

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 19-ALJ-04-0155-AP
Appellate Case No. 2020-001124

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Jan 04 2021

SC Court of Appeals

Spencer Utsey, #192660.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

January 4, 2021

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

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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 Spencer Utsey (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On December 11, 2020, Appellant filed a Step One Grievance regarding the classification of his Armed Robbery sentence as violent. On January 6, 2020, it was considered denied after it was determined that Appellant’s sentence is classified as a violent offense. On January 7, 2020, Appellant filed a Step 2 Grievance, and on February 6, 2020, the grievance was also denied because Appellant’s offense is classified as violent. Appellant then appealed the decision by filing a Notice of Appeal with the Administrative Law Court. On July 30, 2020, Judge Funderburk issued an order affirming the decision of SCDC that Appellant’s sentence was classified correctly. 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 June 15, 1999, Appellant was sentenced to thirty years' incarceration for Armed Robbery under S.C. Code § 16-11-330(A). Appellant argues that the sentence should not be classified as violent because the sentencing judge did not check "violent" on the sentencing sheet.

The 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. 334 337, 759 S.E.2d 398, 399 (2014), *re 'g denied* (July 10, 2014). Appellant's sentencing sheet is in no way ambiguous. The sentencing sheet provides that Appellant was charged with armed robbery under S.C. Code Ann. § 16-1-60, which is defined as a violent crime. Furthermore, Appellant's armed robbery sentence is a Class A felony. See S.C. Code Ann. § 16-1-90. According to S.C. Code Ann. § 24-13-100, a Class A felony is a no parole offense; therefore, Appellant must be incarcerated at least 85% of his 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.

(Emphasis added).

Appellant's sentence start date is June 15, 1999. Eighty-five percent of Appellant's thirty-year sentence is approximately twenty-five years and six months. Appellant's current projected max out date is June 1, 2025. Appellant has not carried the burden that SCDC has incorrectly classified or calculated Appellant's sentence. Therefore, the Court should affirm the decision in Judge Funderburk's July 30, 2020 Order.

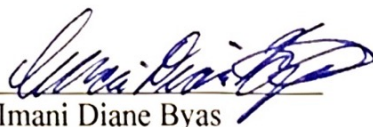
CONCLUSION

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



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Columbia, South Carolina
January 4, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

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Spencer Utsey, #192660.....Appellant,

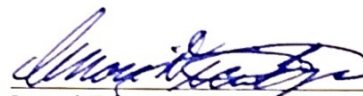
v.

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, January 4, 2021, addressed to the Appellant as follows:

Spencer Utsey, #192660
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F2-0139-B
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SC Court of Appeals

January 4, 2021

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

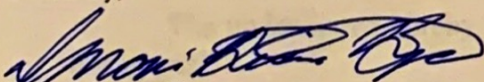
RE: Spencer Utsey, #192660, v. South Carolina Department of Corrections
Appellate Case No. 2019-001124

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
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S.C. Bar No. 103715

cc: Spencer Utsey, #192660
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