STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Adam Winningham, 268099,	)	Docket No.: 19-ALJ-04-0077-AP
	)	Grievance No.: GCI 84-18
Appellant,	)	
vs.	)	
	)	**ORDER**
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Adam Winningham ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant is seeking judicial review of the Department's determination regarding the application of earned work credits ("EWCs") to his sentence. After careful review of the Record and briefs, the Department's decision is affirmed.

ISSUE ON APPEAL

Did the Department commit error by not applying earned work credits to reduce Appellant's sentence?

STANDARD OF REVIEW

The Court'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 *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such a liberty interest is at stake in the calculation of an inmate's sentence. *See Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *See also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 and recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

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In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate

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standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2017). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the Appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2017). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

On March 20, 2006, Appellant received a twenty-year sentence after pleading guilty to Burglary-First Degree, a violation of S.C. Code Ann. § 16-11-311(B). Upon calculating his sentence, the Department determined that Appellant committed a no parole offense and must serve at least eighty-five percent of his sentence without the application of earned work credits. This Court will review Appellant's case to determine whether the Department did in fact err. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007).

S.C. Code Ann. § 24-13-100 defines a "no parole offense" as "a class A, B, or C felony, or an offense exempt from classification as enumerated in Section 16-1-10(D), which is punishable by a maximum term of imprisonment for twenty years or more." S.C. Code Ann. 16-1-10(D) sets forth the offenses that are exempt from classification, and section 16-11-311(B), Burglary-First Degree, is on the list of offenses exempt from classification. Furthermore, as set forth in relevant portions of S.C. Code Ann. § 24-13-150 (A), "a prisoner convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections.... is not eligible for early release, discharge, or community supervision.... until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed. The eighty-five percent must be calculated without the application of EWCs. *See Id.* Additionally, while inmates are given credit for good behavior and allowed reductions in their sentence for participation in certain programs, no inmate "convicted of a "no parole offense" is entitled to a reduction below the maximum term of incarceration provided in Section... 24-13-150..." S.C. Code Ann. §§ 24-13-

210(B) and 24-13-230(B).

In sum, Appellant pled guilty to and was sentenced for Burglary-First Degree and therefore he is required by law to serve eighty-five percent of his twenty-year sentence before being eligible for release, discharge, or community supervision. *See* sections 24-13-150(A), 24-13-210(B) and 24-13-230(B).

Appellant further argues he is not required to serve eight-five percent of his sentence due to conflicting language in S.C. Code Ann. §§ 24-13-150 and 24-13-230. Appellant contends section 24-13-150 states the eighty-five percent is calculated without the application of credits while section 24-13-230(B) discusses an annual limit of seventy-two days of eligible work and education credits. In light of the language Appellant views as being in conflict, or ambiguous, he urges that the statutes be interpreted such that no-parole offenders can receive seventy-two days of eligible credits annually to reduce the eighty-five percent requirement. However, there is no ambiguity in this instance. Appellant must serve at least eighty-five percent of his sentence for Burglary-First Degree, which must be calculated "without the application of earned work credits...." Section 24-13-150(A). *See Smith v. Tiffany*, 419 S.C. 548, 556, 799 S.E.2d 479, 483 (2017) ("Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning"); *see also S.C. Carolina Coastal Council v. S.C. State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991) (when interpreting a statute, a court should not consider a particular clause in isolation but rather, it should be read in conjunction with the purpose of the whole statute and the policy of law).

Lastly, Appellant argues that section 24-13-100 was repealed by *Bolin v. S.C. Dep't of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016). However, *Bolin* affected drug distribution, manufacturing, and possession with intent to distribute charges for second or subsequent offenses and has no relevance to Appellant's case.

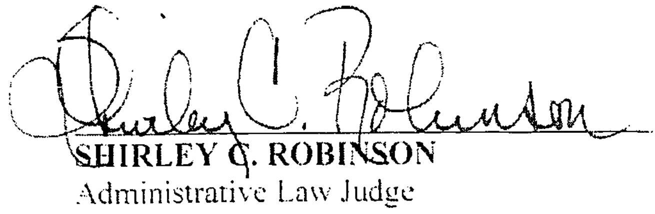
CONCLUSION

The substantial evidence in the record supports the Department's decision that Appellant must serve eighty-five percent of his sentence, which cannot be reduced by the application of earned work credits.

ORDER

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

AND IT IS SO ORDERED.



SHIRLEY C. ROBINSON
Administrative Law Judge

October 4, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

[illegible] in the United States mail, postage paid or in the Interagency Mail Service, as addressed to the party(ies) or their attorney(s).

This 4 day of October, 2019

By: [illegible]
Judicial Law Clerk