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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward Prestley Carroll Jr., #325570,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 20-ALJ-04-0454-AP

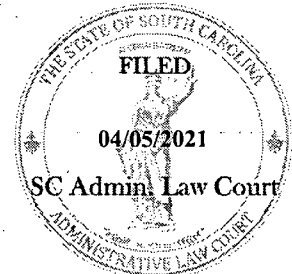
ORDER

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Edward Prestley Carroll Jr. (Appellant), an inmate incarcerated with South Carolina Department of Corrections (SCDC or Department), challenging the calculation of his sentence-related credits.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 20, 2007, Appellant was arrested for Armed Robbery and Possession of a Gun/Knife during the commission of a violent crime. He was later convicted of these crimes and, on September 18, 2008, Appellant was sentenced to eighteen years' incarceration for Armed Robbery and five years' incarceration for Possession of a Gun/Knife during the commission of a violent crime. Each of the sentencing sheets from September 18, 2008 indicate that the sentences were to run concurrently to one another, and that Appellant was to be given credit for time served. However, it does not state for how many days he was to be given credit.

After Appellant's arrest for the above crimes, but before he was convicted and sentenced, Appellant was arrested and convicted on several other charges. On July 23, 2007, Appellant began serving an unrelated sentence for Failure to Pay Child Support. Then, on December 10, 2007, Appellant was transferred to SCDC to serve another unrelated sentence for a probation violation; Appellant completed that sentence on March 4, 2008. He was then transferred to the Greenville County Detention Center for an additional unrelated Failure to Pay Child Support charge. He completed this sentence on March 20, 2008, and was released to the community. On August 12, 2008, Appellant was arrested on charges unrelated to those at issue in this case including Failure to Appear.



On July 9, 2020, Appellant filed a Step 1 Grievance, arguing that his sentence was miscalculated. Appellant asserted he was entitled to credit for time served during the time he spent in the detention center as a pretrial detainee for the period between July 20, 2007 through March 4, 2008 and August 12, 2008 through September 22, 2008. After the grievance was denied, Appellant filed a Step 2 Grievance on August 25, 2020. In this Step 2 Grievance, Appellant argued the Department erred in this matter by assuming he was not entitled to receive credit for the time served as a pretrial detainee for armed robbery and possession of a weapon during the commission of a violent crime. Appellant also argued that his grievance had nothing to do with his time served for family court. In the Department's response to the grievance, it noted that the "inmate records office applied jail time from 8/12/08 through 9/22/08 due to that is the only credit you were owed."

Appellant filed a Notice of Appeal with this Court on November 9, 2020, asserting he is entitled to jail time credit for the entire period between July 20, 2007 through September 22, 2008.¹ The case was assigned on December 3, 2020. The Department filed the Record on Appeal on February 9, 2021. Appellant filed his brief² on February 26, 2021. The Department filed its brief on March 24, 2021.

JURISDICTION/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). In *Al-Shabazz*, the Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty interests in which an inmate contends that prison officials have erroneously calculated his or her sentence. *Id.* The Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754.

¹ The Court notes that the time period for which Appellant claims he is entitled to receive credit is different in his Notice of Appeal and his brief than the time period he claimed in his Step 1 and Step 2 grievances. However, since the substance of the issue he raised has not changed, this issue is preserved for this Court's review. *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

² Appellant attached two documents to his brief to support his assertions. However, these documents are not part of the Record on Appeal. SCALC Rule 65 sets forth that "[t]he Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." Furthermore, Rule 210(h) of the South Carolina Appellate Court Rules provides that "[e]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal." Therefore, the documents provided by Appellant will not be addressed by the Court.

“A reviewing court will not disturb findings of [an administrative agency] if its findings are supported by substantial evidence on the record as a whole.” *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 397; 489 S.E.2d 219, 220 (Ct. App. 1997). A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Furthermore “the party challenging a[n administrative agency’s] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.” *Porter v. S.C. Pub. Serv. Comm’n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

DISCUSSION

Appellant asserts he is entitled to jail time credit for the entire period between July 20, 2007 through September 22, 2008. Specifically, Appellant asserts section “24-13-40 [of the South Carolina Code] illustrates he must receive credit for all time served prior to trial” and that “when the court revoked his probation in full pursuant to 24-21-460 and before imposing a new sentence, the court opened the door for the mandates of 24-13-40 to be applied regarding all Appellant charges that were awaiting sentencing from the date entered into pretrial custody 7-20-07 through 9-18-08.”

Section 24-13-40 of the South Carolina Code (Supp. 2020) provides, in pertinent part:

In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

This statute requires that prisoners be given credit for all time served prior to sentencing unless either of the two statutory exceptions applies. *See id.* The South Carolina Supreme Court applied this statute in *Allen v. State*, 339 S.C. 393, 529 S.E.2d 541 (2000). In *Allen*, the appellant was

awaiting trial on three charges when he was released on bond on June 22, 1996, and then re-arrested on two separate charges four days later and returned to jail on June 26, 1996, where he remained until he plead guilty to all five charges on September 12, 1996. *Id.* at 394, S.E.2d at 541. The lower court found section 23-13-40 applied and denied the appellant time served for the first three charges for the period between June 26, 1996 and September 12, 1996, but the Supreme Court reversed, holding section 23-13-40 did not apply because "Allen was neither an escapee nor was he serving any sentence at the time of his June 26 arrest." *Id.* at 395 S.E.2d at 542. In other words, the Court looked to whether the inmate was **servicing a sentence** on the date he was arrested; not simply awaiting trial, in determining the calculation of the sentence. *See id.*

In this case, Appellant contends that he is entitled to 14 months of jail time credit,³ rather than the 40 days calculated and followed by the Department. Appellant has the burden of proving that SCDC did not apply the days of credit correctly and thus improperly calculated his sentence, but Appellant has failed to carry that burden. *See Porter, supra.* Here, Appellant was not just awaiting trial for fourteen months, but serving unrelated sentences between July 23, 2007, and March 20, 2008. Therefore, pursuant to section 23-13-40, Appellant is not entitled to time served for the period of July 23, 2007 through March 20, 2008. Under Section 24-13-40, Appellant was only eligible for jail time credits from July 20, 2007, the date of his arrest for the charges at issue, through July 23, 2007, when he began serving another sentence, and from August 12, 2008, when he was arrested for other charges, until he was sentenced on September 18, 2008 for Armed Robbery and Possession of a Gun/Knife. Thus, Appellant earned a total of forty days of jail time credit⁴ which was correctly calculated and applied to his sentence by the Department.

In sum, Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed. *See Porter, supra.*

³ Again, the Court notes that in his Step 1 Grievance, Appellant only claimed he was entitled to 267 days but in his notice of appeal and brief, he claims he is entitled to 14 months of credit for time served. Both of Appellant's assertions are incorrect.

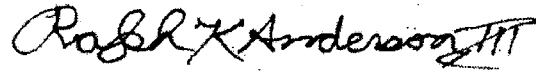
⁴ Although the Record reflects a total of thirty-seven days of credit for time served, the Department asserted in its brief that it had recently corrected this to reflect forty days of jail time credit. This explains why the Department noted in its response to Appellant's Step 2 Grievance that Appellant was only entitled to credit for the period of August 12, 2008 through September 22, 2008, which adds up to thirty-seven days.

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 5, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

April 5, 2021
Columbia, South Carolina