

JAN 18 2022

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>William Cathcart</u>	OFFICE USE ONLY
SCDC NUMBER: <u>249565</u>	Grievance No. <u>MAED 0006-22</u>
INSTITUTION: <u>MAC DOUGALL</u>	Code: General <u>CL/CL</u>
HOUSING UNIT: <u>Mag 1 B/B-19</u>	Policy _____
WORK ASSIGNMENT: <u>Outside Ground Maintenance</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>2/1/22</u>
	IGC Initials <u>LD</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

After writing classification about my sentence 21-02396723 they told me my sentence was mandatory. The sentencing judge sentence me to a 85% sentence. The sentencing judge told me in court and it is documented in my transcript that the sentence will be 85% sentence. SCDC Classification does not have the Authority to modify a sentencing judge sentence. It is forbidden by the Due Process clause U.S. Constitution

RECEIVED

MAR 30 2023

SC Court of Appeals

William Cathcart 1.13.22

Grievant Signature

Date

ACTION REQUESTED: To have my sentence to reflect the 85% that the Judge sentence me too.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

IGC Signature

Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Cathcart, William 249565

MacD-0006-22

I have reviewed your concern. In your grievance you state that classification informed you via RTSM that your sentence is mandatory. You claim that the sentencing judge sentenced you to an 85% sentence. You state that the sentencing judge told you in court and that it is documented in your transcript that the sentence will be an 85% sentence. Next you state that classification does not have the authority to modify a sentencing judge's sentence, that it is forbidden by the due process clause of the US Constitution. You request to have your sentence reflect the 85% that the judge sentenced you to. SCDC Policy OP-21.09, Inmate Records Plan, Section 12. Truth in Sentencing and Release Calculation, states, "Persons convicted of murder with an offence date on or after January 1, 1996, will be sentenced to one (1) of the following per statute 16-3-20: ...30-year mandatory minimum (flat sentence - not redactable by EWC/EEC/GT accrual." You have not shown that SCDC Staff failed to perform their job duties appropriately.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Step 2 Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

W. M. Tell

2/9/22

Warden Signature

Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

Walter Cotton *2-18-22*

Grievant Signature

Date

C. J. L.

2/15/22

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only

INMATE NAME: William Cathcart
SCDC NUMBER: 249565
INSTITUTION: MacDougall ✓
HOUSING UNIT: Birch 2-C-16A
WORK ASSIGNMENT: Dorm

RECEIVED
MAR 01 2022
INMATE GRIEVANCE

Grievance No. MACD-00006-22
Code: General CLICL
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: 2/15/22
IGC Initials: in
Date Received: 3/1/22
IGA Initials: BW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): AFTER waiting classification about my sentence 21-02396723 they told me my sentence was mandatory. The sentencing judge sentence me to a 85% sentence. The sentencing judge told me in court and it is documented in my transcript that the sentence will be 85% sentence. SCDC Classification does not have the Authority to modify a sentencing judge sentence. It is forbidding by the Due Process clause of the U.S. Constitution.

Grievant Signature William Cathcart Date 2-21-22

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you wrote Classification staff at MacDougall Correctional Institution (MacD) about your sentence, and you were informed that your conviction/sentence was mandatory. You state that the sentencing judge gave you an 85% sentence and the court documented the same on the corresponding transcripts. You further state that Classification staff does not have the authority to modify the judges sentencing determination and it is forbidden by due process laws within the constitution. You have requested that your sentence reflect the 85% that was determined by the judge. Be advised that you were convicted of Murder and given a sentence of 30 years to Life without the possibility of parole which is considered a mandatory sentence. There has been no misinterpretation of information as it relates to staff inputting the correct sentencing guidelines. You may consult with outside legal counsel about the aforementioned information if you deem necessary. You have not shown that SCDC staff has conducted their job duties improperly.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Greg Adams Date 3/1/22

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____

IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

RECEIVED

MAR 30 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Cathcart, #249565,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 22-ALJ-04-0113-AP

ORDER

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

BACKGROUND AND PROCEDURAL HISTORY

On April 24, 1997, Appellant was arrested for murder and conspiracy to commit murder. He was later convicted of these crimes as well as possession of a weapon during the commission of a violent crime. On May 6, 1998, Appellant was sentenced to thirty years' incarceration for murder, five years' incarceration for possession of a weapon during the commission of a violent crime, and five years' incarceration for conspiracy to commit murder.

