

APPEALED 10/11/22
S.C. Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shaheen Cabbagestalk #295567,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 22-ALJ-04-0160-AP

FINAL ORDER

RECEIVED

NOV 21 2022

SC Court of Appeals

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Shaheen Cabbagestalk (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). On April 4, 2022, Appellant filed a step 1 grievance. Appellant's grievance is difficult to read based on his handwriting, the fact that at points his handwriting is placed over typed text, and some of Appellant's arguments are difficult to follow. Appellant referenced cases 157 and 158 in his grievance and stated he had not received good-time credits that were supposed to have been returned to him as indicated in grievance MCCI 0005-22¹; however, he acknowledged that he received two days of credit back. Specifically, he referenced October 29, 2023, to October 27, 2023, which the Court understands to be Appellant's alleged release date. Appellant also asserted that he was being told that he would be held more than 85% of his sentence and stated issues with the Department's personnel such as claims of human trafficking, kidnapping, and other criminal charges. According to Appellant, he wanted \$50,000 every day due to the danger of gangs and other crimes involved with his incarceration. Appellant concluded with that he "won" prior grievances and wanted his "maxout date fixed."

¹ Appellant appealed this grievance to the ALC, and on June 24, 2022, the Honorable Shirley C. Robinson dismissed Appellant's appeal as moot because the Department already reinstated the good-time credits that Appellant claimed were improperly removed. See *Cabbagestalk v. S.C. Dep't of Corr.*, Docket No. 22-ALJ-04-0101-AP (S.C. Admin. L. Ct. filed Jun 24, 2022). No appeal of Judge Robinson's order was filed with the South Carolina Court of Appeals.



On April 8, 2022, the warden denied Appellant's grievance, stating Appellant's max-out date appeared to be October 27, 2023, and Appellant started serving his sentence on January 12, 2007. (According to the warden,) Appellant started serving his sentence on January 12, 2007, and "[s]erving 85% would be fifteen years, 3 months, and 18 days with a projected release date of April 30, 2022, without disciplinaries and all work credits." The warden stated that based on Appellant's "many disciplinaries" and failure to earn work credits, Appellant would serve more than 85% of his sentence.

On April 12, 2022, Appellant filed a step 2 grievance, requesting a copy of the documents that showed how much good-time credits and his total sentence credits, and asserting that he was being held unlawfully without a valid commitment order for "James Cabbagestalk." Appellant also listed January 12, 2007, and the time he served in Dillon County jail. The responsible official denied Appellant's grievance on May 2, 2022. The official noted Appellant complained that he did not receive good-time credits back from grievance MCCI-0005-22 and stated Appellant listed complaints about his max-out date and the 85% rule. The official stated Appellant "received over 150 disciplinary charges during [his] incarceration which all affect [Appellant's] max-out date. All the good time that was reinstated for the dismissal of charges ha[d] been properly entered accordingly. There ha[d] been no miscalculation or discrepancy in the calculation of [Appellant's] sentence." The official did not explicitly address any jail credits and/or time-served credits that Appellant may have earned previously.

Not to // was Re-substantiate

On May 31, 2022, Appellant filed a notice of appeal with the Court. In his notice of appeal, which is difficult to follow, Appellant (1) alleged that his sentence and commitment were unlawful and without jurisdiction because the person convicted and sentenced was James Cabbagestalk and he is Shaheen Cabbagestalk—Appellant argues that because he is being required to serve a sentence given to someone else, the Department's actions amount to "kidnapping" and "human trafficking," and the Department lacks jurisdiction to penalize him in any fashion; (2) asserted grievance MCCI 0005-22 instructed the Department to provide him with nine (9) days of good-time credit that had previously been removed; (3) referenced good-time credits, the 85% rule, a "projected maxout date [of] (April 30, 2022)," credits from January 12, 2007; and (4) stated the Department needed to prove he had more time to serve.

