

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

Case No. Docket No.: 12-ALJ-04-0201-AP

Julian Ford, Jr., # 155800.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

September 25, 2012

South Carolina Department of Corrections

Christopher D. Florian
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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE?**

- II. WAS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Court pursuant to the appeal of Julian Ford, Jr., (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). In this appeal, appellant argues he is not being awarded the appropriate amount of work credits toward completion of his aggregate forty-year sentence for strong armed robbery and first-degree criminal sexual conduct.

For a period between July 1995 and April 1996, appellant was not assigned to work within SCDC. Instead, appellant indicates he was a student in an educational program. (R.p.6). On September 14, 2011, appellant filed a Step One grievance complaining SCDC was inaccurately calculating his release date. (A.R.p.2).¹ Specifically, he alleged that he should have received work credits for a seven month period between 1995 and 1996. SCDC investigated and denied the grievance, explaining that there was no evidence showing appellant worked during the period in question. (A.R.p.2). Appellant filed a Step Two grievance on November 8, 2011. In this grievance, appellant stated he “was assigned to the Education Department at that time. . . . as a student in the GED class.” The Step Two grievance was denied after it was determined appellant’s release date had been correctly calculated. (A.R.p.3).

Appellant then appealed to the Administrative Law Court (ALC). In his brief to the ALC, appellant again acknowledged he “was assigned to education as a student” during the period in question.” (R.p.6).

¹ In addition to the Record on Appeal, appellant filed additional materials in an Amended Record on Appeal. This and similarly cited materials appear in the Amended Record.

On July 20, 2012, Administrative Law Judge John D. McLeod issued an Order affirming SCDC's decision in this matter. (R.pp.1-4). Judge McLeod found appellant had not provided any evidence he was entitled to work credits during the period he alleged; in fact, documentation supplied by appellant indicated he was terminated from a job assignment on July 24, 1995 and did not begin another job assignment until April 11, 1996. Judge McLeod therefore ruled appellant was not entitled to earn work credits for his assignment to school because he was not performing a job assignment. Judge McLeod also found appellant was not entitled to earn educational credits pursuant to S.C. Code Ann. § 24-13-230(F)(2) because he was serving a sentence for a violent offense. (R.p.4).

Appellant has now appealed the ALC's decision, arguing he is entitled to additional work credits, educational credits, and good time credits. In support of his argument for earned educational credits, appellant notes that during the time period in question, he was actually serving a sentence for a non-violent offense.

After reviewing appellant's consecutive sentence structure, SCDC has found that appellant was not serving a sentence for a violent offense in 1995 and 1996.² He therefore was allowed to earn educational credits during that period, and those earned educational credits have now been applied toward completion of his sentence. However, appellant is not entitled to earned work credits or additional good time credits. Therefore, for the reasons that follow, SCDC respectfully requests this Court affirm the ALC's

² Appellant is serving consecutive terms for strong arm robbery, a non-violent offense and first-degree criminal sexual conduct, a violent offense.

decision in this matter as modified by SCDC's allowance of additional earned educational credits.

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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

ARGUMENT AND CITATION OF AUTHORITY

I. THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CALCULATION OF APPELLANT'S SENTENCE.

The ALC correctly affirmed SCDC's final agency decision that appellant was not entitled to earn work credits because appellant was not assigned to a job.

In calculating an offender's sentence, SCDC considers four different types of credit which an inmate may accrue towards completion of his sentence: (1) calendar service credit; (2) good time credit;³ (3) work credit;⁴ and (4) education credit.⁵

³ See S.C. Code Ann. § 24-13-210(A) ("An inmate convicted of an offense against this State, except a "no parole offense" as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections . . . whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.").

⁴ See S.C. Code Ann. § 24-13-230(A) ("The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department, except an inmate convicted of a "no parole offense" as defined in Section 24-13-100, who is assigned to a productive duty assignment . . . or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. . . .").

In his Step One and Step Two grievances, appellant requested he be given work credits for a period in 1995 and 1996 while he was assigned to an educational program. (A.R.pp.2-3). His grievances were denied because there was no evidence to show he had worked during the period in question. (A.R.p.3). Following the agency's final decision, appellant appealed to the ALC again alleging he should have received work credits. (A.R.p.5).