On January 13, 2022, Appellant filed a Step 1 Grievance, arguing that his sentence was miscalculated. Appellant asserted he was sentenced to an eighty-five percent sentence and requested his sentence reflect that. After the grievance was denied, Appellant filed a Step 2 Grievance on February 21, 2022, on the same grounds. In the Department's denial of the Step 2 Grievance, it noted that he was "convicted of Murder and given a sentence of 30 years to Life without the possibility of parole which is considered a mandatory sentence."

Appellant filed a Notice of Appeal with this Court on April 12, 2022, asserting the sentencing judge sentenced him to an eighty-five percent sentence and SCDC does not have the authority to modify the sentence. Appellant cites to the Due Process Clause of the U.S. Constitution in support of his argument. The case was assigned on April 28, 2022. The

FILED
08/29/2022
SC Admin Law Court

Department filed the Record on Appeal on June 30, 2022. Appellant filed a brief¹ on June 9, 2022. The Department filed its brief on August 12, 2022.

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 findings from 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 contends that the sentencing judge sentenced the Appellant to "thirty years at 85%." He thus argues he should only serve eighty-five percent of his thirty-year sentence rather than the mandatory minimum thirty-year sentence calculated by the Department. He further argues

¹ Appellant attached documents to his brief to support his appeal. However, these documents are not part of the Record on Appeal. SCALC Rule 65 sets forth that "[t]he Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." Since the documents attached to Appellants brief do not appear in the Record, they will not be addressed by the Court. Furthermore, even if the Court could consider the transcript of the oral sentencing that Appellant attached, Appellant did not produce the entire transcript; thus, making it improper to consider.

he is only required to serve eighty-five percent of his sentence as recorded by the sentencing judge because, in *Hill v. United States ex rel. Wampler*, the United States Supreme Court held that the “only sentence known to the law is the sentence or judgement entered upon the records of the court.” 298 U.S. 460, 464 (1936). The Department, on the other hand, asserts Appellant was sentenced to a mandatory minimum of thirty years’ imprisonment pursuant to the 1996 version of section 16-3-20(A) of the South Carolina Code, and, accordingly, Appellant’s sentence was calculated correctly.

The 1996 version of the section 16-3-20(A), which was the controlling authority for Appellant’s sentence, provides, in pertinent part:

(A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a **mandatory minimum term of imprisonment for thirty years**. . . . No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section.

S.C. Code Ann. § 16-3-20(A) (1996) (emphasis added). Appellant’s offense is a violation of 16-3-20(A). Appellant does not dispute that this statute requires a person convicted of murder be sentenced to thirty years, and there is no reference to someone convicted under this statute serving only eighty-five percent of their sentence. Thus, pursuant to section 16-3-20(A), Appellant must serve a mandatory minimum of thirty years’ imprisonment, and the Department’s sentence calculation of thirty years correctly reflect this.

This conclusion is further supported by the statutes dealing with work, education, and good conduct credits, which specifically provide that sentences for murder convictions are excluded from being reduced below the mandatory minimum of thirty years. *See* S.C. Code Ann. § 24-13-210(B) (1996) (“However, no prisoner serving . . . a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision”); *see also* S.C. Code Ann. § 24-13-230(B) (1996) (“However, no prisoner serving . . . a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision”).

