

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 16-ALJ-04-0869-AP
Appellate Case No. 2017-001484

RECEIVED
NOV 26 2018
SC Court of Appeals

VINCENT JERMAINE RICE, # 316178,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Annie Laurie Rumler

Staff Attorney

Office of General Counsel

South Carolina Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1355

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 16-ALJ-04-0869-AP
Appellate Case No. 2017-001484

VINCENT JERMAINE RICE, # 316178,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Annie Laurie Rumler

Staff Attorney

Office of General Counsel

South Carolina Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1355

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....7

TABLE OF AUTHORITIES

CASES

Hendley v. Budget & Control, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996).....3

Tant v. S. Carolina Dep't of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014), reh'g denied
(July 10, 2014)..... 6, 7

Wolff v. McDonnell, 418 U.S. 539, 540, 94 S. Ct. 2963, 2967, 41 L. Ed. 2d 935
(1974).....6

STATUTES

SC Code Ann. § 1-23-126.....6

SC Code Ann. § 1-23-320.....6

S.C. Code Ann. § 1-23-3803

S.C. Code Ann. § 1-23-610.....3

SC Code Ann. § 24-13-150.....5

S.C. Code Ann. § 44-53-370.....4, 5

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. THE DEPARTMENT DID NOT VIOLATE APPELLANT'S DUE PROCESS RIGHTS.

STATEMENT OF THE CASE

This case is before the Court pursuant to the appeal of Vincent Rice, an inmate incarcerated with the Department of Corrections (SCDC). Appellant filed a Step One Grievance on September 26, 2016, challenging 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 October 27, 2016. 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 June 19, 2017, the Honorable Deborah Brooks Durden 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, and Appellant has failed to show that the Department committed any error with respect to the calculation of his sentence. On December 3, 2013, Appellant was sentenced on eight separate convictions. Two of those sentences were completed on March 27, 2014. (S.R. p. 10, lines 16-17). For the remaining six offenses, Appellant received seven year sentences to run concurrently. (S.R. p. 10, lines 10-15 and S.R. p. 4-9, lines 22-27). Four of these sentences have projected completion dates of June 18, 2017. (S.R. p. 10, lines 10, 13-15). Two of those sentences have projected completion dates of February 4, 2019. (S.R. p. 10, lines 11-12). Both of these convictions are for Manufacturing/Possession with Intent to Distribute of Schedule I, II, III Drugs or Flunitrazepam in violation of SC Code Ann. § 44-53-370(b)(2). (S.R. p. 10, lines 11-12 and S.R. p. 3-4, lines 22-27). These last two sentences are the ones Appellant contends have been incorrectly calculated. App. Initial Brief.

SC Code Ann. § 44-53-370(b)(2) says in relevant part,

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 subsections (c) and (d), 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[.]

Appellant's sentence can be controlled by the first sentence quoted above only if all of his prior convictions for violations of SC Code Ann. 44-53-370 are under subsections (c) and (d).

Appellant has two prior convictions for violations of subsection (b) of SC Code Ann. 44-53-370. Namely his MDP, Possession with Intent to Distribute Marijuana and MDP, Possession with Intent to Distribute Cocaine convictions. (S.R. p. 5-6 & 8-9, line 14). Thus, Appellant's sentence is controlled by the second sentence quoted above, not the first. Based on the language of this statute, the two sentences Appellant is disputing are no parole sentences. SC Code Ann. § 24-13-150 requires that any person convicted of a no parole offense serve "at least" 85% of his or her sentence. Thus, Appellant must serve "at least" 85% of his seven year sentences for Manufacturing/Possession with Intent to Distribute of Schedule I, II, III Drugs or Flunitrazepam in violation of SC Code Ann. § 44-53-370(b)(2).

The 85% mandatory service requirement for these seven year sentences is five years, 11 months, and 12 days. Appellant's sentence start date is December 3, 2012. (S.R. p. 10, lines 11-12). If Appellant served only 85% of his sentence, his projected max out date would be approximately November 15, 2018. Appellant's projected max out date at the time of the Administrative Law Court decision was February 4, 2019. (S.R. p. 10, lines 11-12). In order to serve only the minimum required 85% of his sentence, Appellant would have to earn all available good time during his sentence. Appellant has not done so. Appellant has lost or failed to earn approximately 349 days of good time credits during his incarceration due to disciplinary convictions. (S.R. p. 11-13). This accounts for Appellant's projected max out date being approximately three months later than his 85% mandatory service requirement.

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.

II. THE DEPARTMENT DID NOT VIOLATE APPELLANT'S DUE PROCESS RIGHTS.

Appellant argues that his due process rights were violated. Specifically, he argues that he should have been afforded the due process rights established in Wolff v. McDonnell, 418 U.S. 539, 540, 94 S. Ct. 2963, 2967, 41 L. Ed. 2d 935 (1974). However, Wolff deals with the loss of sentence related credits as a result of prison disciplinary proceedings and does not apply here. Appellant was not found guilty of any disciplinary offense and SCDC did not take any earned good time credits in the administrative hearing at issue here. The administrative hearing at issue here was a hearing to determine if Appellant's sentence as imposed by the sentencing judge had been applied correctly and his projected max out date calculated correctly.

Appellant also argues that he was entitled to 30 days of notice prior to his administrative hearing. For this proposition he cites to SC Code Ann. § 1-23-126 to which he attributes this quote: "In a contested case all parties must be given reasonable opportunity for hearing after giving at least (30) days' notice." This quote does not come from SC Code Ann. § 1-23-126 but appears to come from SC Code Ann. § 1-23-320. SC Code Ann. § 1-23-126 explains the process by which a member of the public can petition a state agency to promulgate a regulation. SC Code Ann. § 1-23-320 applies to contested cases before the Administrative Law Court. Neither of these statutes applies to an internal administrative hearing conducted by SCDC.

As Judge Durden noted, the South Carolina Supreme Court ruled in Tant v. S.C. Dep't of Corr., "the Department must provide an inmate with timely formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing." 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014). However, as

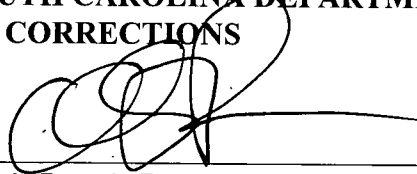
Judge Durden properly found, Respondent's correction of an administrative error does not trigger the protocol laid out in Tant. SCDC did not change Appellant's sentencing sheet but simply corrected an administrative error regarding the portion of that sentence Appellant is required to serve. Thus the Tant requirements did not apply. Regardless, Appellant was provided with notice, a hearing, and the opportunity to appeal this determination.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Annie Laurie Rumler
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355

November 26, 2018