

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jay Tate, #131879,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0060-AP

ORDER GRANTING MOTION TO
DISMISS

RECEIVED

JUN 16 2023

SC Court of Appeals

STATEMENT OF CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Jay Tate (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). In his notice of appeal filed on February 10, 2023, Appellant alleged issues with his hearing on a charge for smuggling and/or conspiracy to smuggle in contraband (855). Appellant attached his step 1 and step 2 grievances to the notice of appeal and included the Department's decisions as to the grievances. This matter was assigned to the undersigned on February 24, 2023.

On May 8, 2023, the Department filed a motion to dismiss pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022) and *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012), because Appellant is serving a life sentence, the loss of good-time credit has no impact on Appellant's sentence, and no state-created liberty or property interest is implicated in this case. To support its position, the Department attached the disciplinary report and hearing record and a printout of the Department's offender management system to its motion. The disciplinary report and hearing record show Appellant received the following sanctions for his conviction (855): no tablet for 20 days, no canteen for 109 days, no phone privileges for 109 days, no visitation for 109 days, extra duty for a period of time, disciplinary detention for a period of time, and a loss of 30 days of good-time credit. The offender management printout shows Appellant is serving a life sentence.

On May 17, 2023, Appellant filed "Appellant's motion to proceed in pursuant to *Al-Shabazz v. State* and S.C. Code Ann § 1-23-610," which the Court construes as a response to the Department's motion to dismiss. According to Appellant, the Department "initiated the rights



of the appellant when it triggered his claim of 'liberty interest' when it decided to sanction him to loss of accrued good-time credits." Appellant asserts that he was improperly sanctioned and that his conviction and sentence are still pending on appeal.

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2022); *Allen v. S.C. Dep't of Corr.*, Op. No. 28147 (S.C. Sup. Ct. filed Apr. 5, 2023) (Howard Adv. Sh. No. 13 at 32) ("[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed."); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331 605 S.E.2d 506, 507 (2004); *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (stating 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 because of a serious rule violation).

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" (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 272-74, 633 S.E.2d 910, 913-14 (2006). "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757.

Further, section 1-23-600(D) prohibits the Court from hearing appeals from "an appeal from an inmate in the custody of the Department . . . involving the loss of the opportunity to earn sentence-related credits pursuant to [s]ection 24-13-210(A) or [s]ection 24-13-230(A)." In *Howard*, 374 S.C. at 629-30, 649 S.E.2d at 217-18, our supreme court addressed section 1-23-600(D) and the Legislature's amendment of that section post *Furtick v. South Carolina*

Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007). Our supreme court acknowledged "the Legislature's authority to limit the jurisdiction of the ALC" and noted "an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest." *Howard*, 374 S.C. at 629, 733 S.E.2d at 217. Nevertheless, a matter involving loss of the opportunity to earn credits is reviewable by the ALC where an inmate's appeal *also* implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits." *Id.* at 630, 733 S.E.2d at 218.

Presently, the Department seeks an order of dismissal from the Court because it asserts Appellant's appeal does not implicate any state-created liberty or property interests. Appellant asserts the Court should not dismiss and that his liberty interests are implicated by the removal of good-time credits. The Court agrees with the Department. Appellant received the following sanctions for his conviction (855): no tablet for 20 days, no canteen for 109 days, no phone privileges for 109 days, no visitation for 109 days, extra duty for a period of time, disciplinary detention for a period of time, and a loss of 30 days of good-time credit. These sanctions do not warrant due process protections. *See Al-Shabazz*, 338 S.C. at 372 n.8, 527 S.E.2d at 751 n.8 (stating "lesser penalties such as extra duty, loss of television privileges, or cell restriction" are not afforded due process protections); *Dumas v. State*, 675 So. 2d 87, 89 (Ala. Crim. App. 1995) (stating store, telephone, and visitation privileges are not liberty interests and thus an inmate has "no liberty interest in the loss of those privileges"). Traditionally, the loss of accrued good-time credits for an inmate who could use the credits would be sufficient to trigger due process protections. *See Howard*, 399 S.C. at 630, 733 S.E.2d at 218; *see also 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." (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972))); *id.* at 369-70, 527 S.E.2d at 750 ("The statutory right to sentence-related credits is a protected 'liberty' interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated.").

