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Feb 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 19-ALJ-04-0575-AP
Appellate Case No. 2020-001512

Buddy Newsome, # 220855.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

February 19, 2021

South Carolina Department of Corrections

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

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STATEMENT OF THE ISSUES ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT IS NOT SERVING A LIFE SENTENCE AND IS NOT ELIGIBLE TO DISTRIBUTE HIS ESCROW WAGES TO A PERSON OR ENTITY .

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Buddy Newsome ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). On September 17, 2019, Appellant filed a Step One grievance requesting that he have access to his wages in escrow the same as inmates who are serving life sentences. On September 27, 2019, SCDC denied the Step 1 grievance. Thereafter, on August 6, 2019, Appellant filed a Step Two grievance alleging that he is serving a life sentence and should have access to wages in escrow. On October 31, 2019, SCDC denied the Step 2 grievance. Appellant appealed to the Administrative Law Court (ALC). On October 8, 2020, the Honorable Milton G. Kimpson dismissed Appellant's appeal because Appellant is not serving a *de facto* life sentence. This appeal followed.

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 Administrative Law Court's (ALC) 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 DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT IS NOT SERVING A LIFE SENTENCE AND IS NOT ELIGIBLE TO DISTRIBUTE HIS ESCROW WAGES TO A PERSON OR ENTITY

Appellant asserts that the ALC made an error of law dismissing Appellant's appeal based on his parole eligibility. *See* Appellant Brief. Appellant argues that he should be allowed to distribute wages from his escrow account the same as those serving a life sentence or sentenced to death pursuant to S.C. Code Ann. § 24-3-40(B)(2) because his 100- year sentence is a *de facto* life sentence. *Id.* However, Appellant is eligible for parole and is not serving a life sentence. Therefore, Appellant is not entitled to distribute wages from his escrow account to a person or entity of his choice.

S.C. Code § 24-3-40(B) provides,

(B) The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period.

Appellant is not serving a *de facto* life sentence. The Supreme Court of South Carolina defined a *de facto* life sentence as "one that is expressed as a lengthy term of years, causing

the defendant's eligibility for parole or release to fall outside his projected life expectancy." See Judge Kimpson's October 8, 2020 Order citing *State v. Slocumb*, 426 S.C. 297, 301, 827 S.E.2d 148, 150 n3. (2019). Because Appellant is currently eligible for parole, he is not serving a *de facto* life sentence. Furthermore, if Appellant is granted parole § 24-3-40(B)(3) provides how the escrow balance will be distributed to him and the Department of Department of Probation, Parole and Pardon Services. Because Appellant is currently eligible for parole and the statute provides how wages in escrow will be distributed if an inmate is granted parole, Appellant is not entitled to distribute his wages in escrow while incarcerated. Therefore, Judge Kimpson's dismissal of Appellant's appeal was proper. See Judge Kimpson's October 8, 2020 Order.

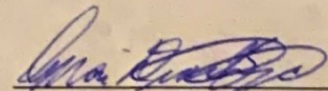
CONCLUSION

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



Imani Diane Byas
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-1278

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Administrative Law Judge Milton G. Kimpson

ALC Case No. 19-ALJ-04-0575-AP
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Buddy Newsome, # 220855.....Appellant,

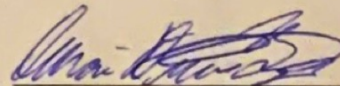
v.

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

PROOF 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 19, 2021, addressed to the Appellant as follows:

Buddy Newsome, 220855
Tyger River Correctional Institution
100-200 Prison Road
U11-0227-A
Enoree, SC 29335



Imani Diane Byas
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221
Attorney for Respondent



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

February 19, 2021

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

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SC Court of Appeals

RE: Buddy Newsome, #220855, v. South Carolina Department of Corrections
Appellate Case No. 2020-001512

Dear Ms. Kitchings:

Enclosed please find a copy of **Respondent's Entry of Appearance, Initial Brief of Respondent, Designation of Matter, and Proof of Service** in the above-referenced case. 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, SC Bar #103715
Staff Attorney
South Carolina Department of Corrections

cc: Buddy Newsome, 220855
Tyger River Correctional Institution
100-200 Prison Road
U11-0227-A
Enoree, SC 29335