THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2022-001601

Charles Eugene Carpenter, #181783,.....Appellant,

v.

South Carolina Department of Corrections,.....Respondents,

RECORD ON APPEAL

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
Ballard & Watson
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299

ATTORNEYS FOR APPELLANT

Teresa S. Player (S.C. Bar No. 72831)
Staff Attorney
Post Office Box 21787
Columbia, South Carolina 29211
Telephone 803.896.2074

ATTORNEY FOR RESPONDENT
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INDEX

Orders and Decisions

Pleadings

Other Documents

Certificate of Counsel

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 Grievance No.: RCI-0429-19 **ORDER GRANTING RESPONDENT'S MOTION TO HOLD IN ABEYANCE**

This matter is before the South Carolina Administrative Law Court (Court) pursuant to the Notice of Appeal filed by Charles Eugene Carpenter (Appellant) on February 7, 2020. South Carolina Department of Corrections (Respondent) filed the Record on Appeal with the Court on May 12, 2020. Appellant filed his initial brief on June 15, 2020.

On July 2, 2020, Respondent filed a Motion to Hold in Abeyance on the grounds that the issues in this matter are currently before the South Carolina Court of Appeals in an action filed by Appellant, Appellate Case No. 2017-002577. To date, Appellant has not filed a response to Respondent's Motion. It is, therefore,

ORDERED that Respondent's Motion to Hold in Abeyance is Granted.

AND IT IS SO ORDERED.

July 27, 2020
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Court Judge

CERTIFICATE OF SERVICE
[illegible]
27th day of July, 2020
By: [illegible]
Clerk

FILED
JUL 27 2020
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Eugene Carpenter, #181783, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No. 20-ALJ-04-0083-AP **ORDER TO LIFT STAY**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Charles Eugene Carpenter (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

Appellant filed his Step 1 Grievance on November 20, 2019, regarding loss of good time and work credits. He filed this appeal on February 7, 2020, after his Step 2 grievance was denied. The Notice of Assignment was filed February 13, 2020. The Record on Appeal was filed May 12, 2020. Appellant filed his brief on June 15, 2020.

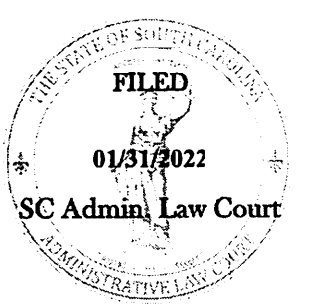
On July 2, 2020, the Department filed a Motion to hold the matter in abeyance because Appellant had an action pending in the South Carolina Court of Appeals that could affect the outcome of this case: Appellate Case No. 2017-002577. This Court granted that Motion by Order dated July 27, 2020, holding this matter in abeyance pending the resolution of Appellate Case No. 2017-002577.

The South Carolina Court of Appeals issued its decision on August 19, 2020, affirming in part, vacating in part, and remanding Appellant's matter to the circuit court. While not formally lifted, the stay expired of its own terms on that date. A year and five months have passed with no action in this case.

The judge originally assigned to this case retired and a new judge was assigned the case in January 2022. On January 11, 2022, the Court notified the parties that a new judge was assigned the case. In addition, the parties were advised that if either party desired to have the stay remain in place that they should submit a Motion requesting such relief within ten days of the notification. As of the date of this Order, neither party has responded.

IT IS THEREFORE ORDERED that the Stay is lifted.

IT IS FURTHER ORDERED that the motion to consolidate cases is denied.



IT IS FURTHER ORDERED that the South Carolina Department of Corrections shall file its brief within twenty days of the date of this Order, or February 22, 2022.[1]

IT IS FURTHER ORDERED the Appellant's reply brief is due March 4, 2022.

AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

January 31, 2022
Columbia, South Carolina

[1] Twenty days from the date of this Order is of February 20, 2022. However, because February 20, 2022, is a Sunday and Monday, February 21, 2022, is a state holiday, Respondent's brief is due the next working day, which is Tuesday, February 22, 2022. SCALC Rule 52.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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).

E. Harvin Belser Fair
Interim Judicial Law Clerk

January 31, 2022
Columbia, South Carolina

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 **ORDER HOLDING THIS MATTER IN ABEYANCE/REQUIRING STATUS UPDATES**

This matter is 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). Appellant's legal history for while he has been incarcerated 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).

As to the matter presently before the Court, Appellant filed his Step 1 Grievance, alleging the Department improperly removed good time and work credits that had previously appeared on Appellant's record with the Department. Appellant's grievance was investigated and denied. Appellant filed a Step 2 Grievance, reasserting the Department improperly removed good time and work credits. This grievance was also investigated and denied. Appellant then filed this appeal on February 7, 2020. The record on appeal was filed on May 12, 2020. On June 15, 2020, Appellant filed his primary brief.

On July 2, 2020, the Department 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 impacted the matter before this Court. Specifically, the Department'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 a subsequent appeal Appellant filed with the Court. *See Carpenter v. S.C. Dep't of Corr.*, Docket No. 20-ALJ-04-0083. 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. *See* S.C. Code Ann. §§ 17-27-10 to -150 (2014). While not formally lifted, the stay in this Court expired of its own terms on that date. 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 the Honorable H.W. Funderburk, Jr. On January 11, 2022, this Court asked the parties to submit a motion to reinstate the stay within ten days if either party so desired. The allotted time period passed, and the Court received no such motion from either party. Accordingly, on January 31, 2022, the Court explicitly lifted the stay and denied the motion to consolidate the cases.

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. 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 contacted the parties about the possibility of holding a conference call on this matter. Appellant informed the Court that during a hearing on the pending PCR action before the circuit court, that 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 this Court. Thus, Appellant requested the ALC again stay this matter pending the circuit court's ruling on the motion in the PCR matter. Respondent stated it did not object to staying the ALC matter. Based on the agreement of the parties,

IT IS THEREFORE ORDERED that the ALC matter will be stayed pending the resolution of the circuit court's ruling on the motion to amend Appellant's pleadings in the PCR matter.

IT IS FURTHER ORDERED that the parties must update the Court within ten days of the circuit court's ruling on the pending motion.

IT IS SO ORDERED.

_____

Robert L. Reibold
Administrative Law Judge

April 19, 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

April 19, 2022
Columbia, South Carolina

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**

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]

---

[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.

---

[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

RECEIVED
DEC 13 2019

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Due: 12/7/19

Office Use Only

INMATE GRIEVANCE

INMATE NAME: Charles Carpenter

SCDC NUMBER: #181783

INSTITUTION: Ridgeland ~~RIDGELAND~~ CCI CORRECTIONAL INSTUTION

DEC 02 2019

HOUSING UNIT: CB-28-B

WORK ASSIGNMENT: Dorm

Grievance No. RCI-0429-19
Code: General
Policy
Disc. Hear.
Class ✓
PREA
Date Received: 12/5/19
IGC Initials:
Date Received: 12/16/19
IGA Initials:

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): As Stated in step I, clm under a mantory Min, Not Mantory, the sentence judge has got to attest give a 25 year sentence, NO less NO more, unless you work for them, other word RAT, All inmate that enter S.C.D.C. fall, intall 1996, fall under ~~44-53-370~~ (S.C-24-13-210) under inate good time, work Credet Plus inmate work plan (OP-21-09) show and state what clm saying, the statute S.C.D.C. and General Counsel are trying to used (44 5 3-370) I not under (44 53 370) clm under, and NO ONE EVEN God cannit show where it say Day for Day. Plus statute stating this. What they are trying to use, If someone Can read, Or show anyone on what they are trying to say, the Judge didnt give me the sentence NOW I'm done, the Gen. Counsel did and SCDC.

Grievant Signature Charles Carpenter Date 12-4-19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. You stated in your grievance that you would like the Warden to add good time and work credits to your sentence, and that SCDC is in violation of the SC Code of Laws and SCDC policy. As you were previously advised, your sentence was modified in 2011 to reflect the correct sentence of a mandatory 100% service time required for statute 44-53-0370(E)(1)(D), Trafficking in Marijuana. By law, this sentence requires you to serve day for day with no benefit of work credits or good time. In order to change this, you would have to have an amended order from the court. Your projected release date is correct, and you have been given credit for all the time that you deserve. You may confer with the Classification Caseworker at your institution should you have more questions.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Responsible Official Signature _____ Date 12/20/19

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)

SCDC 10-5A (Rev May 2015)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Charles Carpenter

SCDC NUMBER: #181783

INSTITUTION: Ridgeland, C.I.

HOUSING UNIT: CB-28-B

WORK ASSIGNMENT: Dorm

RIDGELAND CORRECTIONAL INSTUTIE
NOV 2 2019

OFFICE USE ONLY
Grievance No. RCI-0429-19
Code: General
Policy
Disc. Hear.
Class. ✓
PREA
Date Received 11/20/19
IGC Initials

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.)

I'm asking the warden, to grant this grievant and put Good time and work credit BACK on my record, and stop my right and Due-process from a gross and grave injustice being done on me, alone with S.C.D.C, and General Counsel took my Good time & work credit as I was headed to County, and was going home seven after a series of mistakes on my case was made. I'm under a straight Adult sentence This is under Good-time Statute (S.C. 24-13-210) I entered prison 1987, NOV-27, all except Life sentence get 180 days off each year plus Work Credits, this in (OP-21-09). They have taken the 44-53-370 and read what they wanted, & same kind of reading is been in S.C Sup Court (ie. Davis vs Doe, 331, SE2d 392-1985) cannot read only what Law state, not what you think. If you take the statute in these readings and mark out what the 44-53-420 state, they will not have anything, Nothing, about the 44-53-370, saying Day for Day, anyway, it doesn't suggest that (Day for Day) anyway, just a conspiracy violate my Due Process

I'm under the	44-53-420—NO Drugs
44-53-370	with drugs
trafficking in Cocaine - Marijuana	NO drugs in My Case

Charles Carpenter 11-18-19
Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: ☑ PROCESSED ☐ UNPROCESSED ☐ OTHER

Your grievance was reviewed and forwarded to the Warden for his review/decision.
See Warden's decision.

M. E. Martin 11/20/19
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

CARPENTER, CHARLES - 181783

RCI-0429-19

I have reviewed your concerns. In your grievance, you are requesting that you be given good time and work credits back on your record. According to Classification Case Worker, Ms. Chisolm, you have a mandatory 25 year sentence. You will not benefit from any good time or work credits. The 25 years are mandatory. You were given this sentence by the Judge, so you may need to contact the Judge, if there is a problem in your sentencing.

Therefore, your grievance is denied.

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

Warden Signature 11/25/19 Date

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

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

Charles Carpenter 12-2-19 Grievant Signature Date

M. E. Montauk 12-2-19 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.

Number - 19-01432247 / Classification

Kline enter date 11/4/2019 asking Head CaseWork
o help me, and even ask to be call up on
erson, to talk about my Good time + Work Credit
to be put back on my record, even on Kiosk
many time asking Caseworkin to call me up and
alk with me, But cannt get this to happen

Request Date 11/4/2019 - 9:36 AM

Plus Now, Kios willnt let me enter to
add old date.

