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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terri Ellen Lawson, #270537, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 20-ALJ-04-0401-AP Grievance No. LCIW 0070-20 **ORDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Terri Lawson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant was sentenced to eight years imprisonment for Possession with Intent to Distribute Cocaine Base, Third or Subsequent Offense. Appellant's prior offenses were Trafficking in Crack Cocaine, Second Offense, three Distribution of Crack Cocaine charges, and two Distribution of Crack Cocaine within ½ Mile of a Park charges. The Honorable Perry H. Gravely presided over Appellant's last case and, per a plea agreement between Appellant and the State, agreed to treat Appellant's prior drug charges as "possession" charges to ensure that Appellant's present charge would not be classified as a no parole offense.

On May 6, 2020, Appellant appeared before a Department classification panel and was advised that the Department had audited her sentence and classification status. The Department concluded that Appellant did not qualify for parole because her prior offenses were for drug trafficking and distribution, regardless of the characterization of the prior offenses as possession charges on Appellant's November 17, 2016 sentencing sheet. Additionally, the Department informed Appellant that she would be required to serve eighty-five percent of the duration of her sentence before she could qualify for release due to her sentence being a no parole offense. Appellant argues that her sentence should be calculated based upon the intent of the judge rather than the Department's interpretation. Appellant filed a grievance with the Department objecting to the Department's amendment of her sentence calculation and received the Department's final decision on August 10, 2020. This appeal followed.

STANDARD OF REVIEW

The Court'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 Administrative Law Court's 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 as a result of a serious rule violation. Id. at 369, 527 S.E.2d at 750. When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Consequently, the review in these inmate grievance cases is limited to the record presented. S.C. Code Ann. § 1-23-380(4) (Supp. 2020). An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2020). Furthermore, 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 of law. See Id.; See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); South Carolina Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998).

DISCUSSION

As an initial matter, Appellant argues the Department violated her due process rights by failing to timely respond to and communicate with her concerning her Step Two Grievance within the 10-day period established under SCDC policy OP-13.5. Appellant argues this failure should result in the summary dismissal of the Department's brief and any defenses or arguments the Department raised. A prison official's failure to follow the prison's own policies does not on its own constitute a violation of procedural due process. See Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996) (citation omitted) ("a prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met").

The Department makes two arguments defending its decision to change the way it calculated Appellant's sentence. First, the Department argues that it is bound by South Carolina law to treat Appellant's offense as a no parole offense. This Court disagrees.

> 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.

S.C. Code Ann. § 24-13-150(A) (Supp. 2020). "For purposes of definition under South Carolina law, a 'no parole offense' means a class A . . . felony . . . ." S.C. Code Ann. § 24-13-100 (2007). Class A felonies are felonies with a sentence of up to thirty years imprisonment. S.C. Code Ann. § 16-1-20(A)(1) (2015).

> A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction: . . .
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> (3) for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.
>
> . . . Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

S.C. Code Ann. § 44-53-375(B)(3) (2018).

Appellant's offense is a class A felony and is thus a no parole offense unless her prior offenses were for possession of a controlled substance. Therefore, the treatment of Appellant's sentence turns on the characterization of the prior offenses. According to S.C. Code Ann. § 24-13-150(A), "[n]otwithstanding any other provision of law . . ." the Department must require Appellant to serve eighty-five percent of the term of her imprisonment before she is eligible for release. However, Section 44-53-375(B)(3) provides an exception, stating "[n]otwithstanding any other

provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession . . . may have the sentence suspended and probation granted and is eligible for parole . . . ." "When two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute." Stone v. State, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994). "[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein." Bolin v. South Carolina Dept. of Corrections, 415 S.C. 276, 282-83, 781 S.E.2d 914, 917 (Ct. App. 2016); citing Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981). In Bolin, the South Carolina Court of Appeals held that the language "Notwithstanding any other provision of law . . ." explicitly implies a legislative intent to repeal prior legislation to the extent the prior legislation conflicts with the new or amended statute. Bolin at 283, 781 S.E.2d at 917. Section 44-53-375(B) was amended with the present language in 2016. Section 23-13-150 was amended with the present language in 2010. Section 44-53-375(B) is more recent and applies to the more specific circumstance than Section 23-13-150. Therefore, Section 44-53-375(B) repeals Section 23-13-150 to the extent the two statutes conflict. The Department is not bound by South Carolina law to treat Appellant's offense as a no parole offense pursuant to Section 44-53-375(B) in circumstances where the prior offenses are for possession.

Second, the Department argues that the sentence sheet unambiguously states Appellant must serve her sentence as though her offense is a no parole offense. This Court disagrees. "[T]he Department is confined to the face of the sentencing sheets absent ambiguity." Tant v. South Carolina Dept. of Corrections, 408 S.C. 334, 342, 759 S.E.2d 398, 402 (2014). When interpreting the sentence to be imposed under the terms of the sentence sheet, "[t]he intent of the trial judge is controlling." State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971); see also U.S. v. Taylor, 414 F.3d 528, 533 (4th Cir. 2005) ("[t]he intent of the sentencing court must guide any retrospective inquiry into the term and nature of a sentence.") "A sentence should be so complete as to need no construction of a court to ascertain its import." Finley v. State, 219 S.C. 278, 284, 64 S.E.2d 881, 883 (1951). A sentencing sheet signed by the judge and both parties without objection is "assumed to memorialize the judge's intention no less than what was pronounced from the bench." Tant at 344, 759 S.E.2d at 403. "[T]o the extent that there is an ambiguity in the sentence, we

properly may consider the sentencing judge's subjective intent." Taylor at 534. "Ambiguity or doubts relative to a sentence should be resolved in favor of the accused." DeAngelis at 50, 183 S.E.2d at 909.

Here, the sentencing sheet states "In disposition of the said indictment comes now the Defendant who . . . [pleads to] PWID Cocaine Base, 3rd of Sub Offense (Prior offenses for Possession . . . .)" The judge clearly intended for Appellant's prior offenses to be treated as possession offenses for purposes of the sentence he was imposing. Absent ambiguity, the Department was confined to the face of the sentencing sheet. From the four corners of the sentencing sheet being interpreted, the prior offenses should be treated as convictions for possession, therefore the sentence imposed was not for a no-parole offense.

If you go beyond the four corners of the sentencing sheet, ambiguity is introduced into the situation, because the prior offenses were not, in fact, for simple possession violations but were for trafficking and distribution of crack cocaine. In resolving ambiguity, the sentencing judge's subjective intent must be considered. Here, the judge's subjective intent is clearly shown by his notation in parenthesis that prior offenses were for possession. By recategorizing Appellant's prior offenses as possession charges, the sentencing judge memorialized his intent that the sentence imposed would not fall under the no-parole rubric. Ambiguities must be resolved in favor of the accused. Therefore, the categorization of Appellant's prior offenses for purposes of construing her sentence imposed on November 17, 2016 must remain possession charges because that is the most favorable categorization for Appellant.

The Department's conclusion that Appellant's offense is a no parole offense was not supported by substantial evidence and was affected by an error of law. Therefore, seeing that Appellant's substantial rights were prejudiced in that her sentence was recalculated erroneously by the Department, this Court reverses the Department's decision that Appellant's offense was a no parole offense.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the Department is **REVERSED** and the Department is hereby ordered to recalculate Appellant's sentence on the basis of an eight-year sentence eligible for parole and release.

AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

April 2, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

April 2, 2021
Columbia, South Carolina