

Dear,

Clerk of Court please accept
What I received as the Record from
SCDC in Case: 2022-001560
Shahen Abbegestalk v. SCDC

By: Shahen Abbegestalk
6/17/23

RECEIVED

JUN 26 2023
SC Court of Appeals



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

July 22, 2022

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 Shaheen Cabbagestalk, #295567, vs. SCDC
Docket No. 22-ALJ-04-0160-AP

Dear Judge Robert L. Reibold:

Find the enclosed *Record on Appeal* for the above referenced case. The Record for this case, relating to Inmate Grievance MCCI 86-22, consists of the Inmate Grievance Form(s) and other supporting documents.

Please file the original and return a clocked-in copy of the cover letter in the enclosed self-addressed envelope. If you have any questions or concerns, do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess
Cheron Hess
Administrative Coordinator
Office of General Counsel

Enclosures

cc: Inmate Shaheen Cabbagestalk, #295567
File

*objected
and why*

*7/28/22
Sent in
same night*

*Invalid commitment
based - sentence
not calculated
proper*

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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

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

v.

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

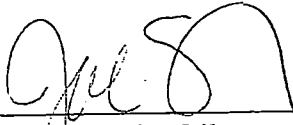
**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent submits that the following should be included in the Record on Appeal:

- (1) Step 1 Grievance Form;
- (2) Step 2 Grievance Form;
- (3) All filings in the Administrative Law Court Filings including:
 - a. Record on Appeal dated July 22, 2022;
 - b. Respondent's Motion to Supplement the Record dated September 27, 2022;
 - c. Respondent's Brief dated September 27, 2022;
 - d. Order on Motions dated September 28, 2022; and
 - e. Administrative Law Judge Robert L. Reibold's Order dated October 21, 2022.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

SIGNATURE PAGE TO FOLLOW



Joseph R. Shakibanasab, SC Bar No. 102825

Staff Attorney

Office of General Counsel

S.C. Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

Phone: (803) 896-1278

January 27, 2023

Counsel for Respondent

Exhibit

DISI640D
OMDISCA

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM

C052640

07/20/22

GOOD TIME RESTORE HISTORY

CURR LOC: MCCORMICK

SCDC# 295567
CABBAGESTALK, SHAHEEN -
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

CASE#	GT LOST	GT RESTORED	DISAPPRV	DISAPRV BY	LOCATION	DATE
-------	------------	----------------	----------	---------------	----------	------

END OF LIST

PAGE: 0001

INFORMATION DISPLAYED

PF6-DISAPRV PENDING PF7-BACKWARD PF8-FORWARD PF10-MAIN MENU PF11-QUIT

↑
" Clear to
see no
Good time Restored "
Proof

APR 13 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due By: 4/13/22

RECEIVED

STEP 2

Office Use Only
 Grievance No. MCCI-00FG-2
 Code: General GL/CL
 Policy _____
 Disc. Hear. _____
 Class: _____
 Date Received APR 14 2022
 IGC Initials HW
RVD 4/25/22 BN

INMATE NAME: Shahen Cabbagestalk

SCDC NUMBER: 295567

INSTITUTION: MCC

HOUSING UNIT: R-4 #120

WORK ASSIGNMENT: Dorm worker

RECEIVED

APR 20 2022

INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I want you all to provide me with copy of the documents show EXACTLY how much good time credit am to get from (Jan. 12/22/07) my sentence credits. Start some of which you all can't touch regard less when I WAS IN Dillon County Jail until (August 29/07) pretrial detainee type work ID's to be calculated AGAINST the invalid sentence that's for James Cabbagestalk. The policy op-21.04 (# 4.2) states SCDC can't accept new laws: - lid commitment order is not (James Cabbagestalk) And I've been held under this invalid document now in SCDC and I've been continuously told I'll be held and held without justifiable documentation that's tyranny. Shahen Cabbagestalk 4/14/22

0 Banished crime, lid happen, to use imprisonment, Grievant Signature Date
to a jail and be held in SCDC and I've been continuously told I'll be held
4/14/22

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you did not receive some of your good time back as designated in grievance MCCI-0005-22. You state that your records appear as if you would serve more than 85% of your sentence which you believe is incorrect. You also state that you are at risk of suffering harm if you are held past your designated max-out date and would like to be compensated \$50,000 for each day past the designated max-out date. You further state that it is not your fault that your time is incorrect. You have requested that your good time be given back, and all staff members involved in the miscalculation of your sentence be criminally charged. Be advised that you have received over 150 disciplinary charges during your incarceration which all affect your max-out date. All the good time that was reinstated for the dismissal of charges has been entered accordingly. There has been no miscalculation or discrepancy in the calculation of your sentence.