However, Appellant is serving a life sentence, and any good-time credits that may have appeared on Appellant's record with the Department have no use to him to reduce his sentence of life imprisonment. Because the credits are of no use to Appellant, the loss of the credits do not trigger due process protections. *See generally 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); *Bd. of Regents of State Coll.*, 408 U.S. at 577 ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it."); *Whiting 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). Based on the foregoing, the Court finds that summary dismissal is appropriate.

ORDER

IT IS THEREFORE ORDERED that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

May 22, 2023
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

May 22, 2023
Columbia, South Carolina

INMATE TRUST FUND ACCOUNT REPORT for SOUTH CAROLINA COURT FILING FEES

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Mr. Jay Walter Tate HD#140

SCDC # #131879 INMATE SIGNATURE: Jay Tate

I plan to file this action in the SC County of Richland Court of Appeals

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 3,183.67
- (2) Twenty percent (20%) of line 1 \$ 636.74
- (3) Account balance - current date \$ 850.27
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # 934447 \$ 150.00

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

RECEIVED

JUN 16 2023

SC Court of Appeals

*Admission date is noted here if inmate incarcerated less than six months

Peggy Cowthorpe
Prepared by Financial Accounting Branch - SCDC

6/7/2023
Date

#7 #8

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

10/21/22 (11/10)

Institution/Center: PERRY CORRECTIONAL				Date of Report: 10/14/2022	
Reporting Official (Full Name): HESTER, A				Time of Report: 3:20PM APPROX	
Employee ID #: 062731				Date of Incident: 10/13/2022	
Location of Incident: GTL PHONE SYSTEM				Time of Incident: 5:06PM APPROX	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. TATE, JAY	131879				1. CAPT. TOTI
2. SHELTON, SCOTTY	385004				2. SGT. BOCCABELLO
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

Inmate Tate, Jay #131879 was transferred via bus with 6 other inmates from Lee Correctional on 10/12/2022. I, Sgt. Hester, was reviewing phone calls I started a call by inmate Tate. At Min mark 3:13 inmate Tate told the person he was on the phone with "Man I had two Marijuana vapors when I came here" then stated "I let the white dude hold um that came here, I told him, man you in the same dorm as me don't try nothin. And man they got his ass before 8:00 this morning, and I had told him don't do nothin, this real jail here man. " Inmate Tate was transferred with inmate Shelton, Scotty #385004 on 10/12/2022. Inmate Tate and Shelton were both housed in Q1 upon transfer to Perry. On 10/13/2022 inmate Shelton was brought up to the holding cell after raising suspicion to the officer in the dorm he was housed in. Upon a search of inmate Shelton 1 Vape pen was recovered on the inmates person. I tested that vape pen and it did come back positive for THC. Inmate Shelton was the only white male that transferred that day with inmate Tate. Inmate Shelton was questioned in the holding cell on how he acquired the vape pen but he refused to answer. END OF REPORT

INMATE COPY

Signature: *[Signature]* Title: CONTRABAND SGT.

Evidence: GTL SCREENSHOT

Disposition of Evidence:

Supervisor's Comments:

REFER TO MAJOR

STG Related - Refer to STG Committee

Yes No Unknown

Printed Name: *Dominic Boccabello*

This incident is DRUG related

Signature: *[Signature]* Title: SGT Date/Time: 10-14-22 3:25 pm

Yes No Unknown

Major/Responsible Authority: *JMH*

Responsible Authority

Action Taken

Printed Name: *M. Titi* 10.16.22

Signature: *[Signature]* Title: *Capt* Date/Time: *Approx*

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

15:00 pm

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

Exhibit # 2

INMATE NAME: <u>Jay Tate</u>	RECEIVED NOV 10 2022 #1	OFFICE USE ONLY
SCDC NUMBER: <u>131879</u>		Grievance No. <u>PCI-0660-22</u>
INSTITUTION: <u>Perry</u>		Code: <u>General</u>
HOUSING UNIT: <u>Bravo Y 18</u>		Policy: <u>Disc. Hear</u>
WORK ASSIGNMENT: <u>NONE</u>		Class: <u>PREA</u>
	Date Received: <u>11/10/22</u>	IGC Initials: <u>Km</u>

