

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 19-ALJ-04-0077-AP
Appellate Case No. 2019-001751

RECEIVED

FEB 27 2020

SC Court of Appeals

Adam Winningham, #268099.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

February 27, 2020

South Carolina Department of Corrections

Imani Diane Byas
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT AND CITATION OF AUTHORITY.....4

**I. DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM
THE DEPARTMENT’S CALCULATION OF APPELLANT’S
SENTENCE?**

CONCLUSION.....7

CERTIFICATE OF SERVICE.....8

TABLE OF AUTHORITIES

I. STATUTES

S.C. Code Ann. § 1-23-610.....3

S.C. Code Ann. § 1-23-380.....3

S.C. Code Ann. § 24-13-150.....4

S.C. Code 24-13-210.....5

S.C. Code Ann. § 24-13-230.....5

II. CASES

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).....4

DuRant v. S.C. Dep’t of Health & Environmental Control, 361 S.C. 416, 420, S.E.2d 704 (Ct. App. 2004).....4

Howard v. S.C. Dep’t of Corr., 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012).....5

Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998).....3

Odom v. Town of McBee Election Comm’n, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019).....5

STATEMENT OF THE ISSUES ON APPEAL

**DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE
DEPARTMENT'S CALCULATION OF APPELLANT'S SENTENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Adman Winningham (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On October 14, 2018, Appellant filed a Step One Grievance regarding the calculation of his sentence and the application of credits to his sentence. On October 31, 2018, it was considered resolved after it was determined SCDC had properly calculated Appellant’s sentence and provided him with all credits. On November 3, 2018, Appellant filed a Step 2 Grievance, and on December 12, 2018, the grievance was also considered resolved. Appellant then appealed the decision by filing a Notice of Appeal with the Administrative Law Court. On October 4, 2019, Judge Robinson issued an order affirming the decision of SCDC that Appellant must serve eighty-five percent of his sentence. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:

- (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.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC

reached. DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S CALCULATION OF APPELLANT'S SENTENCE

On February 24, 2003, Appellant was sentenced to six months and seven days for Grand Larceny and two counts of Burglary in the Second Degree, to run concurrently. See Sentencing Sheet Indictments 2002GS107385, -7384, and 7386. On March 30, 2006, Appellant was sentenced to twenty years' incarceration for Burglary in the First Degree. See Sentencing Sheet Indictment 2005GS082096. Appellant was sentenced under S.C. Code Ann. § 16-11-311(B), which is a no parole offense. A no parole offense is defined as a “[c]lass 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 24-13-100. First-Degree Burglary is enumerated in section 16-1-10(d) and carries the possibility of fifteen years to life imprisonment.

Appellant is required to serve eighty-five percent of his twenty-year sentence. S.C. Code Ann. § 24-13-150(A) provides,

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate 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 as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the

application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

Appellant argues that S.C. Code Ann. § 24-13-230(B) and 24-13-210(B) conflict with one another. S.C. Code Ann, § 24-13-230 (B) provides that an inmate who is enrolled in certain programs may earn credit towards a reduction in sentence; however, inmates convicted of a no parole offense may not have their sentenced reduced below the minimum requirement. S.C. Code 24-13-210(B) allow inmates serving a no parole offense to earn credit for good behavior but also provides that credits cannot be applied to lower an inmate's sentence below the eighty-five percent requirement. There is no conflict nor ambiguity in the meaning of the statutes. When the "language of a statute is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Odom v. Town of McBee Election Comm'n, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019). Appellant is required to serve, at a minimum, eighty-five percent of his sentence and credits cannot be used to reduce his sentence below the eighty-five percent requirement.

Appellant has not carried the burden that SCDC has incorrectly calculated Appellant's sentence. Therefore, the Court should affirm the decision in Judge Robinson's October 4, 2019 Order.

CONCLUSION

WHEREFORE, for all the reasons stated above, the Court should affirm the

Administrative Law Court's decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Attorney for Respondent



Imani Diane Byas
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508

Columbia, South Carolina
February 27, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

RECEIVED

ALC Case No. 19-ALJ-04-0077-AP
Appellate Case No. 2019-001751

FEB 27 2020

SC Court of Appeals

Adam Winningham, #268099.....Appellant,

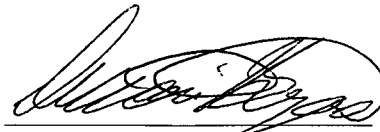
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief and Designation of Matter by depositing a copy of same in the United States Mail, postage prepaid, February 27, 2020, addressed to the Appellant as follows:

Adam Winningham, #268099
Goodman Correctional Institution
B4-0007-B
4556 Broad River Road
Columbia, SC 29210



Imani Diane Byas
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

February 27, 2020

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

FEB 27 2020

SC Court of Appeals

RE: Adam Winningham, #268099, v. South Carolina Department of Corrections
Appellate Case No. 2019-001751

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Imani Diane Byas
Staff Attorney
South Carolina Department of Corrections
S.C. Bar No. 103715

cc: Adam Winningham, #268099
Goodman Correctional Institution
B4-0007-B
4556 Broad River Road
Columbia, SC 29210