STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Torrey Deaund Manning, #364781 Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No.: 17-ALJ-04-0491-AP **ORDER**

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed September 15, 2017, by Torrey Deaund Manning (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). In this appeal, Appellant argues the Department has miscalculated his prison sentence. Specifically, the Appellant argues that the offense he was convicted of should be a classified as a non-violent offense, and also argues that his crime of conviction should not be classified as a "no parole" offense, requiring him to serve eighty-five (85) percent of his actual term of imprisonment.

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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SC ADMIN. LAW COURT

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. 2015). 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. 2015). 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

Because this court exists to review the actions of administrative agencies and not the actions of circuit court judges, this court cannot rule on the validity of the Appellant's sentence. *See Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259–60, 531 S.E.2d 507, 508–09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al-Shabazz*). Instead, this court reviews the Appellant's case to determine if the Department is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007).

The Appellant pleaded guilty to Trafficking in Illegal Drugs, less than fourteen (14) grams but more than four (4) grams of Heroin, pursuant to S.C. Code Ann. § 44-53-370(e)(3)(a)(1) and sentenced to seven (7) years. S.C. Code Ann. § 16-1-90(B), defines the offense to which the Appellant pleaded guilty as a Class B Felony. Additionally, S.C. Code Ann. § 24-13-100, defines a "no parole offense" as "a class A, B, or C felony...which is punishable by a maximum term of imprisonment for twenty years or more." Moreover, S.C. Code Ann. § 24-13-150(A) provides that

". . . an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eight-five percent of the actual term of imprisonment." Therefore, an inmate serving a no-parole sentence for a conviction of a Class B felony must be incarcerated at least 85% of the total sentence imposed.

The Appellant was sentenced on July 20, 2015, to 7 years confinement, which amounted to two thousand five hundred and fifty-five (2,555) days. Eighty-five (85) percent of 2,555 days is two thousand one hundred and seventy-one (2,171) days. Running the sentence from July 20, 2015, with credit for time served, the earliest possible date the Appellant could be released from confinement is June 27, 2021. The Record on Appeal (Conviction Summary) reflects that the Department reached the same conclusion and the Appellant has established no reason to differ from that conclusion, therefore, this court affirms the Department's decision.

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

AND IT IS SO ORDERED.

S. Phillip Lenski
Administrative Law Judge

March 20, 2018
Columbia, South Carolina