be a true and correct copy of the original. Witness my hand and the seal of the Court this 24th day of August 2017.

24th day of August 2017


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¹ Appellant's Step Two grievance contends he should receive credit for the time he was incarcerated in Tennessee, and states, in parenthesis, "this includes the time served during the extradition process." However, this reference does not bring the issue of the time Appellant was held in Anderson County, South Carolina, before this Court.