Very Important

This matter was assigned to the undersigned on June 9, 2022. On June 22, 2022, the Court received a brief from Appellant; the Court wrote Appellant on June 24, 2022, and noted that there

ref

Very Important
Corrected Deficiencies

Corrected Deficiencies

were several deficiencies with his brief, including a failure to include a proof of service.² Subsequently, Appellant provided a certificate of service and (corrected the deficiencies). On July 26, 2022, the Department filed the record on appeal. Since the Department filed the record on appeal, Appellant has filed numerous motions with the Court. By order dated September 28, 2022, the Court denied seven of Appellant's motions—all of the motions it had received at that point.³ Specifically, the Court (1) denied Appellant's motions to the extent that he attempted to address the merits of his appeal in motion form and noted (it would consider the briefs after the briefing process was complete, (2) denied Appellant's motions that requested the Court immediately order relief and/or asked for relief that the Court cannot grant,) and (3) informed Appellant that if he "file[d] repetitive motions with the same content in the future and the Court determines the motions are repetitive in nature, the Court will summarily deny those motions."⁴ The Court noted it would entertain any proper motions that Appellant filed in the normal course and Appellant still had the ability to file a reply brief, if any.

Re

~~*~~ On September 27, 2022,⁴ prior to the Court's September 28, 2022 order, Appellant filed a "motion for order to remove" and "motion for relief and removal of fraudulent record." Additionally, the Department filed its brief and a motion to supplement the record.

Motion to Supplement Record
Added on

~~***~~ On October 4, 2022,⁵ Appellant filed the following documents: "fraud upon the courts supplement," "objection to motion to supplement record and bogus brief and why relief," and "facts point out and reason for relief." In the "fraud upon the courts supplement," Appellant asserted and/or stated the following: (1) the Department's brief is "frivolous"; (2) he has not been convicted of a charge; (3) "disciplinaries and earned work credits got nothing to do with 228 days jail credit toward invalid sentence"; (4) the Department dismissed several cases but not others; (5) the Department stole his personal belongings; (6) all of Appellant's issues would not have occurred

² The Court copied the Department on the communication and included a copy of Appellant's brief.

³ For a summary of Appellant's motions and attachments, see the Court's order dated September 28, 2022.

⁴ The Court received these motions on October 11, 2022. See SCALC Rule 53(A) ("The date of the filing is the date of delivery or the date of mailing as shown by the postmark or by the date stamp affixed by the mail room at the appellant's correctional institution. . . . A document, pleading or motion or other paper is deemed filed with the Court by: (1) delivering the document to the Court; or (2) depositing the document in the U.S. mail or in the mail room at the appellant's correctional institution, properly addressed to the Court, with sufficient first class postage attached.").

⁵ The Court received these documents on October 11, 2022.

had the Department not accepted him; and (7) he deserved all of his good-time credits back and to have all charges closed and dismissed. In his "objection to motion to supplement the record and bogus brief and why relief," Appellant asserts the following points in addition to the points previously stated in his initial brief in the following order: (1) the charges the Department refers to are too old and he asks for the three charges to be removed; (2) the good-time system is inaccurate; (3) he is not raising a collateral challenge or about the validity; (4) there would be no need for calculated sentences if the Department respected his liberty interests; and (5) the Post-Conviction Relief (PCR) Act⁶ has nothing to do with Due Process Clause violations. In his "facts pointed out and reasons for relief," Appellant asserted and/or stated the following: (1) his 228 days of jail-time credit have not been given; (2) someone should explain why his max-out date changed; (3) the Department has an obligation to have charges heard in a timely fashion; (4) the Department (has policies about invalid sentence orders); (5) old charges are outdated and he was entitled to good-time credit for the month of charges he was not convicted of; and (6) Appellant has due process rights.

VERY Important

(?)