Therefore, your grievance is denied.

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

Shahen Cabbagestalk 5/2/22
 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.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Warden's Area SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APR 06 2022

Cabbagestalk (#295567)

INMATE GRIEVANCE FORM

STEP 1

McCI-0086-22

RECEIVED

OFFICE USE ONLY

INMATE: I have reviewed your concern in your grievance and stated that your max out date is incorrect. You also stated you were released and moved from October 29, 2023 to October 27, 2023. You further stated you should have been given credit for disciplinary charges that were removed. You would like to earn work credits and your max out date General SCDC Policy OP-21.11 Loss of Statutory Good Time Section 3.1 reason For Failing To Earn 3/20 Days Good Time, Policy on Inmate who Accepts administrative resolution, pleads guilty, or is found guilty of violating an Agency rule or regulation will fail to earn 3/20 days of good time for the month during which the infraction occurred. In addition, part or all of an inmate's accrued good time may be forfeited as a result of a disciplinary hearing conviction within the guidelines set forth in SCDC Policy/Procedure OP-22.14, Inmate Disciplinary System." Additionally, SCDC Policy OP-21.07, Earned Work Credits Section 8.1 "Earn Inmate 2022 assignment will be placed in one of four job classification levels, and EWCs will be awarded on the basis of custody level, review of your concerns has been conducted with proper SCDC staff. It appears your max out date is October 27, 2023. Your sentence started on April 10, 2022 and you would be 15 years 3 months and 18 days with a projected release date of April 10, 2022 without disciplinary and all work credits. However due to your many disciplinarys and you have failed to earn work credits at some points and times. At this time as it stands you will do more than 85% of your sentence. You are advised to follow SCDC rules, policies, and procedures.

STATEMENT OF GRIEVANCE: I am filing this grievance on the date of incident, and if the grievance is a charging to SCDC Agency, specify which policy, include supporting documentation and attach answered RISM or other grievance numbers. You are advised to follow SCDC rules, policies, and procedures.

22-02565406 | 4/1/2022 Author: C067394 : Cases #157 +158

Therefore, your grievance is denied.

If you disagree with the Warden's Decision (Decision), you may file an appeal by completing SCDC Grievance Form 10-5A, provided you 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.

RECEIVED: I want my good time back I was only gave 2 days back from (October 29th 2023 to October 27th 2023) That's not what grievance McCI-0005-22 instructs them to do and they have been Tyranny telling me they gonna hold me longer than 85%. Not apart of the 3 Branch government to do so with no Authority to do so. I want to also be paid for Every day I'm not given \$50,000 do to the danger SCDC Classification will be subjecting me to around gangs and organized crime, this is organized crime by SCDC and that person and all involved fired the request is proof they tell me I'm not getting all my time back and it's not my fault I won these grievance's what is the use to having the grievance system I have been Cabbagestalk 4/1/22

I ASKED nothing less and to replace all with new people and new laws. I want this grievance handled as if I must sit and watch SCDC (back) there own grievance system this criminal activity and I want

ACTION REQUESTED: TO Remove all involved in not giving me my credit and good time back / criminal charges filed for kidnapping, human trafficking and have my max out date fixed, this is organized crime, I want \$5000 everyday since the grievance branch decided to overturn the and classification's should give it to me and free all

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Grievant Signature: [Signature] Date: 4/2/22

IGC Signature: [Signature] Date: [Blank]

(CONTINUE ON REVERSE SIDE)

VERY IMPORTANT

WARDEN'S DECISION AND REASON:

Cabbagstalk, Shaheen 295567

MeCI-0086-22

I have reviewed your concern. In your grievance you stated that your max out date is incorrect. You also state your release day moved from October 29, 2023 to October 27, 2023. You further stated you should have been given more good time credits for your disciplinary charges that were removed. You would like to earn work credits and your max out date changed. SCDC Policy OP-21.11, Loss Of Statutory Good Time Section 3.1 reason For Failing To Earn 3/20 Days Good Time, 3.1 An inmate who accepts administrative resolution, pleads guilty, or is found guilty of violating an Agency rule or regulation (will fail to earn 3/20 days of good time for the month during which the infraction occurred.) In addition, part or all of an inmate's accrued good time may be forfeited as a result of a disciplinary hearing conviction within the guidelines set forth in SCDC Policy/Procedure OP-22.14, "Inmate Disciplinary System." Additionally, SCDC Policy OP-21.07, Earned Work Credits Section 8.1, "Each inmate job assignment will be placed in one of four job classification levels, and EWCs will be awarded on the basis of custody" A review of your concerns has been conducted with proper SCDC staff. It appears your max out date is October 27, 2023. Your sentence started on January 12, 2007. Serving 85 % would be 15 years 3 months and 18 days with a projected release date of April 30, 2022 without disciplinaries and all work credits. However due to your many disciplinaries and you have failed to earn work credits at some points and times. At this time as it stands you will do more than 85 % of your sentence. You are advised to follow SCDC rules, policies, and procedures.

