

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Darius Gould, #189007,)
)
 Appellant,)
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 vs.)
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 South Carolina Department of Corrections,)
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 Respondent.)
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Docket No. 18-ALJ-04-0192-AP

FINAL ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed on April 27, 2018 by Darius Gould (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). The Appellant alleges that the Department is misinterpreting S.C. Code Ann. § 44-53-370(e) and incorrectly classifying his numerous drug convictions as no parole offenses, which requires him to serve eighty-five (85) percent of his actual term of imprisonment.

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).

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

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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).

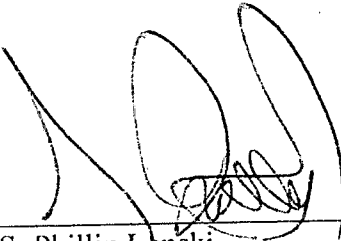
The Appellant pleaded guilty to Trafficking in cocaine, 28 g or more, but less than 100g-First Offense pursuant to S.C. Code Ann. § 44-53-370(e)(2)(b)1 and was sentenced to seven (7) years in prison; Drugs, Manufacturing, Distribution-First Offense pursuant to Section 44-53-370(b)(1) and was sentenced to seven (7) years; a weapons charge pursuant to Section 16-23-0030 and 16-23-0050(A) and sentenced to five (5) years; and the Manufacture, Distribution of cocaine base-First Offense, and sentenced to seven (7) years in prison, all sentences to run concurrent. S.C. Code Ann. § 24-13-100 provides that a “no parole offense” means a class A, B, or C felony and Section 24-13-150(A) further clarifies that inmates who are serving time for a conviction of a “no

parole offense" are not eligible for early release, discharge, or community supervision until the inmate has served as least eighty-five (85) percent of the actual term of imprisonment imposed. Additionally, in accordance with S.C. Code Ann. § 16-1-20(A)(2), the Appellant's conviction for the offense of Trafficking in cocaine in violation of Section 44-53-370(e)(2)(b)1, is a Class B felony and therefore, a "no parole offense."

The Appellant was sentenced on June 22, 2017 to seven (7) and five (5) 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-two (2,172) days. Running the sentence from June 22, 2017, with credit for time served, the earliest possible date the Appellant could be released from confinement is May 29, 2023. 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.

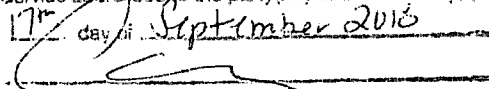


S. Phillip Lenski
Administrative Law Judge

September 17, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date entered this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).

This 17th day of September 2018
by 

Deputy Law Clerk