STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0184-AP
Appellate Case No. 2018-001776

BRETT CURTISS, # 373259,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Brett Thomas Curtiss, an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on December 21, 2017, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on January 31, 2018. This grievance was also investigated and denied. Appellant filed a Notice of Appeal in the Administrative Law Court on April 19, 2018. Thereafter, on August 31, 2018, the Honorable H. W. Funderburk, Jr. issued an order affirming the decision of the Department of Corrections. 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.

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 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 Administrative Law Court properly affirmed the decision of the Department of Corrections, and Appellant has failed to show that the Department of Corrections committed any error with respect to calculation of his sentence. On July 10, 2017, Appellant was sentenced to nine years for Trafficking in Crack Cocaine, 28 grams or more, 2nd Offense, in violation of SC Code Ann § 44-53-375(c)(2)(b), which is his controlling sentence. R. p. 4.[1] Appellant argues that Respondent is incorrectly applying S.C. Code Ann. § 24-13-100 to his sentence. App. Final Brief, p. 2. This is not correct.

On June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 went into effect. The Act amended portions of S.C. Code § 44-53-370 and § 44-53-375 by adding the following language to certain subsections dealing with manufacturing/distribution-level drug offenses:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense 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. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), 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.

---

[1] Appellant was also sentenced on July 10, 2017 for Marijuana Possession with Intent to Distribute, 1st Offense; Possession with Intent to Distribute Methamphetamine, 2nd Offense; and on April 19, 2018 for Trafficking Ice, Crank, or Crack Cocaine- 10g or more, but less than 28g, 1st Offense. *See* ALC Order, p. 4 fn. 4.

This language was **not** added to any of the subsections dealing with trafficking-level offenses. *See* S.C. Code Ann. § 44-53-370(e) and S.C. Code Ann. § 44-53-375(C).

The case of *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 282, 781 S.E.2d 914, 917 (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016), held that the addition of the above-quoted language to the manufacturing/distribution-level subsections signaled the legislature's intent to repeal S.C. Code § 24-13-100 (the "85% law") to the extent it conflicted with the amended portions of S.C. Code § 44-53-370 and -375. Accordingly, the *Bolin* court found that these specific offenses were no longer to be considered to be 85%, "no-parole" offenses. However, since the language discussed in *Bolin* was **not** added to the trafficking subsections of the drug statutes, *Bolin* has no application to convictions for trafficking. R. p. 5

Appellant's trafficking conviction falls under the 85% "no parole" statute because the offense is a Class A felony which carries a maximum sentence of thirty years. *See* S.C. Ann. Code § 44-53-375(c)(2)(b) (stating that second-offense trafficking in cocaine, 10-28 grams, carries a sentence of seven to thirty years); S.C. Code Ann. § 24-13-100 and -150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses) and S.C. Code Ann. § 16-1-20(A)(1) ("A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.").

Appellant argues that the following language contained in subsection F of S.C. Code § 44-53-375 requires that he be eligible for parole, extended work release, or supervised furlough:

> Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-

> five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

Initially, this language has no application to Appellant's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment of twenty-five to thirty years. More importantly, this language (which, notably, was never mentioned or discussed in the *Bolin* case), does not repeal, implicitly or otherwise, the 85% provisions as applied to Appellant's drug trafficking offense. The above language became effective on January 12, 1995. *See* S.C. Code Ann. § 44-53-375(f) (Supp. 1995). At that time, there was no law requiring an inmate to serve an 85%, no-parole term, so the provision prohibiting parole for certain serious drug trafficking offenses had meaning. However, subsequently, on January 1, 1996, the 85% "no-parole" statutes were enacted. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996). These broader statutes require 85%, no-parole terms for **all** sentences for class A, B, or C felonies or those exempt from classification but carrying a possible penalty of twenty years or more. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996).

Additionally, as a part of the January 1, 1996 enactments, S.C. Code § 24-21-560 was added, which requires that all inmates sentenced for 85%, "no parole" offenses must be released directly to a community supervision program under the supervision of the Department of Probation, Parole, and Pardon Services for a period not to exceed two years. *See* S.C. Code § 24-21-560(A) & (B). All of this subsequent legislation - including S.C. Code § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code § 44-53-375(f), supersedes -375(f). *See, e.g., Williams v. Town of Hilton Head Island*, S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) (in instances where it is not possible to harmonize two sections of a statute, a later legislation supersedes an earlier enactment); *State v. Brown*, 317

S.C. 55, 58, 451 S.E.2d 888, 891 (1994) ("More recent and specific legislation supersedes prior general law.").

Therefore, Appellant must be incarcerated for at least 85% of his sentence. *See* S.C. Code Ann. § 24-13-150(A); *see also* R. p. 5. Appellant's sentence start date is March 16, 2017. *See* R. p. 27.[2] Eighty-five percent of Appellant's nine-year sentence is approximately seven years, seven months, and twenty-four days. Appellant's current projected max-out date is November 5, 2024[3], which is approximately seven years, seven months, and twenty-one days from his sentence start date.[4] Appellant has failed to show that the Department's calculation is incorrect in any way. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

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

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[2] Appellant did not include in the Record on Appeal the full Record that was filed with the ALC, which included SCDC records indicating his sentence start date.

[3] Respondent filed a Motion to Amend Initial Brief or Modify Final Brief on March 13, 2019 due to a change in Appellant's max-out date from the date of the filing of Respondent's Initial Brief; that motion was granted. However, Appellant's max-out date subsequently changed, again, due to the addition of Earned Education Credits. Appellant's max-out date is subject to change at any time if any earning rate of credits is changed.

[4] Appellant failed to earn good time in October 2018 and his earning rate for work credits changed on March 11, 2019, both affecting his max-out date.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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July 3, 2019

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and in accordance with this Court's June 13, 2019 Order.

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June 19, 2019