By order dated October 5, 2022, the Court denied Appellant's motions that were filed on September 27, 2022, and the Court declined to rule on the Department's pending (motion to supplement the record at that time.) The Court additionally reminded Appellant that repetitive and frivolous motions would be summarily denied, informed Appellant that the Court would still entertain proper motions, and noted that as of the date of the Court's order, Appellant was still entitled to file a reply brief and a response to the Department's pending motion.

declined motion to supplement record

KE

On October 7, 2022, Appellant filed certificate of service "for each [of the] motions spoken of in case: 22-ALJ-04-160-AP." Appellant additionally attached a document that shows his account was debited for the postage. Also on October 7, 2022, Appellant filed reply brief. This appeal followed.

Reply Brief

JURISDICTION & STANDARD OF REVIEW

The Court's jurisdiction to hear inmate appeals 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 (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

⁶ S.C. Code Ann. §§ 17-27-10 to -160 (2014).

X 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 . . .").

Jurisdiction

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 & Regul. v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). "[W]hen appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

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)).

Statutory Interpretation
Questions of Law

DISCUSSION

As a starting point, the Court notes Appellant's briefs, along with the other filings he has submitted to the Court, are not a model of clarity. The thrust of Appellant's issues on appeal is that he does not want to be in the Department's custody. To achieve this goal, Appellant has raised a myriad of arguments through motions, briefs, and other filings with the Court. The Court has disposed of all of Appellant's motions (save his most recent filings, which the Court addresses below. The Court condenses Appellant's issues on appeal from his notice of appeal and briefs to two issues. First, he is being held unlawfully because he is not "James Cabbagestalk." Second, the Department has incorrectly calculated his sentence because: (1) nine (9) days of good-time credit were not returned to him and (2) his "maxout date" should have been March 9, 2022,⁷ but was illegally changed by Jameelya Cunningham based on a "fake SCDC charge." At points, Appellant also references that he was entitled to 228 days of time-served credit from his time in Dillon County jail and that unidentified charges should be removed from his record.

not what I said law/policy SAY

XXXX

In contrast, the Department argues it correctly calculated Appellant's sentence because it is a no-parole offense, which requires Appellant to serve 85% of the actual term of imprisonment. The Department states 85% of Appellant's 18 years' sentence is 15 years, 3 months, and 18 days. According to the Department, Appellant must serve more than the 85% of his sentence because of his numerous disciplinary infractions.⁸ Next, the Department argues Appellant incorrectly asserts that he only received two days of good-time credit back in cases 157 and 158. Furthermore, the Department asserts that Appellant's claims that he has an invalid sentence is improper for the ALC to consider and is rather proper under the PCR Act. Finally, the Department concludes that Appellant "failed to prove ([its] determination is clearly erroneous,) arbitrary or capricious, or an abuse of discretion."

SCDC say SCDC say

I. Preliminary Matters

(Very Important)
①

There are a number of preliminary matters. First, the Department has moved to supplement the record on appeal. Appellant opposes this motion. The Court has reviewed the materials and arguments submitted by the parties and grants the motion with one caveat. The documents

⁷ In other of his filings, Appellant states his max-out date should have been April 30, 2022. See, e.g. Fraud on the Courts Supplement, filed Oct. 4, 2022.

⁸ The Department asserts Appellant's max-out date has changed during the pendency of this appeal to (September 2, 2023.)

Admitted it changed 6 of 14

supplied by the Department are simply printouts from the Department's case management system. These documents contain information relevant to the appeal and will be included in the record on appeal. However, to the extent that these documents contain information related to events which occurred after the filing of the appeal, that information (is not relevant to the appeal) and (will not be considered by the Court.

Very Important

Second, Appellant's filings seek relief based upon events which took place after the appeal was filed. Changes to Appellant's release date and other requests for relief based upon such subsequent events are not properly before the Court.⁹ Events that occurred after the filing of the notice of appeal certainly are not preserved in this matter because they had not yet occurred when the appeal was filed. See *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) ("An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC."); *id.* (affirming the ALC's determination that an issue was not proper when it was not included in the grievances); *Young v. S.C. Dep't of Health & Env't Control*, 383 S.C. 452, 458, 680 S.E.2d 784, 787 (Ct. App. 2009) ("A court has a limited scope of review of the final decisions of administrative agencies and cannot ordinarily consider issues that were not raised to and ruled on by the agency from which an appeal is taken."). The Court is concerned simply with the Department's determinations at the time of the grievance process. Appellant's requests for relief based upon matters which occurred subsequent to the filing of this appeal are improper in this matter and are thus not considered in the disposition of this matter.

