STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Eugene Carpenter, #181783, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No. 20-ALJ-04-0083-AP **FINAL ORDER**

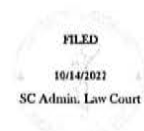
RECEIVED
Nov 14 2022
SC Court of Appeals

BACKGROUND

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Charles Eugene Carpenter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). Appellant's legal history is lengthy. *See generally Carpenter v. S.C. Dep't of Corr.*, 431 S.C. 512, 515-19, 848 S.E.2d 346, 347-50 (Ct. App. 2020) (discussing the history of Appellant's incarceration and subsequent attacks on his convictions and sentences). Importantly for this matter, Appellant pled guilty in April 1990 to conspiracy to traffic cocaine and conspiracy to traffic marijuana.[1] In June 1990, the sentencing court sentenced Appellant to twenty-five years' imprisonment for the cocaine conviction. In August 1990, the sentencing court sentenced Appellant to a consecutive sentence[2] of twenty-five years' imprisonment for the marijuana conviction. During the course of Appellant's incarceration, starting in 1990 on these convictions, SCDC recorded good-time and work credits. According to SCDC, on June 24, 2011, SCDC audited Appellant's record and determined Appellant was not entitled to earn any credits because his sentences run day for day. Thus, SCDC removed credits from Appellant's record without a hearing at that time.

[1] *See* S.C. Code Ann. § 44-53-370(e)(1)(d), (e)(2)(e) (Supp. 1989). Appellant, pro se, previously disputed the statutes he was convicted under; however, his appellate brief to the Court cites these statutes. *See* App. Br. 1, filed June 15, 2020. These statutes are also consistent with the sentencing sheets included in the record.

[2] Appellant previously disputed whether the marijuana sentence ran consecutively to the cocaine sentence. *See, e.g.*, App. Br. 1 n.1, filed June 15, 2020.



As to the matter presently before the Court, Appellant filed his step 1 grievance in 2019, alleging SCDC improperly removed the good-time and work credits that previously appeared on his record. Appellant's grievance was investigated and denied because of the mandatory nature of Appellant's sentences. Appellant filed a step 2 grievance, reasserting the same. This grievance was also investigated and denied. Appellant filed this appeal on February 7, 2020, and this matter was assigned to the Honorable H.W. Funderburk, Jr. on February 13, 2020. The record on appeal was filed on May 12, 2020. On June 15, 2020, Appellant filed his primary brief and attached exhibits to his brief.[3]

On July 2, 2020, SCDC filed a motion to hold this matter in abeyance because Appellant previously filed a state habeas petition that was on appeal before the South Carolina Court of Appeals and could have an impact on the matter before the Court. Specifically, SCDC's requested relief was to hold this matter "in abeyance until there is a final ruling from the Court of Appeals." On July 27, 2020, the Court granted the motion. On August 5, 2020, Appellant filed a motion to consolidate this appeal with another appeal Appellant filed with the Court. *See Carpenter v. S.C. Dep't of Corr.*, Docket No. 20-ALJ-04-0018-AP. The Court declined to rule on the motion to consolidate at that time.

On August 19, 2020, the South Carolina Court of Appeals rendered a final decision on the state habeas matter, affirming in part, vacating in part, and remanding to the circuit court for an evaluation of Appellant's claims under the Post-Conviction Relief (PCR) Act.[4] No petition for rehearing was filed, and the remittitur was sent on September 10, 2020. While not formally lifted, the stay in the Court expired of its own terms. Almost a year and five months passed with no action on the matter before the ALC. This matter was reassigned to the undersigned upon the retirement of Judge Funderburk. On January 11, 2022, the Court requested the parties submit a motion to reinstate the stay within ten days if either party so desired. The allotted period passed, and the Court received no such motion. Accordingly, on January 31, 2022, the Court explicitly lifted the stay and denied the motion to consolidate the cases.[5]

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[3] This brief was timely pursuant to the Court's Covid-19 order that was applicable at the time.
[4] S.C. Code Ann. §§ 17-27-10 to -150 (2014).
[5] The Court affirmed the other appeal, and no appeal from the Court's order was filed with the South Carolina Court of Appeals.