Charles Carpenter
181783
CB-28-B / 4-18-19

CMTI100D SCDC OFFENDER MANAGEMENT SYSTEM 04/23/20
OMCOMITA COMMITMENT APPLICATION C052640
CONVICTION SUMMARY

SCDC# > 181783 CURR LOC: **RIDGELAN**
CARPENTER, CHARLES EUGENE SCDC CLASSIFICATION..: **VIOLENT**
OFFENDER TYPE: **ADULT-STRAIGHT SENTENCE**

	NUM	CONVICTION OFFENSE	INCARC SENT YRS MO DYS	SENT DATE	SENT START	PROJ COMP	CONV STAT	VIO IND
_ *	S00002	TRAFFICKING IN MARIJ	025 00 000	08/09/90	06/13/90	04/07/2040	ACT	V V
	S00001	TRAFFICKING IN COCAI	025 00 000	06/04/90	04/07/90	04/07/2015	ACT	V V

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...
PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 04/23/20
OMÇOMITA COMMITMENT APPLICATION C052640
SCDC #: **181783** **INQUIRY** CURR LOC: **RIDGELAN**
CARPENTER, CHARLES EUGENE NONCONFORM SENT: **N** RTRN TO COURT: N
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
CONVICTION NUM: **S00002** INDICT NUM: **90-GS-4705001** WARRANT NUM: **0000000000**
DATE SENTENCED..: **08/09/1990** JUDGE LAST..: **COTTINGHAM** FI:
STATUTE: **44-53-0370(E)(1)(D)** CDR CODE.: GPS IND: **N**
OFFENSE: **3544** TRAFFICKING IN MARIJUANA OFFENSE DATE: **04/07/1990**
CHARACT: **C** CONSPIRACY TO C COUNTS: **01** OFFENSE CNTY: **13** CHESTERFIE
PLEA...: **G** GUILTY TYPE OF COURT....: **01** GENERAL SESSIO
TYPE SENTENCE... : **S** ADULT-STRAIGHT SCDC JURIS DATE..: **06/13/1990**
TOTAL SENTENCE...: **025 00 000** MAND SERV REQMT..: **025 00 000**
INCARC SENTENCE..: **025 00 000** PAROLE FACTOR....: **2** 1/3 SENT. REQ.
PROBATION SENT...: **000 00 000** PAROLE SERV REQMT: **999 99 999**
HIP SENT.....: **000 00 000** HAYES CRED: **00000**
RESTITUTION REQMT: **N** AMT: **.00** JAIL CRED: **00000** EXTRA CRED: **00000**
CONVICTION STATUS: **AC** ACTIVE SENT START DATE: **06/13/1990** DOM.IND:
CONSECUTIVE IND..: **Y** SPOUSE ABUSE: STATUTE CLASSIFICATION...: **VIOLENT**
DNA OFFENSE IND..: **Y** EEC ELIG: **N** SCDC CLASSIFICATION.....: **VIOLENT**
SEX REG: **N** PRED OFF: **N** LAST UPDATE: **J JOHNSON** DATE: **08/16/19**
NO PAROLE: **DRUG STATU** CREATED BY.: **K RUDY** DATE: **11/14/91**

PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

SENTENCE

Count 1 (3544)

OFFENSE Conspiracy-Trafficking in Marihuana - §44-53-370 (e)(1)(d)

STATE OF SOUTH CAROLINA)
) CASE NUMBER 90 GS-13- 4705001
COUNTY OF CHESTERFIELD)

THE DEFENDANT Charles Eugene Carpenter IS COMMITTED TO THE STATE OR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 25 ~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF $ 50,000 ; PROVIDED UPON THE SERVICE OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF $_____; PLUS PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury $_____

For Property damage $_____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: Consecutive to sentence of 90GS4705002

~~30 days~~

DATE: August 9, 1990

Edwin B. Cottingham

PRESIDING JUDGE E. B. COTTINGHAM

COSTS AND ASSESSMENTS:

_____

_____

Amy Patterson

Assistant CLERK OF COURT, ~~CHESTERFIELD~~ COUNTY, S.C.
State Grand Jury

FILED
AUG 9 1990
LISA C. DUNBAR,
CLERK, STATE GRAND JURY

ATTEST
A TRUE COPY

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 04/23/20
OMCOMITA COMMITMENT APPLICATION C052640
SCDC #: **181783** **INQUIRY** CURR LOC: **RIDGELAN**
CARPENTER, CHARLES EUGENE NONCONFORM SENT: **N** RTRN TO COURT: N
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
CONVICTION NUM: **S00001** INDICT NUM: **90-GS-4705002** WARRANT NUM: **0000000000**
DATE SENTENCED..: **06/04/1990** JUDGE LAST..: **COTTINGHAM** FI: **E**
STATUTE: **44-53-0370(E)(2)(E)** CDR CODE.: GPS IND: **N**
OFFENSE: **3545** TRAFFICKING IN COCAINE OFFENSE DATE: **04/07/1990**
CHARACT: **C** CONSPIRACY TO C COUNTS: **01** OFFENSE CNTY: **13** CHESTERFIE
PLEA...: **G** GUILTY TYPE OF COURT....: **01** GENERAL SESSIO
TYPE SENTENCE... : **S** ADULT-STRAIGHT SCDC JURIS DATE..: **06/04/1990**
TOTAL SENTENCE...: **025 00 000** MAND SERV REQMT..: **025 00 000**
INCARC SENTENCE..: **025 00 000** PAROLE FACTOR....: **2** 1/3 SENT. REQ.
PROBATION SENT...: **000 00 000** PAROLE SERV REQMT: **999 99 999**
HIP SENT.....: **000 00 000** HAYES CRED: **00000**
RESTITUTION REQMT: **N** AMT: .00 JAIL CRED: **00057** EXTRA CRED: **00000**
CONVICTION STATUS: **AC** ACTIVE SENT START DATE: **04/07/1990** DOM.IND:
CONSECUTIVE IND..: **N** SPOUSE ABUSE: STATUTE CLASSIFICATION...: **VIOLENT**
DNA OFFENSE IND..: **Y** EEC ELIG: **N** SCDC CLASSIFICATION.....: **VIOLENT**
SEX REG: **N** PRED OFF: **N** LAST UPDATE: **J JOHNSON** DATE: **08/16/19**
NO PAROLE: **DRUG STATU** CREATED BY.: **K RUDY** DATE: **11/14/91**

PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

[redacted]

18783

SENTENCE

3545

OFFENSE Conspiracy - Trafficking in Cocaine § 44-53-370(e)(2)

STATE OF SOUTH CAROLINA)
) count one of CASE NUMBER 90 GS-~~13~~- 4705002
COUNTY OF CHESTERFIELD)

THE DEFENDANT Charles Eugene Carpenter IS COMMITTED TO THE STATE

OR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 25

~~MONTHS~~/YEARS AND/~~OR~~ TO PAY A FINE OF $200,000; PROVIDED UPON THE SERVICE

OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF $_____; PLUS

PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE

IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury $_____

For Property damage $_____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: Concurrent w/ sentence now serving from Federal Court in N.C.

DATE: June 4, 1990

PRESIDING JUDGE E. B. CUTTINGHAM

COSTS AND ASSESSMENTS:

$ _____

_____

RECEIVED
NOV 1 1991
RECEPTION CEN. C.
BY _____ DEPUTY

CLERK OF COURT, ~~CHESTERFIELD COUNTY~~, S.C.
State Grand Jury

FILED
JUN 4 1990
LISA C. DUNCAN,
CLERK, STATE GRAND JURY.

ATTEST
A TRUE COPY

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request For Jail Time

Kirkland

RECEIVED
PM 12:27

Inmate Charles Carpenter SCDC# 181783

indicated he/she served a period of pre-trial confinement in your facility for

Trafficking in Marijuana Cocaine, Kidnapping
(Offense)

Tried by Judge Cottingham on 8/9/19 90

he/she was committed to the S.C. Department of Corrections on 11/13/19 91

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the allotted space. Return to address below.

Credit _____ for jail time from
(Inmate Name)

11-27-89 until 11-29 19 89
4-7 19 90 5-3 19 90 for Trafficking in Marijuana
(Offense)
Cocaine + Kidnapping

S/ Donnie Hill

Chesterfield County Det. 11-18-92
County or City Date

Return:

Classification Caseworker's Name: Paula W Lance

SCDC Institution: Evans Correctional Inst.

Address: P.O. Box 2951202
Bennettsville SC 29512-5202

MFR:
He is not entitled to any jail time. He was serving prior federal sentence while awaiting trial on SC charges. (see indictment 90-GS-4705002)

BATS
3/26/93

SCDC 1411 (Rev. May, 1986)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request For Jail Time

D 11-23-16
P ?

Inmate Charles Carpenter SCDC# 181783

indicated he/she served a period of pre-trial confinement in your facility for

Trafficking in Marijuana ; Trafficking in Cocaine
(Offense)

Tried by Judge COTTINGHAM on ____ 19 90

he/she was committed to the S.C. Department of Corrections on ? 19 ____

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the allotted space. Return to address below.

Credit CHARLES CARPENTER for jail time from
(Inmate Name)

4-7 19 90 until 5-3 19 90 for Trafficking in Cocaine
(Offense)

THEN TRANFERRED TO DARLINGTON CO.

S/ Don Hill

CHESTERFIELD CO 5-24-92
County or City Date

Return:

Classification Caseworker's Name: Andrea Salley

SCDC Institution: Allendale Correctional Inst.

Address: P.O. Box 1151 Hwy 47
Fair Fax, S.C. 29827

90-

Changed SSD on Jimmie 1 to 05/06/90 - credit for Chesterfield Co. Jail time

6/19/92

SCDC 18-11 (Rev. May, 1986)

KF
5/7/21

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request for Jail Time

Inmate Charles Carpenter AKA [redacted] SCDC # 181783

Soc. Sec. # [redacted] DOB [redacted] Race [redacted] Sex [redacted]

The inmate listed above indicates that he/she was held in your facility as a pre-trial detainee for:

Trafficking in Marijuana & Trafficking in Cocaine
(Offenses)

He/She was committed to the Department of Corrections on November 27 19 1989.
If he/she has served time in your facility, would you please fill in the information requested below.

Completed by: B. Styles (Caseworker) Evans (Institution) 6-6-11 (Date)

(✓) Approved: [signature] Chief, Offender Records 6/-/11 Date

( ) Disapproved: ______ Reason for Disapproval ______ Date

Inmate: ______ (Inmate's Name) was in the custody

of this agency at the following time(s) for the following offense(s):

OFFENSE	WARRANT NO.	DATE OF ARREST	DATE OF RELEASE	REASON FOR RELEASE

... date
6/13/96 ... after
7 days TPC on off.

S/ ______

City or County ______ Date

PLEASE RETURN TO: **Offender Records, 4444 Broad River Road, Columbia, SC 29210**

WHITE: Caseworker
CANARY: Offender Records
PINK: Suspense

SCDC 18-11 (Revised September, 1993)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request For Jail Time

Kirkland

RECEIVED
PM 12:27
OFFICE

Inmate Charles Carpenter SCDC# 181783

indicated he/she served a period of pre-trial confinement in your facility for

Trafficking in Marijuana Cocaine, Kidnapping
(Offense)

Tried by Judge Cottingham on 8/9/19 90

he/she was committed to the S.C. Department of Corrections on 11/13/19 91

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the allotted space. Return to address below.

Credit _____ for jail time from

11-27-89 (Inmate Name) 11-29-89
4-7 19 90 until 5-3 19 90 for TRAFFICKING IN MARIJUANA
(Offense)
COCAINE + KIDNAPPING

S/ Donnie Hill

CHESTERFIELD COUNTY DET. 11-18-92
County or City Date

Return:

MTR
You not entitled to any jail time. He was serving prior federal sentence while awaiting trial on SC charges. (see indictment 90-65-4705002)

Classification Caseworker's Name: Paula W Lance

SCDC Institution: Evans Correctional Inst.

Address: P.O. Box 2951202
Bennettsville SC 29512-5202

BAB
3/26/93

SCDC 18-11 (Rev. May, 1988)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Classification

Request For Jail Time

RD 11-23-16
P ?

Inmate Charles Carpenter SCDC# 181783

indicated he/she served a period of pre-trial confinement in your facility for

Trafficking in Marijuana; Trafficking in Cocaine
(Offense)

Tried by Judge COTTINGHAM on ______ 19 90

he/she was committed to the S.C. Department of Corrections on ? 19 ____

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the allotted space. Return to address below.

Credit CHARLES CARPENTER for jail time from
(Inmate Name)

4-7 19 90 until 5-3 19 90 for Trafficking in Cocaine
(Offense)

THEN TRANFERRED TO DARLINGTON CO.

S/ Don Hill

CHESTERFIELD CO — 5-24-92
County or City — Date

Return:

Classification Caseworker's Name: Andrea Salley

SCDC Institution: Allendale Correctional Inst.