* Third, Appellant made a number of other filings, which the Court construes as motions, including a "fraud upon the courts supplement," "objection to motion to supplement record and bogus brief and why relief," "facts point out and reason for relief," and a certificate of service document for all motions filed. (These motions are denied) As discussed above, these filings in part seek relief based upon events which occurred subsequent to the filing of this appeal. The remaining arguments raised by Appellant in these filings are arguments related to the merits of the pending appeal. Rather than separately rule on motions which argue the merits of the appeal, the Court will consider these arguments in connection with the resolution of the appeal as set forth more fully below.

fixed

Very Important



⁹ For example, Appellant alleges that Department personnel have stolen his family address book. See *Fraud on the Courts Supplement*, filed on Oct. 4, 2022

Very Important

II. Appellant Is Not "James Cabbagestalk" & Sentence Is Expired

Appellant contends that he is being currently being unlawfully held for two reasons: (1) he is Shaheen Cabbagestalk and not "James Cabbagestalk"; or, alternatively, (2) his max-out date was either March 9, 2022, or April 30, 2022, both of which have already passed. These arguments can only be made in PCR proceedings and the ALC Court therefore lacks jurisdiction to entertain these arguments. See S.C. Code Ann. § 17-27-20.

Section 17-27-20, which is part of the Uniform Post-Conviction Relief Act, is entitled "Persons who may institute proceedings; exclusiveness of remedy." It defines a person who may file a PCR claim as including:

(A) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) That the court was without jurisdiction to impose sentence

...

I never said it expired

→ (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20(A).

Section 17-27-20 further provides that the remedy of a post-conviction relief proceeding

is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. *It shall be used exclusively in place of them.*

S.C. Code Ann. § 17-27-20(B) (emphasis added).

Our court of appeals construed this section in *Carpenter v. South Carolina Department of Corrections*, 431 S.C. 512, 848 S.E.2d 346 (Ct. App. 2020). In *Carpenter*, the court of appeals explained that "[w]hen the Legislature passed the PCR Act, it included the unambiguous mandate that: 'Except as otherwise provided in [the PCR Act], it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.'" *Id.* at 523, 848 S.E.2d at 352. The court in *Carpenter* concluded that because the claims asserted therein fell within the scope of the PCR Act, the PCR Act was the exclusive remedy for those claims. *Id.*

Here, as in *Carpenter*, Appellant's claims that he is being unlawfully held fall squarely within the PCR Act. The PCR Act is therefore Appellant's exclusive remedy for those claims, and this Court lacks jurisdiction to address them.¹⁰

III. Sentence Calculation & Credits

As noted above, Appellant's filings are not a model of clarity. Appellant broadly asserts his max-out date is incorrect and that the Department took credits from him improperly. Specifically, Appellant contends that his max-out date was March 9, 2022, but Jameelyn Cunningham, a Department employee, changed the date as a penalty for a "false SCDC charge," which he "beat;" that his max-out date changed to April 30, 2022;¹¹ that he has been deprived of nine (9) days of good time credit that the Department failed to return to him; that he has not been given 228 days credit for time served.¹² He also broadly asserts that he is entitled to have all of

¹⁰ Additionally, the Court notes Appellant previously filed a PCR action in which he argued that he is "Shaheen Ramel Cabbagestalk" and not "James Cabbagestalk." The PCR court denied relief. Appellant then appealed to the South Carolina Court of Appeals and the appeal was subsequently transferred to the South Carolina Supreme Court. *See Cabbagestalk v. State*, App. Case No. 2018-000885. By order dated September 21, 2018, our supreme court dismissed this matter, reasoning that Appellant failed to "show that there is an arguable basis for asserting that the determination by the lower court was improper." *Cabbagestalk v. State*, App. Case No. 2018-000885 (S.C. Sup. Ct. order filed June 7, 2018). Moreover, the Court notes Appellant has not consistently raised the allegation that he is not James Cabbagestalk at every step of this matter. Specifically, this argument can neither be found on his step 1 grievance nor in his notice of appeal filed with the Court.