Additionally, absent any ambiguity in the sentencing sheet, the Court must presume that the sentencing court’s sentence is correct. *See Tant v. S.C. Dep’t of Corr.*, 408 S.C. 334, 337, 759

S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014) (“[T]he Department is generally confined to the face of the sentencing sheets in determining the length of a sentence . . . [unless] there is an ambiguity in the sentencing sheets.”). Here, the sentencing sheet for Appellant’s May 1998 conviction unambiguously states Appellant was sentenced to thirty years’ imprisonment; therefore, the Department was required to calculate Appellant’s sentence according to that sheet.

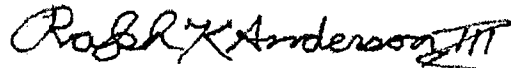
In sum, Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department’s decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding “the party challenging [an administrative agency’s] order bears the burden of convincingly proving 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.”).

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.



Ralph King Anderson, III
Chief Administrative Law Judge

August 29, 2022
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson Administrative Law Judge
Case No. 22-ALJ-84-8113-AP

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William Cathcart, #249565

MAR 30 2023

APPELLANT,

SC Court of Appeals

v.

South Carolina Department of Corrections,

RESPONDENT,

RECORD ON APPEAL

The Appellant William Cathcart submits the Record on Appeal. The Record on Appeal is in compliance with Rule 210, Rule 209, and 267 of the S.C. Appellate Court Rules.

Date: 3-27-2023

William Cathcart

William Cathcart #249565
MANNING LG W-2 114
502 Beckman Rd
Columbia, SC 29203

Joseph R. Shakibanasab
SCDC STAFF ATTORNEY
Office of General Counsel
4444 Broad River Rd
Columbia, SC 29226

Appellant Pro Se

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson Administrative Law Judge
Case No. 22-ALS-84-0113-AP

William Cathcart, # 249565

APPELLANT,

V.

South Carolina Department of Corrections

RESPONDENT,

CERTIFICATE OF COUNSEL

The Appellant William Cathcart hereby certifies that the Record on Appeal contains all material proposed to be included and no other material.

Date: 3-27-2023

William Cathcart
William Cathcart 249565
Manning Ct. W-2/14
502 Beckman Rd
Columbia, SC 29203

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW

Ralph K. Anderson, Administrative Law Judge

Case No. 22-ALJ-04-0113-AP

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MAR 30 2023

SC Court of Appeals

William Cathcart, #249565

APPELLANT,

v.

South Carolina Department of Corrections,

RESPONDENT,

PROOF OF SERVICE

I William Cathcart #249565 hereby certify that I have this 27th day of March 2023 mail a copy of the Record of Appeal and Certificate of Counsel upon the below mentioned. Service was made by U.S. mail and address as followed.

Date: 3-27-2023

William Cathcart
APPELLANT

Honorable Jenny A. Kitchings
Clerk of S.C. Court of Appeals
P.O. Box 11629
Columbia, SC. 29211

Joseph R. Shakibanasab
Office of General Counsel
4444 Broad River Rd
Columbia, SC 29221

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

William A. Cathcart, #249565,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

RECEIVED

) Docket No.: 22-ALJ-04-0113-AP

) [Grievance No.: MACCI 6-22]

) MAR 30 2023

) SC Court of Appeals

) Hon. Judge K. "Tripp" Anderson, III

)
)
) **RESPONDENT'S**
) **BRIEF**
)
)

STATEMENT OF THE CASE

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of William Anthony Cathcart ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC").

Appellant filed a Step One Grievance on January 13, 2022, claiming he was sentenced to an eighty-five percent sentence and requested that his sentence be corrected to reflect an eighty-five percent sentence. Appellant alleged that SCDC classification does not have the authority to modify the sentence by making it a mandatory day for day sentence. This grievance was investigated and denied on February 9, 2022. Pursuant to statute S.C. Code Ann. §16-3-20, Appellant is required to serve a "30-year mandatory minimum" sentence. On February 21, 2022, Appellant filed a Step Two Grievance on the same grounds. This grievance was also investigated and denied on March 18, 2022. Appellant subsequently filed his Notice of Appeal.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely 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 *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (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 the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

