

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Richard Vandale Clowney, #276073, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )

Docket No. 22-ALJ-04-0207-AP

ORDER

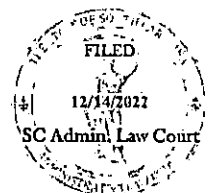
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SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Richard Vandale Clowney (Appellant), an inmate incarcerated with South Carolina Department of Corrections (SCDC or Department), challenging the calculation of his sentence-related credits.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On November 13, 2018, Appellant pled guilty to distribution of heroin, first offense, in violation of section 44-53-0370 of the South Carolina Code (2018 & Supp. 2022). He was sentenced to eight years suspended to an active Home Incarceration Program (HIP) sentence of two years to be monitored by Greenville County followed by eighteen months' probation. While serving the HIP sentence, Appellant violated the conditions of his sentence on two occasions. After the first violation, the court discontinued his HIP on June 11, 2019, and required that he serve six-months' incarceration and then be reinstated to the program. The court did not give Appellant credit for prior jail time served in applying the six-months sentence, although Appellant was given two days of *Hayes*<sup>1</sup> credit. Following Appellant's second HIP violation, on November 15, 2019, the court terminated the HIP including the remainder of the home incarceration to be served and required Appellant to serve 500 days' incarceration. Upon completion of that incarceration, Appellant was released to serve the probationary portion of his sentence. Appellant then violated his probation on January 19, 2022. The court then revoked his probation and ordered that he serve three years' incarceration on the original eight-year sentence. Pursuant to the new sentencing sheet, Appellant was to be given credit for pre-revocation hearing detention time on the

<sup>1</sup> See *Hayes v State*, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015).



probation violation as well as credit for pretrial detention time served but next to this, in parenthesis, the sheet stated “N/A if defendant has served prior SCDC time.”

Thereafter, on June 1, 2022, Appellant pled guilty to other charges, which included the following violations and resulting sentences 1) unlawful possession of a pistol in violation of section 16-23-0030 of the South Carolina Code for which he was sentenced to three years’ incarceration; 2) possession of a firearm by a person convicted of a violent crime in violation of section 16-23-500(A) of the South Carolina Code for which he was sentenced to three years’ incarceration; and 3) unlawful carrying of a pistol in violation of section 16-23-0020 of the South Carolina Code and for which he was sentenced to one year incarceration. All three firearm charges were ordered to be served concurrently and backdated from December 22, 2021.

On June 8, 2022, the Department received a Step 1 Grievance filed by Appellant, in which he argued his sentence was miscalculated. Appellant asserted he was entitled to credit for time served for the two years he was in HIP pursuant to section 24-13-40 of the South Carolina Code. The Warden denied Appellant’s Step 1 Grievance, finding that Appellant’s “current sentence is a probation violation. Any time served comes off the original 8-year sentence. Per Inmate Records Office, any credit for house arrest must be ordered by the judge.” Appellant then filed a Step 2 Grievance on June 16, 2022, again, alleging the Department incorrectly calculated his pre-revocation time served credit. His Step Two grievance was denied on July 7, 2022.

Appellant filed a Notice of Appeal with this Court on July 20, 2022, asserting that his sentence was miscalculated. The case was assigned on August 4, 2022. Appellant filed his brief on August 11, 2022.<sup>2</sup> The Department filed the Record on Appeal on September 23, 2022. The

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<sup>2</sup> Since the case was assigned, Appellant has filed numerous documents with the Court. One specific document was labeled “Brief,” which the Court interprets as his Appellant’s Brief. However, this document only contains general facts of the case and the relief requested. The document did not include a statement of the issues on appeal or citations to legal authority, other than referencing one statute. Therefore, the brief is considered woefully deficient. See SCALC Rule 60; see also *Potter v. Spartanburg School Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) (“An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.”); *State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (finding that issues raised by the appellant were deemed abandoned because the arguments on those issues were conclusory). Appellant also filed a reply brief on August 30, 2022, prior to the Department’s brief being filed, that is woefully deficient. Nonetheless, because South Carolina favors deciding cases on the merits, the Court will address Appellant’s issues. *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Moreover, on August 30, 2022, Appellant filed a document labeled “Motion” asserting his sentence was miscalculated. This Motion is denied as the Court is addressing his sentence calculation in this Order. On September 8, 2022, Appellant filed another document labeled “Motion” in which he asks the Court to “immediately release [him] from SCDC restraint/custody of these horrible conditions and cruel and unusual punishment of [his] liberty.” The Court denies this Motion as well.