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

On November 2, 2022 a disciplinary hearing was held. DHO Hearing Officer P. Hough requested a alleged Audio Recording from Sgt. Lester. DHO Hearing Officer P. Hough violated a 21 Department Policies by committing a unlawful procedure by going off the record to review this alleged Audio Recording in secrecy to determine my guilt. This alleged Audio Recording is not part of the Incident Report as evidence. See Exhibit 1. I had a created liberty interest right to hear the alleged Audio Recording and that directly affected me as a inmate. I requesting charge # 7 (855) Conspire to smuggle contraband into institution. dismiss at this time.

DHO Hearing Officer P. Hough also committed another unlawful procedure by adding the time served credit days to the following sanctions. Carter (855) 90+192/09 Visitation Suspension (855) 90+192/09 Phone (855) 90+192/09. I am requesting that Charge (855) be dismiss at this time See Exhibit 2. Gobai Telkirk also violated the terms of the phone call by providing a alleged screenshot of a phone call. Gobai Telkirk said this phone call can be monitored or recorded. This makes Gobai Telkirk liable for violating the terms of the call. Substitute Counsel never reviewed the Charge (855) within the 24 hours of the hearing as required by policy.

Jay Tate 11-9-22

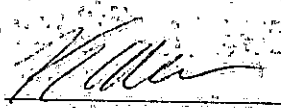
Grievant Signature Date

PCI 063322 told me to file separate grievance from this Charge.

ACTION REQUESTED: I am requesting that Charge (855) Conspire to smuggle contraband into Institution be dismiss and Expunged from the SCDC Computer System

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

***** PLEASE SEE REVERSE FOR WARDENS DECISION *****

 11/10/22
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Exhibit #2

Tate, Jay -131879

PCI-0660-22

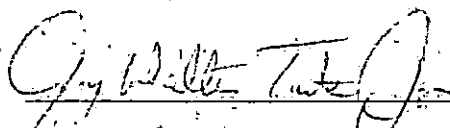
I have reviewed your concern. In your grievance you have appealed the results of the Disciplinary Hearing that was conducted on 11/02/22 where you were convicted of violating SCDC Charge 855, Smuggling and/or Conspiracy to Smuggle in Contraband. In your grievance you are requesting that the DHO findings be dismissed and sanctions be restored. No documentation, procedural errors, or misrepresentation of the evidence was noted, and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The sanctions imposed are not excessive but proportionate to the rule violation. Based on this information your appeal is without merit.

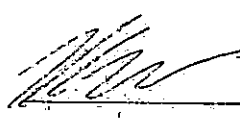
Therefore, your grievance is denied.

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

 11/23/22
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

 11/28/22
Grievant Signature Date

 11/28/22
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

DEC 05

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due: 12/3/22

GRIEVANCE

STEP 2

Exhibit #3

Office Use Only

INMATE NAME: Jay Tate

INMATE ID: [blacked out]

Grievance No. PCI-0660-22

SCDC NUMBER: 131879

Code: General

INSTITUTION: Perry

DEC 06 2022

Policy

Disc. Hear. 11/2/22 (855)