Therefore, your grievance is denied.

If you disagree with the Warden's Decision (Decision), you may file an appeal by completing SCDC Grievance Form 10-5A, provided you 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.

[Handwritten Signature] 4-8-22

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.

Shaheen Cabbagstalk 4/8/22

Grievant Signature

Date

[Handwritten Signature] 4/8/22

IGC Signature

Date

Alternative Process Served

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.

The South Carolina Court of Appeals

Shaheen Cabbagestalk, #295567, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-001560

ORDER

The motion to proceed *in forma pauperis* is granted pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant's motion for the appointment of outside counsel is denied.



FOR THE COURT

Columbia, South Carolina

cc:

Shaheen Cabbagestalk, 295567
Christina Catoe Bigelow, Esquire

FILED
Jan 05 2023



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

Mr. Charles Allen

Letter Dated 1/20/23

Court Dead line

Was January 6th 2023

(21) days after deadline

January 27, 2023

Via Email to ctappfilings@sccourts.org
The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

*Objected
to
Before filed
and why*

RE: Shaheen Cabbagestalk, #295567 v. South Carolina Department of Corrections
Appellate Case No. 2022-001560

Dear Ms. Kitchings:

Enclosed, please find the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal in the above captioned appeal, along with the Proof of Service.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Joseph R. Shakibanasab, SC Bar #102825
Staff Attorney
South Carolina Department of Corrections

cc: Shaheen Cabbagestalk, #295567
Dorm-Room-Bunk: 2A-0187-B
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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

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

v.

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

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Joseph R. Shakibanasab, SC Bar No. 102825
Staff Attorney
Office of General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
Phone: (803) 896-1278

ATTORNEY FOR RESPONDENT

January 27, 2023

*File Date
I never received
this by then
It's way pass
dead line
of January 6th
2023*

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STATEMENT OF ISSUES ON APPEAL

I. Whether Appellant is properly being accredited 228 days of jail time.

II. Whether Appellant's remaining issues are post-conviction relief matters that are not properly raised before the Administrative Law Court.

STATEMENT OF THE CASE

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

ASCO policies op-20.04
SECTION
4-2
op-21.09
2.42.52.6
2.7

STANDARD OF REVIEW

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

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

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

S.C. Code Ann. § 1-23-380(5).

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

ARGUMENT

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

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

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

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

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

3)
cdc policy my this
if can't acceptive
2-21-09 classification
4/21/07
-21-09
was recorded
2/1/07

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

** Not allowed this by scpc to appeal issues to pcr*

this is why every classification of a prisoner need only be handled by courts by scpc not afforded notice to space due process violation Ex post facto violation

OP-2109
Section 3.3.2

OP-2109
p. 2

CDC Policies
for Com
with
this
Act
Appellate

is assumed to state legal name upon AP misstar
no entry be made on
other screen
Challenged by family court can't accept
CDC policies of 2/10/09, OP-2104

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

Act, the PCR Act "comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be

used exclusively in place of them." S.C. Code Ann. §17-27-20 (B). The ALC properly found that Appellant's claims that he is being unlawfully held are governed by the PCR Act. Rec. p. ____.

Secondly, Appellant filed a PCR¹ action and he argued that he is Shaheen Ramel Cabbagestalk and not James Cabbagestalk. See Rec. p. ____. The PCR court denied Appellant relief. Rec. p. ____. The case was appealed, and by order dated September 21, 2018, the Supreme Court dismissed the matter reasoning that Appellant "failed to show that there is an arguable basis for asserting that the determination by the lower court was improper." *Cabbagestalk v. State*, App. Case No. 2018-000885 (S.C. Sup. Ct. order filed June 7, 2018).