Department filed its brief on November 23, 2022.<sup>3</sup> The Department also filed a Motion to Supplement the Record on November 23, 2022.<sup>4</sup>

### **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). In *Al-Shabazz*, the Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty interests in which an inmate contends that prison officials have erroneously calculated his or her sentence. *Id.* The Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754.

"A reviewing court will not disturb findings of [an administrative agency] if its findings are supported by substantial evidence on the record as a whole." *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 397, 489 S.E.2d 219, 220 (Ct. App. 1997). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's factual findings from

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Additionally, on October 17, 2022, Appellant filed a document labeled "Motion for Relief," in which Appellant requested the Court to "order the statutory requirement and make his opinion based on the all the evidence of the whole record." The Court denies this Motion. Then, on November 22, 2022, Appellant filed another "Motion for Relief," in which Appellant asserts the Department failed to comply with the Court rules when it failed to timely file its brief. The Department filed its brief on November 23, 2022. The Department's brief was due one hundred and ten (110) days after the Notice of Assignment was filed, or November 22, 2022. SCALC Rule 60(A). Thus, it appears to only be one day late; therefore, the Motion is also denied.

<sup>3</sup> In its Brief, the Department included a "Partial Motion to Dismiss" section in which it argues that Appellant only raised one issue in his Step One Grievance and that all issues other than that should be summarily dismissed as they were not preserved for review. *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [fact finder] to be preserved for appellate review." (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))). Specifically, the sole issue they reference is whether Respondent correctly excluded the two-years of HIP from counting towards Appellant's probation revocation sentence. In his Notice of Appeal, Appellant generally raises the issue of his sentence being miscalculated and, in his brief, specifically raises other issues relating to the calculation of his firearm sentences. Although the Department may be correct that the other issues relating to his firearm sentences are not preserved for review, all issues are related to Appellant's sentence calculation, and as stated earlier, South Carolina favors addressing the merits of the case. Therefore, because these issues are all related and Appellant is not barred from bringing another case before the Court to raise these exact issues, the Court will address all issues relating to Appellant's sentence calculation.

<sup>4</sup> The Department requested to supplement the Record to include 1) Probation Revocation Maxout Date Calculation Worksheet; 2) Probation Revocation Warrant; 3) Updated Release Data Screen; 4) Updated Conviction Summary; and 5) Updated Conviction Inquiries for 22-GS-3282, 22-GS-233283, and 22-GS-3284. Appellant did not object to the Department's request; thus, the Motion is granted.

being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Furthermore “the party challenging a[n administrative agency’s] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.” *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

### DISCUSSION

Appellant asserts he is entitled to credit for time served during the two year period he was serving his HIP sentence. Appellant asserts section 24-13-40 of the South Carolina Code illustrates he must receive “prerevocation hearing detention time and pretrial detention time” following the reinstatement of his sentence resulting from his probation revocation. The Department, however, asserts it has correctly calculated Appellant’s sentence. Specifically, it contends Appellant was only entitled to jail time credit from the date of the issue of the warrant for the probation revocation to the date he was sentenced. Thus, he is entitled to pre-revocation jail time of thirty days which is being credited towards his probation revocation sentence; as a result, his sentence start date is December 20, 2021. As for his firearm charges, the Department argues Appellant is not entitled to credit for time served that occurred before the offenses even occurred; thus, he only receives credit from October 3, 2021 (the date the warrant was issued) to October 29, 2021, which makes the start date for his concurrent firearm sentences November 26, 2021.

