

APPENDIX 1 TO BRIEF IN OPPOSITION

2010-UP-367 – Martin v. SCDC

Op. No. 2010-UP-367 (S.C. Ct. App.
filed July 14, 2010)

App. 1

2010-UP-367 – Martin v. SCDC

THIS OPINION HAS NO PRECEDENTIAL VALUE.
IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT AS
PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Orlando Martin, Respondent,

v.

South Carolina Department of Corrections, Appel-
lant.

Appeal From Administrative Law Court

Deborah Durden, Administrative Law Court Judge

Unpublished Opinion No. 2010-UP-367

Submitted June 1, 2010 Filed July 14, 2010

REVERSED

Michael Vincent Laubshire, of Columbia, for Ap-
pellant.

William Levern Pyatt, of Columbia, for Respon-
dent.

PER CURIAM: The South Carolina Department of
Corrections (the Department) appeals the Administra-
tive Law Court's (ALC) order instructing the Depart-
ment to recalculate Orlando Martin's sentence. We
reverse.^[1]

App. 2

On June 14, 2004, an Aiken County grand jury indicted Martin for second-degree arson, and on July 22, 2005, Martin pled guilty. The plea court sentenced Martin to ten years' imprisonment, suspended upon the service of "time served,"^[2] and five years' probation. Thereafter, a probation arrest warrant was issued. On June 29, 2007, the probation revocation court revoked Martin's probation and required Martin to serve five years of the original sentence and then be reinstated on probation.^[3] The Form 9^[4] revocation order indicated Martin previously served 562 days on the sentence.

On June 3, 2009, and July 29, 2009, Martin submitted a Step One and Step Two Grievance to the Department seeking credit for the 562 days he served prior to pleading guilty. The Department denied both grievances, explaining the 562 days was previously applied to Martin's ten year sentence, reducing the total sentence to eight years' and 168 days. Martin appealed to the ALC, arguing the Department failed to apply the 562 days he served to his current five year sentence rather than applying the time served to his original ten-year sentence. The ALC reversed and ordered the Department to "recalculate [Martin's] sentence on the basis of a 5-year sentence commencing June 29, 2007[,] with credit for 562 days previously served on the sentence at that time." This appeal followed.

In an appeal of the final decision of an administrative agency, this court shall not substitute its judgment for that of the ALC as to findings of fact however, it may reverse or modify decisions which are controlled by an

App. 3

error of law. Sanders v. S.C. Dep't of Corr., 379 S.C. 411, 417, 665 S.E.2d 231, 234 (Ct. App. 2008).

Here, the ALC misinterpreted the effect of the revocation order. Martin served 562 days prior to his guilty plea, and when the plea court sentenced Martin, the plea court gave Martin credit for this time served. Then, when Martin's probation was revoked, the probation court imposed five years of the suspended portion of the sentence. The Form 9 revocation order indicated Martin previously served 562 days of the sentence. The 562 days previously served is not applied to the five-year sentence imposed at the probation revocation hearing. Rather, it applied toward Martin's original sentence of ten years' imprisonment. Accordingly, we find the ALC erred in (1) finding the probation revocation court's order revoked the original ten year sentence and reduced the sentence to five years' imprisonment, and (2) instructing the "sentence be recalculated on the basis of a 5-year sentence commencing June 29, 2007[,] with credit for 562 days previously served on the sentence at that time." Therefore, we reverse the ALC's order and reinstate the decision of the Department.

App. 4

REVERSED.

FEW, C.J., WILLIAMS, J., and CURETON, A.J., concur.

^[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

^[2] Martin served 562 days prior to sentencing.

^[3] Martin did not serve any time awaiting his probation revocation hearing.

^[4] Form 9 is created by the South Carolina Department of Probation, Parole, and Pardon Services, and is the form order used by the circuit court in probation revocation proceedings.