¹¹ *See, e.g.*, Notice of Appeal, filed May 31, 2022.

¹² This argument is found primarily in Appellant's filing of "objection to motion to supplement record and bogus brief why relief," but also appears to a limited extent in several of Appellant's other filings. *E.g.*, Objection to Invalid Record and Why, filed on Aug. 1, 2022.

his "privileges" restored that certain unidentified charges should be removed from his record. (The Court disagrees with Appellant's alleged errors.¹³) } Why

→ * First, Appellant argues that nine (9) days good-time credit were taken from him in relation to MCCI 0005-22. That issue was the subject of a prior appeal to the ALC and was finally adjudicated by the Honorable Shirley C. Robinson in *Cabbagestalk v. South Carolina Department of Corrections*, Case No. 22-ALJ-04-0101-AP (S.C. Admin L. Ct. filed June 24, 2022). Appellant is therefore precluded from relitigating matters related to the nine (9) days of good time credits which the Department allegedly failed to return in this appeal. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 834 (1997) ("The term res judicata encompasses two types of preclusion: claim preclusion and issue preclusion."); *id.* at 216, 493 S.E.2d at 834-35 ("Issue preclusion and claim preclusion have historically been called collateral estoppel and bar or merger respectively." (quoting *Pedrina v. Chun*, 906 F. Supp. 1377, 1399 n.8 (D. Haw. 1995))); *id.* at 216, 493 S.E.2d at 835 ("Issue preclusion only bars relitigation of particular issues actually litigated and decided in the prior suit." (quoting *Pedrina*, 906 F. Supp. at 1399)); *id.* ("Claim preclusion . . . bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated." (omission by court) (quoting *Pedrina*, 906 F. Supp. at 1399)).

Additionally, and in any event, the Court has reviewed the printed materials in the record on appeal which relate to case numbers 157 and 158. The record indicates that the charges for cases 157 and 158 were dismissed and that no good-time were credits taken from Appellant related to these charges. Accordingly, if this argument were properly before the Court, the Court would conclude that the record contains substantial evidence supporting the Department's resolution of Appellant's grievance and would affirm the Department's determination. See *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583, 591 (Ct. App. 1999) ("Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.").

¹³ As discussed above, to the extent that Appellant is asserting that he is being unlawfully held, the Court dismisses this claim because that issue is squarely in the realm of a PCR action. However, out of an abundance of caution, the Court proceeds with an analysis of Appellant's claims assuming that Appellant is also arguing in the alternative that (even if he is properly incarcerated, the Department has somehow miscalculated his sentence.

Next, Appellant argues that he has not received 228 days of credit for time served in Dillon County jail before he was transferred to the Department's custody. Initially, this argument does not clearly and succinctly appear in Appellant's step 1 grievance. Appellant made reference to credits from his incarceration at Dillon County jail in his step 2 grievance (but the statements made by Appellant are vague and confusing and possibly would not have been understood by the Court as asserting an issue relating to credit for time served. Appellant more cogently raises this point in his notice of appeal, but his initial brief itself does not specifically address this issue.¹⁴ Appellant's primary arguments regarding time served appears in a reply to the Department's brief.

Accordingly, the Court concludes that this issue has not been properly raised and is not before the Court. See *Brown*, 348 S.C. at 519, 560 S.E.2d at 417; *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694. See generally *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 153, 494 S.E.2d 449, 460 (Ct. App. 1997) ("[A]n appellant may not use the reply brief to argue issues not argued in the appellant's initial brief."); 4 C.J.S. *Appeal and Error* § 735 (West Oct. 2022 Update) ("[P]oints raised by appellant or plaintiff in error in his or her reply brief, which were not presented in the opening brief, are generally regarded as waived, and will not, as a rule, be considered by the appellate court . . .").

