STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joseph Thomas, #315894, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 21-ALJ-04-0253-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Joseph Thomas (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant contends the Department has incorrectly calculated his sentence.

BACKGROUND

On June 12, 2006, Appellant pled guilty to trafficking cocaine and was sentenced to twenty-five years' imprisonment pursuant to section 44-53-370(e)(2)(d) of the South Carolina Code (2020). Appellant was also awarded 669 days of credit for jail time served. Based upon this conviction, the Department has determined Appellant committed a "no parole offense" and must serve eighty-five percent of his sentence. Accordingly, the Department calculated Appellant must serve as least twenty-one years, two months, and thirty days of his sentence. Currently, Appellant's sentence start date is listed as August 12, 2004, and his projected max out date is November 5, 2025, which is a little over twenty-one years.

On March 25, 2021, Appellant filed a Step 1 Grievance arguing that his sentence was miscalculated based on *Bolin v. SCDC.*[1] Specifically, Appellant argued he is classified as having a mandatory minimum sentence, but the legislature "did away with mandatory sentences" and his sentence should be recalculated under the current law to include earned work credits (EWCs), good time credits, and parole. He requested the mandatory minimum be removed and EWCs be

[1] The Court presumes Appellant is referring to *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016).

applied. The Warden denied the grievance, noting "[c]lassification has advised you have a mandatory sentence of 21 years 2 months and 30 days. Your max out date is 11/05/2025." On April 12, 2021, Appellant filed a Step 2 Grievance asserting the same arguments, emphasizing that he believed he was entitled to EWCs, good time credits under section 24-13-210 of the South Carolina Code, and educational credits under section 24-13-230 of the South Carolina Code, which would bring his max out date forward from November 5, 2025, to this year. His Step 2 Grievance was also denied.

On June 29, 2021, Appellant filed a Notice of Appeal with the Court, in which he asserts the Department has miscalculated his sentence because the Department is making him serve his mandatory minimum sentence of twenty-five years "day-for-day" instead of applying the current law that allows Appellant to serve eighty-five percent of his sentence. Appellant requests this Court interpret section 24-13-150(A) of the South Carolina Code (Supp. 2020), which codifies the "eighty-five percent rule," as controlling with respect to the mandatory minimum sentences for certain "no parole" drug trafficking offenses like his.

This case was assigned on July 15, 2021. On September 24, 2021, the Department filed the Record on Appeal on September 24, 2021. Then, on October 5, 2021, Appellant filed his brief. Following an extension which was granted by this Court, the Department filed its brief on November 9, 2021. Thereafter, Appellant filed a reply brief.[2]

ISSUE ON APPEAL

Did the Department err in calculating Appellant's sentence?

[2] In his reply brief, Appellant asserts the Department's brief was untimely because "[he] did not receive [it] until November 17, 2021, well beyond the time ordered by the Court." However, Appellant is mistaken about the Court's rules regarding the timeliness of a filing. Pursuant to rule 4(B) of the Rules of Procedure for the Administrative Law Court (SCALC Rules), the date of filing is the date of delivery or the date of mailing. It further explains the filing is defined as the date mailed by first class mail to the Court, along with a certificate of service. See SCALC Rule 4(B) 2021 Revised Notes. Here, although Appellant did not receive the Department's brief under November 17, 2021, the Court received the brief in an envelope postmarked on November 9, 2021; thus, it was deemed filed November 9, 2021. Even though the Court's order granting the extension of time did provide a deadline of November 8, 2021, the Department's brief was only filed a day late. Appellant has submitted his reply brief timely and South Carolina courts favor deciding cases on the merits rather than technicalities. *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). In addition, because he contends its untimely, Appellant requests the Court to rule in his favor, but Appellant did not make a formal motion according to the Court's rules. Therefore, based on those reasons, this Court exercises its discretion and denies Appellant's request. *See* SCALC Rule 62.

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) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Al-Shabazz*, the court held the ALC'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 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 382; 527 S.E.2d at 757.[3] Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2020).

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[3] In *Sullivan v. South Carolina Department of Corrections*, the Supreme Court also found that other conditions of confinement could potentially implicate state-created liberty interests. 355 S.C. 437, 586 S.E.2d 124 (2003). However, those interests are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 442, 586 S.E.2d at 126 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

Consequently, 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." *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

In his brief, Appellant argues the Department miscalculated his sentence because, under section 24-13-150(A), he should only be required to serve eighty-five percent of his sentence rather than the full term of his twenty-five-year sentence.[4] The Department contends it correctly calculated Appellant's sentence based upon the eighty-five percent rule under section 24-13-150(A). Applying the eighty-five percent rule to Appellant's twenty-five-year sentence, the Department calculated that Appellant was required to serve twenty-one years, two months, and

