

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gregory Pencille, # 312332,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 18-ALJ-04-0547-AP
[Grievance No.: LCI 0724-18]

ORDER RECEIVED
AUG 22 2019
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Gregory Pencille (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS AND PROCEDURAL HISTORY

On November 7, 2005, Appellant was sentenced in Horry County to incarceration for twelve (12) years for kidnapping on indictment number 2005-GS-26-2054. On August 9, 2010, Appellant was sentenced in Horry County to incarceration for thirty (30) years for Criminal Sexual Conduct, First Degree, on indictment number 2010-GS-2604686. This sentence was to run concurrently with the sentence for kidnapping that he was still serving. However, the judge allowed credit for time served from October 2008. The Department calculated that Appellant was entitled to credit of 677 days from October 1, 2008, to August 9, 2010. Effectively, the trial judge allowed Appellant's sentence to start on October 1, 2008.

Appellant filed a Step 1 Grievance on August 15, 2018, challenging the Department's sentencing calculation. Appellant argued that he was entitled to credit for time served against his sentence for Criminal Sexual Conduct from the sentencing date for the kidnapping charge on November 7, 2005. When his grievance was denied, Appellant filed a Step 2 Grievance on August 30, 2018, again contending that time-served credits for his sentence for Criminal Sexual Conduct should start on November 7, 2005, since he had been incarcerated since that date. This grievance was denied on October 25, 2018. He filed a timely appeal to the ALC on November 16, 2018, raising the same issue that he should be credited for time served on the Criminal Sexual Conduct sentence from November 7, 2005.

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JUL 24 2019

SC ADMIN. LAW COURT

Appellant filed a brief on December 7, 2018. The Department filed the Record on Appeal on February 1, 2019. The Department filed its brief on March 19, 2019.

ISSUE

Did the Department err in its sentence calculation by failing to give Appellant proper credit for time served?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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) (Supp. 2017). *See also* *Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)

(quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, 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, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant's argument alleges that the Department erred by not applying all of the time he served on his 2005 conviction against his 2010 conviction.

The statute governing time served, S.C. Code Ann. § 24-13-40 (Supp. 2017), provides:

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, and may be given for any time spent under monitored house arrest. 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.

The statute is clear that Appellant cannot get credit for time served while "serving a sentence for one offense and ... awaiting trial and sentence for a second offense." See *State v. Boggs*, 338 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (Section 24-13-40 "mandates prisoners receive credit for the time they served prior to trial unless one of two exceptions exist, either: (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense.")

The statute's language is clear and applies in this case.

The trial judge allowed Appellant credit for time served in the sum of 677 days. The sentencing sheet for indictment number 2010-GS-2604686 is without ambiguity; therefore, SCDC is confined to the face of the sentencing sheet in determining Appellant's sentence. See *Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014).

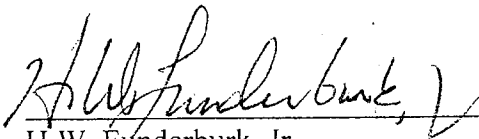
Therefore, substantial evidence supports the Department's calculations for Appellant's sentences, including its application of credit for time served as ordered by the trial judge.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

July 24, 2019
Columbia, South Carolina



H.W. Funderburk, Jr.
Administrative Law Judge

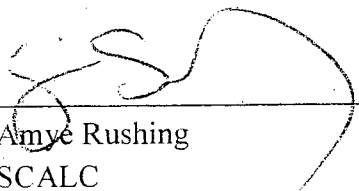
CERTIFICATE OF SERVICE

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).

Kensey Barrett
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, SC 29211

Gregory Pencille
#312332
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

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Columbia, South Carolina



Amye Rushing
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