STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terrance Tompkins, #318169, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No.: 21-ALJ-04-0346-AP **FINAL ORDER**

RECEIVED
MAR 25 2022
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by Terrance Tompkins (Appellant) an inmate in the custody of the South Carolina Department of Corrections (Department or Respondent). After the Appellant's Step 1 and Step 2 grievances were denied, the Appellant file a Notice of Appeal with the court on September 24, 2021, appealing the denial of his grievance in which the Appellant alleges that the Department is required to bring a declaratory judgment action in the Court of General Sessions because he does not agree with the Department's interpretation of his sentence.

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). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such a liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d

State of South Carolina
FILED
FEB 09 2022
Administrative Law Court

at 754–56. Consequently, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

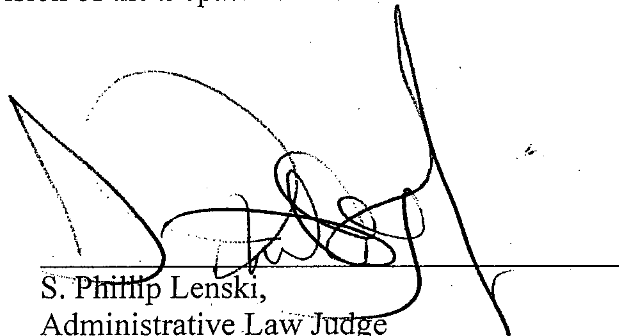
On October 13, 2006, the Appellant was sentenced to five (5) years incarceration for Assault and Battery with Intent to Kill (ABWIK), with no credit for time served, to run consecutive to a twenty (20) year sentence for ABWIK, for which the Appellant was to receive credit for time served. In accordance with subsection 24-13-150(A) of the South Carolina Code, the Appellant is required to serve eight-five percent of his five-year ABWIK sentence, which is approximately four (4) years, two (2) months, and thirty (30) days. After the Department applied all of the Appellant's applicable credits to eighty-five percent of his five-year ABWIK sentence, the Appellant completed this sentence on October 8, 2009. However, pursuant to the Appellant's sentencing sheet, the Appellant then commenced his twenty-year ABWIK sentence on October 8, 2009, upon completing his five-year ABWIK sentence. The Appellant's twenty-year ABWIK sentence is also a no-parole offense for which he must serve eighty-five percent of the sentence, or seventeen years.

The Appellant argues that because he disagrees with the Department's proposed reinterpretation of his sentence, the *Tant* decision requires the Department to bring a declaratory judgment action in General Sessions Court. The Appellant misconstrues *Tant*. In the Appellant's case, unlike in *Tant*, his sentencing sheets are not ambiguous. The sentencing judge clearly indicated which of the Appellant's sentences were to run consecutively and which were to run concurrently, and for which convictions the Appellant was to get credit for time served. Further, the Department provided the Appellant with timely, formal notice when it corrected the offense code of the Appellant's conviction and twenty-year sentence for ABWIK, to a no-parole offense,

after an audit of the Appellant's inmate records detected the error. Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.



S. Phillip Lenski,
Administrative Law Judge

February 9, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 9th day of February 2022

Judicial Law Clerk