Thereafter, Respondent filed a motion to supplement the record, which is still pending before the Court, and its brief in this matter. Additionally, Appellant filed his reply brief and return to the motion to supplement the record; Appellant had no objection to supplement the record as long as the attachments to his briefs were also considered. None of the briefs discussed the impact and import of the opinion from the South Carolina Court of Appeals. Thus, on March 9, 2022, the undersigned instructed the parties to brief the following issues:

> 1. Does the appellate decision in *Carpenter* hold that the exclusive remedy for the due process and equal protection claims asserted in this appeal is through [PCR] proceedings?
>
> 2. Does Appellant have a protect liberty interest (or state-created property interest) in good-time and work credits if he was not entitled to receive them in the first place?

After the parties briefed these issues, the Court held a conference call. Appellant informed the Court that during a hearing on the pending PCR action, he asked the circuit court to rule on a prior motion to amend his pleadings to allow the circuit court to handle some of the matters that are presently before the Court. Thus, Appellant requested the ALC again stay this matter pending the circuit court's ruling on the motion. Respondent did not object. By order dated April 19, 2022, the Court held this matter in abeyance pending resolution of the circuit court's ruling on the pending motion to amend.

Subsequently, the circuit court denied Appellant's motion. Accordingly, this matter is no longer held in abeyance and is ready for consideration. As fully explained herein, the Court (1) grants SCDC's motion to supplement the record and considers all attachments to briefs; (2) dismisses this matter to the extent it raises matters that are proper for PCR, (3) dismisses this matter because Appellant has no state-created liberty or property interest in the credits, and to the extent to the extent Appellant's claims can survive summary dismissal, the Court dismisses because Appellant has now received the due process, if any, that he was entitled to receive when SCDC originally removed the credits from Appellant's record; and (4) to the extent Appellant raises a distinct equal protection violation related to the credits, the Court determines Appellant failed to establish such a claim and thus affirms.

JURISDICTION & 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); *see also* S.C. Code Ann. §1-23-600(D) (Supp. 2021). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is generally 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. 338 S.C. at 369, 527 S.E.2d at 750; *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) ("[T]he [ALC] has jurisdiction over all inmate grievance appeals that have been properly filed . . . ."). However, the Court may summarily dismiss an inmate's appeal when the appeal does not implicate state-created liberty or property interests, or when the inmate is not subjected to atypical and significant hardships. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest"); *id.* (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life" (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995))).

In reviewing appeals of the Department's actions in inmate grievance matters, the Court sits in an appellate capacity and is, therefore, limited to review of the record on appeal. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. Furthermore, the Court may not substitute its judgment for the judgment of the agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2021). The Court may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. *See 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 Lab., Licensing and Regul. v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). Moreover, to afford "meaningful judicial review," the Administrative Law Judge must "adequately explain" his decision by "documenting the findings of fact" and basing his decision on "reliable, probative, and substantial evidence on the whole record." *Al-Shabazz*, 338 S.C. at 380, 527 S.E.2d at 756. "[A] question of statutory interpretation, which is a question of law [is] 'subject to de novo review.'" *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 280, 781 S.E.2d 914, 916 (2015) (quoting *Barton v. S.C. Dep't of Prob. Parole & Pardon*

Servs., 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013)). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *S.C. Energy Users Comm'n v. S.C. Elec. & Gas*, 410 S.C. 348, 353, 764 S.E.2d 913, 915 (2014) (quoting *Dunton v. S.C. Bd. Of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)).

DISCUSSION

The thrust of Appellant's appeal is that he wants the Court to order SCDC to restore good-time and work credits that were previously included on his record. To obtain his requested relief, Appellant raises two enumerated arguments in his brief. First, Appellant argues SCDC "engaged in activity that constituted an alteration with respect to the sentence being served . . . , which triggered due process rights that were not met." Within this argument, Appellant does not explicitly contend that he was entitled to earn the credits; rather, his point is that once he received them, SCDC could not unilaterally remove them without violating his due process rights. Second, Appellant argues SCDC "violated [his] rights through its disparate treatment [when] compared to others similarly situated." Specifically, Appellant contends he was treated differently than Bobby G. Horne, who "was arrested in connection with the same course of events," was given good-time and work credits, and was subsequently released from active custody on August 30, 2001.[6] Appellant also states that he believes other inmates were being treated differently too; in support of this position, Appellant attached a Freedom of Information Act (FOIA) request that states "Drug Trafficking Audit Results." In response to the Court's request for briefing on the two issues listed in the statement of the case, Appellant asserts the ALC could hear his credits-related issue, which would possibly change his release date. He also disputes the premise of the Court's question that he was not entitled to receive the credits pursuant to statute but then evidently admits he is not entitled to earn the credits pursuant to a statute.