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

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

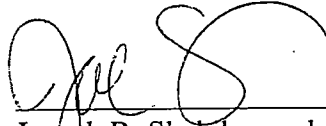
matter. Neither of which are the case.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Joseph R. Shakibanasab, SC Bar No. 102825
Staff Attorney
Office of General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
Phone: (803) 896-1278

January 27, 2023

ATTORNEY FOR RESPONDENT

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



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS

Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

March 8, 2023

Via Email to ctappfilings@sccourts.org
The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

proof of
Business
(Motion to
~~Strike~~
for state
(not
true)
legally
suppose to
Be on case
no proper
Motion to
Be on case

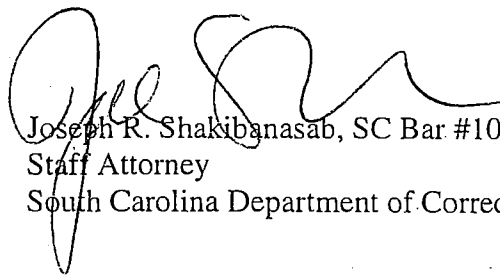
RE: Shaheen Cabbagestalk, #295567 v. South Carolina Department of Corrections
Appellate Case No. 2022-001560

Dear Ms. Kitchings:

Enclosed, please find the Motion to Strike Appellant's Final Brief and Extraneous Filings in the above referenced matter along with the proof of service.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



Joseph R. Shakibanasab, SC Bar #102825
Staff Attorney
South Carolina Department of Corrections

cc: Shaheen Cabbagestalk, #295567
Dorm-Room-Bunk: 2A-0196-A
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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

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

v.

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

**RESPONDENT’S MOTION TO STRIKE APPELLANT’S FINAL BRIEF AND
EXTRANEOUS FILINGS**

Respondent, South Carolina Department of Corrections (SCDC or Department), pursuant to Rule 240, SCACR, moves this Honorable Court for an order striking Appellant’s Final Brief and Extraneous filings.

Rule 211 of the SCACR governs final briefs. Section (b) of Rule 211 states:

(b) Content: The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:

(1) *References to the Record.* The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, Lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).

(2) *Corrections of Typographical Errors and Misspellings.* The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made.

Final Brief

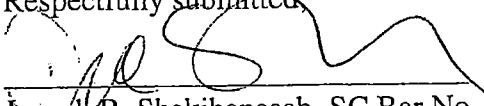
Rule 211 (b) SCACR.

Here, Appellant's Final Brief does not comply with the Rule 211 (b) SCACR. Appellant's Final Brief is not identical to the Initial Brief Appellant filed on November 22, 2022. Appellant added jurisdiction as an issue to the "Statement of Issues on Appeal." Additionally, the Record on Appeal has yet to be filed and Appellant's brief contains no references to a Record on Appeal. Therefore, because Appellant's Final Brief does not comply with Rule 211 (b) SCACR, Respondent requests this Court strike Appellant's Final Brief.

In addition, Respondent moves to strike the extraneous filings which were filed contemporaneously with Appellant's Brief. Specifically, Respondent moves to strike the documents titled "Questions of law," "Request for Relief," and the SCDC document titled "Notice of Policy Exemptions." The SCAC Rules do not contain any provisions for such filings, and they are not proper. Appellant's extraneous filings were not part of Appellant's Initial Brief. Therefore, this Court should strike same.

WHEREFORE, Respondent moves this Honorable Court for an order striking the Appellant's Final Brief and Extraneous filings.

Respectfully submitted,


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Phone: (803) 896-1278

Counsel for Respondent

Columbia, South Carolina
March 8, 2023

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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

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

v.

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

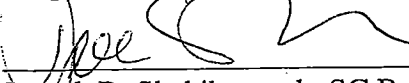
CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the foregoing *Motion to Strike Appellant's Final Brief and Extraneous* Filings upon Appellant by depositing a copy of same in the United States Mail, addressed to:

Shaheen Cabbagestalk, SCDC #295567
Dorm-Room-Bunk: 2A-0196-A
Evans Correctional Institution
610 Highway 9 West
Bennetsville, SC 29512

Columbia, SC
March 8, 2023

Respectfully submitted,


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Counsel for Respondent

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Shaheen Cabbagestalk, #295567,)	Docket No.: 22-ALJ-04-0160-AP
)	[Grievance No.: MACCI 86-22]
Appellant,)	
)	
v.)	<i>Hon. Robert L. Reibold</i>
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	RESPONDENT'S BRIEF
<hr/>		

