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**Jan 27 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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ALC Case No. 22-ALJ-04-0160-AP  
Appellate Case No. 2022-001560

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Shaheen Cabbagestalk, #295567.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

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**INITIAL BRIEF OF RESPONDENT**

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

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January 27, 2023

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## TABLE OF CONTENTS

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TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE ISSUES ON APPEAL .....	1
STATEMENT OF THE CASE .....	2
STANDARD OF REVIEW .....	3
ARGUMENT .....	4
CONCLUSION.....	6

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**TABLE OF AUTHORITIES**

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**CASES**

Hendley v. Budget & Control, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996).....3

Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).....4, 5

State v. Bennett, 375 S.C. 165, 650 S.E.2d 490 (Ct. App. 2007).....5

**STATUTES**

S.C. Code Ann. § 1-23-380.....3

S.C. Code Ann. § 1-23-610.....3

S.C. Code Ann. § 24-13-40.....4

S.C. Code Ann. § 17-27-10.....5

S.C. Code Ann. § 17-27-20.....5

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## **STATEMENT OF ISSUES ON APPEAL**

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- I. Whether Appellant is properly being accredited 228 days of jail time.**
- II. Whether Appellant's remaining issues are post-conviction relief matters that are not properly raised before the Administrative Law Court.**

## STATEMENT OF THE CASE

This case is before the Court pursuant to the appeal of Shaheen Cabbagestalk, an inmate incarcerated with the Department of Corrections (SCDC). Appellant filed a Step One Grievance on April 4, 2022, alleging that his maxout date was incorrect and alleged that he should have received reinstatement of more goodtime credits for disciplinary charges that were dismissed. This grievance was investigated and denied on April 8, 2022. Appellant filed a Step Two Grievance on August 12, 2022, requesting a copy of documents showing how much good time credit Appellant has and he also alleged that he is being held at SCDC without a valid order. This grievance was investigated and denied on May 2, 2022. Appellant subsequently filed his Notice of Appeal with the Administrative Law Court (ALC). Appellant filed numerous motions in the ALC. The appeal in the ALC went forward, and on October 21, 2022, the Honorable Robert L. Reibold, issued an order affirming the decision of the Department of Corrections and denying the motions filed by the Appellant. This appeal follows.

## STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

## ARGUMENT

### **I. Whether Appellant's jail time credit is properly being calculated.**

Appellant's jail time credit has been properly calculated by the Department of Corrections and therefore the Administrative Law Court's Order should be affirmed.

The Code provides, "[t]he computation of time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. ..." S.C. Code Ann. § 24-13-40. This is consistent with Appellant's sentence calculation. Rec. pp. \_\_\_\_\_. Here, Appellant was arrested on January 12, 2007, and housed in the Dillion County Detention Center until he was transferred to the Department of Corrections to serve his sentence. Rec. p. \_\_\_\_\_. Appellant was sentenced on August 28, 2007. Rec. p. \_\_\_\_\_. Therefore, to account for Appellant's jail time credit of 228 days in his sentence calculation, Appellant's sentence start date is January 12, 2007. Rec. pp. \_\_\_\_\_. Therefore, the Administrative Law Court's finding that Appellant's jail time credit has been properly calculated should be affirmed. Rec. p. \_\_\_\_\_.

### **II. Whether Appellant's remaining issues raised in Appellant's brief are Post Conviction Relief matters that are not properly raised in the Administrative Law Court.**

Appellant's remaining issues can be summarized as, Appellant contends that he is "Shaheen Cabbagestalk" and that his sentencing sheet states "James Cabbagestalk," therefore his sentencing sheet is not a valid commitment order therefore Appellant is being unlawfully held in the custody of the Department of Corrections. Appellant's claim fails for several reasons.

First, Appellant is literally claiming that his sentencing sheet is invalid and because of that, his custody is not lawful. See Appellant's Brief p. 3. This type of claim is not cognizable in the Administrative Law Court and is more appropriately brought as a post-conviction relief matter. See generally Jernigan v. State, 340 S.C. 256, 259-60, 531 S.E.2d 507, 508-09 (2000) (citations omitted)

(distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al-Shabazz*); *State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007) (noting that a grievance under *Al-Shabazz* is essentially an attempt to enforce a sentence correctly, not challenge it). A collateral challenge to a sentence must be brought under the Uniform Post-Conviction Procedures Act. See S.C. Code Ann. § 17-27-10 et. seq. Except as provided in the PCR Act, the PCR Act “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). The ALC properly found that Appellant's claims that he is being unlawfully held are governed by the PCR Act. Rec. p. \_\_\_\_.

Secondly, Appellant filed a PCR<sup>1</sup> action and he argued that he is Shaheen Ramel Cabbagestalk and not James Cabbagestalk. See Rec. p. \_\_\_\_\_. The PCR court denied Appellant relief. Rec. p. \_\_\_\_\_. The case was appealed, and by order dated September 21, 2018, the Supreme Court dismissed the 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).

Third, the relief Appellant is seeking cannot be granted from appealing an Administrative Law Court decision. Appellant states in his Brief, “... grant me relief from Commitment order by Destroying this Invalid order...” Appellant's Brief p. 4. For the relief to be granted, the present matter would have to be either a direct appeal from general sessions court or a post-conviction relief

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<sup>1</sup> The Order Denying Post-Conviction Relief bore docket number 2010-CP-17-0091 and Appellate Case No. 2012-212579 available on the SC Appellate Case Management System. Appellant argued the issue of his indictment stating “James Cabbagestalk” rather than “Shaheen

matter. Neither of which are the case.

**CONCLUSION**

Appellant has not carried his burden. For the above stated reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**



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Cabbagestalk.” Appellant was not granted post-conviction relief.