In contrast, SCDC argues its "recalculation of Appellant's sentence did not trigger due process rights and Appellant's sentence is correctly calculated." Specifically, SCDC contends Appellant's sentences require day-for-day service that cannot be reduced by good-time and work

[6] In his reply brief, Appellant contends Horne "remains free."

credits.[7] Next, SCDC contends it did "not violate Appellant's rights under the Equal Protection Clause." According to SCDC, "[i]nmates . . . sentenced to the same terms of incarceration under the same statutes do not automatically create a similarly situated group of inmates." SCDC asserts Horne's case is also distinguishable because he was already released prior to SCDC determining the error in its system. Thus, SCDC contends the Court should "dismiss this case with prejudice." In response to the Court's questions, SCDC asserts Appellant's exclusive remedy for due process and equal protection is through the PCR proceedings, and it reasserts Appellant does not have a state-created liberty or property interest in credits that he was not entitled to in the first place.

I. PRELIMINARY MATTERS

There are two matters the Court needs to address before reaching the underlying good-time and work credit issues. First, the Court grants SCDC's motion to supplement the record and also considers any documents that were attached to the briefs in this matter. *See generally* SCALC Rule 63 (providing for motions); SCALC Rule 60(C) (permitting an appendix during the briefing process). Second, to the extent Appellant contends he is being held unlawfully, those claims are not properly before the Court. The exclusive remedy for such claims lies in PCR proceedings, and accordingly, those matters are dismissed. *See Carpenter v. S.C. Dep't of Corr.*, 431 S.C. 512, 526, 848 S.E.2d 346, 349 (Ct. App. 2020); S.C. Code Ann. § 17-27-20 (2014).

II. IS APPELLANT ENTITLED TO GOOD-TIME AND WORK CREDITS THAT PREVIOUSLY APPEARED ON HIS RECORD?

Appellant contends he is entitled to good-time and work credits that previously appeared on his record. The Court dismisses his appeal as to this argument. Appellant has no protected state-created liberty or property interest in those credits under the specific facts of this case, and as a result, the matter is merely an academic question.

Section 44-53-370(e)(1)(d) of the South Carolina Code (Supp. 1989) provides the following penalty for conspiracy to traffic marijuana in pertinent part "a term of imprisonment not less than twenty-five years nor more than thirty years with a mandatory minimum term of

[7] In its filings, SCDC references the 85% rule that is set forth in section 24-13-150 of the South Carolina Code (Supp. 2021). The Court makes no comment on the application of this section and how long Appellant must serve his sentences because the issue before the Court is whether SCDC improperly removed credits from Appellant's record—not Appellant's release date.

imprisonment of twenty-five years, no part of which may be suspended nor probation granted." Section 44-53-370(e)(2)(e) of the South Carolina Code (Supp. 1989) provides the following penalty for conspiracy to traffic cocaine in pertinent part "a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted." As is evident in the quoted texts, both of the provisions of the Code that Appellant pled guilty under require a *mandatory minimum term* of imprisonment of twenty-five years' imprisonment. *See* § 44-53-370(e)(1)(d) (providing mandatory minimum term of imprisonment of twenty-five years), (e)(2)(e) (same); *Kerr v. State*, 345 S.C. 183, 186-90, 547 S.E.2d 494, 496 (2001) (discussing the distinction between a mandatory term and a mandatory minimum); *cf. Nelson v. Ozmint*, 390 S.C. 432, 435-37, 702 S.E.2d 369, 370-71 (2010) (discussing mandatory minimums in the context of domestic violence); Attorney Gen. Op., dated June 28, 2019, at 4, https://www.scag.gov/wp-content/uploads/2019/07/StirlingB-OS-10367-FINAL-Opinion-6-28-2019-02007687xD2C78-02008817xD2C78.pdf (last visited Oct. 12, 2022) (outlining case law that discuses mandatory minimums).