I. SCDC CORRECTLY DETERMINED THAT APPELLANT'S SENTENCE FOR MURDER IS A "DAY FOR DAY" SENTENCE.

On May 6, 1998, Appellant was convicted of murder and sentenced to a term of thirty years' incarceration. *See Rec.* pp. 10-11. Appellant was also convicted of conspiracy to commit murder in violation of S.C. Code. Ann §16-17-0410, and possession of a weapon during a violent crime in violation of S.C. Code. Ann. §16-23-490 and sentenced to five years' incarceration on both

convictions. Rec. pp. 6-9. Appellant's current projected maxout date is April 17, 2027. *See* Rec. pp. 14-15. Appellant's murder conviction is the controlling offense for his sentence calculation analysis.

Appellant argues that his thirty-year sentence for murder is an eighty-five percent sentence, and that he does not have a mandatory minimum thirty-year, day for day, term of incarceration. Appellant is mistaken.

a. Appellant's murder conviction carries a thirty-year, day for day, minimum sentence.

"[T]he Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence, but may consider the sentencing transcript if the sheet is ambiguous." *Tant v. South Carolina Department of corrections*, 408 S.C. 334, 347, 759 S.E.2d 398, 404 (2014). The offense statute for murder is codified in S.C. Code Ann. §16-3-10. The penalty statute for murder is found in S.C. Code Ann. §16-3-20; which is titled, "Punishment for murder; separate sentencing proceeding when death penalty sought." *Id.* The 1996 version of the sentencing statute, which was in effect during the time appellant committed the offense and Appellant was sentenced, stated that:

A person who is convicted of or pleads guilty to murder must be punished . . . by a ***mandatory minimum term of imprisonment for thirty years***. . . . No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, ***nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section.***

S.C. Code Ann. §16-3-20(A) (1996). (emphasis added).

There is no ambiguity in Appellant's sentencing sheet, he plead guilty to murder in 1998. Rec. p. 11. The offense occurred on April 17, 1997. *See* Rec. p. 10. The 1996 sentencing statute for murder is the controlling authority for Appellant's sentence, and the statute mandates a minimum thirty-year, day for day, sentence. S.C. Code Ann. §16-3-20(A) (1996). Further, per the statute, work, education, and good conduct credits cannot be used to reduce the mandatory minimum term of incarceration. *Id.* Therefore, Respondent correctly determined that Appellant must serve a hundred percent of the thirty-year sentence for Appellant's murder conviction.

b. Appellant does not have an eighty-five percent sentence.

Appellant claims his sentence for murder is an eighty-five percent sentence and Appellant produced three pages of his guilty plea transcript. Initially, the department notes that Appellant has not produced the entire guilty plea transcript, Appellant only produced pages five, forty-five, and forty-six. *See Attachment's to Appellant's Brief*. Even so, based on the transcript pages that were produced, Appellant was evidently erroneously advised that a sentence for murder was an eighty-five percent sentence and not a day for day sentence. *See Attachment's to Appellant's Brief* p. 5 β 18-22 (“Murder being a violent crime, if you don’t get a life sentence, you would have to serve any numerical sentence that I would impose of you, eighty-five percent of it. Do you understand that?”). Though Respondent sympathizes with the Appellant, the framework of the South Carolina Code does not allow convictions for murder to be reduced to eighty-five percent sentences, the Code specifically mandates a minimum term of incarceration of thirty years, day for day.

The sentencing statute, S.C. Code §16-3-20(A) (1996), specifically states the thirty-year minimum term of incarceration for murder cannot be reduced. *Id.* Additionally, consistent with the sentencing statute, the statute outlining that “no parole” offenders must serve eighty-five percent of a sentence before being eligible for early release, discharge, and community supervision, also, specifically excludes convictions for murder. S.C. Code. Ann § 24-13-150 (A) (“... Nothing in this section may be construed to allow a prisoner convicted of murder . . . to be eligible for work release, early release, discharge, or community supervision.”).¹ Likewise, the statutes dealing with work, education, and good conduct credits, also, specifically exclude credits to inmates sentenced pursuant to a minimum term of incarceration for murder. *See* S.C. Code Ann. § 24-13-210 (B) (1996)² (discussing good conduct credits for “no parole” offenders the Code states “.... However, no prisoner serving . . . a mandatory minimum term of imprisonment for thirty years pursuant to Section

¹ See 1995 Act No. 83, (H.B 3096) §3.