HOUSING UNIT: Bravo Y 18

INMATE GRIEVANCE

Class. #7

WORK ASSIGNMENT: NONE

Date Received 12/2/22

IGC Initials km

RLVD 12/9/22 BW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The fact is that the warden disregarded the most important part of the hearing was the 911 Department Policies by Dito Hearing Officer P. Hogg requesting an alleged audio recording from Sgt. Hester and to go off the record to review the evidence in secrecy to commit an unlawful procedure. I had a created interest right to hear and review the alleged audio recording because my liberty was put at stake and this also affected me as an inmate. This alleged audio recording was not part of the incident report evidence. Bobal Telinski provided an alleged screenshot of a phone call and violated the terms of the phone call. Substitute counsel never reviewed the charge 855 with as required by policy. (The warden admittedly said the evidence was false and misleading noted in decision without dismissing the charge of 855 conspire to smuggle contraband into Institution.) I am requesting that the charge of 855 conspire to smuggle contraband into Institution be dismissed and expunged from the SCDC Computer system. The original grievance was not returned to me.

Jay Tate 11-30-22
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Smuggling/aid or Conspiracy to Smuggle in Contraband (855) in case #7, conducted on November 2, 2022, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -30- days accrued good time, were appropriate for the rules violation. There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

INMATE COPY

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

Michelle Nlan 1-4-23
Signature Date

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.

Jay Tate 1-13-23
Grievant Signature Date

[Signature] 1/13/23
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jay Tate # 131879

Exhibit # 4

Appellant,

vs.

NOTICE OF APPEAL

South Carolina Department of Corrections,

Respondent.

DOCKET NO 23-ALJ-04-0060-AP
GRIEVANCE NO.: PCI-0660-22

Notice is hereby given that Jay Tate # 131879 does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-4-23 and received on 1-13-23, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Appellant hereby appeals the Department's final decision based on (but not limited) the following: 1. the Appellant was not allowed to confront his accuser, by not see (and/or hearing) the evidence against him. 2. the accuser had witness on the incident report then also signed as both the supervisor and the Major/Responsible Authority, to refer to the DHO. That violates SCDC Policy and Procedure. Further more that violates both due process rights under State/Federal laws.

Jay Tate # 131879
Appellant's Name

Signed [Signature]

430 Oaklawn Rd
Mailing Address

Dated February 10, 2023

Pelzer, S.C.

City, State, Zip Code

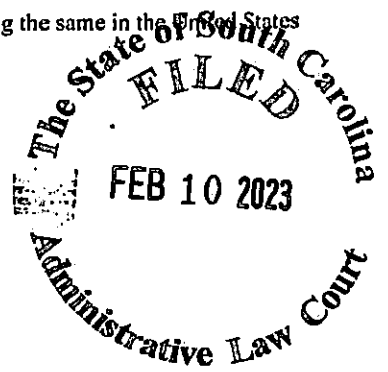
CERTIFICATE OF SERVICE

I hereby certify that I, Jay Tate (your name), on the 10 day of February, 2023, in Pelzer (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Clerk's Office - ALC
205 Pendleton Street, Suite 224
Address: Columbia, S.C. 29201

City, State, Zip Code: _____

Jay Tate [Signature]
Print your name Sign your name
(See reverse side for instructions)

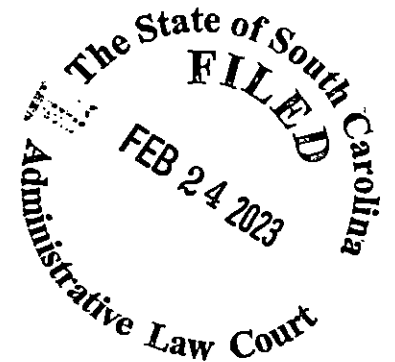


Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Exhibit #5

Case Type	Case Number	Filing Date	Date Assigned	Case Title (Appellant v. Respondent)	JUDGE NAME	Grievance No.
DOC 04 Appeal	23C0060	2/10/2023	2/24/2023	Jay Tate #131879 v. South Carolina Department of Corrections	Judge Reibold	PCI 0660-22

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.



