

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

Case No. 13-ALJ-04-0665-AP

Stefen Harris, # 208563.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

July 24, 2014

South Carolina Department of Corrections

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STATEMENT OF THE ISSUE ON APPEAL

**I. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY
SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Stefen Harris (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant is currently committed to SCDC with a thirty year sentence for Trafficking in Crack Cocaine 10-28 grams (3rd offense). (Supp.R.p. 1)

Appellant filed a Step One Grievance on January 15, 2013, challenging SCDC’s calculation of his sentence. This grievance was investigated and denied. (R.p. 1). Appellant filed a Step Two Grievance on February 7, 2013, which was also denied. (R.p. 3). Appellant then filed a notice of appeal with the Administrative Law Court on August 30, 2013. (Supp.R.p. 2).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding that Appellant’s sentence was being interpreted correctly and under the statute that governs his conviction, Appellant is required to serve at least twenty-five years of his sentence. (Supp. R.pp. 3-5).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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 of 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(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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.

ARGUMENT AND CITATION OF AUTHORITY

I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (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 Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented during Appellant's appeal supports SCDC's decision. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. Appellant's sentencing sheet demonstrates that Appellant was sentenced to thirty years for Trafficking in Crack

Cocaine 10-28 grams (3rd offense). (Supp. R.p. 1). By statute, since this is Appellant's third offense for this crime, Appellant is required to serve no less than twenty five years of his sentence, which can not be suspended. S.C. Code Ann. § 44-53-375(C)(1)(c) (Supp. 2013). This requirement is a result of the statute, not an SCDC policy.

Accordingly, SCDC is correct in calculating Appellant's sentence to require twenty five years of his sentence to be fulfilled before he is eligible for release.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
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CERTIFICATE OF COUNSEL

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



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