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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph K. Anderson, III

ALC Case No. 20-ALJ-04-0414-AP
Appellate Case No. 2021-000436

Derrick Bernard Woods, #197161.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

September 24, 2021

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRM THE DEPARTMENT'S CALCULATION OF APPELLANT'S SENTENCE?**
 - II. IS RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE?**
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STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Derrick Woods (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step 1 Grievance on April 14, 2020, claiming his sentence was incorrectly calculated and he did not receive all earned work credits. (R. p. ____). This grievance was investigated and denied when it was determined that SCDC had properly calculated Appellant’s sentence and given him all credits. (R. p. ____). Appellant filed a Step 2 Grievance on July 5, 2020. (R. p. ____). This grievance was also investigated and denied. (R. p. ____). Appellant then appealed the decision by filing a Notice of Appeal with the Administrative Law Court. On March 25, 2021, Judge Anderson issued an order affirming SCDC’s final agency decision. (R. p. ____). 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 AND CITATION OF AUTHORITY

I. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S CALCULATION OF APPELLANT'S SENTENCE

On September 10, 2003, Appellant was sentenced to fifteen (15) years' incarceration for Possession with Intent to Distribute Crack Cocaine Within Proximity of a Public Park (PWID) and twenty-five (25) years for Possession with the Intent to Distribute Crack Cocaine 2nd Offense (PWID). (R. p. ____). Appellant was also sentenced to ten (10) years' incarceration for Resisting Arrest to run consecutive to the PWID Crack 2nd sentence. R. p. ____). Appellant received 372 days of jail time credit, so the start date is September 3, 2002. (R. p, ____).

Appellant has a multitude of disciplinary convictions in his record. (R. p. ____). Appellant has forfeited 260 days of good time and lost 270 days of good time as a result of guilty disciplinary convictions. (R. p. ____). Appellant earns good time at a rate of twenty days on the 3rd of every month because his sentences are not for no parole offenses. S.C. Code Ann. § 24-13-210(A). When Appellant fails to follow policy and procedure, he forfeits any good time for the month the disciplinary infraction occurred in addition to any good time taken by the Disciplinary Hearing Officer (DHO). S.C. Code Ann. § 24-13-210(D). Appellant has had sixteen disciplinary hearings which resulted in guilty convictions since 2002. (R. p. ____). The failure to earn good time combined with good time taken away increased Appellant's projected max out date to March 14, 2022.

The Department has credited Appellant with all earned work credits (EWC). Appellant's earned work credit history reflects Appellant receive earned work credits during the times he had a job. (R. p. ____). Appellant, in a 3/5 position, earned credits at 7.234 a month and 10.865 credits a month in a 2/5 position.¹ Appellant also earned 48 days of Earned Education Credits (EEC) in 2018. (R. p. ____). Appellant has earned approximately 1,307 EWC and 48 EEC. Appellant has been given all credits he is entitled.

The Department has calculated Appellant's sentence correctly. Appellant's Resisting Arrest sentence of ten years runs consecutively to Appellant's PWID Crack 2nd sentence resulting in a 35-year sentence. (R. p. ____). Because of Appellant's extensive disciplinary history and gap in job history, Appellant's projected max out date is March 14, 2022. (R. p. ____).

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. (R. p. ____). Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Public Service Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and the Department's final agency decision should be affirmed.

[Conclusion and Signature on the following page]

¹ Appellant is allowed to earn a maximum of 180 days of combined earned work and education credits. S.C. Code Ann. § 24-13-230.

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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Derrick Bernard Woods, #197161.....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, September 24, 2021, addressed to the Appellant as follows:

Derrick Bernard Woods, #197161
Manning Reentry/ Work Release Center
W2-0013-B
502 Beckman Drive
Columbia, SC 29203



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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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

RE: Derrick Bernard Woods, #197161, v. South Carolina Department of Corrections
Appellate Case No. 2021-000436

Dear Ms. Kitchings:

Enclosed please find the **Respondent's Motion to File out of Time, 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
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 103715

cc: Derrick Bernard Woods, #197161
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