

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 17-ALJ-04-0362-AP
Appellate Case No. 2017-002628

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MAR 26 2018
SC Court of Appeals

JAMES WESLEY PATTERSON, # 296129,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT'S CLASSIFICATION OF APPELLANT AS AN 85% "NO PAROLE" OFFENDER.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of James Wesley Patterson, an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on March 7, 2017, challenging his sentence calculation. This grievance was investigated and denied when it was determined that SCDC had properly calculated Appellant’s sentence. Appellant filed a Step Two Grievance on April 11, 2017. This grievance was also investigated and denied. Appellant subsequently filed a notice of appeal to the Administrative Law Court. On December 11, 2017, Administrative Law Court issued an order affirming the decision of the Department of Corrections. 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 (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 UPHELD THE DEPARTMENT'S CLASSIFICATION OF APPELLANT AS AN 85% "NO PAROLE" OFFENDER.

On June 12, 2013, Appellant pled guilty to manufacturing methamphetamine, third offense, in violation of S.C. Code § 44-53-375 (B), and possession of methamphetamine or cocaine based, third offense, in violation of S.C. Code § 44-53-375 (A). He was sentenced to 160 months (approximately 13.33 years) for the manufacturing offense and ten years, concurrent, for the possession offense. (See R. p. 7-8). The conviction for third-offense manufacturing falls under the 85% "no parole" statute because the offense is a Class A felony which carries a maximum sentence of thirty years. See S.C. Code § 44-53-375(B)(3) (stating that third offense manufacturing carries ten to thirty years); S.C. Code § 16-1-90 (defining Class A felonies); and S.C. Code § 24-13-100 and -150 (stating that offenses carrying twenty years or more are 85% no-parole offenses).

An exception to the 85% rule is contained in S.C. Code § 44-53-375(B)(3), which states, in relevant part, as follows:

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 subsection (A)***, 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.

(emphasis added). Under the above provision, Appellant would be eligible for parole and considered a non-85% offender if all of his prior drug convictions were for simple possession offenses. However, Appellant has prior convictions for the following: (1) possession with


intent to distribute methamphetamine, Sept. 8, 2003; (2) possession with intent to distribute methamphetamine/cocaine base, March 15, 2007. (See R. p. 5-6). Because these prior offenses are not simple possession offenses, Appellant is properly classified as an 85%, “no parole” offender.

CONCLUSION

For the reasons discussed above, this Court should affirm the Administrative Law Court’s decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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