

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

Case No. Docket No.: 10-ALJ-04-0637-AP

Thomas Torrence, # 94651.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

October 23, 2012

South Carolina Department of Corrections

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SC Court of Appeals

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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 THE DEPARTMENT OF CORRECTIONS' FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Court pursuant to the appeal of Thomas Torrence (“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 pre-conviction jail time credit on the sentences he is currently serving.

On April 7, 1987, appellant was arrested by Charleston County authorities. He remained in the custody until he was sentenced on October 30, 1987 to ten years’ incarceration for accessory after the fact to murder. (A.R.p.1); (R.p.6).

While appellant was still serving his sentence for his 1987 conviction, he was convicted and sentenced in Lexington County on the charges at issue in this appeal. Specifically, on May 25, 1992, appellant was convicted of two counts of murder, one count of first-degree burglary, two counts of armed robbery, one count of criminal conspiracy, and one count of kidnapping. He was sentenced to life imprisonment for the murder and first-degree burglary convictions; and consecutive terms of twenty-five years for the two counts of armed robbery and five years for criminal conspiracy. There was no sentence for the kidnapping conviction because appellant was convicted of murder. (R.pp.18-24).

On July 29, 2003, appellant filed a Step-One grievance complaining about the pre-conviction jail time credit he had received on his 1992 sentences. (A.R.p.2). The grievance was forwarded to the Step-Two level in accordance with SCDC policy. The response to the Step Two grievance explained that on the 1992 sentences, appellant was entitled to pre-conviction credit for time served from April 7, 1987 to October 30, 1987.

However, appellant was not entitled to pre-conviction credit from October 30, 1987 to May 25, 1992. (A.R.p.3).

Appellant then appealed to the Administrative Law Court (ALC). On March 2, 2012, Administrative Law Judge Ralph King Anderson, III issued an Order affirming SCDC's decision in this matter. Judge Anderson found that because appellant started serving his ten-year sentence for accessory after the fact on October 30, 1987 he was not entitled to jail time served for the period from October 30, 1987. (R.pp.1-4).

Appellant has now appealed the ALC's decision. For the reasons contained herein, Respondent respectfully requests this Court affirm the ALC's decision in this matter.

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 because appellant's sentence has been correctly implemented. Appellant challenges his pre-conviction credit for his 1992 Lexington County sentences. Contrary to appellant's argument, his pre-conviction credit has been correctly calculated.

The calculation of pre-conviction jail time credit is controlled by S.C. Code Ann.

§ 24-13-40:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. **In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall**

not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

(Emphasis added); see also Crooks v. State, 326 S.C. 171, 174, 485 S.E.2d 374, 375 (1997) (overturning a post-conviction relief decision to award additional jail time credit because the offender was still serving another sentence during the period in question).

On April 7, 1987, appellant was arrested by Charleston County authorities. He remained in the custody until he was sentenced on October 30, 1987 to ten years' incarceration for accessory after the fact to murder. (A.R.p.1); (R.p.6). While appellant was still serving his sentence for his 1987 murder conviction, he was convicted and sentenced in Lexington County on the charges at issue in this appeal. Specifically, on May 25, 1992, appellant was convicted of two counts of murder, one count of first-degree burglary, two counts of armed robbery, one count of criminal conspiracy, and one count of kidnapping. He was sentenced to life imprisonment for the murder and first-degree burglary convictions; and consecutive terms of twenty-five years for the two counts of armed robbery and five years for criminal conspiracy. There was no sentence for the kidnapping conviction because appellant was convicted of murder. (R.pp.18-24).

Appellant has already been given pre-conviction credit on his 1992 sentences for the period from April 7, 1987 to October 30, 1987. (A.R.p.3). He claims he should also be given credit on the 1992 sentences for the period after he was sentenced on October 30, 1987 to May 25, 1992. (A.R.p.2).

Contrary to appellant's argument, appellant is not entitled to the additional credit he seeks. An inmate does not accrue pre-conviction credit if he is already serving a sentence for

another offense. See S.C. Code Ann. § 24-13-40 (“[W]hen the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense . . . he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.”) Therefore, pursuant to applicable law, appellant is not entitled to jail time credit on his 1992 Lexington County sentences for voluntary manslaughter for the period he was serving a sentence for his 1987 Charleston County conviction. Accordingly, SCDC has correctly calculated appellant’s sentence.

II. RESPONDENT’S FINAL AGENCY DECISION IS 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

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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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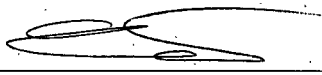
v.

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 October 23, 2012, addressed as follows:

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