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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 21-ALJ-04-0118-AP
Appellate Case No. 2021-001044

WILLIE YOUNG, # 285487,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THIS COURT SHOULD AFFIRM THE DECISION OF THE ADMINISTRATIVE LAW COURT WHERE APPELLANT'S SENTENCE HAS BEEN PROPERLY CALCULATED AS AN 85% NO-PAROLE SENTENCE.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Willie Young, an inmate in the South Carolina Department of Corrections (“SCDC”). Appellant submitted a Step One Grievance on November 22, 2020, claiming that earned work credits were not applied to his sentence and that his sentence was therefore being calculated incorrectly. This grievance was investigated and denied. Appellant submitted a Step Two Grievance on December 17, 2020, again alleging that SCDC denied him work credits and that his release date was incorrect. This grievance was also investigated and denied. Appellant subsequently filed an appeal in the Administrative Law Court (“ALC”), and on August 30, 2021, Judge Ralph King Anderson, III, issued an Order affirming SCDC’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.

S.C. Code Ann. § 1-23-380(5).

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 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

THIS COURT SHOULD AFFIRM THE DECISION OF THE ADMINISTRATIVE LAW COURT WHERE APPELLANT'S SENTENCE HAS BEEN PROPERLY CALCULATED AS AN 85% NO-PAROLE SENTENCE.

Appellant asserts that “he is entitled to the application of his earned work credits, which in effect relieve him of the 85 percent rule,” and that his release date is therefore incorrect. (See Brief of Appellant, p. 5 and p. 6-10). Appellant’s assertions are without merit because state law requires that he serve at least 85% of his sentence before being released.

On June 28, 2002, Appellant was sentenced to thirty years’ incarceration for armed robbery under S.C. Code 16-11-330. (See Indictment). The offense of armed robbery is a Class A felony, and a person convicted of this offense “must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted.” S.C. Code 16-11-330(A); see also S.C. Code 16-1-30 (“All criminal offenses created by statute after July 1, 1993, must be classified according to the maximum term of imprisonment provided in the statute and pursuant to Sections 16-1-10 and 16-1-20”); S.C. Code 16-1-20(A)(1) (“A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.”).

Because Appellant’s offense is a Class A felony which is punishable by a maximum term of imprisonment of twenty years or more, it is an 85%, no-parole offense. See S.C. Code 24-13-100 (“A ‘no parole offense’ means a class A, B, or C felony . . . which is punishable by a maximum term of imprisonment for twenty years or more.”). S.C. Code 24-13-150(A) states as follows:

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. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits**, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

(Emphasis added). Appellant's conviction for armed robbery meets the definition of S.C. Code Ann. § 24-13-100; therefore, he must serve at least 85% of his sentence pursuant to S.C. Code 24-13-150(A). Mathematically, this means that Appellant must serve no less than twenty-five years and six months of his thirty-year sentence. This is what Appellant is projected to serve based upon his sentence start date of September 12, 2001, and his maxout date of March 7, 2027. (See SCDC Printouts). Although Appellant has earned both good time and work credits at the reduced rate at which 85% inmates can earn such credits¹ (see SCDC Printouts), neither good time or work credits can be used to reduce his term of imprisonment below 85% because the statute specifically states that 85% no-parole inmates must serve "**at least eighty-five percent** of the actual term of imprisonment imposed," to be calculated without the application of work credits or good time credits. S.C. Code 24-13-150(A) (emphasis added). Therefore, Appellant's arguments are without merit, and the Order of the ALC must be affirmed.

¹ Under S.C. Code 24-13-210(B), 85% offenders may earn 3 days of good time credit per month. Under S.C. Code 24-13-230(B), 85% inmates may earn 6 days of work credit per month. Contrary to Appellant's apparent belief, good time and work credits are applied to reduce the total sentence (here, 30 years) and are not applied to 85% of the 30 years. This same principle applies to non-85% offenders, although non-85% offenders are able to earn a much greater amount of good time and work credit under S.C. Code 24-13-210(A)

CONCLUSION

Appellant has not met his burden to demonstrate that SCDC incorrectly calculated his sentence. Therefore, Respondent respectfully requests this Court affirm the Administrative Law Court.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:


CHRISTINA CATOE BIGELOW

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 21-ALJ-04-0118-AP
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WILLIE YOUNG, # 285487,

APPELLANT,

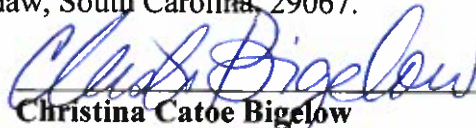
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Willie Young, # 285487, CYP-0047-A, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina, 29067.



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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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SC Court of Appeals

February 3, 2022

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

RE: Willie Young, # 285487 v. South Carolina Department of Corrections
Appellate Case No. 2021-001044

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** 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 there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: Willie Young, # 285487
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