SCDC argues that when a mandatory minimum sentence is required, the time to which an inmate is sentenced must be served day for day and that, accordingly, good-time and/or work credits cannot be accrued. SCDC is correct that a mandatory minimum sentence for conspiracy in trafficking cocaine and marijuana must be served day for day. *See Abrakata v. State*, 168 So.3d 251, 252 (Fla. Dist. Ct. App. 2015) ("[T]he mandatory minimum term will require Appellant to serve his 25-year sentence day-for-day . . . ."); *Quintanal v. State,* 972 So.2d 980, 981 (Fla. 2007) (indicating a "mandatory minimum" sentence is a "day-for-day sentence"); *Moorer v. U.S.*, 868 A.2d 137, 144 (D.C. Ct. of App. 2005) ("The language of [the] statute is clear: a person convicted of carjacking *must* receive a term of at least seven years' imprisonment, and must serve each and every day of these seven years in prison."); *see also State v. Hinojos*, 393 S.C. 517, 520 n.1, 713 S.E.2d 351, 352 n.1 (Ct. App. 2011) (stating the trafficking charges "to which Hinojos pled guilty carried mandatory minimum sentences of seven years' incarceration"); Daniel J. Crooks, III, *Crash Course in South Carolina Sentencing*, S.C. Lawyer, July 27, 2015, at 42-45.

The Court is not convinced that the fact that a sentence must be served "day for day" precludes the accrual of good-time and/or work credits. The Court has reviewed the statute upon which Appellant pled guilty and the various versions of the good-time and work credit statutes that

have existed since Appellant's incarceration during the convictions at issue. *See generally* S.C. Code Ann. § 24-13-210 (1989, Supp. 1994, 2007, Supp. 2021); S.C. Code Ann. § 24-13-230 (1989, Supp. 1994, 2007, Supp. 2021). While it is clear good-time credits and/or work credits could not be used to reduce a sentence below the amount of time which must be served "day for day," it may be possible to harmonize the statutes to allow such credits to be used to reduce that portion of a sentence which may be in excess of a mandatory minimum. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). For example, a defendant sentenced to thirty years' imprisonment on a conviction that carries a mandatory minimum sentence of twenty-five years' imprisonment could accumulate good-time and/or work credit which could be applied to reduce the final five years of the sentence.[8]

However, the Court need not expressly rule on this issue. Even if the Court agreed with Appellant that he was entitled to and did earn credits, these credits have no value to Appellant. They cannot be applied to reduce a sentence below the mandatory minimum, and Appellant did not receive a sentence in excess of the mandatory minimum. As a result, there is no circumstance under which Appellant could ever use any accrued good-time and/or work credits.

Summary dismissal of this portion of the appeal is therefore appropriate for two reasons. First, under the specific facts of this case, good-time and/or work credits which may or may not have been earned by Appellant cannot be used and have no value. There is no state-created property interest in something that has no value. *See Town of Castle Rock v. Gonzales*, 545 U.S. 748, 766-67 (2005) (indicating that although a property interest can take different forms, they must generally have "some ascertainable monetary value" to qualify for due process protection); *see also Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 577 (1972) ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it."); *cf. Whiting*

[8] The version of section 24-13-210 in effect at the time of Appellant's conviction provided for the accumulation of good-time credits at twenty days per month and contained no prohibition on awarding good-time credits for no parole offenses. In 1995, this statute was amended to reduce the rate at which good time credits accrued for no parole offenses, but only precludes the accumulation of good-time credits for a prisoner serving a sentence of life in prison or a mandatory minimum term of thirty years. S.C. Code Ann. § 24-13-210(B) (Supp. 1996). Similar changes were made to the statute addressing work credits in 1995. S.C. Code Ann. § 24-13-230(B) (2007). Neither statute prohibits the accumulation of good time credits when a mandatory minimum sentence of less than thirty years was imposed.

