

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Spencer Utsey, #192660,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 20-ALJ-04-0155-AP
Grievance No. KCI-1088-19

FINAL ORDER
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AUG 11 2020

SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed on March 9, 2020, by Spencer Utsey (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC).

Appellant appeals the decision of SCDC to deny his Step One and Step Two Grievances in which he contends that his sentence was calculated incorrectly. On June 15, 1999, Appellant was sentenced to serve thirty years for commission of Armed Robbery in violation of S.C. Code Ann. § 16-11-330(A). Appellant argues that because the sentencing judge did not select the “violent” box on the sentencing sheet, SCDC is unconstitutionally enhancing his sentence.

STANDARD OF REVIEW

The ALC’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 ALC’s appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation. *Id.*

When reviewing the SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not reverse or modify an agency’s decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error

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of law. See S.C. Code Ann. § 1-23-380(5); 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).

DISCUSSION

The record on appeal establishes that on June 15, 1999, Appellant was sentenced to serve thirty years for the offense of Armed Robbery in violation of S.C. Code Ann. § 16-11-330(A). SCDC is “confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets.” *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 37, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014).

It is of no consequence that the sentencing judge did not select the “violent” box on Appellant’s sentencing sheet. Appellant’s sentencing sheet is not ambiguous. It makes clear that Appellant was charged, indicted and and convicted of Armed Robbery and sentenced to thirty years. South Carolina statutory law dictates the sentence calculation.

Armed Robbery is specifically defined by S.C. Code Ann. § 16-1-60 as a violent crime. Furthermore, Armed Robbery is a Class A felony pursuant to S.C. Code Ann. § 16-1-90(A), which states that “A person convicted of classified offenses, must be imprisoned. . . for a Class A felony, not more than thirty years.”

S.C. Code Ann. § 24-13-100 defines a no parole offense to include a Class A felony. According to S.C. Code Ann. § 24-13-150(A), Appellant must serve at least 85% of his sentence:

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 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.

(Emphasis added).

Appellant’s thirty-year sentence start date is June 15, 1999. Eight-five percent of thirty years is approximately twenty-five years and six months. Appellant’s projected sentence completion date is June 1, 2025, which takes into account earned work credits and disciplinarys which resulted in loss of good time.

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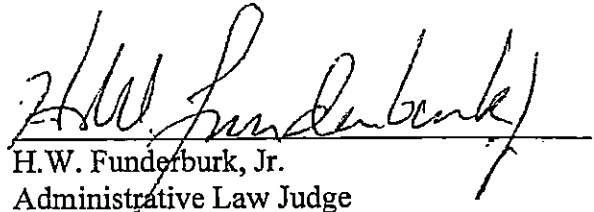
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Appellant has not met his burden of proving that SCDC's calculation of his sentence is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. The substantial evidence on the whole record supports SCDC's final agency decision to deny his grievances. Appellant's sentence for Armed Robbery has been properly determined in accordance with the applicable laws. It is therefore,

ORDERED that the decision of SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.

July 30, 2020
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

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 thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30th day of July 2020
By: Elizabeth A. Perkins
Judicial Law Clerk

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