

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joseph McMorris, Jr., #264508,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of)
 Corrections,)
)
 Respondent.)

Docket No. 21-ALJ-04-0292-AP

RECEIVED

ORDER

JUL 20 2022

SC Court of Appeals

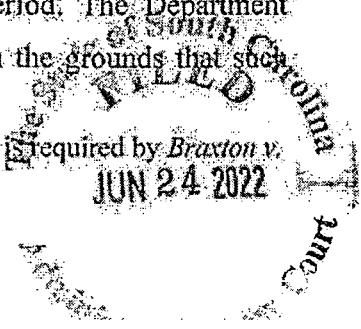
This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Joseph McMorris, Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant seeks review of the Department's denial of his Step Two Grievance, which concluded that Appellant was not eligible for good time or earned work credits during the period in which Appellant was released on parole. For the reasons set forth below, the Department's decision is affirmed.

BACKGROUND

On August 11, 2016, Appellant received a ten-year prison sentence for possession of methamphetamine, third offense, under subsection 44-53-375(A) of the South Carolina Code. Appellant began serving his sentence on August 8, 2016 and was given three days of credit for time served prior to entering SCDC custody. The South Carolina Probation, Parole, and Pardon Services Board (DPPPS) later granted Appellant parole on October 17, 2018, which it subsequently revoked on November 18, 2020 upon determining Appellant violated the conditions of his supervision. Appellant was thereafter returned to SCDC to serve the remainder of his 2016 sentence. He was given day-for-day credit towards his release date for the time he served on parole.¹

On June 2, 2021, Appellant filed a Step One inmate grievance alleging the Department miscalculated the remainder of his sentence upon his return to SCDC custody when it declined to award him good time and earned work credits during his parole period. The Department subsequently denied Appellant's Step One and Step Two grievances on the grounds that such

¹ As will be discussed, awarding Appellant credit for the time he spent on parole is required by *Braxton v. S.C. Dep't of Corrs.*, 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020).



conduct-based credits only applied to inmates confined to an SCDC institution, and that the Appellant was under the legal custody of DPPPS, not the Department, while released on parole. Appellant filed the instant appeal with the ALC on July 30, 2021.

STANDARD OF REVIEW

This Court's jurisdiction to hear inmate grievance matters is derived from the decisions 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). Under the *Al-Shabazz* line of cases, the court's jurisdiction over inmate grievances is limited to matters related to a state-created liberty or property interest. *Al-Shabazz*, 338 S.C. at 368–69, 527 S.E.2d at 749–50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Given that Appellant challenges the calculation of sentence-related credits, he has sufficiently invoked a liberty interest within the purview of this Court's authority. *Slezak v. S.C. Dep't of Corrs.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

DISCUSSION

Appellant argues that although he was not in an actual prison facility while on parole, he nevertheless continued to serve his sentence in the *legal* custody of the Department during this time frame. Appellant is correct, except that while on parole, he was in the legal custody of DPPPS. Our state Supreme Court has defined "parole" to mean "a conditional release from imprisonment and *does not suspend the running of the prisoner's sentence.*" *State v. Ellis*, 397 S.C. 576, 579–580, 726 S.E.2d 5, 7 (2012) (emphasis in original). Thus, a prisoner's sentence continues to run even while he is on parole. In *Braxton v. South Carolina Department of Corrections*, 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020), the Court of Appeals determined that an inmate whose parole has been revoked and returned to prison is entitled to credit against his remaining sentence for the time spent on parole:

[O]ur supreme court addressed the status of a parolee in *Sanders v. MacDougall*, stating, "A prisoner upon release on parole continues to serve his sentence outside the prison walls. The word parole is used in contradistinction to suspended sentence and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence." 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964) (emphases

added). The court further provided, "An order revoking parole simply restores a defendant to the status he would have occupied had this form of leniency never been extended to him." *Id.* at 164, 135 S.E.2d at 837.

Following his CSC conviction and imprisonment in South Carolina, Braxton was successfully paroled from March 31, 1994, until he was arrested in Tennessee on April 16, 1996. Because Braxton continued to serve his sentence outside the prison walls and remained in legal custody while he was on parole, we find he should receive credit towards the remainder of his CSC sentence for the time he was on parole. *See id.* at 163, 135 S.E.2d at 837 (providing that a prisoner on parole remains in the legal custody of the South Carolina Probation, Parole, and Pardon Services (DPPP) Board and continues to serve his sentence outside the prison walls). Accordingly, we reverse and remand this issue to the ALC to recalculate Braxton's sentence such that he receives credit for the time he served while on parole.

Braxton v. South Carolina Department of Corrections, 430 S.C. at 644, 846 S.E.2d. at 386.

Appellant, therefore, contends that under *Sanders v. MacDougall* and *Braxton*, he remained in the legal custody of the Department during his parole period and that the subsequent revocation of parole "simply restores [him] to the status he would have occupied had this form of leniency never been extended to him."² Just as *Braxton* made clear that an inmate whose parole is revoked is entitled to sentence credit for the time spent on parole, Appellant argues that he should further be entitled to good time and work credits generated during this time.³ This Court believes Appellant's argument is misplaced.