Address: P.O. Box 1151 Hwy 47
Fairfax, S.C. 29827

90 -

changed SSD on Nomis 1 to 05/08/90 - credit for Chesterfield Co. jail time. [initials] 6/19/92

SCDC 18-11 (Rev. May, 1986)

ROA 000037

DISI100D SCDC OFFENDER MANAGEMENT SYSTEM 04/23/20
DISCIPLINARY SYSTEM C052640

SCDC ID: 181783 **DISPLAY INMATE OFFENSE HISTORY**

CARPENTER, CHARLES EUGENE CURR LOC: **RIDGELAND**

OFFENDER TYPE: **ADULT-STRAIGHT** PURCHASED TV **Y**

SERIOUS MENTAL ILLNESS: **N**

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00004	REFUSING OR FAILING O	OTHER AC	03/23/03	/ /	00000	CLOSED	3
00002	POSSESSION OF CONTRAB	MINOR DI	03/23/99	03/30/99	00000	CONVICTED	3
00001	POSSESSION OF CONTRAB	MAJOR DI	04/01/96	/ /	00000	CONVICTED	3

END OF LIST

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY

PF4-MODIFY PF6-DISMISSED/NOT GUILTY PF11-QUIT PF10-MAIN MENU

STATE OF SOUTH CAROLINA
In the Administrative Law court

APPEAL FROM THE SOUTH CAROLINA
DEAPRTMENT OF CORRECTIONS

Case No. 20-ALJ-04-83-AP

Charles Eugene Carpenter #181783,..... Appellant,

v.

South Carolina Department of Corrections, ... Respondents.

BRIEF OF APPELLANT

Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal by Appellant Charles Carpenter, #181783 (Carpenter) of the Step 2 Decision issued by the South Carolina Department of Corrections (SCDC or Department) on December 20, 2019, and provided to Mr. Carpenter on January 9, 2020. As part of that decision, SCDC denies that Carpenter is entitled to additional credits towards time served against his sentence. Mr. Carpenter filed the Notice of Appeal in this matter on February 7, 2020.

FACTS

Carpenter is currently confined in the Ridgeland Correctional Institution. He was arrested on November 27, 1989 and charged with multiple drug offenses. On April 7, 1990, Carpenter entered a plea agreement with the State to resolve his multiple outstanding charges. As part of that agreement, Carpenter pleaded guilty and was convicted of one charge pursuant to S.C. Code. Ann. § 44-53-370(e)(2)(e) for trafficking cocaine, and one charge pursuant to S.C. Code. Ann. § 44-53-370(e)(1)(d) for trafficking in marijuana. Although the sentences imposed on Carpenter are the subject of separate litigation, the sentencing sheets included within the record on appeal (ROA p. 7, 9) are interpreted and being enforced by SCDC as imposing consecutive 25-year sentences for the two convictions.[1]

[1] Carpenter has a separate pending action that was filed in Richland County Court of Common Pleas (Case # 2016-CP-40-6916) and is currently on appeal (Appellate Case # 2017-002577) after the trial court denied Carpenter's claims for relief in that action. In that action, Carpenter is challenging the propriety of the multiple sentencing hearings/proceedings held after entry of his guilty plea, and the consecutive sentence purportedly imposed thereby. Conclusion of that appeal and action is, upon information and belief, not a basis upon which Carpenter should be delayed in having the above-captioned matter considered by this Court.

However, Carpenter acknowledges that should he prevail completely in that matter currently on appeal and be afforded all relief requested therein, such relief would include a determination that Carpenter's lawful term of incarceration as to both convictions is only 25 years, not the 50 currently being enforced by SCDC. Because he has

For an extended period following Carpenter's remand to their custody, SCDC tracked the accumulation of good behavior credits against time served, and allowed Carpenter to earn additional work credits. In Carpenter's 1993 Offender Summary (R. pp. 284-290), SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." **Exhibit A.**[2] However, SCDC subsequently and unilaterally, and admittedly, removed those good time and work credits that Carpenter had previously earned to his record.

Carpenter's Step 1 grievance asks that the warden "put Good time and work credit BACK on my record" and that the agency "took my Good time and work credit." (ROA p. 2). Ultimately, the Step 2 official decision indicates Carpenter's "sentence was modified in 2011." (ROA p. 1). The only documentation from 2011 that appears in the record on appeal, however, is a "Request for Jail Time" form that is largely illegible, but does not appear to document any "modification" of Carpenter's sentence or explanation/justification for the taking of work and behavior credits that apparently occurred around that time. (ROA p. 12). Carpenter did not have a hearing at the time his sentence was allegedly "modified."

---

already been actually confined for longer than 25 years since conviction, even without application of any credits in dispute in this matter, such a determination would render this action moot.

[2] This document was not included by SCDC in its Record on Appeal provided to this Court. However, the document is an internal document currently in the possession of the Department, having previously been produced to Carpenter during the referenced separate litigation that began in circuit court. As such, SCDC had access to the same during the consideration of Carpenter's grievance and while issuing the agency decision from which Carpenter now appeals. Accordingly, SCDC should be deemed on notice thereof, and the attached document should be accepted and included within the proper record available for this Court to consider and rule upon.

Further, because of its positions taken in the separate litigation, it is clear the SCDC would not reconsider or potentially alter its final agency decision if this matter were to be remanded with a directive to more directly consider the documents attached. Carpenter submits that such a potential remand would be not only be ineffective, but detrimental to the efficient resolution of the current dispute between the parties, and therefore not in the interest of the parties or of justice generally.

ARGUMENT

I. SCDC ENGAGED IN ACTIVITY THAT CONSTITUTED AN ALTERATION WITH RESPECT TO THE SENTENCE BEING SERVED BY CARPENTER, WHICH TRIGGERED DUE PROCESS RIGHTS THAT WERE NOT MET.

"Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." *Tant v. SC Dep't of Corr.*, 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014) citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* The "length of an inmate's incarceration implicates a constitutional liberty interest" which requires compliance with due process requirements. *Id. (*citing *Greenholtz v. Inmates of Neb. Penal & Corre. Complex*, 442 U.S. 1, 18, 99 S. Ct. 2100, 60 L.Ed. 668 (1979) ("Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary government action.")). As result, the *Tant* court held that whenever 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." *Id.* 408 S.C. at 342, 759 S.E.2d 401.

SCDC cannot remove earned credits from an inmate's record once they have been earned. *Furtick v. S.C. Dep't of Corr.*, 374 SC. 334, 549 S.E.2d 35 (2007). "The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to insure the state created right was not arbitrarily abrogated." *Id.* 649 S.E.2d 37. In *Furtick*, the South Carolina Supreme Court quoted from *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445,454, 105 S. Ct. 2768, 86 L.Ed.2d 356 (1985) to state "[w]here a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom

from confinement by extending the length of imprisonment. Thus, the inmate has a strong liberty interest in assuring the loss of good time credits is not imposed arbitrarily."

Tant recognizes a trigger of due process rights whenever SCDC "alters an inmate's sentence *in its records*," (emphasis added) and not when it changes the actual sentence itself. Whatever Carpenter's actual sentence is upon the conclusion of the separate pending matter (see footnote 1 above), SCDC's interpretation and application thereof was "modified" (i.e. "altered") when it revoked previously extended sentence credits belonging to Carpenter. That is evidenced by the 1993 Offender Summary, wherein SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." **Exhibit B**[3]. It is unclear (at least from records produced) when SCDC unilaterally removed Carpenter's work and good time credits, but equally clear that it has, and violated Carpenter's due process rights by taking away earned credits without due process when it did so.

SCDC in its decision contends that the statute under which Carpenter was convicted precludes him from receiving or benefitting from good behavior or work credits. However, having given them, and allowed them to serve as an enticement for labor extended by Carpenter, the unilateral deprivation of them is without due process.

II. SCDC VIOLATED CARPENTER'S RIGHTS THROUGH ITS DISPARATE TREATMENT OF CARPENTER AS COMPARED TO OTHERS SIMILARLY SITUATED.

The Equal Protection Clause states, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from

[3] See footnote 2.

others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016).

Bobby G. Horne (hereafter "Horne") was arrested in connection with the same course of events as was Carpenter, and also pleaded guilty to a violation of S.C. Code Ann. Section 44-53-370(e). **Exhibit C**[4]. Horne's plea was to trafficking in cocaine, and was included as part of Case No. 90-GS-47-5002, the same case in which Carpenter pleaded guilty to trafficking in cocaine. Horne was also sentenced to 25 years under § 44-53-370(e). His sentence for trafficking in cocaine was therefore identical to Carpenter's, cementing his status as "similarly situated" to that of Carpenter.

As to unequal treatment, Horne was given sentence credits for good time served, pursuant to S.C. Code § 24-13-210, earned work credits pursuant to S.C. Code § 24-13-230, was eligible for parole, was eligible for work release, release, and supervised furlough. As a result, Horne was released from active custody to supervised furlough on August 30, 2001, and his sentence terminated completely on March 1, 2002. **Exhibit D** .[5] On information and belief, other inmates who have been in the custody of SCDC with 25-year sentences for trafficking in cocaine in violation of Section 44-53-370(e) have been granted work credits, good time credits, other administrative credits, have been released on supervised furlough or some combination thereof. **Exhibit E**.[6]

Carpenter was initially allowed to earn the same credits that Horne earned, and was originally made eligible for work release. At some point, after Carpenter's earned credits were stripped from him, and his eligibility for work release was also extinguished, all unilateral acts by

[4] See footnote 2.
[5] See footnote 2.
[6] See footnote 2.

SCDC. These disparate treatments occurred on a sentence on the same indictment, and of the same offense, as was Carpenter sentenced. Thus "treated differently from others with whom he is similarly situated" cannot fairly be contested.

Carpenter, it should be noted, is not advocating for a broad release of numerous inmates, rewriting of any statute, etc. He merely wants identical, and therefore lawful and appropriate, restoration of earned credits just like the others sentenced under the same indictment (No. 90-GS-47-5002) for the same offense. Adding Carpenter alone to that class of individuals would make that narrow class "all-inclusive" and be as broad as the appropriate, full relief should be in this matter, without undermining or abrogating the statutory framework otherwise applicable to unrelated parties serving unrelated sentences.

CONCLUSION

The South Carolina Department of Corrections arbitrarily and unilaterally altered ("modified") Carpenter's service of his sentence, without due process, the result of which is improper deprivation of good behavior and earned work credits previously accounted for in his favor, just as it had been for others convicted under the same indictment. Such action demands restoration of such credits by this Court, which is respectfully requested for the reasons set forth hereinabove.