STATEMENT OF THE CASE

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

? Appellant filed a Step One Grievance on April 4, 2022, alleging his maxout date was incorrect and alleged that he should have received reinstatement of more good time credits for disciplinary charges that were dismissed. This grievance was investigated and denied on April 8, 2022. On April 12, 2022, Appellant filed a Step Two Grievance requesting a copy of documents showing how much good time credit appellant has and also alleged that he is being held at SCDC without a valid order. This grievance was also investigated and denied on May 2, 2022. Appellant subsequently filed his Notice of Appeal.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as

Notes
to include
to give
a copy

Freedom

punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

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

STANDARD OF REVIEW

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

He can prove it

ARGUMENT

Op. 21-04 #412

(2) I. APPELLANT HAS FAILED TO CARRY HIS BURDEN TO DEMONSTRATE SCDC HAS INCORRECTLY CALCULATED HIS SENTENCE.

On August 28, 2007, Appellant plead guilty to armed robbery in violation of S.C. Code. Ann. §16-11-330(A) and sentenced to eighteen years incarceration. See Rec. p. 6. Appellant was arrested on January 12, 2007 and held in custody until he was transferred to SCDC on August 29, 2007. Rec. p. 10. Therefore, Appellant's sentence start date is January 12, 2007. See Rec. pp. 5 & 25.

a. Respondent correctly calculated Appellant's sentence.

Appellant's conviction for armed robbery is a "no-parole" offense, meaning the minimum amount of time Appellant must serve is eighty-five percent of the actual term of imprisonment

Also in not

imposed. See S.C. Code. Ann § 24-13-150 (A); and S.C. Code Ann. §24-13-100 (identifying class A felonies as “no parole” offenses); and S.C. Code Ann. §16-1-90(A) (identifying robbery while armed with a deadly weapon pursuant to 16-11-330(A) as a class A felony). Eighty-five percent of eighteen years equals fifteen years three months and 18 days. Appellant’s sentence started on January 12, 2007, see Rec. pp. pp. 5 & 25, the eighty-five percent projected completion date would have been April 30, 2022, with no disciplinaries and earning work credits. Rec. p. 3.

See they Administer

Appellant is required to serve more than the minimum eighty-five percent minimum because

See 150

* Appellant has been charged with over one-hundred and fifty disciplinary offenses during his time of incarceration and convicted of eighty-four of the disciplinary offenses. See Rec. pp. 15-23¹. 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 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). Each month Appellant commits or committed a disciplinary

offense (not only was Appellant at risk of losing good time, but he also failed to earn good time for

that month.) Because of Appellant’s numerous disciplinary infractions several of which resulted in the loss of good time, he is required to serve more than the eighty-five percent minimum. See Rec.

p. 3, see also updated Inmate Offense History.

punishment or are parity double violation (good time) jeopardy for same punishment

Possible Jeopardy = punishments for same policy violations

take days and can't earn days max out changes

¹ See also updated Inmate Offense History screens attached to Respondent’s Motion to Supplement the Record.

Restored
to cover
there
self

Since the filing of the Record, Appellant's maxout date has since changed again because he had some of his lost good time restored and Appellant has also received new disciplinary charges.²

Additionally, when an inmate is in the Restrictive Housing Unit or on Disciplinary Detention, they are unable to earn work credits (which also effect the projected maxout date) Appellant's current projected maxout date is September 2, 2023, and is subject to change pending the outcome of the pending disciplinary offenses.³

9/15/22 + 8/20/22 → old charges out dated to be off my Record → Invalid

b. Appellant's claim that was not reinstated good time for disciplinary offenses that were dismissed is incorrect.

Appellant argues in the Step One grievance that disciplinary case numbers 157 and 158 were dismissed and that he was only given two days of good time back. Rec. p. 2. As previously explained in the case bearing docket number 22-ALJ-04-0101, Appellant's projected maxout date moved from October 29th to October 27th because of the earning of goodtime during the time in which the disciplinary infractions occurred, no good time was taken from Appellant as a result of those disciplinary offenses and the good time lost for these disciplinary offenses are zeroed out in the computer.⁴ Appellant's claim that he has improperly lost good time as a result of disciplinary offense case numbers 157 and 158 is incorrect.

should
get good
time
if best
charges

only SCDC policy

c. Appellant's claim that his sentence is "invalid" is not a cognizable claim in the Administrative Law Court and should be dismissed. (no process)

Appellant states as if a mantra that his sentencing sheet is "invalid" and that he should be released from SCDC custody. See e.g. Rec. p. 1; see Appellant's Motion for Relief dated Sep. 16,

² See Good Time Restore History Screen and updated Display Inmate Offense History Screen both attached to Respondent's Motion to Supplement the Record. Appellant received three pending disciplinary charges in August 2022. * old out dated take it off my Record. now

³ See updated Release Date Screen attached to Respondent's Motion to Supplement the Record.