The relevant statutes governing the application and limitations of good time and earned work credits to an inmate's sentence are found under sections 24-13-210 (good behavior) and -230 (earned work credits) of the South Carolina Code (Supp. 2021). The relevant provisions of these statutes are as follows:

(A) An inmate convicted of an offense against this State, except a "no parole offense" as defined in Section 24-13-100, **and sentenced to the custody of the Department of Corrections**, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, **whose record of conduct shows that**

² Appellant argues that for the purposes here, there is no difference between the Department and DPPP inasmuch as both are agencies of the State of South Carolina.

³ Although there is no evidence in the Record on Appeal establishing that Appellant was employed during the time he was on parole, it is more likely than not that his status required some form of employment. Further, aside from the actions which lead to revocation of parole, Appellant most probably did exhibit some form of acceptable behavior while on parole.

he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.

§ 24-13-210(A) (emphasis added).

The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department, except an inmate convicted of a "no parole offense" as defined in Section 24-13-100, who is assigned to a productive duty assignment, including an inmate who is serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30 or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. A maximum annual credit for both work credit and education credit is limited to one hundred eighty days.

§ 24-13-230(A) (emphasis added).

Courts are bound to the plain textual meaning of an unambiguous statute to give effect to the legislature's intent. *See Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (finding the rules of statutory construction unnecessary where the plain language of the statute is unambiguous). In addition, a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). Moreover, "[a] statute should not be construed by concentrating on an isolated phrase." *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Here, the plain language of the above statutes makes clear that an inmate's eligibility for either of these conduct-based credits is contingent on the inmate abiding by institutional policies or participating in certain prison programs during their confinement period. Subsection 24-13-210(A) specifically applies to an inmate "whose record of conduct shows that he has faithfully observed all the rules of *the institution where he is confined*..." (emphasis added).⁴ While subsection 24-13-230(A) is not as definitive with regard to institutional

⁴ Appellant cites *Crooks v. Sanders*, 123 S.C. 28, 115 S.E.760 (1922) for the proposition that a paroled inmate's time on parole should be shortened for "good behavior." However, in *Crooks*, the South Carolina Supreme Court construed a statute that did not condition an inmate's entitlement to "good behavior" credits on being incarcerated within an institution. *Id.* 115 S.E. at 763. *See also* S.C. Code Ann. § 24-21-670 ("Any prisoner who may be paroled under authority of this chapter shall continue on parole until the expiration of

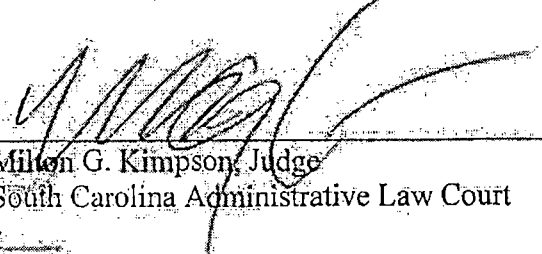
confinement, reading the statute as a whole indicates the General Assembly's intent that the work credit be made available to inmates assigned a productive duty assignment while serving time in an institution. See § 24-13-230(D): "[t]he amount of credit to be earned for each duty classification or enrollment must be determined by the director and published by him in a conspicuous place available to inmates at each correctional institution." (emphasis added). This language is a clear indication that the General Assembly intended for work credits to be generated during an inmate's time of incarceration within a facility, not during parole.⁵

Here, Appellant was not confined within an SCDC institution or any designated facility while on parole but was rather under the supervision of DPPPS. Appellant's assertion that these two agencies are the same for the purposes of good conduct and earned work credits is misplaced. See S.C. Code Ann. § 24-21-660 (2007): "Every such paroled prisoner must remain in the jurisdiction of the board [Parole Board] and may at any time on the order of the board, be imprisoned as and where therein designated." The statute governing parole authorization additionally makes clear that a parole order effectively releases an inmate from SCDC institutional custody. See S.C. Code Ann. § 24-21-650 (2007): "a parole order which, if accepted by the prisoner, provides for his release from custody." Because Appellant was not within SCDC institutional custody during his parole period, it was not possible that he could have "faithfully observed all the rules of the institution where he [was] confined" or have been "assigned to a productive duty assignment ... or training program" as contemplated under subsections 24-13-210(A) and -230(A).

Appellant's claim is without merit as he seeks entitlement to credits for a period in which he was statutorily ineligible. Accordingly, **IT IS HEREBY ORDERED** that the Department is **AFFIRMED**.

AND IT IS SO ORDERED OF SERVICE

June 24, 2022
Columbia, SC


Milton G. Kimpson, Judge
South Carolina Administrative Law Court

This is to certify that this is a designated true and correct copy of this order in the above entitled matter upon all parties to this cause by depositing a copy hereto in the United States mail, postage paid, or in the United States Postal Service addressed to the party(ies) or their attorney.

The 24 day of June, 2022

the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as may be provided for by law." (emphasis added)

⁵ This point is reinforced by section 4.7 of SCDC Policy No. OP-21.07, "Earned Work Credits", which states that "[i]nmates on parole or probation, even when related to a sentence which includes incarceration, are not eligible to receive earned work credits or earned education credits for the time spent under community supervision."

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