Respectfully submitted,

s/ Harvey M. Watson III
Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171

Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR THE APPELLANT

June 15, 2020

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM ROA 0287
RELEASE DATE SCREEN ROUNDMI

SCDC ID: 00181783 LOC: KIRKLAND
CARPENTER, CHARLES EUGENE OFFENDER CATEGORY: VIOLENT
TOTAL SENTENCE ...: 050-00-000 CONSECUTIVE SENTENCE ..: Y
CURRENT SENTENCE .: 050-00-000 CURRENT SENT START DATE: 06/04/1990
PROJECTED COMPLETION DATES OFFENDER TYPE.....: ADULT-STRAIGHT SENTENCE
MAXOUT DATE ....: 07/07/2015 CURRENT EWC .: 2 F 5
FULL TIME .....: 03/12/2038 CURRENT EEC .: NOT CURRENTLY EARNING EEC
GOOD TIME .....: 04/22/2020 REST CTR COMPLETION DATE: 0/ 0/ 0 0
INITIAL PAROLE DATE: 0/ 0/ 0 0 NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

WORK RELEASE ELIG DATE: 07/07/2013
TOTAL GT DAYS EARNED .....: 000700 SHORT TERM WK REL DATE: 01/07/2015
TOTAL EARNED WORK CREDITS ..: 000102 EPA DATE .....: 99/99/9999
TOTAL EDUCATION CREDITS ....: 000000 SFII .....: 99/99/9999
TOTAL EXTRA EARNED CREDITS .: 000 SFII/EPA .....: 99/99/9999
TOTAL SERVICE TIME EARNED ..: 001072 SFI.....: 99/99/9999

PFKEYS: 5:HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REPORT 1 OFFENDER SUMMARY

INMATE NO:181783 NAME:CARPENTER, CHARLES EUGENE

********** PERSONAL/IDENTIFICATION DATA **********

RACE----------:WHITE	FBI NUMBER---------:281758M1
SEX-----------:MALE	BIRTH DATE---------:05/26/53
HEIGHT--------:5 FT 6 IN	RELIGION-----------:BAPTIST-GENERAL
WEIGHT--------:170	U.S.CITIZEN--------:CITIZEN - NATIVE BORN
EYE COLOR-----:BROWN	MARITAL STATUS-----:SINGLE
HAIR COLOR----:BROWN	MEDICAL STATUS-----:NONE ON FILE
SKIN TONE-----:FAIR	SOCIAL SECURITY #--:244885770
BODY BUILD----:MEDIUM	DRIVER LIC # & ST--:NOT ON FILE
MARKS/SCARS---:NONE ON FILE	AIMS GRP ASSIGNMENT:ALPHA I

********** DATA CURRENT AS OF: 05/26/93**********

	TOTAL SENTENCE-----: 50 YRS 0 MOS 0 DYS
CURR STATUS---:INCARCERATED	CURR SENT SERVING--: 50 YRS 0 MOS 0 DYS.
CURR INST.----:KCI	CURR SENT START----:06/04/90
CURR CUST LVL-: CL4	EWC JOB LEVEL------:02095
CURR ASSIGN.--:MAINTENANCE	CURRENT LOCK-------: B20055B
ESCAPE/ATTEMPT:SEE ESCAPE HISTORY	SCDC ADMIT DTE-----:11/13/91
HLD/WNT-DETAIN:YES, SEE REPORT 2	PROJ EWC-MAX-OUT---:07/07/2015
VICTIM/WITNESS:NONE ON FILE	
PRIOR CONV OVER 90 DYS---: 0	PROJ EWC PAR-ELIG--:00/00/2000
PRIOR CONV 90 DYS OR LESS: 0	WORK RELEASE ELIG--:07/07/2013

********** COMMITMENT INFORMATION **********

SEQ# STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS	MO	DYS	CHAR	CNTS	SENT TYPE	VIOL IND	CONS IND	SUSP YRS	COMM CNTY
S00002	TRAFFICKING IN MARIJUANA	25	0	0	F	1	ST TIM	V	Y		CHESTE
AC	NO PROBATION										
S00001	TRAFFICKING IN COCAINE	25	0	0	F	1	ST TIM	V	N		CHESTE
AC	NO PROBATION										

ROA 0284

Ballard FOIA w/ Release for Charles Eugene Carpenter 181783 October 11, 2016 GC388

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REPORT 1 CONTINUED OFFENDER SUMMARY

INMATE NO:181783 NAME:CARPENTER, CHARLES EUGENE

********** CONSECUTIVE STRUCTURE **********

CONVICTION NUMBER		CONSECUTIVE TO: NUMBER
S00002	IS CONS TO -->	S00001
S00001		

** COMMITMENT TEXT **
SENTENCE START DATE ON OFFENSE #1 CHANGED TO 05/08/92, CREDIT FOR JAIL TIME
CHESTERFIELD CO. RR 06/19/92

TRNI220D SCDC OFFENDER MANAGEMENT SYSTEM 05/26/93
INMATE TRANSFER AND COUNT ROUNDMI
SCDC # 181783 TRANSFER HISTORY
CARPENTER,CHARLES EUGENE CURR LOC: KIRKLAND
OFFENDER STATUS: ADULT-STRAIGHT
CURR ASSNMT: 5000 MAINTENANCE CURR DORM: B20055B CURR CUST/SEC: CL4

	STATUS	LOCATION	CHG DATE	CHG REASON
_	INCARCERATED	KIRKLAND	12/21/92	ADMINISTRATIVE
_	INCARCERATED	EVANS	07/11/92	ADMINISTRATIVE
_	INCARCERATED	ALLENDALE	12/04/91	ADMINISTRATIVE
_	INCARCERATED	BRR&EC	11/14/91	NEW ADMISSION

PAGE.> 0001

SELECT A RECORD AND PRESS (ENTER)...
PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

SCDC ID: 181783 INMATE INFRACTION HISTORY
CARPENTER, CHARLES EUGENE CURR LOC: KIRKLAND
OFFENDER TYPE: ADULT-STRAIGHT

INFRACTION DESCRIPTION	INFRACTION DATE	HEARING DATE	ADM SEG	SUSP TO	NET GT LOST	DISPOSITION

END OF LIST

PAGE 0001

SELECT A RECORD AND PRESS (ENTER)...
PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD CLEAR-PREVIOUS SCREEN

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM ROA 0287
RELEASE DATE SCREEN ROUNDMI

SCDC ID: 00181783 LOC: KIRKLAND
CARPENTER, CHARLES EUGENE OFFENDER CATEGORY: VIOLENT
TOTAL SENTENCE ...: 050-00-000 CONSECUTIVE SENTENCE ..: Y
CURRENT SENTENCE .: 050-00-000 CURRENT SENT START DATE: 06/04/1990
PROJECTED COMPLETION DATES OFFENDER TYPE.....: ADULT-STRAIGHT SENTENCE
MAXOUT DATE ....: 07/07/2015 CURRENT EWC .: 2 F 5
FULL TIME .....: 03/12/2038 CURRENT EEC .: NOT CURRENTLY EARNING EEC
GOOD TIME .....: 04/22/2020 REST CTR COMPLETION DATE: 0/ 0/ 0 0
INITIAL PAROLE DATE: 0/ 0/ 0 0 NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

WORK RELEASE ELIG DATE: 07/07/2013
TOTAL GT DAYS EARNED .....: 000700 SHORT TERM WK REL DATE: 01/07/2015
TOTAL EARNED WORK CREDITS ..: 000102 EPA DATE .....: 99/99/9999
TOTAL EDUCATION CREDITS ....: 000000 SFII .....: 99/99/9999
TOTAL EXTRA EARNED CREDITS .: 000 SFII/EPA .....: 99/99/9999
TOTAL SERVICE TIME EARNED ..: 001072 SFI.....: 99/99/9999

PFKEYS: 5:HISTORY OF DATE CHANGES

DET1210D DOC OFFENDER MANAGEMENT SYSTEM 05/24/93
CAUTION/DETAINER APPLICATI ROUNDMI
ROA 1288

SCDC # 181783 DETAINER SUMMARY
CARPENTER, CHARLES EUGENE CURR LOC: KCI
OFFENDER TYPE: ADULT-STRAIGHT VIC/WIT :

DETAINER	WARRANT NUMBER	DATE ISSUED	COUNTY	OFFENSE	ISSUING AGENCY
_ NOTIFY	90GS4705002	06/04/90	COLUMBIA		ATTNY GEN OFFI
	END OF LST				

PAGE: 0001

PLEASE SELECT RECORD AND PRESS (ENTER)...
PF11-QUIT PF10-MAIN MENU CLEAR-PREVIOUS SCREEN PF7-BACKWARD
PF4-MODDETN PF8-FORWARD

EDUI200D C OFFENDER MANAGEMENT SYSTEM 05/26/93
EDUCATIONAL SERVICES ROUNDRI

SCDC#) 181783 TEST HISTORY CURR LOC: KIRKLAND
CARPENTER,CHARLES EUGENE DOB: 05/26/53 RACE: W
OFFENDER TYPE: ADULT-STRAIGHT OFFENDER CATEGORY: VIOLENT

	TEST DATE	TYPE	LEVEL	READING	MATH	LANG	ENROLLMENT INDICATOR
_	11/18/91	WRAT		10.3	07.3	.	

PAGE) 0001

TEST SCORE HISTORY DISPLAYED...
PFKEY 3:ADD 4:MOD ENTER:INQ

ROA 0289

EDU1100D DC OFFENDER MANAGEMENT SYSTEM 05/26/93
EDUCATIONAL SERVICES ROUNDMT
SCDC#) 181783 ENROLLMENT SUMMARY CURR LOC: KIRKLAND
CARPENTER,CHARLES EUGENE DOB: 05/26/53 RACE: W
OFFENDER TYPE: ADULT-STRAIGHT OFFENDER CATEGORY: VIOLENT

PROGRAM NAME	ENROLLED	TERM DTE	TERM REASON

PAGE) 0001

ENROLLMENT SUMMARY DISPLAYED...
PFKEY 3:ADD 4:MOD ENTER:INQ

STATE OF SOUTH CAROLINA COUNTY OF Chesterfield

VS.

CASE NO: 90G54705001
90G54705002

Bobby Gene Horne
A/K/A "Wormy"

I, Bobby Gene Horne, do hereby

enter a plea of Guilty to any or all count(s) 1 (90G54705002)

of the Supersedy Indictment in the above captioned

case.

Conspiracy to traffick in cocaine.

Bobby Gene Horne
DEFENDANT

April 7, 1990
DATE

George M. Hartzell
ATTORNEY FOR THE DEFENDANT

FILED
APR 7 1990
LISA G. DUNBAR
CLERK, STATE GRAND JURY

Lisa C. Dunbar
CLERK

April 7, 1990
DATE

EXHIBIT
C

SENTENCE Count 1

OFFENSE Conspiracy - Trafficking in Cocaine §44-53-370(e)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

CASE NUMBER 90 GS-~~18~~ 47 05002

THE DEFENDANT Bobby Gene Horne IS COMMITTED TO THE STATE

OR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 25

~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF $ 200,000 ; PROVIDED UPON THE SERVICE

OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF $_____; PLUS

PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE

IS SUSPENDED WITH PROBATION FOR _____ ~~MONTHS~~/YEARS.

RESTITUTION YES / NO

For Physical Injury $_____

For Property damage $_____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: credit for time served in Chesterfield County

DATE: August 9, 1990

PRESIDING JUDGE

COSTS AND ASSESSMENTS:

_____

_____

Assistant to CLERK OF COURT, ~~CHESTERFIELD COUNTY, S.C.~~ State Grand Jury

ORIGINAL FILED
AUG 9 1990
LISA C. DUBBAR,
CLERK STATE GRAND JURY

08/29/2001 11:26 803-737-[illegible] PPPS-FS PAGE 02

South Carolina Department of Probation, Parole and Pardon Services, Columbia, S. C.

SUPERVISED FURLOUGH II-A CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS and the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that Bobby Horne SCDC No 168786 and SID No 74724 who was convicted of Trafficking in Cocaine (#00-GS-4705002) on 8th day of August, 1930 in the county of Chesterfield meets requirements for supervised furlough as provided for in South Carolina Code of Laws §24-13-720 (Supp 1983)

It is therefore ORDERED that said prisoner be released on conditional release, upon the satisfactory completion of SCDC's internal inmate release check, under supervision subject to the specific conditions as listed below, until his/her maximum sentence shall expire on March 1st, 2002.

In witness whereof this Certificate is issued this 29th day of September, 2001

Completed Check

Date

Satisfactory Check ☐ yes ☐ no

By

SCDC

By order of
SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES

By

Theodore H. Kelly, Jr., Administrator for Field Supervision Programs

CONDITIONS OF SUPERVISION:

This certificate shall not become operative until the following conditions are agreed to by the inmate. Violation of any of these conditions may result in the immediate removal from the program and disciplinary action taken.

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services office on the day of my release or not later than 9:30 A.M. on the next business day, and as instructed by the Department and I shall make complete and truthful reports to the Agent.

   Please report to the office in the County of Chesterfield Phone 843-623-7748

2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
4. I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work regularly at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws, and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. I understand that I will be responsible for all expenses incurred through medical and/or dental services, and for costs of medicine. I also understand that I will be required to participate in group insurance programs provided by my employer unless I can provide proof of other coverage not necessitating participation.
12. I understand that while on this early release program that I will not be eligible for any parole consideration that I would otherwise be eligible for. I understand that failure to successfully complete this program will prevent any parole reconsideration from occurring until at least one year from the date of my incarceration.
13. I understand that failure to successfully complete this early release program may be the basis for denial of my participation in subsequent early release programs.

ADDITIONAL CONDITIONS:

INTENSIVE SUPERVISION AND ELECTRONIC MONITORING.

