STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

---



ALC Case No. 17-ALJ-04-0200-AP
Appellate Case No. 2017-002343

---

DAWAN CHATMAN, # 172972,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

---

# INITIAL BRIEF OF RESPONDENT

---

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

**Kensey E. Barrett**
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508
**ATTORNEY FOR RESPONDENT**

Tommy A. Thomas, Esq.
ATTORNEY FOR APPELLANT
Post Office Box 88
Irmo, SC 29063

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES



### STATUTES



### OTHER AUTHORITIES

## STATEMENT OF ISSUES ON APPEAL

I. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

II. APPELLANT HAS NOT PROPERLY PRESERVED THE ISSUE OF EQUITABLE ESTOPPEL. HOWEVER, REGARDLESS OF ANY ISSUE PRESERVATION CONCERNS, EQUITABLE ESTOPPEL DOES NOT APPLY IN THIS CASE.

## STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Dawan Chatman, an inmate in the custody of the South Carolina Department of Corrections ("SCDC" or "Department"). On January 3, 2017, Appellant submitted a Step One Grievance claiming SCDC incorrectly calculated his sentence pursuant to S.C. Code § 16-3-20. The Step One Grievance was denied on the ground that no error was found in Appellant's sentence calculation. On January 25, 2017, Appellant submitted a Step Two Grievance, which was also denied on the ground that there were no errors in the calculation of Appellant's sentence. Appellant filed a Notice of Appeal in the Administrative Law Court ("ALC") on April 15, 2017. Thereafter on October 11, 2017, the Honorable H. W. Funderburk, Jr. 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

### I. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

The jurisdiction of the ALC to hear inmate matters 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.

In this case, the ALC properly affirmed the decision of the Department of Corrections. Initially, the ALC exists to review the actions of administrative agencies, and it does not have jurisdiction to review the actions of circuit court judges in sentencing defendants. Accordingly, the ALC properly declined to rule upon the legality of Appellant's sentence. Order, page 2. Rather, the ALC properly affirmed SCDC's imposition of an unambiguous sentencing sheet. *Id.* Furthermore, Appellant has failed to show that the Department committed any error with respect to the calculation of his sentence. As the Administrative

Law Judge found, Appellant's reading of the sentencing statute that went into effect on January 1, 1996 is incorrect. Order, page 2; *see* S.C. Code Ann. § 16-3-20(A) (Supp. 1995). The trial judge was restricted from imposing a sentence less than 30 years. *See* Order, page 2. Further, SCDC must impose the sentence as shown on an unambiguous sentencing sheet. *Id.* Appellant has failed to show that the Department's calculation is incorrect in any way.

Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

## II. APPELLANT HAS NOT PROPERLY PRESERVED THE ISSUE OF EQUITABLE ESTOPPEL. HOWEVER, REGARDLESS OF ANY ISSUE PRESERVATION CONCERNS, EQUITABLE ESTOPPEL DOES NOT APPLY IN THIS CASE.

Initially, Appellant has not preserved his issue of equitable estoppel. Appellant complains he detrimentally relied upon his misreading of the sentencing statute. However, Appellant never raised the issue to the Department in his Step One or Step Two Grievances and it was not ruled upon by the ALC. In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); *see* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "It is axiomatic that an issue cannot be raised for the first time on appeal, but

must have been raised to *and ruled upon* by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (emphasis added), citing *Creech v. S.C. Wildlife and Marine Resources Dep't.*, 328 S.C. 24, 491 S.E.2d 571 (1997). Appellant did not give Respondent a chance to address his concern of equitable estoppel at the agency level, and therefore did not preserve the issue for appeal. Furthermore, this issue was not ruled upon by the ALC, although the court made clear that it does not have jurisdiction to alter an "erroneous or 'illegal' sentence". Order, page 2.

Nevertheless, the doctrine of equitable estoppel does not apply in this case. Courts apply the doctrine of equitable estoppel "when one party, 'by his actions, conduct, words or silence which amount to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury'". *State Acc. Fund v. S.C. Second Injury Fund*, 388 S.C. 67, 76-77, 693 S.E.2d 441, 446 (Ct. App. 2010) (citing *Rushing v. McKinney,* 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App.2006)). Further, equitable estoppel applies when "the party to be estopped [has] exhibited misleading conduct during the formation of the agreement with the intent or expectation the complaining party would rely on it." *Id.* at 77, 693 S.E.2d at 446. Appellant's misreading or misunderstanding of the statute was not a result of SCDC's actions, inactions, conduct, words, or silence. SCDC did not exhibit any conduct at all to Appellant during his reading of the statute as he had not yet been found guilty and sentenced to SCDC. There was no agreement or any attempt to form an agreement between the Appellant and SCDC in regards to his reading of the statute and SCDC did not make any promises to Appellant, therefore, there was nothing upon which Appellant could have detrimentally relied. Therefore, the doctrine of equitable estoppel does not apply in this case.

## CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

KENSEY E. BARRETT
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

April 5, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.



---

ALC Case No. 17-ALJ-04-0200-AP
Appellate Case No. 2017-002343

---

DAWAN CHATMAN # 172972,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

---

**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's counsel, addressed as follows: Tommy Thomas, Post Office Box 88, Irmo, SC 29063.

Kensey E. Barrett
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

April 5, 2018