By way of an Order dated July 20, 2012, Administrative Law Judge John D. McLeod affirmed SCDC's decision. (R.pp.1-4). Judge McLeod found appellant had not provided any evidence he was entitled to work credits during the period he alleged; in fact, documentation supplied by appellant indicated he was terminated from a job assignment on July 24, 1995 and did not begin another job assignment until April 11, 1996. (R.p.2). Judge McLeod therefore ruled appellant was not entitled to earn work credits for his assignment to school because he was not performing a job assignment. Judge McLeod also found appellant was not entitled to earn educational credits pursuant to S.C. Code Ann. § 24-13-230(F)(2) because he was serving a sentence for a violent offense. (R.pp.3-4).

As an initial matter, in his brief, appellant argues he should be entitled to earn educational credits for the period in question because, due to the consecutive structure of his sentences, he had not yet begun serving his violent sentence. In response to this argument, SCDC has reviewed its records and determined appellant is correct in this

⁵ See S.C. Code Ann. § 23-13-230(B) (recognizing a distinction between work credits and educational credits).

regard; he was not serving a sentence for a violent conviction at the time. Therefore, because appellant was not prohibited from earning educational credits, SCDC has now granted earned educational credits to appellant for the period in question. Consequently, appellant's argument with regard to educational credits is now moot. See McDill v. Nationwide Mutual Insurance Co., 368 S.C. 29, 31, 629 S.E.2d 749, 750 (Ct. App. 2006) (explaining a case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy).

As to work credits, the ALC correctly upheld SCDC's decision that appellant was not entitled to earn work credits for the period he was not assigned a job. Work credits are awarded to those inmates who are assigned a productive duty assignment. See S.C. Code 24-13-230(A). Appellant was not given a job assignment during the period in question; instead, he was assigned to an educational program. (R.p.6). Inmates in educational programs accrue education credits, not work credits. See id. (referring to "work credits" and "education credit" as separate and distinct).

Finally, in appellant's brief, appellant repeatedly asserts he was denied good time credits. Appellant's argument with regard to good time credits fails for three reasons. First, appellant never claimed in his initial grievances that he was denied good time credits, and as a result, neither the agency decision nor the ALC's order address the amount of good time credit has accrued. Therefore, the issue of good time credits is not properly presented for appellate review. See Al-Shabazz v. State, 338 S.C. 354, 376, 527 S.E.2d 742, 754 (2000) (explaining the ALC's review is of the Department's final decision); Zaman v. S.C. State Bd. of Medical Examiners, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (applying issue

preservation principles in the context of an appeal from the decision of an administrative agency) . Second, even if the argument were preserved for appellate review, appellant has provided not provided any evidence or argument supporting his bare assertion he was denied good time credits during the period in question. See State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (explaining a conclusory argument which is unsupported by authority will not be considered on appeal). Third, appellant's good time credits have been confirmed by the inmate records office and found to be correct. (R.p.4).

In sum, appellant's sentence has been correctly calculated, as modified by the additional education credits now applied to the sentence. Therefore, SCDC respectfully requests the Court uphold the ALC's decision in this matter.

II. RESPONDENT'S FINAL AGENCY DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 396, 489 S.E.2d 219, 220 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to justify its action. Laws v. Richland County Sch. Dist. No. 1, 2270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Administrative agencies are afforded wide latitude in making

decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm'n, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998).

The record conclusively establishes that the “substantial evidence on the whole record” supports the SCDC’s final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Public Svc. Comm’n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (S.C. 1998). As shown above, Appellant has not met this burden and his claim should be dismissed with prejudice.

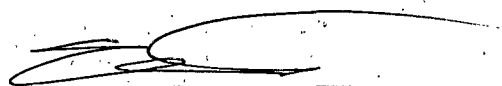
CONCLUSION

For the reasons stated above, SCDC respectfully requests that the ALC’s decision be affirmed.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



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September 25, 2012

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on September 25, 2012, addressed as follows:

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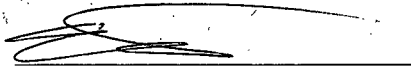
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South Carolina Department of Corrections.....Respondent.

AMENDED CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on September 27, 2012, addressed as follows:

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