I hereby certify that these conditions of supervision have been read and explained to me and in agreement thereto, I attach my signature.

Bobby Horne 8-30-01

Offender's Signature Date

Offender's Address Rte 1, Box 123, Pageland, SC

I hereby certify that these conditions of supervision have been read and explained to the offender and he/she has agreed to them.

Monitor's Signature AUG 30 2001

Witness Signature Date

Ozmint Filing ROA Order Re Carpenter 1972783 & Bobby Horne 168786
4/7/2015 GC23

EXHIBIT D

INMATE NOTIFICATION
SUPERVISED FURLOUGH AND EMERGENCY POWERS ACT EARLY RELEASE PROGRAMS

SCDC#:	NAME OF INMATE:	INSTITUTION:	DATE:
168787	Bobby Horne	LCCC	6-4-01

I have been advised that I am eligible for the following type of early release:

☐ Supervised Furlough I (SFI) ☒ Supervised Furlough II (SFII)

☐ Emergency Powers Act I (EPAI) ☐ SFII/EPAI (Combination)

1st Address Information (if approved for release):

Street 427 Box 323

City Hartsville Zip Code 29550

County Darlington Home Phone (843) 332-6107

Person With Whom to be Living and Relationship:

Sherri Horne Daughter

(Name) (Relationship)

Other Phone # (Work, etc.) _____

(If neighbor or other relative, give name)

2nd Address Information (if approved for release):

Street _____

City _____ Zip Code _____

County _____ Home Phone _____

Person With Whom to be Living and Relationship:

_____

(Name) (Relationship)

Other Phone # (Work, etc.) _____

(If neighbor or other relative, give name)

Max-Out Date Information (Check appropriate box):

☐ SFI or SFII I understand that while I am in SFI or SFII, I will receive Good Time and Earned Work Credit (level 2, five days per week). My current projected max-out date is _____; however, I realize that this date may change in the event I am placed on this program. (If on SFI release only: I further understand that if I am granted parole while on SFI, I will serve the remainder of my sentence on parole "day-for-day" and will therefore no longer accrue Good Time or Earned Work Credit.)

☐ EPAI I understand that while I am on EPAI, I will NOT receive Good Time or Earned Work Credit and this will affect my max-out-date. My current projected max-out date is _____; however, I realize that this date will change in the event I am placed on this program. I also understand that if I am revoked from EPAI, I will be penalized by loss of the time served on the program (i.e., "dead-time").

☐ SFII/EPAI I understand that I will first complete SFII and then transfer to EPAI. While I am on SFII, I will receive Good Time and Earned Work Credit (level 2, five days per week). While I am on EPAI, I will NOT receive Good Time or Earned Work Credit. My current projected max-out date is _____; however, I realize that this date will change in the event I am placed on this program. I also understand that if I am revoked from EPAI, I will be penalized by loss of the time served on the program (i.e., "dead-time").

I hereby certify that the Address Information indicated above is correct and that the Max-Out Date Information and Statement of Conditions on the reverse side of this form have been explained to me. I understand that this type of early release is voluntary.

☒ I wish to be considered for early release.

☐ I do NOT wish to be considered for early release. Reason:

I hereby certify that I have explained the Max-Out Date Information and the Statement of Conditions on the reverse side of this form to him/her.

SIGNATURE OF INMATE:	DATE:	SIGNATURE OF CLASSIFICATION CASEWORKER:	DATE:
Bobby Horne	6-4-01	[signature]	6/4/01

DISTRIBUTION:
WHITE- CENTRAL RECORDS (Send to Offender Records Branch, Headquarters)
YELLOW- INSTITUTIONAL RECORDS
PINK INMATE

F-1 6/4/01 P.P.

DRUG TRAFFICKING AUDIT RESULTS

65498 – Per Supreme Court Ruling, sentence is parolable. Letter from Ben Aplin, DPPPS dated 01/30/2003 confirmed ruling.

126120 – Inmate died on 03/31/2010.

138725 – DPPPS deemed inmate parolable

141971 – DPPPS deemed inmate parolable

164599 – Felony E offense

166324 – Interstate Corrections Compact inmate. His sentence did not belong to South Carolina.

172728 – Need to pull record.

179548 – Incarcerated with a life sentence.

180828 – Not mandatory minimum per statute – 44-53-0370(e)(2)(b)1

181783 – Sentence updated to mandatory minimum.

181966 – Not mandatory minimum per statute – 44-53-0375(C)(2)(a)

184752 – Not mandatory minimum per statute – 44-53-0375(C) – over 100 grams

187864 – DPPPS deemed inmate parolable – 28-100 grams crack cocaine

193419 – Sentence updated to mandatory minimum.

208563 – Sentence updated to mandatory minimum.

212864 – Sentence updated to mandatory minimum.

215045 – Judge wrote on order that sentence was parole eligible.

217067 – Convicted of Trafficking Marijuana 10-100lbs – 1st – not a mandatory minimum sentence.

217075 – Sentence updated to mandatory minimum prior to audit.

228711 – Judge wrote on order eligible for parole.

235910 – Not mandatory minimum per statute – 44-53-0370(e)(1)(b)

243669 – Not mandatory minimum per statute – 44-53-0370(e)(2)(c)

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Charles Eugene Carpenter, #181783, Appellant, *v.* South Carolina Department of Corrections, Respondent.	)	Docket No.: 20-ALJ-04-0083-AP [Grievance No.: RCI-0429-19] *Hon. H.W. Funderburk, Jr.* **MOTION TO HOLD IN ABEYANCE**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the appeal of Charles Eugene Carpenter ("Appellant"). The case was assigned on February 13, 2020. Respondent, South Carolina Department of Corrections ("SCDC"), filed the record on May 12, 2020. Appellant's brief was filed with the court on June 15, 2020.

ARGUMENT

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 *Al-Shabazz*, the Supreme Court created a new avenue by which inmates could seek review of final decisions of SCDC in "non-collateral" matters, *i.e.*, matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the ALC. *Id.* at 373, 376, 527 S.E.2d at 752, 754.

In his brief filed with the court, Appellant contends that SCDC has violated his due process rights by initially allowing Appellant to earn work credits and then later removing these work credits without due process. *See* Appellant's Brief, pp. 3-5. Appellant also contends that SCDC has violated Appellant's rights through their disparate treatment of Appellant when compared to other inmates who are similarly situated. *See* Appellant's Brief, pp. 4-6.

Both of these issues are included in an action filed by the Appellant, which is pending in the South Carolina Court of Appeals (Case No. 2016-CP-40-6916; Appellate Case No. 2017-002577). In that case, Appellant is appealing the Honorable Robert Hood's "Order for Judgment in Favor of the South Carolina Department of Corrections" and "Order Dismissing Petition for Writ of Habeas Corpus." Appellant's final brief filed with the Court of Appeals has six arguments, two of which are substantially the same issues that are raised in the Appellant's brief filed with the Administrative Law Court. *See* Exhibit A. According to the South Carolina Appellate Case Management System, oral argument took place on June 3, 2020 and the case status is decision pending.

CONCLUSION

THEREFORE, SCDC respectfully requests that this case be held in abeyance until there is a final ruling from the Court of Appeals.

Respectfully submitted,

Teresa S. Player
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-2074

June 29, 2020
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CA
In the Court of App

APPEAL FROM RICHLAN
ROBERT E. HOOD, CIRCUIT

Case No. 2016-CP-40
Appellate Case No. 2017

Charles Eugene Carpenter,.....

v.

South Carolina Department of Corrections and
The State of South Carolina, ... Respondents.

FINAL BRIEF OF APPELLANT

Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

TABLE OF AUTHORITIES

CASES

Constitutional provisions and STATUTES

OTHER AUTHORITIES

STATEMENT OF THE CASE

This matter was initiated by Appellant Charles Eugene Carpenter (hereinafter "Carpenter") filing of a Summons and Complaint against Respondent South Carolina Department of Corrections (hereinafter "SCDC") on November 18, 2016. The Complaint included causes of action for declaratory judgment pursuant to S.C. Code Ann. Section 15-53-10 et seq. as well as a Petition for Writ of Habeas Corpus. (R. pp. 47-315). Carpenter also filed a separate Petition for Writ of Habeas Corpus (Expedited) that same day. (R. pp. 44-46). Defendant SCDC filed a Motion to Dismiss on December 28, 2016. (R. pp. 316-318). Following a hearing on that motion, the Honorable Casey Manning ordered on February 23, 2017 that the State of South Carolina (hereinafter "the State") be made a defendant to the action. (R. pp. 4-6). An amended Summons was filed on February 21, 2017 and served on Respondent State on that same day. The State filed a Return and Motion to Dismiss on March 31, 2017. (R. pp. 327-337).

Retired Chief Justice Jean Toal, sitting as a circuit court judge by designation, denied both Motions to Dismiss by order dated April 19, 2017 and filed April 25, 2017. (R. pp. 7-12).

The matter was then tried before the Honorable Robert Hood on June 7, 2017, who subsequently issued two orders. The first order was captioned as "Order for Judgment in Favor of the South Carolina Department of Corrections" (hereafter "SCDC order") and was dated September 12, 2017, but not filed until October 2, 2017 at 11:19 A.M. (R. pp. 15-24). The second order was captioned as "Order Dismissing Petition for Writ of Habeas Corpus," (hereafter "Habeas Order") likewise was dated for September 12, 2017 but only filed on October 2, 2017 at 11:20 A.M. (R. pp. 25-40). The habeas order stated that it "dispenses with the claims made against the State." (Id., p. 27).

of the Defendant, Charles Eugene Carpenter... receives as a result of these pleas shall be concurrent terms of incarceration, and that the Defendant has no right to withdraw his plea, with the further understanding that should the Defendant fail to fulfill the terms of this agreement, then the State may recommend that any sentence be run consecutive, each Count to the other."

(h) "The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statement of the parties, that this Agreement may be modified only in writing and signed by all parties, except as to the matters placed on the record in open court on April 7, 1990, and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void."

Carpenter entered his plea on April 7, 1990. At the time Carpenter's plea, the presiding judge, Judge Cottingham, stated "Now, I tell you that this Court will abide by this plea agreement. I tell you that upon the record." (R. p. 85, lines 19 – 20). Judge Cottingham also stated "If I conclude upon proper presentation that you have not [cooperated with law enforcement], then this plea agreement to you and to me is void and of no effect." (R. p. 86, lines 4-6). In Judge Cottingham's colloquy with counsel, he stated "And as I understand it the understanding is it is 25 years concurrent?" and the reply was "yes." (R. p. 88, lines 5-7).

Prior to entry of the plea, the prosecutor stated, "If I could also ask that the Defendant understand that this is a mandatory term of imprisonment, that it is a mandatory minimum, the sentence cannot be suspended, probation can't be granted and it is a sentence that does not have eligibility for parole until the passage of 25 years." Carpenter's counsel indicated Carpenter's understanding of that term as part of the plea. (R. p. 95, lines 1-7).

Judge Cottingham concluded the entry of the plea by stating that "I am going to abide by the plea agreement. [Carpenter] is entitled to that, and I will do that." (*Id.* at lines 14-15).

Judge Cottingham convened a second hearing on August 9, 1990. Carpenter again objected to the second hearing, renewing an earlier objection made in June, all of which was acknowledged by the Court. (R. p. 129, lines 18-24). The trial judge characterized the proceedings which were occurring as a hearing on "contempt in disobedience of the plea agreement." (R. p. 269, lines 22-24). He also characterized the inquiry which was occurring as a determination of whether Carpenter had "breached his agreement." (R. p. 269, lines 14 – 25).

Without a criminal charge pending against Carpenter, without advising Carpenter of his rights to a jury trial or other constitutional protections, and notwithstanding the existence of his plea already having been entered and accepted and a sentencing hearing already concluded, the trial judge proceeded to take testimony from witnesses to determine whether Carpenter had complied with his obligations under the plea agreement. *Id.*

Carpenter's Counsel objected and correctly pointed out that there were no additional charges brought against Carpenter, and the evidence to be presented had to do with matters which occurred after the plea agreement had been entered and accepted, and therefore were not properly up for consideration. Carpenter's counsel astutely observed "There is a clean way for the State to accomplish what they're attempting to do. This is a muddy way, but I guess they're entitled to proceed whichever way they want to proceed." (R. p. 135, lines 9-13).

