

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT **SC Court of Appeals**

Administrative Law Judge S. Phillip Lenski

ALC Case No. 17-ALJ-04-0163-AP
Appellate Case No. 2018-001293

JOHN K. MASSEY, JR., # 305341,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Kensey E. Barrett
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL AS HE FAILED TO SHOW THE DEPARTMENT INCORRECTLY CALCULATED HIS JAIL TIME CREDIT.

STATEMENT OF THE CASE

This matter is comes before the Court pursuant to the appeal of Thomas K. Massey, Jr., an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on August 2, 2016, claiming his jail time credit was not being properly applied. This grievance was investigated and denied when it was determined that SCDC has properly applied Appellant's jail time credit. Appellant filed a Step Two Grievance on January 5, 2017. This grievance was also investigated and denied. Appellant filed a Notice of Appeal in the Administrative Law Court on March 30, 2017. Thereafter, on December 6, 2018, the Honorable S. Phillip Lenski issued an order dismissing Appellant's appeal. 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 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

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL AS HE FAILED TO SHOW THE DEPARTMENT INCORRECTLY CALCULATED HIS JAIL TIME CREDIT.

On July 13, 2013, Appellant was arrested for Grand Larceny and Malicious Injury to Property – Third or Subsequent. ALC R. p. 17. These are the only two convictions for which Appellant is still incarcerated. ALC R. p. 1. Appellant was released on bond for both charges on August 27, 2013. ALC R. p. 17. Appellant was arrested again on both charges on August 26, 2015. *Id.* He was then sentenced on December 2, 2015. ALC R. p. 6, 11. Pursuant to S.C. Code Ann. § 24-13-40, Appellant is entitled to any pre-detention jail time he served. (“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[.]”)

On both of the previously referenced sentencing sheets, the sentencing judge indicated Appellant served 140 days of jail time. ALC R. p. 6, 11. However, the judge ran one of the sentences consecutively. ALC R. p. 6. SCDC must adhere to an unambiguous sentencing sheet. *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 759 S.E.2d 398 (2014), *reh'g denied* (July 10, 2014). Accordingly, the jail time credit applied at the beginning of the string of sentences. *See State v. Richardson*, 295 N.C. 309, 245 S.E.2d 754, (1978). Appellant was also credited with the time he spent in jail prior to his March 31, 2015 Shoplifting conviction. ALC R. p. 18. Therefore, his total jail time credit is 582 days.

Again, as Appellant's sentencing sheet for Malicious Injury to Property – Third or Subsequent indicates, this is a consecutive sentence. ALC R. p. 6; *see also* ALC Order p. 2 of 2. By its very nature, a consecutive sentence cannot begin until all prior sentences are completed. *See State v. Richardson*, 295 N.C. 309, 319, 245 S.E.2d 754, 761 (1978). When a

defendant receives a consecutive sentence, the prior sentence(s) and the consecutive sentence(s) are considered one sentence for the purpose of providing jail time credit. *Id.* Jail time credit is counted once toward the string of sentences. *Id.* As shown on Appellant's Commitment Application Inquiry Screen, his jail time has been applied to his Grand Larceny conviction. ALC R. p. 7 and updated screen included with Respondents December 29, 2018 Letter to the ALC. The same jail time cannot be applied a second time to his second conviction.¹

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department'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 Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden.

Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, Respondent respectfully requests that the Court affirm the Administrative Law Court's dismissal of Appellant's appeal.

CONCLUSION

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

¹ If Appellant's jail time credit was applied a second time to his Malicious Injury to Property sentence, it would result in a windfall as Appellant only served the jail time once, but would receive credit for it twice.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



KENSEY E. BARRETT

Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

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v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal to Appellant, addressed as follows: John K. Massey, Jr., 305341, MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, C1B-0018-A.



Kensey E. Barrett
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

April 24, 2019

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: John K. Massey, Jr., #305341 v. South Carolina Department of Corrections
Appellate Case No. 2018-001293

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kensey E. Barrett
Deputy General Counsel
South Carolina Department of Corrections

cc: John K. Massey, Jr. #305341
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, South Carolina, 29472
C1B-0018-A