Out of an abundance of caution, the Court will nevertheless address the merits of the claim. A review of the record on appeal reveals that Appellant has in fact received 228 days "jail credit" on the sentence imposed for the armed robbery conviction. Record on Appeal at 5.¹⁵ Substantial evidence therefore supports the Department's position that Appellant's sentence is correctly calculated on this issue, and the Court affirms the Department's calculation on this issue. See S.C. Code Ann. § 1-23-380.

* Appellant next argues in his "objection to motion to supplement the record and bogus brief and why relief" filed on October 4, 2022, that three charges should be removed from his record because he grieved them. It is unclear which "old charges" Appellant is referring to in this filing. * The Court questions if this issue is preserved because the term "old charges" was not used during the grievance process, and it is unclear to what Appellant is referring. See *Brown*, 348 S.C. at 519,

¹⁴ As noted above, Appellant filed motions that referenced the 228 days of credit.

¹⁵ Records related to sentences Appellant received for other, unrelated charges do not indicate that Appellant received credit for any time served. However, the conviction at issue on this appeal is the conviction for armed robbery, and on that conviction, Appellant was properly credited for time-served in Dillon County after his arrest for armed robbery.

* 228 days jail credit how?

560 S.E.2d at 417 ("[I]ssues not raised to and ruled on by the agency are not preserved for judicial consideration."). In Appellant's "fraud upon the courts supplement," which the Court has already denied above, Appellant referenced cases 159, 164, and 165.¹⁶ These cases are included in the supplemental record as part of Appellant's overall inmate offense history. The Department lists the dates of these offenses as August 15, 2022, and August 20, 2022. Based on what is presently before the Court, Appellant has not yet received a hearing in these matters and no good-time credit has been lost. Again, the issues properly before the Court are those related to the review of the Department's actions at the time of the inmate grievance process, not issues which have subsequently arisen. Because Appellant filed his notice of appeal in this matter on May 31, 2022, separate disciplinary infractions that occurred after the fact are not before the Court. Even if the Court were to consider these charges, Appellant has not lost any good-time credits based on the record before the Court. Thus, the charges could have no impact on the calculation of his sentence anyhow.

Finally, Appellant generally alleges that the Department has incorrectly calculated his sentence. The Court has already addressed this argument to the extent it rests upon allegations regarding a claimed loss of nine days of good-time credit, credit for time-served in Dillon County jail, and a loss of credits due to charges for which Appellant was not convicted. Appellant has not identified any other error which might affect the calculation of his sentence, and after review of the record, the Court has not been able to ascertain any other potential error. Appellant's general allegations, without more, are therefore insufficient to carry his burden on appeal. See § 1-23-380(5); *Marietta Garage, Inc.*, 337 S.C. at 137, 522 S.E.2d at 607; *Girgis*, 332 S.C. at 166, 503 S.E.2d at 492; *Mitchell*, 377 S.C. at 260, 659 S.E.2d at 23 ("[W]hen appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above."). Accordingly, the Court affirms as to Appellant's broad assertions that the Department has incorrectly calculated his sentence.

ORDER

IT IS THEREFORE ORDERED that the Department's motion to supplement the record is **GRANTED.**

¹⁶ The Department also referenced in its brief that Appellant had pending disciplinary charges that could affect Appellant's release date. Resp. Br. at 4.

↓ That's exactly what it was speaking on

Very Important

Yanlet
SCDC
put it
in there
Brief said
Nothing
to them
Business

IT IS FURTHER ORDERED that Appellant's remaining motions are **DENIED**. ✓ how

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

IT IS FURTHER ORDERED that the Department's decisions in this matter are **AFFIRMED**.

AND IT IS SO ORDERED.

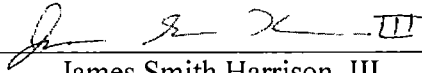


Robert L. Reibold
Administrative Law Judge

October 21, 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 21, 2022
Columbia, South Carolina