v. Univ. of S. Miss., 451 F.3d 339, 345 (5th Cir. 2006) ("A mere breach of contract will not suffice for [a due process action] . . . unless [appellant's] constitutional rights have been denied or his exercise of those rights penalized in some way."), *abrogated on other grounds by Sims v. City of Madisonville*, 894 F.3d 632, 640 (5th Cir. 2018); *Portman v. County of Santa Clara*, 995 F.2d 898, 905 (9th Cir. 1993) ("Deprivation of a benefit to which one is entitled under a statute or a contract does not automatically give rise to a property interest protected by the Due Process Clause."); *Klingler v. Univ. of S. Miss.*, 612 Fed. Appx. 222, 227 (5th Cir. 2015) (holding that a professor who was denied performance reviews that he needed to satisfy tenure criteria had no legitimate expectation in obtaining tenure because the decision would still have been entirely at the discretion of the board, and thus, he was not deprived of a constitutionally protected right). *See generally Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property."). When there is no state-created liberty or property interest at issue in an inmate appeal, the appeal should be summarily dismissed. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest").

Second, because there is no circumstance under which Appellant could ever use any good-time or work credits, any decision issued by the Court would have no effect on the amount of time to be served by Appellant. The issue posed by Appellant is therefore purely academic and in the nature of an advisory opinion. It would be improper for the Court to rule on such an issue. *See generally Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("If there is no actual controversy, this Court will not decide moot or academic questions."); *Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."); *Booth v. Grissom*, 265 S.C. 190, 191, 217 S.E.2d 223, 224 (1975) ("It is elementary that the courts of this State have no jurisdiction to issue advisory opinions").

III. PROCEDURAL DUE PROCESS

Appellant cites to *Tant v. South Carolina Department of Corrections*, 408 S.C. 334, 759 S.E.2d 398 (2014), for the proposition that his procedural due process rights were violated when SCDC removed the credits that appeared on his record in 2011. *See generally id.* at 342, 759

S.E.2d at 401 ("[W]henever [SCDC] alters an inmate's sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing."). Even assuming SCDC violated Appellant's rights by failing to follow proper procedure, the relief for such a failure would be to afford Appellant the process and conduct a review, which has now occurred. Appellant has now received the process to which he claims he was entitled, curing any deficiency related to procedural due process. *See James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 299, 657 S.E.2d 469, 472 (2008) (acknowledging the State may cure a procedural due process violation by providing subsequent procedural remedy); *see also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 492 S.E.2d 62, 71 (1997).

IV. EQUAL PROTECTION

As another means to challenge the removal of credits that appeared on his record, Appellant asserts SCDC violated the Equal Protection Clause by allowing Horne, and others, to be released from prison.[9] The Court disagrees.

The Equal Protection clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1; *see also* S.C. Const. art. I, § 3 (stating no "person be denied the equal protection of the laws"). "The concept of equal protection is 'difficult to define and not susceptible of exact delimitation.'" *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 147, 568 S.E.2d 338, 350 (2002) (quoting *Thompson v. S.C. Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976)). Our supreme court has previously explained:

> [T]he constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. . . . The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated.

[9] As noted above, to the extent Appellant asserts he is being unlawfully held, that matter is proper for the PCR court, not the ALC. However, to the extent this matter is properly before the ALC, the Court continues with a review of an equal protection claim.

Id. (omission by court) (quoting *Thompson*, 267 S.C. at 472, 229 S.E.2d at 722). The Equal Protection Clause "does not prohibit different treatment of people in different circumstances under the law." *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782-83 (Ct. App. 2009).

"The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). "A crucial step in the analysis of any equal protection issue is the identification of the pertinent class . . . ." *Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013) (omission by court) (quoting *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 481, 636 S.E.2d 598, 613 (2006), *overruled by Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 790 S.E.2d 763 (2016)). "Courts generally analyze equal protection challenges under one of three standards: (1) rational basis; (2) intermediate scrutiny; or, (3) strict scrutiny." *Doe v. State*, 421 S.C. 490, 504-05, 808 S.E.2d 807, 814 (2017) (quoting *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)). "[O]ne seeking to show discriminatory enforcement in violation of the Equal Protection Clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced." *Harbit*, 382 S.C. at 396, 675 S.E.2d at 783.

As an initial matter, it is difficult to ascertain what classification Appellant asserts received disparate treatment. Appellant asserts he finds fault with the fact that he has not been released from prison, or not receiving credits, but Horne has been released. Appellant also asserts he believes other inmates are being treated differently than him. However, Appellant does not identify a group to which he belongs but Horne and/or others do not.