[4] In his Step 1 and Step 2 Grievances as well as his reply brief, Appellant raised the issue of the Department's alleged failure to account for EWCs, good time credits, or other credits in his sentence calculation. However, in his Notice of Appeal and Appellant's brief, Appellant makes no argument concerning this issue and focuses solely on his assertion that the Department did not apply the eighty-five percent rule to his sentence. Therefore, Appellant has abandoned this issue. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue."). However, even if Appellant had not abandoned this issue, because Appellant was convicted of a "no parole offense," good time credits, etc., cannot be used to reduce the minimum term of incarceration required under section 24-13-150, which in this case is eighty-five percent of Appellant's sentence. S.C. Code Ann. § 24-13-210(B) (Supp. 2020) (providing that an inmate convicted of a "no parole offense" as defined in section 24-13-100 is entitled to good time credits; however, "[n]o inmate convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150"); S.C. Code Ann. 24-13-230(B) (Supp. 2020) (providing that an inmate convicted of a "no parole offense" as defined in section 24-13-100 is entitled to educational time credits; however, "[n]o inmate convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150").

thirty days. The Department asserts it also incorporated Appellant's 669 days of jail time credit in calculating Appellant's projected max out date of November 5, 2025. Based upon the following, I conclude the Department correctly calculated Appellant's sentence.

The Record shows that on June 12, 2006, Appellant pled guilty to trafficking cocaine in violation of section 44-53-370(e)(2)(d) of the South Carolina Code and was sentenced to twenty-five years' imprisonment. Section 44-53-370(e)(2)(d) provides that Appellant's conviction is a felony subject to a mandatory term of imprisonment:

> (e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:
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> (2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a **felony** which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:
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> (d) two hundred grams or more, but less than four hundred grams, a **mandatory term of imprisonment** of twenty-five years, **no part of which may be suspended nor probation granted,** and a fine of one hundred thousand dollars;

(emphasis added). Appellant's felony conviction is exempt from classification, and it is a "no parole offense" under section 24-13-100 of the South Carolina Code (2007). S.C. Code Ann. § 16-1-10(D) (Supp. 2020) (providing Appellant's felony conviction under section 44-53-370(e)(2)(d) is exempt from classification as a, for example, Class A or Class B felony); S.C. Code Ann. § 24-13-100 (2007) (providing that a felony that is exempt from classification under section 16-1-10(D) is a "no parole offense"). Regarding "no parole offenses," section 24-13-150(A) further provides:

> (A) **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.** . . . Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (2007 & Supp. 2020) (emphasis added). Therefore, under section 24-13-150(A), Appellant is not eligible for early release, discharge, or community supervision until he has served at least eighty-five percent of his actual term of imprisonment, or eighty-five percent of twenty-five years.

However, the reduction in Appellant's sentence that is allowed under the "eight-five percent rule" in section 24-13-150(A) conflicts with the language in section 44-53-370(e)(2)(d), which provides that Appellant is subject to "a **mandatory term** of imprisonment of twenty-five years, **no part of which may be suspended nor probation granted.**" Under *Bolin v. South Carolina Department of Corrections*, when two statutes conflict, if the more recent statute uses the phrase "notwithstanding any other provision of the law," the legislature intends the more recent statute to control. 415 S.C. 276, 282, 781 S.E.2d 914, 917 (Ct. App. 2016). Here, section 24-13-150(A) is the more recently codified statute and incorporates the language "notwithstanding any other provision of the law"; therefore, section 24-13-150(A) is controlling. *See id.*[5][6] Thus, under section 24-13-150(A), Appellant is required to serve at least eighty-five percent of his sentence.

The Record shows the Department applied the eighty-five percent rule in calculating Appellant's sentence and thus determined Appellant must serve at least twenty-one years, two months, and thirty days of his twenty-five-year sentence. This calculation is reflected in Appellant's sentence start date and projected max out date. Appellant's sentence start date is listed as August 12, 2004, and his projected max out date is November 5, 2025, which a little over twenty-one years. Therefore, the Department has not miscalculated or misapplied the current law to require Appellant to serve "day-for-day" the full term of his twenty-five years as Appellant

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[5] Section 44-53-370 has remained the same since 1995 and section 24-13-150(A) became effective in 1996. *See* S.C. Code Ann. § 44-53-370(e)(2)(d) (Supp. 1995) (effective January 1, 1995); S.C. Code Ann. § 24-13-150 (Supp. 1995) (effective Jan. 1, 1996).

[6] Applying the last legislative expression rule would also lead to the conclusion that section 24-13-150(A) controls. *See Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) ("[T]he Last Legislative Expression Rule requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment."); *Eagle Container Co., LLC v. Cty. of Newberry*, 379 S.C. 564, 572, 666 S.E.2d 892, 896 (2008) ("Under the 'last legislative expression' rule, where conflicting provisions exists, the last in point of time or order of arrangement, prevails." (citing *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991)). The Court recognizes that the last legislative expression rule has been interpreted as "an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 54, 26 S.E.2d 22, 24 (1943). However, in this instance it further substantiates the Court's reasoning.

asserts. Rather, the Record shows the Department has correctly calculated Appellant's sentence under the applicable law.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED.**

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 3, 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

December 3, 2021
Columbia, South Carolina