ARGUMENT IN SUPPORT OF MOTION TO PROCEED

DISCUSSION

SCDC INITIATED THE RIGHTS OF THE APPELLANT WHEN IT TRIGGERED HIS CLAIM OF "LIBERTY INTEREST" WHEN IT DECIDED TO SANCTION HIM TO LOSS OF ACCRUED GOOD-TIME CREDITS. APPELLANT ASSERTS THAT IN PURSUANT TO THE DECISIONS OF THE SOUTH CAROLINA SUPREME COURT IN * AL-SHABAZZ v. STATE, 338 S.C. 354, 527 S.E.2d 742 (2000), THE COURT'S JURISDICTION TO HEAR SUCH MATTERS BASED UPON THE IMPLICATION OF A STATE-CREATED "LIBERTY INTEREST" OR "PROPERTY INTEREST", IS SUFFICIENT TO TRIGGER PROCEDURAL DUE PROCESS GUARANTEES. SEE & ALLEN v. S.C. DEPT. OF CORRECTIONS, S.E.2d _____, 2023 WL 2778609 (S.C. 2023) (WHERE THE REQUIREMENTS OF PROCEDURAL DUE PROCESS WILL ONLY APPLY TO THE DEPRIVATION OF INTERESTS ENCOMPASSED BY THE FOURTEENTH AMENDMENT'S PROTECTION OF LIBERTY AND PROPERTY. APPELLANT ASSERTS THAT HE WAS IMPROPERLY SANCTIONED WITH (30) THIRTY DAYS LOSS OF ACCRUED GOOD-TIME CREDITS WHICH TRIGGERED AND MAY AFFECT HIS RIGHTS TO GAIN ANY GOOD-TIME CREDITS IN THE FUTURE IF HIS CONVICTION AND SENTENCE MAY BE OVERTURNED. APPELLANT'S CONVICTION AND SENTENCE FOR STATE COURT APPEALS ARE STILL ONGOING AND HAVE NOT BECAME FINAL. THEREFORE, THIS DECISION TO DEPRIVE THE APPELLANT OF HIS (30) THIRTY DAYS LOSS OF OPPORTUNITY TO EARN ANY SENTENCE RELATED GOOD-TIME CREDITS IN PURSUANT TO SECTION 24-13-210(A), WITHOUT ANY MATERIAL EVIDENCE OR FACTS SUPPORTED ON THE RECORD VIOLATES HIS DUE PROCESS PROCEDURALLY.

SEE * WOLFF v. McDONNELL 418 U.S. 539, 563-69 (1974) (DETAILING DUE PROCESS MINIMUMS FOR DISCIPLINARY PROCEDURES: (1) ADVANCE WRITTEN NOTICE OF CHARGES; (2) WRITTEN STATEMENTS OF REASONS FOR DISCIPLINARY ACTIONS TAKEN AND (3) OPPORTUNITY TO CALL WITNESSES AND PRESENT EVIDENCE IF DOING SO WILL NOT JEOPARDIZE INSTITUTIONAL SAFETY.) ALSO SEE * SUPERINTENDENT, MASS CORR INST. v. HILL, 473 U.S. 445, 447, 454 (1985) (REQUIRING REVOCATION OF GOOD-TIME CREDITS TO BE SUPPORTED BY " SOME EVIDENCE" RULE REQUIRED IN DISCIPLINARY PROCEDURE RECORD TO COMPORT WITH DUE PROCESS. " SOME EVIDENCE" RULE REQUIRES ONLY THAT THE ~~DECISION~~ NOT BE ARBITRARY OR WITHOUT SUPPORT IN THE RECORD. ALSO SEE * WILSON v. JONES, 430 F.3d 1113, 1120-21 (10TH CIR. 2005) LIBERTY INTEREST IN AVOIDING MISCONDUCT CONVICTION RESULTING IN DEMOTION OF CREDIT EARNING STATUS CREATED BY STATE REGULATIONS.