After hearing from witnesses, the trial judge said "There has not been made, before me, a single showing of additional cooperation by [Carpenter] since the plea agreement was entered into. Nobody has come forward and said, Judge, he cooperated, he did this, that, and the other. There's not one single incident today before me where, and according to that plea agreement, he has done anything." (R. p. 259, lines 12 – 19). The trial judge continued "I'm inclined to think he knows

that he relied upon to declare that Carpenter's sentence should be "enhanced." (R. p. 269, line 12).

The trial judge referenced the questionable authority retained as of August 9, 1990 when he stated:

> "As you well know, ordinarily during a week of general sessions court our Supreme Court has said that the term ends on Friday and the judge cannot, thereafter, change the sentence later. I don't know what our Supreme Court will say in connection with this."

(R. p. 266, line 21 – p. 267, line 1).[2]

Trial judge conducted the hearing and then ultimately concluded "I'm just leaving an avenue open in the event he demonstrates to you, to the extent that you [the State] wants to make a motion for me to reconsider this hearing and I'll do it, but I'll do it within thirty days. (R. p. 268, lines 2 – 6).

The trial judge reiterated "Now, let me get this clear. The hearing is now over." (R. p. 270, lines 6-8). "I've made a ruling. I'm gone *[sic]* stand by it. And I'm not gonna re-open that." (R. p. 270, lines 18-19). But despite repeated claims he would not reopen the hearing,[3] the judge continued to allow for reconsideration of the consecutive nature of the sentence imposed if the State, not Carpenter, requested the reconsideration be made. (R. p. 271, lines 1 – 6).

In concluding the August 9, 1990 hearing, the trial judge attempted to sentence Carpenter on Case No. 1990-GS-47-05001 to a fine of $50,000 and a term of 25 years, consecutive to the sentence earlier entered on Case No. 1990GS-47-05002. (R. p. 125; R. p. 281).

---

[2] The trial judge stated that "ordinarily, in general sessions court, after the term ends, but nobody knows when the term of the grand jury ends." (R. p. 267, lines 19-21). The trial judge may have been arguing that he had continuing jurisdiction, not as a general sessions judge, but as the judge who was presiding over the grand jury, to leave open the sentencing and make an evidentiary ruling that permitted him to "enhance" the sentence.

[3] "I don't want to do anything to open up this hearing again and I'm not gone [sic] beat a dead horse to death." (R. p. 271, lines 9-11).

- As of May 16, 2005, Carpenter's Offender Summary reflected a projected "max-out" date of November 7, 2016. (R. pp. 303-304).

- As of January 17, 2008, Carpenter's Offender Summary reflected a projected "max-out" date of February 7, 2018. (R. pp. 305-306).

- As of June 28, 2010, Carpenter's Offender Summary reflected a projected "max-out" date of May 20, 2016. (R. pp. 307-308).

- As of June 24, 2011, Carpenter's Offender Summary reflected the same sentence, with a projected "max-out" date of April 7, 2040. (R. pp. 309-310).

On September 12, 2011, after learning that his sentence had been increased by 24 years, Carpenter contacted SCDC classification officials and inquired into the matter. Carpenter received a written response on December 2, 2011 from an employee of SCDC that stated, "Your sentence was modified to show as 25 yr. mandatory minimum day-for-day sentence on 6/24/11." (R. p. 311).

SCDC records reflect, however, that the day before the modification of Carpenter's sentence and increase by 24 years, an internal transaction was undertaken at SCDC to "give" Carpenter 57 days credit on his newly-modified sentence for time he had served prior to conviction, before transfer into the custody of SCDC. (R. p. 312). Carpenter has repeatedly attempted to address the unilateral change in his sentence internally and the Department of Corrections has offered explanations for why his sentence was unilaterally increased without notice to Carpenter or an opportunity to be heard. Staff at SCDC have attempted to justify its changes made more than 20 years after he was taken into Department custody. (R. pp. 313-315).

In 2010, an inmate named Carlos Gonzales wrote a letter to Chief Justice Toal, asserting that he was being illegally held because his sentence had expired. (R. p. 902). Upon receipt of

"updated" Mr. Carpenter's sentence in 1997 "per the drug statute to show that is was non parolable." (R. p. 925).

SCDC also unilaterally removed good time and work credits that Carpenter had previously earned to his record. In Carpenter's 1993 offender summary (R. pp. 284-290), SCDC recorded that Carpenter had already earned 700 "GT days" and 102 "earned work credits" for a "total service time earned" of "001072." (*Id.* at p. 287). Another undated Offender Summary produced by SCDC reflects no good time or work credits, but does reflect that Carpenter will become eligible for work release on February 6, 2015. (R. p. 291).[6]

ARGUMENT

I. CARPENTER LAWFULLY ASSERTED CLAIMS IN THE CIRCUIT COURT, FOR REASONS RECOGNIZED AND DETERMINED BY JUDGE TOAL, WHO ADDRESSED AND RULED ON THE ISSUE PRIOR TO THE TRIAL BELOW.

Before addressing the merits of the underlying claims, the Habeas Order determined that Carpenter was procedurally barred from bringing his claims (all treated as habeas corpus but not exclusively consisting of a claim for habeas corpus, as discussed in argument section III infra) in the circuit court. Notwithstanding statutory diversion of many similar matters to a separate adjudicatory process, Carpenter was not barred from raising his claims fully and freely in the circuit court. Former Chief Justice Toal recognized the same and reduced that determination to a written order in this case, and nothing factually referenced or legally cited in the final orders now being appealed properly justify any determination or action to the contrary.

[6] This Offender Summary reflects Carpenter's "max-out" date as "04/07/2017."

while Judge Hood ruled as to the merits. However, the basis for ruling in each circumstance was identical, the purely legal issue of the subject matter jurisdictional limits of the circuit court with respect to habeas petitions. That determination by Judge Toal not being immediately appealable. *See Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011). And while subject matter jurisdiction can be raised at any time, even for the first time upon appeal, Appellant contends that Judge Hood had no authority to revisit and upend a prior circuit court determination regarding the exact same legal issue in the same matter during trial.

B. Appellant's claims are not restricted to adjudicatory processes outside the circuit court.

The "Background" portion of the Habeas Order makes extensive reference to prior PCR and habeas efforts instituted by Appellant. However, that factual detail regarding the same makes clear that the issues raised in those separate matters was not the same as currently raised by Appellant in the underlying circuit court action. (R. pp. 18-19).

The Habeas Order endorses the Respondents' reduction and overgeneralization of Appellant's causes of action into a mere improper sentence calculation claim, finding that all such matters must be handled via PCR instead of being allowed for determination in the circuit court. (R. p. 23). While a statutory procedure exists for purposes of challenging constitutional violations related to the criminal conviction, it is not the exclusive method for challenging an unlawful sentence.. *See e.g. Williams v. Ozmint* 380 S.C. 473, 671 S.E.2d 600 (2008). Declaratory relief remains available "to accomplish it intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships." *Thompson v. State of South Carolina,* Op. No. 27610 (S.C. Sup. Ct. filed Mar. 2, 2017) (Davis Adv. Sh. No. 9 at 25).

The Habeas Order addresses that issue, without support by any citation to authority of any sort, by stating "The trial court was not limited in its jurisdiction as it may have been if Judge Cottingham had been assigned a specific weekly term of court because he was vested with continuing jurisdiction over the case, unique to SGJ cases." (R. p. 38). That statement is inconsistent with South Carolina law, and as applied to Carpenter results in a void sentence that nevertheless has forced Carpenter to remain incarcerated past his lawful sentence expiration.

A. Mere appointment over cases arising from the State Grand Jury did not provide the sentencing judge with jurisdiction in perpetuity over any such case, in contravention of basic and universal rules limiting jurisdiction in criminal matters.

The state grand jury (SGJ) was born from legislation enacted in 1987, which went into effect in February 1989, when Article I, Section 11 and Article V Section 22 of the South Carolina Constitution were amended to accommodate the establishment of the SGJ. 1987 Act No. 150. Thus, the SGJ process was in its infancy at the time Carpenter's pleas were taken in 1990, and procedures in place at that time remain in some respects unclear. In an effort to fill that gap, the Habeas Order's discussion of the purported authority retained by the sentencing judge references the Supreme Court's Administrative order for the SGJ dated March 20, 2003, an order established approximately thirteen years after Carpenter was sentenced. (R. p. 37). In a footnote, the Habeas order summarily acknowledges the administrative order came after the relevant sentencing, but justifies reference thereto by saying "...but these were the procedures in place at the time" with no citation to any document, exhibit, or authority. *Id.*

The South Carolina Supreme Court has had to issue a series of Administrative Orders to create procedure for the handling of cases which arise from indictments of the SGJ. *See* 2000-12-07-01, which states, *inter alia*, that "it has been necessary for the Supreme Court... to set out through administrative orders certain duties and responsibilities" governing the SGJ.

purported to vest in circuit solicitors with authority to control the docket in general sessions court, as violative of the separation of powers doctrine).

Accordingly, the 1989 order appointing Judge Cottingham to "dispose" of certain cases arising out of a particular grand jury did not create or provide for any continuing jurisdiction in perpetuity. It merely made certain that Carpenter's matter would be brought before Judge Cottingham and that judge only, but still within the framework of whatever term of court during which Judge Cottingham received it. If the jurisdiction of Judge Cottingham continued in perpetuity, the case itself would continue, and thus could never be "disposed" of permanently by Judge Cottingham. That would be inconsistent with the long-standing default rule that a trial judge loses jurisdiction over a particular criminal matter when the term of court during which it was concluded adjourns *sine die*. *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008).

The Habeas Order's conclusion as to jurisdiction in perpetuity is so broad as to be absurd, as presumably Judge Cottingham could reconvene a hearing today, some twenty-eight years later, and conduct proceedings on Indictments 90GS4705001 and 5002. The Supreme Court rejects arguments and constructions that lead to an "absurd result," and such holding leading to such results should be reversed. *See Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).

B. Carpenter was fully sentenced on June 4, 1990 such that the subsequent purported actions against him as to his sentence in August 1990 were void for lack of authority on the part of the sentencing judge.

As correctly noted in the Habeas Order, "Judgment in a criminal case is not final until sentence is imposed." *State v. Robinson*, 287 S.C. 173, 174, 337 S.E.2d 204 (1985). Carpenter's plea was entered on April 7, 1990, but because Judge Cottingham did not impose any sentence at that time, he thus naturally retained jurisdiction to impose sentences at a later date. *State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008). Carpenter contends, as is supported by the facts

It is well settled that a trial judge loses authority to change a sentence in a criminal matter after the term of court adjourns *sine die*. *Id.* at 373 ("It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment[10] was entered expires."). Each week of court is a separate term. *State v. Mixon*, 275 S.C. 575, 274 S.E.2d 406 (1981), cited with approval in *Campbell*.

State v. Campbell is startlingly similar to this case. The defendant Campbell was sentenced pursuant to a plea agreement. *Id.* at 372. After a trial in a related matter, at which Campbell allegedly did not comply with the plea agreement's requirement to cooperate, the State made a motion to vacate Campbell's plea agreement and sentence. The sentencing judge scheduled a hearing, vacated the earlier sentence, and re-sentenced Campbell to life in prison. The Supreme Court[11] vacated the life sentence, determining that the trial judge lacked the authority to reconvene the proceeding and change Campbell's sentence. *Id.* at 374.

