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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-04-0495-AP
Appellate Case No. 2021-000718

John Ward, #171770.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT'S APPLICATION OF APPELLANT'S JAIL TIME CREDIT?**

 - II. DID THE ADMINISTRATIVE LAW COURT PROPERLY DENY APPELLANT'S MOTION FOR JUDICIAL NOTICE OF RECORDS CONTAINED OUTSIDE OF THE RECORD?**
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STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of John Ward (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On August 10, 2020, Appellant filed a Step 1 grievance regarding the amount of Jail Time Credits applied to Appellant’s Armed Robbery Sentence. Appellant wanted 156 days applied to the sentence. On August 27, 2020, SCDC denied the Step 1 grievance. Thereafter, on September 10, 2020, Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance and requesting 156 days of jail time credit be applied equally to all sentences. On October 20, 2020, SCDC resolved the grievance by adjusting Appellant’s projected release date from December 7, 2023 to October 13, 2023. On June 16, 2021 Judge Anderson affirmed the Department’s final agency decision. 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 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.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S APPLICATION OF APPELLANT'S JAIL TIME CREDIT

The ALC's jurisdiction to hear inmate appeals of final decisions by the South Carolina Department of Corrections is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added). Here, Appellant complains that the Department did not apply 156 days of jail time credit to Appellant's Armed Robbery sentence. R. p. ____.

On December 11, 2006, Appellant was sentenced to twenty-years' incarceration for Burglary in the First Degree, Assault and Battery with the Intent to Kill (ABWIK), and Armed Robbery to run concurrent with one another. R. p. ____, p. ____, p. ____ . Appellant received 156 days of jail time credit for the Burglary in the First Degree and ABWIK sentences and fifty-five days of jail time credit for the Armed Robbery sentence. R. pp. ____ . Appellant argues 156 days of jail time credit should be applied to the Armed Robbery sentence. The Department has properly

credited Appellant with all time served.

Appellant argues Blakeney v. State, 339 SC. 86, 529 S.E.2d 9 (2009), allows the 156 days of jail time credit to be applied to the armed robbery sentence. In Blakeney, Beaufort County put a “hold” on the petitioner for a burglary charge that occurred in Beaufort after the petitioner was arrested for unrelated charges in Berkeley County. Blakeney, 339 SC. At 11, 529 S.E.2d at 88 (2009). The following day Beaufort executed an arrest warrant but waited fifteen months to serve the petitioner with the arrest warrant. Id. The Supreme Court of South Carolina held, the petitioner should be granted time-served from the date of the “hold” because if the warrant had been executed the day it was issued, petitioner would have received time served if unable to post bond. Id. at 89. South Carolina section provides,

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**, and may be given for any time spent under monitored house arrest. 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.

S.C. Code Ann. § 24-13-40 (emphasis added). The Court look to Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997), to reach a decision in Blakeney. The Court found Crooks held South Carolina section 24-13-40 required the person to be in “pre-trial confinement *and* charged with the offense for which he is sentenced . . .” Blakeney v. State, 339 S.C. at 88, 529 S.E.2d at 10 (2000).

Here, Appellant was arrested for Burglary in the First Degree and ABWIK on July 8, 2006. Appellant was then indicted for Armed Robbery on October 17, 2006. Based on the above cases,

Appellant is not entitled to 156 days of jail time credit for the armed robbery sentence. An arrest warrant was never issued for Appellant's armed robbery sentence. It does not matter, as Appellant contends, all the convictions arose out of a single occurrence. Appellant was only charged for Burglary in the First Degree and ABWIK when arrested on July 8, 2006. R. p. _____. Appellant then received a direct indictment for Armed Robbery on October 17, 2006. R. p. _____. As explained above, South Carolina section 24-13-40 requires a person be in pre-trial detention and charged with the offense that led to sentence. Appellant was not entitled to time-served for Armed Robbery until October 17, 2006, when Appellant received a direct indictment. R. p. _____. Appellant received fifty-five days of jail time credit from October 17, 2006 until December 11, 2006 towards the armed robbery sentence. R. p. ___. The Administrative Law Court properly affirmed the Department's application of jail time credits.

II. DID THE ADMINISTRATIVE LAW COURT PROPERLY DENY APPELLANT'S MOTION FOR JUDICIAL NOTICE OF RECORDS CONTAINED OUTSIDE OF THE RECORD?

Appellant argues the Administrative Law Judge (ALJ) should have taken judicial notice of documents provided by Appellant. However, the ALJ sits in an appellate capacity in these matters and the review is confined to the record. S.C. Code Ann. § 1-23-380(4); SCALC Rule 36(g) (The Administrative Law Judge will not consider any fact which does not appear in the Record.). The ALJ properly denied Appellant's motion for judicial notice.

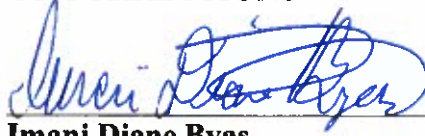
CONCLUSION

Wherefore, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

[Signature page to follow]

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



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John Ward, #171770.....Appellant,

v.

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

PROOF OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter** to Appellant, addressed as follows:

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Enoree, SC 29335



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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: John Ward, #171770, v. South Carolina Department of Corrections
Appellate Case No. 2021-000718

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
Deputy General Counsel
South Carolina Department of Corrections
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cc: John Ward, #171770
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