

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

David Mills Hancock, #268655,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 19-ALJ-04-0473-AP

FINAL ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by David Mills Hancock (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). After the Appellant's Step 1 and Step 2 Grievances were denied, the Appellant filed a Notice of Appeal with the court on September 19, 2019. The Appellant is appealing the Department's denial of his grievance in which the Appellant alleges that the Department has incorrectly calculated the amount of time served credit to be applied to his sentences, resulting in an erroneous sentence max-out date.

STANDARD OF REVIEW

The ALC has jurisdiction to consider appeals where an inmate believes his sentence-related credits have been erroneously calculated by prison officials. *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in its appellate capacity, applying the appellate standard of the Administrative Procedures Act. *See id.*, 338 S.C. at 377, 527 S.E.2d at 754. Consequently, review in inmate grievance cases is limited to the record presented. S.C. Code Ann. § 1-23-380(4). 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). Substantial rights of an 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;

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TO ADMIN. LAW COURT

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 a clearly unwarranted exercise of discretion. *Id.* A liberty interest is at stake in the calculation of an inmate's sentence. *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) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

DISCUSSION

On May 17, 2016, the Appellant was arrested for Second Degree Burglary in Lexington County and served three (3) days before he was released on bond. The Appellant was then arrested again on October 10, 2016 for Second Degree Burglary also in Lexington County and served 177 days before being released on bond. Later, on January 18, 2018, the Appellant was arrested for Second Degree Burglary in Aiken County. The Appellant stayed in jail from January 18, 2018 until July 10, 2018 when he was sentenced to five (5) years for Second Degree Burglary in Aiken County. On June 4, 2019, while serving his 5 year sentence for Second Degree Burglary, the Appellant was transported to Lexington County where he pleaded guilty to the two (2) 2016 Second Degree Burglary charges and was sentenced to thirteen (13) years confinement on each charge, both to run concurrent with his five-year sentence from Aiken County.

The Appellant asserts that pursuant to S.C. Code Ann. § 24-13-40, he is entitled to 502 days of jail time credit on his two Lexington County charges because he was in jail from January 18, 2018 until he was sentenced on June 4, 2019. The Department argues that the Department has applied the correct jail time credits to the Appellant's sentence. The Department asserts that it applied 177 days jail time credit for the Appellant's May 17, 2016 arrest charge, 178 days jail time credit for his October 10, 2016 arrest charge, and 173 days jail time credit for his January 18, 2018 arrest charge.

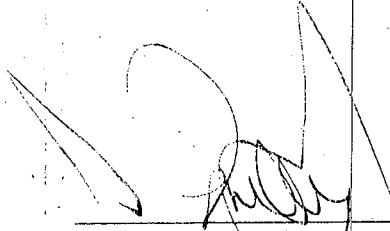
Section 24-13-40 of the South Carolina Code requires that a prisoner receive credit for time served prior to trial and sentencing unless one of two exceptions exists: "(1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense." S.C. Code Ann. § 24-13-40. It therefore follows that credit for time served *must be*

applied any time a prisoner spends time in jail during which he is neither already serving a sentence nor currently an escapee. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542; *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (citing *McCord*, 349 S.C. at 487, 562 S.E.2d at 694). Moreover, an inmate is entitled to credit against “**all** charges” for which he was in custody. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542 (emphasis in original); *see also Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10–11 (2000) (citing *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997)). The application of time served in accordance with Section 24-13-40 is mandatory and not within the discretion of the sentencing judge. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598; *McCord*, at 349 S.C. at 487, 562 S.E.2d at 696 (citing *Allen*, 339 S.C. at 395, 529 S.E.2d at 542). Moreover, the denial of credit for time served where no exception applies is an error of law. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598.

Therefore, because the Appellant started serving a sentence for his Aiken County conviction on July 10, 2018, the Appellant’s Lexington County charges fall within the second exception in § 24-13-40, such that the Appellant is not eligible for credit for time served from July 10, 2018 until his sentencing in Lexington County on June 4, 2019. The Appellant is however, entitled to 173 days of credit for time served on both of his Lexington County charges for the 173 days he was in jail beginning January 18, 2018 until he was sentenced on July 10, 2018. Based on the foregoing,

IT IS HEREBY ORDERED that the Department’s decision is **REVERSED** and this matter is **REMANDED** to the Department to recalculate the jail time credits applicable to Appellant’s sentence under the law. Within sixty (60) days from the date of this order, the Department must recalculate Appellant’s jail time credits and apply the additional credits to Appellant’s sentence max-out date.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

February 6, 2020
Columbia, South Carolina

February 2020