CONCLUSION

FOR THE FOREGOING REASONS, APPELLANT RESPECTFULLY ASKS THIS HONORABLE COURT, TO DECLINE THIS MATTER, AND PRAYS THAT THIS COURT WILL ALLOW THIS MATTER TO PROCEED IN PURSUANT TO THE S.C. SUPREME COURT DECISION OF AL-SHABAZZ v. STATE, AND GRANT ANY AND ALL RELIEFS AVAILABLE TO THE APPELLANT AS JUSTICE IS SO REQUIRED, AS A MATTER OF LAW.

DATED: 5-15-23

RESPECTFULLY SUBMITTED,

1st *Jay Walter Tate, Jr.*
MR. JAY WALTER TATE, #131879
KCI, HICKORY D#140
4848 GOLDMINE HWY.
KERSHAW, S.C. ~~29067~~ 29067
PRO-SE APPELLANT



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

Exhibit # 7

May 5, 2023

The Honorable Robert L. Reibold
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

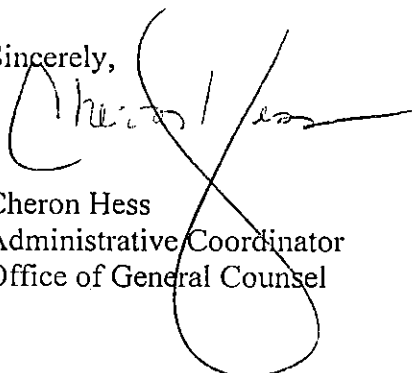
Reference: Inmate Jay Walter Tate, Jr., #131879, vs. SCDC
Docket No. 23-ALJ-04-0060-AP

Dear Judge Reibold:

Find enclosed an original and one copy of the *Respondent's Motion to Dismiss* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron Hess
Administrative Coordinator
Office of General Counsel

Enclosures

cc: Inmate Jay Walter Tate, Jr., #131879
File

Exhibit #7

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Jay Walter Tate, #131879,)	Docket No.: 23-ALJ-04-0060-AP
)	[Grievance No.: PCI 660-22]
Appellant,)	
)	<i>Hon. Robert L. Reibold</i>
v.)	
)	RESPONDENT'S MOTION TO
South Carolina Department of Corrections,)	DISMISS PURSUANT TO HOWARD
)	V. S.C. DEPT OF CORR. AND S.C.
Respondent.)	CODE ANN. § 1-23-600(D)
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Jay Walter Tate (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant is appealing SCDC’s final agency decision of January 4, 2023, that denied Appellant’s Step Two grievance.

On November 9, 2022, Appellant filed a Step One grievance to challenge his November 2, 2022, conviction for offense 855, “Smuggling and/or Conspiracy to Smuggle in Contraband.” Appellant alleged that material not on the record was used to determine his guilt. Appellant requested his conviction be overturned. On November 23, 2022, Appellant’s Step One grievance was investigated and denied. Thereafter, on November 30, 2022, Appellant filed a Step Two grievance alleging, again, that material off the record was used at his disciplinary hearing. This grievance was investigated and denied on January 4, 2023. This appeal followed.

To clarify, although Appellant was sanctioned with a loss of 30 days good time per the Disciplinary Report and Hearing Record,¹ Appellant is serving a life² sentence and is not

¹ A copy of the disciplinary report and hearing record is attached for the Court’s and parties’ convenience.

eligible to earn good time credits, and therefore there is no practical effect regarding the loss of good time credits. Pursuant to S.C. Code Ann. § 24-13-210, inmates convicted of crimes against the State may earn good-time credits; these credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior. S.C. Code Ann. §§ 24-13-210(A)–(B). Inmates convicted of offenses other than “no-parole” offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month. *Id.* However, these same provisions—*i.e.*, §§ 24-13-210(A) and (B)—make the earning of good time for a particular month contingent upon an inmate’s good behavior. *See, e.g.*, § 24-13-210(A) (granting good time credits for a month of time served, *provided that* the inmate “has not been subjected to punishment for misbehavior”) (emphasis added). In concert with this statutory language, SCDC, Policy OP-21.11, *Loss of Statutory Good Time*, provides for an inmate’s failure to earn good time for a given month upon the inmate’s violation of a rule.³

However, section (B) of 24-13-210 in pertinent part states, “... [h]owever, *no inmate serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits* under this provision. ...” S.C. Code Ann. § 24-13-210(B) (emphasis added). Likewise SCDC Policy states that inmates will not be eligible to earn good time credits if they are serving a life sentence. *See* Section 2.3 of SCDC Policy OP-21.11.