Note due to the computer system the good time and earned work credits on the release date screen are not the accurate numbers to use when calculating a sentence calculation. speak of it

⁴ See Dropped Offense Screen and Offense Inquiries for disciplinary offenses attached to Respondent's Motion to Supplement the Record. Note the good time lost for case numbers 157 and 158 are zero.

admit

Admn Law Judge
got jurisdiction over
claims

2022; see Appellant's Request for Relief from Jurisdiction Issue Dated August 28, 2022: Appellant

claims he is not "James Cabbagestalk" but is "Shaheen Cabbagestalk." See Rec. p. 1. This Argument

is not a cognizable claim in the Administrative Law Court and is more appropriate as a post-

conviction relief matter. See generally *Jernigan v. State*, 340 S.C. 256, 259-60, 531 S.E.2d 507, 508-

09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a

sentence under post-conviction relief laws and non-collaterally seeking review of the Department's

actions under the procedure established in *Al-Shabazz*; *State v. Bennett*, 375 S.C. 165, 170, 650

S.E.2d 490, 493 (Ct. App. 2007) (noting that a grievance under *Al-Shabazz* is essentially an attempt

to enforce a sentence correctly, not challenge it). A collateral challenge to a sentence must be brought

under the Uniform Post-Conviction Procedures Act. See S.C. Code Ann. § 17-27-10 et. seq.

Appellant's claim that his sentencing sheet is an invalid commitment order is not a proper argument

in the Administrative Law Court and therefore should be dismissed. See *Skipper v. S.C. Dep't of*

Corr., 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006); see also *Slezak v. S.C. Dep't of Corr.*, 361

S.C. 327, 605 S.E.2d 506 (2004).⁵

Appellant has not carried his burden of proving that his sentence is improperly calculated or that he goodtime was improperly taken from him. Appellant did not lose good time as a result of disciplinary case numbers 157 or 158. Appellant's claim that his sentencing sheet is not a valid commitment order is not a claim that can be brought in the Administrative Law Court and should be dismissed. Therefore, the final agency decision should be affirmed.

wt CDC
instably
only charge
on

Not PCR violation due process

Not its Due process / Liberty / Freedom

Got nothing to do with ALC case

Indictment got nothing to do with

⁵ Additionally see Order Denying Post-Conviction Relief for case bearing docket number 2010-CP-17-0091 and Appellate Case No. 2012-212579 available on the SC Appellate Case Management System. Appellant argued the issue of the indictment stating "James Cabbagestalk" rather than "Shaheen Cabbagestalk." Appellant was not granted post-conviction relief.

Commitment order being valid

ii: **APPELLANT FAILED TO PROVE THE AGENCY DETERMINATION IS CLEARLY ERRONEOUS, ARBITRARY OR CAPRICIOUS, OR AN ABUSE OF DISCRETION.**

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

CONCLUSION

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

Respectfully submitted,



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Email: Shakibanasab.joseph@doc.sc.gov

September 27, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold Administrative Law Judge

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

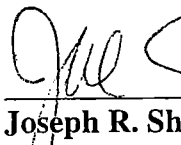
Shaheen Cabbagestalk, #295567..... Appellant,

v.

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

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date he mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Shaheen Cabbagestalk, #295567, Dorm-Room-Bunk: 2A-0187-B, Evans Correctional Institution, 610 Highway 9 West, Bennettsville, SC 29512.



Joseph R. Shakibanasab, SC Bar No. 102825
Staff Attorney
Office of General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
Phone: (803) 896-1278

January 27, 2023

Counsel for Respondent

The South Carolina Court of Appeals

Shaheen Cabbagestalk, #295567, Appellant,

v.

South Carolina Department of Corrections, Respondent.

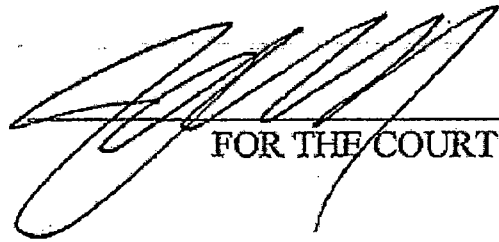
Appellate Case No. 2022-001560

ORDER

After careful consideration, