STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Quentin Holt, #268198, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No. 19-ALJ-04-0322-AP ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) in its appellate capacity pursuant to subsection 1-23-600(D) of the South Carolina Code (Supp. 2018). In the case *sub judice*, Quentin Holt (Holt) challenges a decision of the South Carolina Department of Corrections (Department or SCDC). Specifically, Holt appeals the Department's decision in response to his Step 2 Grievance, which determined it had correctly calculated his sentence. After careful consideration of the Record on Appeal (Record), arguments raised in the parties' briefs, and the applicable law, the Court affirms the Department's decision.

BACKGROUND

On September 22, 2010, Holt, appearing before the Honorable Benjamin H. Culbertson, was convicted of two counts of possession with intent to distribute cocaine base or methamphetamine, third offense, in violation of subsection 44-53-375(B)(3) of the South Carolina Code. He received concurrent sentences of twenty-five years as a result of each conviction. In addition, on that same date, Judge Culbertson found that Holt had violated the conditions of his probationary sentence for an earlier conviction on December 20, 2007.[1] Consequently, Holt received a four-year sentence for the probation violation where the sentence was to run consecutive to the other sentences he received on September 22, 2010.

[1] The original sentence provided "4 yrs ss 3yrs prob" following his conviction for possession of cocaine, second offense, in violation of subsection 44-53-370(d)(3) of the South Carolina Code of Laws.

On November 16, 2018, Holt filed a Step 1 Grievance claiming the Department had erroneously calculated his sentence at twenty-nine years. Rather, Holt contended that his sentencing sheets state that he is to serve a twenty-five-year sentence. Holt further maintained that the sentencing judge never pronounced the twenty-nine-year sentence. To remedy this perceived error, Holt sought for his projected "maxout" date to be amended to October 27, 2031, from its current December 10, 2033. The Warden denied Holt's grievance on December 10, 2018. Holt then appealed via a Step 2 Grievance submitted on March 17, 2019. Within this grievance, Holt again insisted that the Department had incorrectly calculated his projected "maxout" date. The Responsible Official concluded that Holt's sentence had been properly calculated and, therefore, considered Holt's grievance resolved on April 29, 2019.

Thereafter, Holt filed his Notice of Appeal with the Court on June 18, 2019. This matter was assigned to the undersigned on June 27, 2019. Holt filed his brief along with five documents on August 26, 2019.[2] The Department filed the Record on August 23, 2019, and its brief on October 16, 2019.

ISSUE ON APPEAL[3]

Whether the Department correctly calculated Holt's sentence?

JURISDICTION/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). In *Al-*

[2] Specifically, these documents included: (1) Holt's Step 1 Grievance; (2) an affidavit and arrest warrant; (3) a February 2010 indictment for distribution of cocaine base; (4) a September 22, 2010, sentencing sheet for his conviction of possession with intent to distribute cocaine base or methamphetamine, third offense; and (5) a single page from his section 44-53-375(B)(3) offense sentencing hearing transcript. Aside from items 1 and 4, the Record does not contain the other documents or any of the contents therein. However, even where, as here, an inmate has failed to file a motion to supplement the record, the Court would fully expect the Department to comply with SCALC Rules 58 and 61 regarding the content of the record on appeal and properly include those items in the Record consistent with these requirements. In this instance, by failing to explain why items enumerated 2,3, and 5 are proper for the Court's review, Holt has left the Court to speculate whether these documents were filed, received, or considered by the Department. *See* SCALC Rule 58 (explaining that the record shall consist, *inter alia*, all documents filed and all evidence received or considered). The Court must not do so and, accordingly, the Court has not considered items enumerated 2, 3, and 5 in its review. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2018) (explaining the Court's review "must be confined to the record.").

[3] While Holt also listed the issue of whether his conviction is violent or not violent in his brief, as will be discussed below, this issue is not preserved for the Court's review.

Shabazz, the court held that the ALC's jurisdiction in inmate appeals is limited to non-collateral or administrative matters[4] typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 369, 527 S.E.2d at 750. Importantly, the court stressed the caveat that not all provisions of the Administrative Procedures Act (APA)[5] apply to the internal prison disciplinary or decision-making process. *Id.* Rather, procedural due process is guaranteed only when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. *See id.* (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548, 556 (1972)); *see also Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008) (recognizing that the *Al-Shabazz* court "emphasized that its decision was not without limitation" given its discussion of when the requirements of procedural due process would be applicable).

Following *Al-Shabazz*, South Carolina jurisprudence has found that a matter is reviewable by the ALC where an inmate's appeal implicates a state-created liberty or property interest. *See, e.g., Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); *see also Wicker v. S.C. Dep't. of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (recognizing another limited ALC jurisdictional exception where inmate claims deprivation of a property interest). In the case at bar, Holt alleges that the Department is erroneously calculating his sentence. "There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted). Therefore, given that such a liberty interest is implicated, the Court has subject matter jurisdiction over Holt's appeal, and summary dismissal is inappropriate. *Contra Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) ("Summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest.") (citation omitted).

When reviewing the Department's final decision in a non-collateral or administrative matter, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754. The Court's standard of review, after an exhaustion of administrative remedies, is governed by

[4] A non-collateral or administrative matter is "one in which an inmate does not challenge the validity of a conviction or sentence." *Al-Shabazz*, 338 S.C. at 368, 527 S.E.2d at 749.

[5] The APA is found at S.C. Code Ann. §§ 1-23-10 to –680 (2005 & Supp. 2018).

section 1–23–380 of the South Carolina Code (Supp. 2018). *See* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Pursuant to this standard, the Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2018). Although the Court may affirm the agency's decision or remand for additional proceedings, the Court's review in determining whether to reverse or modify an agency decision is circumscribed to the following:

> 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)(a)-(f) (Supp. 2018). When reviewing, the Court is generally confined to the record presented and, as such, will not consider any fact that does not appear in the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2018).

DISCUSSION

Holt contends that the Department is incorrectly interpreting his sentence at twenty-nine years as this sentence is inconsistent with his sentencing sheets and the sentencing judge's oral pronouncement of his sentence, which reflect twenty-five years. Holt further asserts that the sentencing judge never pronounced an additional four year sentence from the bench. Conversely, the Department argues that Holt's sentencing sheets are unambiguous and indicate that the Department is correctly interpreting his sentence at twenty-nine years.

To support his position, Holt relies on *Boan v. State*, 388 S.C. 272, 695 S.E.2d 850 (2010). In that case, our Supreme Court analyzed a post-conviction relief claim in which the inmate argued his trial counsel provided ineffective assistance by failing to file a motion regarding a discrepancy between an oral pronouncement of a sentence and a written sentencing order. *Id.* at 275, 695 S.E.2d at 851. Specifically, following his conviction for, *inter alia*, criminal sexual conduct with a minor first degree, the trial judge orally sentenced the inmate to twenty years for that offense. *Id.* at 274-

75, 695 S.E.2d at 851. However, the written sentencing order for that offense revealed that the inmate was to serve thirty years. *Id.* at 275, 695 S.E.2d at 851. In finding that the inmate's trial counsel provided ineffective assistance, the court held that "a trial's fairness is compromised when a trial judge increases a defendant's sentence outside his presence." *Id.* at 277, 695 S.E.2d at 852. Applying that principle to the inmate's case, the court concluded:

> Accordingly, in a situation such as the one on appeal, due process requires the judge's oral pronouncement control over a conflicting written sentencing order. Here, the trial judge announced one sentence from the bench in the presence of the defendant, but later increased that sentence in his written order. If trial counsel had made the appropriate motion regarding the sentencing discrepancy, the oral pronouncement would have controlled and [the inmate] would have received the twenty-year sentence. Thus, [the inmate] has demonstrated a reasonable probability the result would have been different if trial counsel had made the appropriate motion.

Id. at 277, 695 S.E.2d at 852.

Following *Boan*, in *Tant*, the South Carolina Supreme Court clarified the process the Department must follow to determine an inmate's sentence as intended by the sentencing judge. Ultimately, the court found that when administering and enforcing an inmate's sentence, the Department, absent ambiguity, must restrict its review to the inmate's sentencing sheet(s). *Id.* at 346, 759 S.E.2d at 404 (holding "the Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence but may consider the sentencing transcript if the sheet is ambiguous."). In reaching that conclusion, the court rejected the Department's claim that this pronouncement,[6] initially made by the South Carolina Court of Appeals, is contrary to the holding in *Boan*:

> The Department contends our *Boan* decision adopted the majority rule that an oral pronouncement controls. We disagree. *Boan's* holding was plainly limited to its facts. In explicating the rationale for our decision, we specifically relied on the defendant's constitutional right to be present at every stage of trial instead of adopting a bright-line rule. Here, Tant does not allege his sentence was increased in the sentencing sheets; rather, the sheets arguably indicate a reduction of his sentence. Therefore, the constitutional concerns presented in *Boan* are not implicated here. Instead, Tant's case involves the routine practice undertaken by the Department in discerning an inmate's sentence and how it addresses situations where it subsequently discovers the original interpretation may be erroneous.

[6] In particular, the Department claimed: "the court of appeals erred in holding it [SCDC] can only consider a sentencing transcript if the sentencing sheets are ambiguous." *Tant*, 408 S.C. at 343, 759 S.E.2d at 402.

> In this context, we find the court of appeals' ruling both sound and practical. Although the Department expresses concern about its ability to follow the intent of the trial judge if its ability to reference other evidence is constrained, the sentencing sheets were signed by the judge and both attorneys without objection and are assumed to memorialize the judge's intention no less than what was pronounced from the bench. We see no reason why the Department should not be able to rely on unambiguous sentencing sheets as indicative of the intended sentence.

Id. at 344, 759 S.E.2d at 403 (citation omitted).

Here, Holt's applicable sentencing sheets reveal that he received three sentences on September 22, 2010. Holt was sentenced to two twenty-five-year sentences following his convictions for two counts of possession with intent to distribute cocaine base or methamphetamine, third offense. These sentences were to run concurrent with one another. The sentencing sheet for the probation violation indicates that Holt was to serve a four-year sentence consecutive to the other sentences he received on September 22, 2010.[7] Therefore, because the Court finds these sentencing sheets unambiguous, the Department appropriately utilized them in calculating Holt's sentence. *See id.* at 346, 759 S.E.2d at 404 (holding "the Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence, but may consider the sentencing transcript if the sheet is ambiguous.").

Nevertheless, the Court's inquiry cannot end there as "[t]here are some situations in which SCDC may look beyond unambiguous sentencing sheets."[8] *Tant v. S.C. Dep't of Corr.*, 395 S.C. 446, 449 n.3, 718 S.E.2d 753, 755 n.3 (Ct. App. 2011), *aff'd as modified*, 408 S.C. 334, 759 S.E.2d 398 (2014) (citing *Boan*, 388 S.C. at 277, 695 S.E.2d at 852). However, unlike in *Boan*, where the inmate's sentence was increased outside his presence, Holt's sentencing sheet for his probation violation reveals that "[a]fter hearing the evidence and being duly advised, in the (presence/~~absence~~) of the defendant, I find that the above named defendant has violated the following condition(s) of probation . . . 6." [9] Although not explicitly stated, the Court interprets this quoted language to mean that Holt was sentenced for his probation violation in the presence

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[7] The sentencing sheet for the probation violation specifically states "Probation violation sentence runs consecutive to sentences received on 9/22/10 on Indictments #10-GS-22-179 and #10-GS-22-181..." The listed indictment numbers are the indictments for Holt's two counts of possession with intent to distribute cocaine base or methamphetamine, third offense, in violation of subsection 44-53-375(B)(3).

[8] To this extent, the Court disagrees with the Department assertion that "*Boan* is inapplicable to [Holt's] case insofar as it has nothing to do with SCDC's entry of an unambiguous sentence sheet."

[9] For clarity purposes, the trial judge marked out the word "absence" as reflected above.

of the trial judge.[10] As such, based on Holt's unambiguous sentencing sheets, the Court finds the Department properly interpreted Holt's sentence as twenty-nine years.

Finally, in the last sentence of his brief, Holt asserts that "The crime [subsection 44-53-375(B)(3)] is also a non-violent offense in which S.C. Dept't of Corrections states the offense must be treated as 85% which is incorrect." To the extent Holt contends the Department is erroneously classifying him as an 85% offender, he raises this issue for the first time on appeal. Accordingly, this issue is not preserved for the Court's review. *See, e.g., Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the trial judge.") (citation omitted); *see generally S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.") (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)).[11]

ORDER

IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**, **AND IT IS SO ORDERED.**

October 30, 2019
Columbia, South Carolina

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30 day of October, 2019
By: _____
Judicial Law Clerk

[10] The Court would expect the Department, if it had knowledge that Holt was not present during the sentencing for the probation violation, to be forthright about such.

[11] Holt did make reference to the 85% service requirement in his Step 2 but did not challenge whether the requirement itself applied. Moreover, it appears that the ALC has previously decided that the 85% service requirement under S.C. Code Ann. 24-13-150(A) does apply to Holt's section 44-53-375(B)(3) conviction in *Holt v. South Carolina Department of Corrections*, No. 17-ALJ-04-0252-AP (S.C. Admin. Law Judge Div. Nov 6, 2017). *See Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) ("A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.") (citation omitted).