STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jakarta Deshon Young, #276572,	)	Docket No. 17-ALJ-04-0507-AP
	)	Grievance No.: KCI 744-17
Appellant,	)	
	)	
vs.	)	**ORDER**
South Carolina Department of Corrections,	)	
Respondent.	)	

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SC Court of Appeals

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GENERAL COUNSEL

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Jakarta Deshon Young (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS/PROCEDURAL HISTORY

On August 25, 2016, Appellant was sentenced to seven (7) years for the offense of trafficking cocaine 10-28 grams, 2nd offense, in violation of S.C. Code Ann. § 44-53-370(e)(2). On May 16, 2017, Appellant was sentenced to eight (8) years for the offense of manufacturing cocaine base, 2nd offense, in violation of Section 44-53-375(B)(2). The latter sentence was to run concurrently with the August 25 sentence for trafficking cocaine.

Appellant filed a Step 1 Grievance on June 28, 2017 challenging the Department's sentencing calculation because Appellant alleged that his offense of trafficking cocaine 10-28 grams, 2nd offense, is no longer a "no parole" offense under S.C. Code Ann. § 44-53-375(F) (2018)[1] following the 2010 amendment, and he should therefore not have to serve 85% of his sentence. He asserted that he had not been sentenced to a mandatory term of imprisonment of twenty-five years, a mandatory minimum of twenty-five years, or a mandatory minimum term of imprisonment of less than twenty-five years nor more than thirty years, and thus could not be held ineligible for parole, extended work release or supervised furlough, under Section 44-53-375(F).

[1] Appellant refers to Section 44-53-375(F) in his Step 1 Grievance. However, he cites only to Section 44-53-370(e)(2) in his Step 2 Grievance, Notice of Appeal, and briefs. Also, Respondent only addresses Section 44-53-370(e)(2)(a)(2) in its brief. Therefore, the Court will only address Section 44-53-370(e)(2)(a)(2).

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The Warden denied Appellant's Step 1 Grievance, finding that the offense of trafficking in cocaine under S.C. Code Ann. § 44-53-370(E)(2) requires a "no parole (85%) sentence." Appellant then filed a Step 2 Grievance, reasserting the same argument from his Step 1 Grievance. Appellant's Step 2 Grievance was also denied. On September 21, 2017, Appellant filed a Notice of Appeal to the ALC, in which he repeated his argument from his Step 1 and Step 2 Grievances.

On October 11, 2017, Appellant filed a brief.[2] The Department filed the Record on Appeal on November 30, 2017. The Department filed Respondent's Brief on January 23, 2018. Appellant filed a Reply Brief on January 30, 2018.

ISSUE ON APPEAL

Did the Department err in its sentencing calculation?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or

[2] On the same day, Appellant filed a "Motion for Appointmen[t] of Counsel," in which he refers to appeal as a "'Post-Conviction Relief – P.C.R.' proceeding." First, this is not a PCR proceeding, and Appellant has cited no authority conferring on him the right to court-appointed counsel in grievance appeals to the ALC. Therefore, his motion is denied. On October 30, 2017, Appellant filed a Motion to Amend, seeking to submit an amended brief. Similarly, on December 7, 2017, the Court received a document from Appellant entitled "Motion to Amend" and also "Addendum/Supplement of Record." It appears to be a motion to amend his brief by adding expanding on his Statement of the Case section of his brief. The Department has not objected to these motions, so the Court hereby grants the motions. On November 28, 2017, Appellant filed a document entitled "Motion to Amend/Supplement of Record/Addendum," seeking to include a sentencing sheet from August 25, 2016 in the Record. However, this sentencing sheet already exists in the record and would be duplicative. Therefore, this motion is denied. Finally, on January 24, 2018, Appellant filed a document entitled "Motion to Resolve Appeal," seeking to have the Court rule in his favor because the Department allegedly failed to file its brief within 110 days after the date of assignment (October 5, 2017), as required by Rule 60(A) of the Rules of Procedure for the Administrative Law Court. However, 110 days from the date of assignment is January 23, 2018, which is the date on which the Department filed its brief. Therefore, Appellant's motion is denied.

modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

> (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) (Supp. 2017); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

DISCUSSION

Appellant acknowledges that he was sentenced according to S.C. Code Ann. § 44-53-370(e)(2) (more specifically 44-53-370(e)(2)(a)(2)), which imposes the following sentence for a second offense of "trafficking in cocaine" where the quantity is more 10 grams or more but less than 28 grams: "a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted; and a fine of fifty thousand dollars[.]" However, Appellant argues that the "unenumerated paragraph at the end of S.C. Code Ann. § 44-53-370(e)" (which is actually located after subpart (7), before subpart (8)) controls subsection (e). According to this paragraph, in pertinent part, one who is "convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole., extended work release . . ., or supervised furlough . . . ." Appellant argues that because he was only sentenced to seven (7) years for his offense of trafficking in cocaine, 10 grams or more but less than 28 grams, second offense, he is eligible for parole, work release, and supervised furlough.

Appellant's sentencing sheet dated August 25, 2016 reflects a sentence of seven (7) years for the offense of "Drugs/Trafficking in cocaine, 10g or more, but less than 28g – 2nd offense" in violation of S.C. Code Ann. § 44-53-370(e)(2). The Department acknowledges the Appellant's sentence and correctly points out that the offense of which Appellant was convicted is a Class A felony under

S.C. Code Ann. § 16-1-90(A) (Supp. 2017). "[A] class A, B, or C felony or an offense exempt from classification" is a "no parole offense." S.C. Code Ann. § 24-13-100 (2007).

> Regarding no parole offenses, S.C. Code Ann. § 24-13-150(A) sets forth the following:
>
> (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served **at lease eighty-five percent of the actual term of imprisonment imposed**. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. . . .

(Emphasis added). Because Appellant's offense is a Class A felony, it is a "no parole offense," generally requiring a service of 85% of the sentence. However, on June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (Act) became effective. As the South Carolina Court of Appeals in *Bolin v. S.C. Dep't of Corr.* discussed, the Act did not amend the definition of "no parole offense," but the General Assembly did use "the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370[, which] expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370." 415 S.C. 276, 282 781 S.E. 2d 914, 917 (Ct. App. 2016). Accordingly, this Court must also consider the amended versions of Sections 44-53-370 and/or -375 (whichever is applicable), as they repealed Section 24-13-100 to the extent that it conflicts with these other two sections. *Id.* 415 S.C. at 282-83, 781 S.E.2d at 917.

S.C. Code Ann. § 44-53-370(e)(2)(a)(2) (2018) provides that for a second offense of trafficking in cocaine in a quantity of ten grams or more but less than twenty-eight grams, will result in "a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]" For each of the sentences imposed for each of the offenses listed under subsection (e), the phrase "no part of which may be suspended nor probation granted" is included, but the mandatory sentences vary in range. In the paragraph immediately following subpart (7) of subsection (e), a further ineligibility is imposed for parole, extended work release, and supervised furlough. This restriction on eligibility for parole, extended work release, and supervised furlough applies where the sentence imposed is "a mandatory term of imprisonment of twenty-five years, a mandatory minimum of imprisonment of

twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years . . . ."

In this case, the Record reflects that on August 25, 2016, Appellant was convicted of Trafficking in Cocaine, 10 grams or more but less than 28 grams, 2nd Offense, a violation of Section 44-53-370(e)(2)(a)(2), requiring a mandatory minimum sentence of five (5) years. The Record also reflects that the Appellant was sentenced to seven (7) years upon his conviction of this offense. Because Appellant was not convicted and sentenced to a mandatory term of imprisonment of twenty-five years, a mandatory minimum of twenty-five years, or a mandatory sentence between twenty-five and thirty years, Appellant is eligible for parole, extended work release, or supervised furlough.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **REVERSED AND REMANDED.**

AND IT IS SO ORDERED.

H.W. Funderburk, Jr.
Administrative Law Judge

June 20, 2017
Columbia, South Carolina

20th June 2018

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