² A copy of Appellant’s Release Date Screen is attached for the Court’s and parties’ convenience.

³ A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept informal resolution, the incident may be referred to a disciplinary hearing, where the inmate may plead guilty to the infraction, or be found guilty of the infraction following the hearing.

STANDARD OF REVIEW

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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Recently the South Carolina Supreme Court clarified the Administrative Law Court's jurisdiction as:

[t]hat the ALC has subject matter jurisdiction over inmate grievance appeals that have properly filed. (*internal citations omitted*) . . . [h]owever, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmates grievance if does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees. The ALC may not grant an inmate relief from an erroneous administrative decision by SCDC, however, unless the inmate demonstrates the error deprived him of due process... (*internal citations omitted*)

Allen vs. S.C. Dep't of Corr., ---S.E.2d ---, ---, 2023 WL 2778609 (S.C. 2023).

“The requirement of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property.” *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (*quoting Board of Regents of State Colleges. v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705 (1972)). SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest”) (*emphasis added*).

The law governing this specific type of inmate appeal is clear. S.C. Code Ann. § 1-23-600(D) provides:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)...

By its plain meaning, § 1-23-600(D) precludes the ALC from hearing all inmate appeals

involving the loss of the opportunity to earn sentence-related credits. *See Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012) (holding that “the plain terms of section 1–23–600(D) precludes [*sic*] the ALC from hearing *all* inmate appeals involving the loss of the opportunity to earn sentence-related credits” and that “the Legislature definitively limited the parameters of the ALC’s subject matter jurisdiction” regarding this specific type of inmate appeals) (emphasis in original). Although the ALC “may not summarily decline to hear an inmate appeal solely on the ground that it involves the loss of the opportunity to earn sentence-related credits[,]” this case does not involve a separate and distinct state-created liberty or property interest as contemplated by *Howard*. *Id.* at 629, 733 S.E.2d at 218.

ARGUMENT IN SUPPORT OF MOTION TO DISMISS

In the instant case, Appellant claims that his conviction for offense 855, “Smuggling and/or Conspiracy to Smuggle in Contraband” should be overturned and his privileges reinstated. However, Appellant lost no good time due to this conviction because he is not eligible to earn good time credits as he is serving a life sentence. *See* S.C. Code Ann. 24-13-210 (B); *see also* Releasee Date Screen. No other state-created liberty or property interest is implicated in this case. Appellant’s claim does not trigger due process guarantees. Therefore, pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D), the ALC should dismiss this appeal.

CONCLUSION AND SIGNATURE PAGE TO FOLLOW

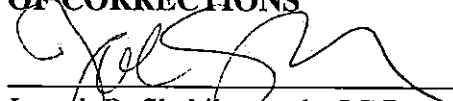
CONCLUSION

For the foregoing reasons, SCDC respectfully requests that the Court dismiss this appeal pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D).

Alternatively, if this Court is not inclined to dismiss this appeal, Respondent request sixty (60) days from the date of the order denying the motion to file the record on appeal.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



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

May 5, 2023
Columbia, South Carolina

ST: Q

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCDC#: 131879
Living Area: BY18 Job: LOCK UP Custody: ST
Offense Date: 10/13/2022 Offense Time: 05:06 AM Institution: Perry Correctional Institution

Offense Description:
#7 855 Conspire to smuggle contraband into institution
#8 903 possess unauthorized drugs

Charging Officer/Employee: A. HESTER Title: INTEL SGT
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

Form with checkboxes: I GIVE UP MY RIGHT TO 48-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING. I DO NOT WANT TO BE PRESENT AT MY HEARING. I DO WANT MY ACCUSER PRESENT AT MY HEARING. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING.