The ruling in *Campbell*, confirming that the trial judge's subject jurisdiction is lost at the end of the term has recently been reaffirmed. *Tant v. State*, 408 S.C. 334, 759 S.E.2d 398 (2014), citing to *Campbell*. In *Campbell*, the Supreme Court said that the trial judge's authority in a particular criminal matter ends at the end of a term of court, but that the lack of authority was not an issue related to subject matter jurisdiction. The Supreme Court's reliance for that declaration was *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 594 (2005). However, the *Gentry* decision construed subject matter jurisdiction issues with respect to a defective indictment and overruled prior

[10] Judgement was not entered on April 7, 1990, because while the plea was accepted, no sentence was imposed. Judgment was entered on June 4, 1990. The South Carolina Supreme Court has recognized that the "typical procedure" is the defendant pleads guilty pursuant to a plea agreement and then sentencing is held in abeyance until after the defendant has cooperated at the co-defendant's trial." *State v. Campbell*, at 373-374.

[11] Campbell's appeal was filed with the Court of Appeals, and the Supreme Court certified the case for its own consideration pursuant to Rule 204(b), SCACR. *Id.*

III. THE "HABEAS ORDER" FAILS TO ADDRESS CARPENTER'S DECLARATORY JUDGMENT BASES FOR RELIEF SOUGHT IN THE ACTION BELOW, SEPARATE AND BEYOND THE HABEAS CORPUS CLAIM.

A. The declaratory judgment claim was fairly raised and is preserved, although never ruled upon by the court below.

Carpenter asserted claims for both declaratory judgment and habeas corpus in its complaint filed in the action below. (R. pp. 47-315). The Complaint discusses in detail, in the portion of the complaint under the "Declaratory Judgment" heading, and under a sub-heading labeled "Lack of Jurisdiction and Due Process Violation," the facts and circumstances surrounding Appellant's now-disputed sentencing. *Id.* Those allegations address both the purported overreach of authority by the sentencing judge as discussed in section II, as well as the process employed by the judge while acting within the scope of his believed authority at the August hearing when the sentence was "enhanced."

Those two factual and legal bases for relief, which Appellant sought to address via declaratory judgment, directly involved state actors and processes in addition to any involvement by those acting under the auspices of SCDC. That was the exact reason why SCDC argued initially, and Judge Manning agreed, that those portions of the complaint were in the nature of claims that fell upon the responsibility of the State at large. That was, in turn, the basis for Judge Manning's order requiring that the State be added as a party to the action. (R. pp. 4-6).

Counsel for the State eventually argued at the outset of the trial below, during a discussion as to whether the State should be held in default for failing to respond to the declaratory judgment portions of the Complaint because the responsive pleading it filed merely addressed habeas corpus, that "I never believed that the declaratory judgment portion of the action really concerned us." (R. p. 745, lines 14-15). Perhaps the trial court agreed, as the Habeas order, the one purporting to

from witnesses to determine whether Carpenter had complied with his obligations under the plea agreement. *Id.*

The trial judge made no determination or statement as to the burden of proof or persuasion to which he subjected the evidence he considered, or the weight of the evidence that he relied upon to declare that Carpenter's sentence should be "enhanced." The "sound discretion of the trial judge" would have been the standard for something like withdrawal of a guilty plea. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795 (1982). But here, Carpenter was being held to the plea, and forced to prove his compliance therewith.

To wit, the Court stated "I find beyond absolutely any doubt in my mind that the State of South Carolina has lived up to their agreement in every respect. I further find that he has failed to do so." (R. p. 668, lines 2 – 25). First, the matter being inquired about required an examination of Carpenter's actions, not those of the State, so a statement as to what the State had shown seems irrelevant.[12] More importantly, however, this seems to have intimated that it was Carpenter who was required to prove, *beyond a reasonable doubt*, that he had fulfilled the plea terms.

Other statements by the court on that date[13] do not evidence any clear, objective standard governing the proceedings:

---

[12] It's unclear what the state had accomplished/proven "beyond absolutely any doubt," other than what would presumably be their only obligation as part of the plea agreement: to cease prosecuting the other charges faced by Carpenter prior to his plea on the two specified charges.

[13] Judge Cottingham also appears to have allowed knowledge of grand jury proceedings generally, perhaps beyond those immediately before the court, to factor into the proceedings against Carpenter at that time we well, "I've been the presiding judge over this whole grand jury indictment and I've got a feel now, based on the pleadings and what I have heard now, for what occurred and who did what." (R. p. 666, lines 16-24). Judge Cottingham was, therefore, moving beyond the terms of the plea agreement and holding Carpenter accountable for facts and information obtained by the judge as part of the grand jury process, but to which Carpenter was shielded by law. See S.C. Code Section 4-7-1720.

"Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." *Tant v. SC Dep't of Corr.*, 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014) citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* The "length of an inmate's incarceration implicates a constitutional liberty interest" which requires compliance with due process requirements. *Id.* (citing *Greenholtz v. Inmates Of Neb. Penal & Corre. Complex*, 442 U.S. 1, 18, 99 S. Ct. 2100, 60 L.Ed. 668 (1979) ("Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary government action.")). As result, the *Tant* court held that whenever 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." *Id.* 408 S.C. at 342, 759 S.E.2d 401.

A. SCDC altered the "sentence in its records" when it revised upwards the calculation of Carpenter's projected max-out date, and changed his status from parolable to non-parolable.

The SCDC Order errs in its conclusion that Carpenter's "sentence was not recalculated from SCDC's initial determination" and therefore Carpenter's due process rights were never implicated. (R. p. 18). This statement blatantly ignores the undisputed evidence. It is undisputed that Carpenter's max-out date suddenly increase in "projected max-out" date after years of steady decline, and two decades of incarceration. (R. pp. 284-310). Never "recalculated" despite an email communication from staff of SCDC to Carpenter's former counsel that stated "Carpenter's sentences were updated..." and "...prior to his sentence being changed..." (emphasis added) (R.

produced by SCDC reflects no good time or work credits, but does reflect that Carpenter will become eligible for work release on February 6, 2015. (R. p. 291).[15] It is unclear (at least from records produced) when SCDC unilaterally removed Carpenter's work and good time credits, but equally clear that it has, and violated Carpenter's due process rights by taking away earned credits without due process.

SCDC cannot remove earned credits from an inmate's record once they have been earned. *Furtick v. S.C. Dep't of Corr.*, 374 SC. 334, 549 S.E.2d 35 (2007). "The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to insure the state created right was not arbitrarily abrogated." *Id.* 649 S.E.2d 37. In *Furtick*, the South Carolina Supreme Court quoted from *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445,454, 105 S. Ct. 2768, 86 L.Ed.2d 356 (1985) to state "[w]here a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus, the inmate has a strong liberty interest in assuring the loss of good time credits is not imposed arbitrarily."

V. SCDC ENGAGED IN ACTIVITY THAT VIOLATED CARPENTER'S DUE PROCESS RIGHTS THROUGH ITS INTENTIONALLY DISPARATE TREATMENT OF CARPENTER AS COMPARED TO OTHERS SIMILARLY SITUATED.

The Equal Protection Clause states, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016).

[15] This Offender Summary reflects that Carpenter's "max-out" date is "04/07/2017."

B. Carpenter's ongoing different treatment is intentional and arbitrary.

As discussed supra, SCDC changed Carpenter's sentence in its records, apparently at the same time that it engaged in such changes to the records of many other individuals. Even assuming such changes were proper, they occasioned an opportunity to treat every such affected inmate in the same manner, yet have failed. Horne remains released, without any apparent desire or attempt on the part of the State to seek the claimed lawful fulfillment of his full sentence. In the words of SCDC's counsel at trial, "Mr. Horne got out. He got lucky." (R. p. 806, line 23). Further, counsel stated "I think if the Department had the resources to have gone out and bring people back in or legally do that, maybe they would have." (R. p. 807, line 6-8).

It is respectfully submitted that the acknowledgement that others in the exact same position as Carpenter merely "got lucky" and will not be subject to the allocation of nearly unlimited resources of the State to apprehend them, despite leaving confinement "early" by supposed clerical or calculation error or otherwise, constitutes "intentional or purposeful discrimination" by the State against Carpenter.

VI. ACTIONS OF THE TRIAL COURT SO COMPLETELY PREJUDICED THESE PROCEEDINGS AS TO CONSTITUTE A DENIAL OF CARPENTER'S DUE PROCESS RIGHTS, REQUIRING RELIEF BE GRANTED TO CARPENTER TO AVOID AN AFFRONT TO THE JUDICIAL SYSTEM.

As noted above, the non-jury merits hearing before Circuit Court Judge Robert E. Hood occurred on Tuesday, June 6, 2017 and the matter was taken under advisement. The following Monday, June 12, 2017, Judge Hood's office advised that "would like a time this week to discuss this case in chambers." (R. p. 849). After hearing from counsel, Judge Hood confirmed the in chambers conference for 10:00 a.m. on June 13, 2017. (R. pp. 847).

Carpenter's counsel filed the entirety of the correspondence and communication referenced above, including the full release signed by Carpenter, with the Richland County Clerk of Court, so the events following Judge Hood's proposal for a consent resolution of the petition for writ of habeas corpus were properly a part of the record. (R. pp. 995-1015[17]). Judge Hood's secretary confirmed receipt of the June 28, 2017 correspondence and advised that Judge Hood was on vacation. She related, however, "please feel free to continue to work toward a final resolution if at all possible." (R. p. 851).

Carpenter's counsel was aware at all times that Judge Hood's proposed release in exchange for a grant of habeas corpus was likely improper. (EAO-05-17)[18]. However, after consulting with appropriate persons, Carpenter and his counsel consented to the proposal, because it would rapidly effectuate the ultimate and proper result in this action, which counsel has attempted to expedite[19] from the outset.

On June 30, 2017, Carpenter's counsel sent Judge Hood a proposed order addressing the merits of the petition for writ of habeas corpus, in light of the objection raised by counsel for the State. (R. pp. 855-865). Judge Hood went silent. Carpenter's counsel requested a status conference. (R. pp. 872-873). Instead, Judge Hood requested "proposed orders" to Judge Hood for consideration. (R. pp. 867). The directive provided no guidance as to how Judge Hood intended to rule. Both defense counsel sent proposed orders to Judge Hood. (R. pp. 874-897).

---

[17] The Clerk's office returned the $25.00 check confirmed that the "documents placed in file." (R. p. 866).

[18] That opinion, dated October 21, 2015, opined that a solicitor could NOT "use the criminal process to obtain a favorable result for a third party in a civil action (potential or actual) even if the solicitor has no direct involvement in the civil action."

[19] The initial, separate habeas corpus pleading was captioned as "Petition for Writ of Habeas Corpus (expedited)." While no order was every signed specifically designating the matter as expedited, the Chief Administrative Judge assisted with an expediting scheduling of hearings in the matter.

S.E.2d 903. However, other instances where appellate courts have not required an issue to have been first raised to and ruled upon by the trial court include the following: *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006) (addressing issue in the interest of judicial economy regardless of preservation problem); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E.2d 300 (2004) (addressing the issue of appealability *ex mero motu* when not raised by the parties); *State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 718 (2001) (agreeing with the Court of Appeals that raising issue after the trial court increased petitioner's sentence would have been futile); and *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000) (stating a party need not engage in a futile act in order to preserve an issue).

Carpenter asserts on appeal that the trial judge's obvious bias in favor of the State, as evidenced by his proposal to protect the State from any civil liability in exchange for granting Carpenter's request for habeas corpus, so prejudiced these proceedings so as to require the affirmative grant of relief by the appellate court. Had the trial judge disclosed his bias in favor of the State prior to the merits hearing, Carpenter would have asked that Judge Hood disqualify himself from hearing the case, although it likely would have been a futile act, regardless. As events unfolded, it is apparent that the trial judge harbored an extrajudicial bias that made it inappropriate to decide the issues presented by Carpenter's petition. Canon 3E(1)(a), Rule 501, SCACR.

The application of this rule in prior precedent reflects that Judge Hood's bias in favor of the State was, in fact, disqualifying. *See State v. Jackson*, 353S.C. 625, 578 S.E.2d 744 (Ct. App. 2003), citing *Payne v. Holiday Towers Inc.*, 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984) for the principle that bias sufficient to disqualify a judge from hearing a particular matter must "stem from an extra-judicial source and result in a decision based on information other than what the trial

- In response to Carpenter's argument that the original trial judge erred in changing Carpenter's sentence on indictment 5001 without charging Carpenter with any additional offenses, the trial judge stated "[y]ou don't have to file a charge to have a cooperation hearing." (R. p. 782, lines 1-4).