Section 24-13-40 of the South Carolina Code (Supp. 2022) provides, in pertinent part:

In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

This statute requires that prisoners be given credit for all time served prior to sentencing unless either of the two statutory exceptions applies. *See id.* In this case, neither exception to section 24-13-40 applies to Appellant’s probation revocation sentence; however, the second exception applies to his firearm sentences. The South Carolina Supreme Court applied this statute in *Blakeney v. State*, 339 S.C. 86, 529 S.E.2d 9 (2000). In *Blakeney*, the Respondent was already in jail in Berkeley County for charges in that county when a “hold” was placed upon him by the Beaufort

County Sheriff's office for another charge. *Id.* at 88, 529 S.E.2d at 11. Although the arrest warrant for the Beaufort County charge was not issued until fifteen months later, the Supreme Court held the Respondent was entitled to credit for time served from the date Beaufort County placed a "hold" on him because he was confined in Berkeley County upon placement of the hold based on the Beaufort County charge. *Id.* at 88–89, 529 S.E.2d at 11. Overall, *Blakeney* relies on the Supreme Court's earlier holding in *Crooks v. State* that "time served" means "the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)." *Id.* at 88, 529 S.E.2d at 10–11 (emphasis original) (citing to *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997)). Therefore, *Blakeney* does not stand for the principle that an inmate should receive time served for time spent in jail on other charges before being charged or indicted for the crime at issue.

Nevertheless, Appellant contends that he is entitled to jail time credit while he was serving time in HIP, which occurred prior to the warrants being issued in his probation revocation and firearm sentences. Appellant has the burden of proving that SCDC did not apply the days of credit correctly and thus improperly calculated his sentence, but Appellant has failed to carry that burden. *See Porter, supra*. Appellant served almost two years in HIP as part of his original incarcerative eight-year sentence; therefore, six years remained for Appellant to serve towards this sentence. Appellant received three years out of this remaining six-year sentence for his probation revocation sentence, which he is currently serving. Thus, although Appellant is entitled to credit for the two years he served under the HIP, that credit reduced the potential remaining sentence to six-years. Accordingly, the three-year sentence he is now serving following his probation revocation is a portion of the six years that remain from his original sentence. Furthermore, under section 24-13-40, Appellant is only entitled to jail time credit from the date of the issue of the warrant for the probation revocation, which was July 1, 2021, to the date he was sentenced, January 19, 2022. Appellant was incarcerated from October 3, 2021, to October 29, 2021, and January 15, 2022, to January 19, 2022. As a result, he is entitled to pre-revocation jail time of thirty days which is being credited towards his probation revocation sentence; as a result, his sentence start date is December 20, 2021.

As for his firearm sentences, Appellant was serving an unrelated sentence when he was in HIP, which occurred prior to these sentences. Consequently, pursuant to section 23-13-40, Appellant is not entitled to time served for the period of two years when he was in HIP. According

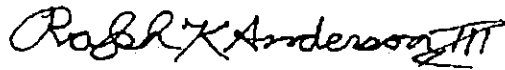
to the sentencing sheet, Appellant's sentence start date was backdated to December 22, 2021. Appellant is only entitled to credit for time served from October 3, 2021 (the date the warrant was issued) to October 29, 2021, which makes his sentence start date November 26, 2021. Therefore, Appellant earned a total of 30 days of jail time credit towards his probation revocation sentence and 26 days of jail time credit towards his firearm sentences both of which were correctly calculated and applied to his sentences by the Department. In addition, Appellant is earning good time and work credits towards his sentences.

In sum, Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed. *See Porter, supra*.

**ORDER**

For the reasons set forth in this Order,

**IT IS HEREBY ORDERED** that the Department's final agency decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

December 14, 2022  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



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Stephanie Perez  
Judicial Law Clerk

December 14, 2022  
Columbia, South Carolina