Date & Time Notified: 10-25-22 11:10 AM By (Print): [Signature]
Inmate Signature: [Signature] SCDC#: 131879 Date: 10-25-22

HEARING INFORMATION:
Hearing Date: 11-2-22 Hearing Time: 11:00 AM Medclass: NMH Reading Level: 10.4

DD: Assigned Counsel Substitute: Mr. McCarty
EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING OR (7) IF HEARING WAS DELAYED.

Table with columns: OFFENSE CODES, INMATE PLEA (G, NG, None), FINDINGS (G, NG, DS) (NGMI) (GMI). Contains handwritten entries for 855 and 903.

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER, EXPLAIN IN DETAIL: 19-294A testimony of accuser, auditor

SANCTIONS:
Loss of Privilege (Days): 30/100/100/90/90/159
Property (Days): 30/100/100/90/90/159
Canteen (Days): 30/100/100/90/90/159
Disciplinary Detention (Days): 30/100/100/90/90/159
Reprimand: 30/100/100/90/90/159
Extra Duty (Hours): 30/100/100/90/90/159
Visit Suspension (Days): 30/100/100/90/90/159
Loss of Good Time (Days): 30/100/100/90/90/159
Restriction: 30/100/100/90/90/159
Cell Restriction (Days): 30/100/100/90/90/159
Phone (Days): 30/100/100/90/90/159
Other: 30/100/100/90/90/159

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED:
Level 2 (903) offense 1-15 of 855 charge 1 severity of
Level 1 (903) offense 1-15 of 903 charge 1 choice

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS: 19 (10/13)
DATE INMATE PLACED IN PHD: 10/13/22 DATE INMATE RELEASED FROM PHD:
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 11-8-2022

HEARING OFFICER (PRINT NAME): G. THOUGH
APPROVED (NO MODIFICATION ONLY) WARDEN REASON
CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/05/23
OMCOMITA RELEASE DATE SCREEN C052640

SCDC# > 131879 LOC: KERSHAW
TATE, JR., JAY WALTER SCDC CLASSIFICATION..: VIOLENT
LEGAL NAME: SEXUAL REGISTRY..: N
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR..:
TABLET ELIGIBLE..: Y DNA STATUS.....: COMPLETED
GPS REQUIREMENT..: N
PREA DECISION.....:
PREA PERP..:

PREA VICTIM.....: [REDACTED]
CURRENT SENTENCE: LIFE CONSECUTIVE SENTENCE ...:
CURRENT SENT START DATE: 06/04/1994

PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999 CURRENT EWC .:
YOA SIX YEAR DATE: CURRENT EEC .:
INITIAL PAROLE DATE: 06/04/2014 NEXT PAROLE HEARING DATE: 02/22/2025

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 000000 ISS.....:

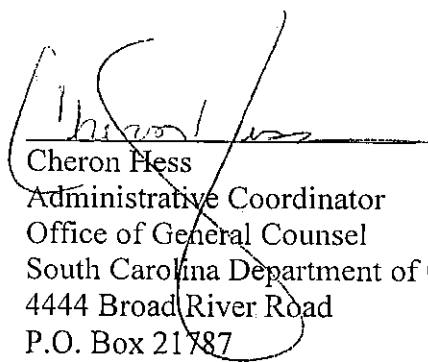
PFKEYS: 5:HISTORY OF DATE CHANGES

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jay Walter Tate, Jr., #131879,)
)
 Appellant,)
) **Certificate of Service**
 vs.)
) Docket# 23-ALJ-04-0060-AP
 South Carolina Department of Corrections,)
)
 Respondent.)

I hereby certify that a copy of the foregoing *Respondent's Motion to Dismiss* was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Jay Walter Tate, Jr.
Inmate Number: 131879
Kershaw Correctional Institution
Dorm-Room-Bunk: HD-0140-B


Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

May 5, 2023