- In response to Carpenter's argument that he had a liberty interest in work credits he was given, but which were taken away from him without a hearing, the trial judge stated "some eight-dollar-an-hour employee at the Department of Corrections makes a mistake, he gets it all[21]?"

- "He's giving him another chance to cooperate. It's clear as day." (R. p. 822, lines 13-14). "I mean, he doesn't explicitly say that but... anybody that's ever handled as many state grand jury cases as I have know that's exactly what happened." (*Id.* at lines 17-20).

Once Judge Hood insisted on a full release of the State as a condition precedent to granting Carpenter's writ of habeas corpus (a week after the hearing and Judge Hood's statements set forth above were made), it became clear that Judge Hood had evolved away from his role as a judicial arbiter and had become an advocate for the State. Bias is evident. Appellate relief is required.

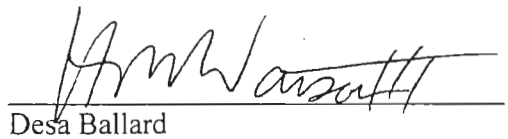
In *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000) the Supreme Court vacated a conviction and death sentence based on improper actions taken by the solicitor, which was "a case involving deliberate prosecutorial intrusion into a privileged conversation between a criminal defendant and his attorney." The Supreme Court stated that "[t]he integrity of the entire judicial

[21] Existing case law establishes that earned work credits, once earned, cannot be taken away without due process. *Furtick v. S.C. Dep't of Corr.*, 374 SC. 334, 549 S.E.2d 35 (2007).

Carolina Supreme Court[22]. Carpenter has also asked the Supreme Court to certify this appeal and consolidate it with the pending Petition in the Original Jurisdiction. (R. pp. 1016-1018).[23] Should the Supreme Court grant original jurisdiction (as Judge Hood said was appropriate), without consolidating it with this appeal, it may not be necessary for the appellate court to decide on any relief from the advocacy and proposed "deal" Judge Hood made, and that Carpenter attempted to accept.

CONCLUSION

For the reasons set forth more fully above, Carpenter contends that his claims were not given full and fair consideration pursuant to South Carolina law, and therefore prays for an order reversing the two orders dismissing his claims for declaratory relief and writ of habeas corpus, with remand of the matter back to the trial court for further proceedings.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

October 26, 2018

[22] Carpenter has done so even through Judge Hood's ruling directly contradicted (and in effect reversed) the prior order of Retired Chief Justice Toal in this action.

[23] Carpenter's position is that this appeal should be consolidated with the original jurisdiction proceeding, so the Supreme Court can consider: the appellate issues and the effect of the trial judge's role as an advocate for the State, fully reach the merits of the habeas corpus petition that was denied in the court below, and consider the declaratory judgment claim that was not addressed.

South Carolina Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

Appellate Case No: ...

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2017-002577

Court:	Court of Appeals	**Classification:**	Appeal - Common Pleas - Hab. Corpus (Non-Death Penalty)
Short Title:	Charles E. Carpenter v. SCDC	**Case Status:**	Decision Pending
	View Full Title		
Consolidated:			
Filed Date:	12/20/2017	**Oral Argument Date:**	06/03/2020 11:20 AM
Disposition Date:		**Disposition Type:**	
Remittitur Date:			
Lower Court or Tribunal:	Richland (2016CP4006916)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Charles Eugene Carpenter	N	Desa Ballard Harvey M. Watson, III
Respondent	South Carolina Department of Corrections	N	Damon Christian Wlodarczyk
Respondent	The State	N	James Clayton Mitchell, III (Former) Alan McCrory Wilson Megan Harrigan Jameson

Views

Display: Descending Go!

Event Information

Filed Date	Event Information	Doc
06/03/2020	Oral Argument - Oral Argument Held	
05/26/2020	Correspondence - Incoming (Responses from Counsel)	
05/22/2020	Correspondence - Incoming (Responses from Counsel)	
05/22/2020	Correspondence - Outgoing (Rescheduling Webex Oral Argument)	
05/21/2020	Correspondence - Incoming (Responses from Counsel)	
05/21/2020	Correspondence - Outgoing (Webex Oral Argument Notification)	
02/28/2020	Correspondence - Incoming (Response to Preliminary List)	
02/18/2020	Correspondence - Outgoing (Letter - Conflict Letter for Oral Arguments)	
06/18/2019	Correspondence - Outgoing	
03/13/2019	Correspondence - Incoming (Notice of Appearance)	
01/29/2019	Final Brief - Briefing and Record Complete	
01/14/2019	Deficiency - Correction (Final Brief - Respondent The State of South Carolina)	
01/08/2019	Deficiency - Deficiency Letter Sent (Final Brief - Respondent The State of South Carolina)	
12/27/2018	Final Brief - Respondent The State of South Carolina	
12/19/2018	Non-Dispositional Decision - Order (Respondent The State of South Carolina's Motion to Supplement Record)	
11/09/2018	Motion - Appellant's Return to Respondent The State of South Carolina's Motion to Supplement Record	
10/31/2018	Record - Supplemental Record on Appeal (Respondent The State of South Carolina)	
10/31/2018	Motion - Respondent The State of South Carolina's Motion to Supplement Record	
10/30/2018	Deficiency - Deficiency Letter Sent (Final Brief - Respondent South Carolina Department of Corrections)	
10/29/2018	Final Brief - Reply to Respondent South Carolina Department of Corrections	
10/29/2018	Final Brief - Appellant	
10/29/2018	Record - Record on Appeal Filed	
10/29/2018	Final Brief - Reply to Respondent State of South Carolina	
10/26/2018	Final Brief - Respondent South Carolina Department of Corrections	

10/10/2018	Record - Proof of Service of Record on Appeal
09/07/2018	Initial Brief - Reply
08/28/2018	Non-Dispositional Decision - Extension Granted (Motion - Extension of Time - 1st - Appellant's Initial Reply Brief)
08/27/2018	Motion - Extension of Time (1st - Appellant's Initial Reply Brief)
08/15/2018	Designation of Matter - Designation of Matter Filed
08/15/2018	Initial Brief - Respondent (The State of South Carolina)
07/20/2018	Non-Dispositional Decision - Extension Granted (Motion - Extension of Time - 1st - Respondent The State of South Carolina's Initial Brief)
07/16/2018	Motion - Extension of Time (1st - Respondent The State of South Carolina's Initial Brief)
07/02/2018	Correspondence - Outgoing (Letter - Unbound Originals Letter)
06/27/2018	Initial Brief - Reply
06/20/2018	Non-Dispositional Decision - Extension Granted
06/13/2018	Correspondence - Incoming (Supreme Court Order Denying Motion to Certify)
06/11/2018	Non-Dispositional Decision - Extension Granted
06/08/2018	Non-Dispositional Decision - Order (Motion to Dismiss-Denied)
04/24/2018	Motion - Appellant's Return to Respondent's Motion to Dismiss
04/23/2018	Motion - Extension of Time (1st - Appellant's Initial Reply Brief)
04/11/2018	Designation of Matter - Designation of Matter Filed
04/11/2018	Initial Brief - Respondent (South Carolina Department of Corrections)
04/11/2018	Motion - Respondent's Motion to Dismiss
03/13/2018	Designation of Matter - Designation of Matter Filed
03/13/2018	Initial Brief - Appellant
02/09/2018	Non-Dispositional Decision - Extension Granted
02/08/2018	Motion - Extension of Time (1st - Appellant's Initial Brief)
01/26/2018	Correspondence - Incoming (Appellant's Response to Transcript Order Overdue Letter)
01/17/2018	Correspondence - Outgoing (Letter - Transcript Order Overdue Letter)
01/16/2018	Transcript Documents - Transcript Delivered - Direct Appeal
01/09/2018	Correspondence - Incoming (Appellant's Habeas Corpus Explaination)
12/29/2017	Correspondence - Incoming (Copy of Motion to Certify to Supreme Court)
12/28/2017	Deficiency - Deficiency Letter Sent Regarding Notice of Appeal
12/27/2017	Correspondence - Incoming (Copy of Motion to Certify Filed with Supreme Court)
12/21/2017	Correspondence - Outgoing (Letter - Notice of Appeal Initial Letter)
12/20/2017	Notice of Appeal (Civil) - Initial

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE
Case No. 20-ALJ-04-0083-AP

Charles Eugene Carpenter, #181783,.....Appellant,

v.

South Carolina Department of Corrections, ...Respondent.

NOTICE OF APPEAL

Appellant Charles Carpenter appeals from the Administrative Law Court's Final Order that dismissed Appellant's claims that he is entitled to good-time and work credits previously credited to him, denied procedural protections afforded to him, and denied his equal protection claim. The referenced order was dated October 14, 2022, that was received by Appellant on October 14, 2022. A copy of that order is attached hereto as **Exhibit A**.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR APPELLANT

November 14, 2022

Other counsel of record:

Teresa Player (S.C. Bar No. 72831)
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210
Telephone 803.896.2074
player.teresa@doc.sc.gov

ATTORNEY FOR RESPONDENT SOUTH CAROLINA DEPATMENT OF CORRECTIONS

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**

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]

---

[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.

---

[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

STATE OF SOUTH CAROLINA

Administrative Law Court

Robert L. Reibold
Administrative Law Judge

PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

March 9, 2022

Harvey M. Watson, III, Esquire
Ballard & Watson
P.O. Box 6338
West Columbia, South Carolina 29171
harvey@desaballard.com

Teresa S. Player, Esquire
South Carolina Department of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
Player.teresa@doc.sc.gov

VIA EMAIL

Re: Charles E. Carpenter, #181783 v. SC Department of Corrections,
Docket No. 20-ALJ-04-0083-AP

Dear Mr. Watson and Ms. Player:

On July 2, 2020, the Department of Corrections (Department) filed a Motion to Hold this appeal in abeyance pending a final disposition of a case pending in the South Carolina Court of Appeals. In the Motion, the Department stated that two of the arguments pending before the Court of Appeals were substantially similar to the same issues raised by Appellant in the ALC. The Court granted the Abeyance Motion by Order dated July 27, 2020.

The Court of Appeals issued its order on August 19, 2020. See, *Carpenter v. S.C. Dept of Corrections*, 431 S.C. 512, 848 S.E.2d 346 (Ct. App. 2020). As a result, the stay arguably expired by its own terms. In January of 2022, the Court contacted the parties about whether they wished the stay to remain in place. The Court received no response to this request for input and subsequently formally lifted the stay. It then proceeded to rule on the companion case. The appellate opinion did not appear to impact the companion case.

However, the appellate decision arguably affects the Court's ability to hear this matter. Appellant asserts that the Department violated his due process rights by initially allowing him to earn work credits/work credits and then later removing them without due process. In addition, Appellant alleges that he was denied equal protection as other inmates sentenced under the same code section under which he was sentenced were treated differently in that they received work credits/good time

credits. Both of these issues were present in the appeal and were addressed in the appellate decision.

The Administrative Law Court has now received all of the briefs in the above-captioned matter. Unfortunately, the parties have not addressed the impact, if any, of the appellate decision on this Court's ability to hear this matter. The Court views this issue as one of subject matter jurisdiction.

Additionally, the Court is concerned that the good time and work credits at issue in this appeal may not constitute a state-created property interest if Appellant was never legally entitled to such credits. The existence of a state-created property interest is, of course, another prerequisite to the exercise of jurisdiction by this Court.

Accordingly, the Court requests that the parties 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 post-conviction relief proceedings?

2. Does Appellant have a protected 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?

Please brief these issues and file the briefs within twenty days of the date of this letter.

If the Court determines that it does not have jurisdiction, it will dismiss the appeal. If the Court determines that it possesses jurisdiction, it will issue a decision on the merits.

Thank you for your cooperation.

Sincerely,

Robert L. Reibold
Administrative Law Judge

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2022-001601

Charles Eugene Carpenter, #181783,.....Appellant,

v.

South Carolina Department of Corrections,.....Respondents,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

s/ Harvey M. Watson III
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR APPELLANT

March 8, 2023