² See 1995 Act No. 83, (H.B 3096) § 26.

16-3-20 is entitled to credits under this provision. ...”); *see also* S.C. Code Ann. § 24-13-230 (B) (1996)³ (discussing earned work and education credits for “no parole” offenders the Code states in pertinent part, “However, no prisoner serving a sentence for ... a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision. ...”). These earned credits, are what allow “no parole” offenders to reduce their sentence to eighty-five percent. What was orally pronounced at Appellant’s sentencing hearing was not in compliance with the South Carolina Code. Respondent does not have the Authority to release Appellant at eighty-five percent of his sentence and must follow the law. Appellant’s claim is more properly cognized as a postconviction relief action rather than a sentencing calculation matter.

c. Respondent correctly calculated Appellant’s sentence.

Lastly, Respondent correctly calculated Appellant’s sentence and projected maxout date. Appellant was arrested on April 24, 1997. Rec. p. 12. Generally, an offender is entitled to credit for time served in a jail prior to sentencing. *See* S.C. Code Ann. § 24-13-40. Therefore, Appellant’s sentence start date is April 24, 1997. *See* Rec. pp. 14-15. Because murder carries a day for day mandatory thirty-year minimum term of incarceration, Appellant must serve thirty years day for day. Thirty years from April 24, 1997, is April 17, 2027.⁴ Therefore, Respondent correctly calculated Appellant’s sentence and projected maxout date. *See* Rec. pp. 14-15.

Although Respondent sympathizes with Appellant, Respondent correctly calculated Appellant’s sentence. Appellant was evidently erroneously informed his offense was an eighty-five percent offence, however, the 1996 sentencing statute is the controlling authority. The sentencing statute S.C. Code Ann. §16-3-20(A) (1996), and the statutory framework regarding sentence related credits and “no parole” offenses specifically exclude murder convictions from being reduced below

³ See 1995 Act No. 83, (H.B 3096) § 28.

⁴ There are 7 leap years from April 1997 to April 2027, which is why Appellant’s maxout date is April 17, 2027, instead of April 24, 2027.

the mandatory thirty-year minimum sentence. Appellant's claim is more appropriately cognized as a postconviction relief matter rather than a sentencing calculation matter. Respondent correctly calculated Appellant's sentence and projected maxout date. *See* Rec. pp. 14-15. Because Respondent correctly determined Appellant's murder conviction is a day-for-day sentence and correctly calculated Appellant's sentence, the final agency decision should be affirmed.

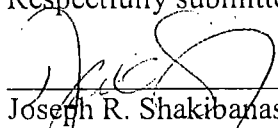
II: APPELLANT FAILED TO PROVE THE AGENCY DETERMINATION THAT HE MUST SERVE A HUNDRED PERCENT, DAY FOR DAY, OF HIS MURDER CONVICTION IS CLEARLY ERRONEOUS, ARBITRARY OR CAPRICIOUS, OR AN ABUSE OF DISCRETION.

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden.

CONCLUSION

For the foregoing reasons, SCDC respectfully requests this Court affirm SCDC's final agency decision.

Respectfully submitted,



Joseph R. Shakibanasab, SC Bar No. 102825
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1278
Email: Shakibanasab.joseph@doc.sc.gov

August 12, 2022
Columbia, South Carolina

William Cathcart 249505
Mansing Ct W12114
362 Beckman Rd
Columbia, SC 29203

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MAR 30 2023

SC Court of Appeals



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MAR 27 2023
MCI
MAIL ROOM

Jenny A. Kitchings
Clerk of S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

29211-162929