In fact, Appellant's complaint appears to be that he and Horne are in the *same* group, and it is unfair that Horne and others who received mandatory minimum sentences accrued good-time and work credits and he did not. This allegation suggests Appellant may be arguing he is a class of one for purposes of an Equal Protection Clause analysis. *See generally King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016).

Assuming without deciding, however, that Appellant has satisfied his burden of identifying the requisite classifications for purposes of equal protection, it is abundantly clear that Appellant has not argued that this case involves any traditional suspect classifications, such as race, religion, or nationality. The Court therefore applies that rational basis test to Appellant's claim. *See Lee v. S.C. Dep't of Nat. Res.*, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000) (explaining that when a

suspect classification or a fundamental right is not in issue, the Court should apply a rational basis test).

> Under the rational basis test, a classification is presumed reasonable and will remain valid unless and until the party challenging it proves beyond a reasonable doubt that there "is no admissible hypothesis upon which it can be justified." *Carolina Amusement Co. v. Martin*, 236 S.C. 558, 576, 115 S.E.2d 273, 282 (1960). If [the Court] can discern any rational basis to support the classification, regardless of whether that basis was the original motivation for it, the classification will withstand constitutional scrutiny. The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny.

McLeod v. Starnes, 396 S.C. 647, 655-56, 723 S.E.2d 198, 203 (2012).

The Court believes there is a rational basis for the actions taken by SCDC. Appellant's and Horne's scenarios are factually different. Under SCDC's logic, to which Appellant apparently concedes, SCDC made an error in recording good-time and work credits on Appellant's and Horne's records. When SCDC realized this mistake, it tried to correct its error. It was able to correct Appellant's record but was unable to correct the error on Horne's record because Horne had already been released.[10] These facts explain the distinction between Horne and Appellant.[11] If Horne were still in prison in 2011, he too would be treated in the same manner as was Appellant.

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[10] Horne received a single mandatory minimum sentence of twenty-five years' imprisonment, *Carpenter*, 431 S.C. at 517, 848 S.E.2d at 348, while Appellant received two mandatory minimum sentences of twenty-five years' imprisonment to be served consecutively.

[11] Appellant states he believes that inmates other than Horne were also treated differently than was he. *See* App. Br. 5, filed June 15, 2020. In support of his position, Appellant attached a FOIA request that lists what appears to be SCDC identification numbers for twenty-two inmates. There are brief statements next to each number with some of the numbers including the following: sentence was updated to mandatory minimum, Department of Probation, Parole and Pardon Services determined an inmate was parolable, and an inmate died. Appellant's beliefs that other inmates are being treated differently and the FOIA response without further details about the inmates in question are insufficient to determine that he was treated differently than others in violation of the Equal Protection Clause. Counsel's statements are not evidence, *see Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."), and the FOIA response itself does not establish disparate treatment beyond sheer speculation. In reviewing appeals of SCDC's actions in inmate grievance matters, the Court sits in an appellate capacity and is, therefore, limited to review of the record on appeal. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754.

Appellant essentially argues that two wrongs make a right, or stated differently, that because Horne benefitted from a mistake by SCDC, he should receive the same benefit.

Based on the foregoing, the Court affirms to Appellant's equal protection claim as it relates to sentence-related credits.

ORDER

IT IS THEREFORE ORDERED that SCDC's motion to supplement the record is **GRANTED** and the Court considers these documents and the other documents attached to the briefs.

IT IS FURTHER ORDERED that to the extent Appellant contends he is being held unlawfully, those claims are not proper before the Court and thus those claims are **DISMISSED.**

IT IS FURTHER ORDERED that Appellant's claims to be entitled to good-time and work credits are **DISMISSED**.

IT IS FURTHER ORDERED that to the extent Appellant claims he was denied the procedural protections afford by our supreme court in *Tant*, the Court dismisses these claims as they are now moot. Subsequent process afforded to Appellant cured deficiencies, if any, in the original procedure.

IT IS FURTHER ORDERED that to the extent Appellant raises Equal Protection Clause challenges to the removal of good-time and work credits to his record, SCDC's actions are **AFFIRMED.**

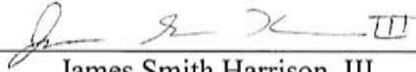
AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

October 14, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

October 14, 2022
Columbia, South Carolina