

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Terry Bo Smith, #160785 )  
)  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 18-ALJ-04-0438-AP  
Grievance No.: LCI 590-18

**RECEIVED**

**AUG 05 2019**

**ORDER**

**SC Court of Appeals**

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Terry Bo Smith (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or Respondent).

Appellant challenges the decision of the Department in denying Appellant's contention that his sentences should be recalculated because the start date of the sentences he is presently serving should have been earlier because of additional "time served" credit that he should have received on a previously completed sentence. Appellant argues that the start date of his 2006 sentences would have begun earlier had all "time served" credits been applied to his 1994 sentences which he completed on June 1, 2006.

This is the second appeal he has filed concerning this sentence calculation. On July 3, 2018, this Court remanded Appellant's previous case, 18-ALJ-04-0050-AP, and ordered Respondent to recalculate Appellant's sentence consistent with the Court's opinion. The Department apparently did so and notified Appellant of its final agency decision in the matter on August 24, 2018. Appellant subsequently filed this Notice of Appeal on September 5, 2018.

**FACTS AND PROCEDURAL HISTORY**

On April 27, 1994, Appellant was sentenced to ten (10) years on indictment number 1994-GS-11-132, for Assault and Battery of a High and Aggravated Nature (ABHAN). He received credit for 103 days that he served on the charge prior to sentencing. On August 9, 1994, Appellant was sentenced to ten (10) years on indictment number 1994-GS-11-949 for Distribution of Crack (Distribution). This sentence was ordered to run consecutively to the ABHAN sentence. Appellant

**FILED**

**JUL 22 2019**

**SC ADMIN. LAW COURT**

completed his sentence for ABHAN on August 14, 1999, and began serving his Distribution sentence.

On August 2, 2000, Appellant was released on parole. Appellant was on parole from August 2, 2000, until May 1, 2002, when he absconded from supervision. On May 2, 2002, Spartanburg County issued a warrant alleging that Appellant had violated his parole. Appellant was served with the Spartanburg County warrant on January 17, 2004; however, during the period between issuance of the warrant and his subsequent arrest on that warrant, Appellant spent time incarcerated in Canada and New York beginning in July 2002 and ending upon his extradition to South Carolina where he was served with the warrant. Appellant's parole was revoked on March 1, 2004, and he returned to SCDC two days later to complete the remainder of the Distribution sentence.

Appellant completed his sentence and was released on June 1, 2006. Including the time of incarceration on the original sentence (2,282 days from May 5, 1994 to August 2, 2000), the time he spent on parole prior to the issuance of his warrant for absconding (638 days from August 3, 2000 to May 2, 2002), and the time of incarceration after his parole revocation (867 days from January 17, 2004 to June 1, 2006), Appellant served approximately 10 years and 4 months, or 3,787 days on the 20 years of consecutive sentences he received for his 1994 ABHAN and Distribution convictions.

Also, during the period between the issuance of the parole violation warrant and his subsequent arrest on that warrant, Appellant committed the offenses of Common Law Robbery and ABHAN on May 21, 2002, and the offenses of Armed Robbery, Kidnapping, and Carjacking with Great Bodily Injury on June 28, 2002. On October 16, 2006, Appellant pled guilty to the charges and was concurrently sentenced as follows: Common Law Robbery (Indictment 2006-GS-42-3933) – 15 years; ABHAN (Indictment 2006-GS-42-3932) – 10 years; Armed Robbery (Indictment 2004-GS-42-2037) – 23 years; Kidnapping (Indictment 2004-GS-42-2036) – 23 years; and Carjacking with Great Bodily Injury (Indictment 2004-GS-42-2035) – 20 years. Appellant was given 189 days of credit for time served on these charges. This credit was applied by backdating his sentence starting date to April 10, 2006, thereby applying the 189 days credit to his actual sentencing date on October 16, 2006.

Appellant argues that he should have been given credit for the time he served in New York (507 days). He claims that time should have been applied to his 1994 Distribution sentence. Had this

time been applied by the Department, Appellant asserts that he would have finished serving the Distribution sentence earlier than June 1, 2006, and would have begun serving the sentences for which he is now incarcerated earlier. He, therefore, believes he is entitled to have this additional credit applied to his current sentence.

### **STANDARD OF REVIEW**

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation. *Id.*

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2018).

### **DISCUSSION**

As outlined above, Appellant completed his 1994 sentences for ABHAN and Distribution on June 1, 2006. Subsequently, he pled guilty and was sentenced for the charges for which he is presently incarcerated on October 16, 2006. The "time served" credit for Appellant's previous offenses would have no impact on his present 2006 sentences as they are unrelated and were completed prior to the imposition of the present sentences.

The Court also finds this issue to be moot. Appellant completed the sentence on the 1994 charges in 2006. Applying additional credit to them can have no effect on them or on the current sentences.

Appellant was credited with 189 days of "time served" for the 2006 sentences. To apply this credit his sentence start date was backdated to April 10, 2006.<sup>1</sup> Since Appellant's sentence start date was

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<sup>1</sup> To give inmates "time served" credit, the Department utilizes this administrative fiction to calculate the sentence ending date.

recorded as April 10, 2006, it may appear that Appellant's current sentences were imposed prior to his completion of the 1994 sentences. Appellant argues that this is the case and further states that, had proper credit been applied to his 1994 sentences, he would have finished them earlier and therefore could have started his present sentence earlier as well.

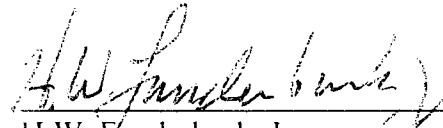
This argument is without merit as the completion date of Appellant's 1994 sentences has no bearing on the calculation of the sentences he is presently serving. Regardless, Appellant's current sentences were not imposed until several months after Appellant had completed the prior sentences. The April 10, 2006, start date is simply the date used by the Department to credit "time served" so as to compute the sentence-ending date.

In conclusion, I find substantial evidence supports the Department's calculations and conclude that they result from a proper application of the law. Appellant's sentences have been accurately adjusted for "time served" credit. It is therefore,

**ORDERED** that the Department's decision is **AFFIRMED**.

**AND IT IS SO ORDERED.**

July 22, 2019  
Columbia, South Carolina

  
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H.W. Funderburk, Jr.  
Administrative Law Judge

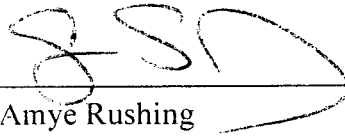
CERTIFICATE OF SERVICE

I, Amye Rushing, hereby certify that I have this date served this Order upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, inter-agency, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

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July 22, 2019  
Columbia, South Carolina

  
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Amye Rushing  
SCALC

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JUL 22 2019

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