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STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 17-ALJ-04-0154-AP
Appellate Case No. 2017-001964

MICHAEL BRAXTON, # 119081,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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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.**

STATEMENT OF THE CASE

This case is before the Court pursuant to the appeal of Michael Braxton, an inmate incarcerated with the Department of Corrections (SCDC). Appellant filed a Step One Grievance on December 22, 2016, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC had already properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on February 1, 2017. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal with the Administrative Law Court. Thereafter, the appeal in the ALC went forward, and on August 24, 2017, the Honorable H.W. Funderburk, Jr. issued an order affirming the decision of the Department of Corrections regarding Appellant's sentence calculation. 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 the 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.

In this case, the ALC properly affirmed the decision of the Department of Corrections, as Appellant has failed to show that the Department committed any error with respect to the calculation of his sentence. On March 15, 1985, Appellant was sentenced to thirty years imprisonment on one charge of Criminal Sexual Conduct - First Degree in violation of SC Code Ann §16-3-652. (R. p. 5, lines 14 & 17). This crime carries a sentence of "not more than thirty years, according to the discretion of the Court." SC Code Ann §16-3-652. After ten years and four months, Appellant was paroled to Tennessee and served two years and two months of parole between March 31, 1994 and May 28, 1996. (R. p. 17, lines 32-43). He was arrested in Tennessee for two more counts of rape on May 28, 1996 and was sentenced to twenty years in prison in Tennessee. (R. p. 7, lines 12 & 13). He was in custody at the Davidson County Criminal Justice Center and the Tennessee Department of Corrections from May 28, 1996 to his release at the end of his sentence on November 2, 2015. (R. p. 14, lines 19 & 21). A hold was in place after his arrest for violation of his South Carolina parole and he was returned after serving his Tennessee sentence to finish out the Criminal Sexual Conduct - First Degree sentence in South Carolina. (R. p. 15, lines 16 & 17). Appellant seeks to have his time served in Tennessee on unrelated charges credited to the time remaining on his sentence in South Carolina.

Appellant is not entitled to jail time credit on his South Carolina sentence for the time period during which he was serving time in Tennessee for Tennessee sentences. SC Code Ann.

§ 24-13-40 explicitly states that a person cannot get credit for time served prior to sentencing if they are, while awaiting said sentencing, serving time for another offense. Appellant was serving time in Tennessee for two separate rape charges unrelated to his South Carolina conviction. Thus, while awaiting sentencing for his South Carolina parole violation, he was serving time for other offenses and cannot get time served credits on his South Carolina sentence.

Appellant argues that he is entitled to credit on his South Carolina sentence for the time period during which he was incarcerated in Tennessee on unrelated offenses because there was a hold on him during that time for the South Carolina parole violation. A parole violation “hold” or “detainer” is merely a warrant issued upon reasonable cause to believe that the subject has violated parole. See Sartain v. Pitchess, 386 F.2d 806, 806-07 (9th Cir. 1966); See also; Cook v. U.S. Atty. Gen., 488 F.2d 667, 671 (5th Cir. 1974) (“A parole violators warrant is executed when its command is carried out-that is when the parolee is retaken and returned to federal custody pursuant to it.”); 67A C.J.S. Pardon & Parole § 80 (“holds” and “detainers” are warrants that may be delayed in execution until the termination of the imprisonment of the parolee under another sentence). Therefore, any detainer or hold put in place by South Carolina during the duration of Appellant’s incarceration in Tennessee would not allow for his time there to count as jail time credit for his sentence in South Carolina. See SC Code Ann. § 24-13-40 (“Provided, however, that credit for time served prior to trial and sentencing shall not be given... (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense.”)

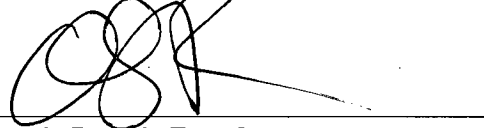
Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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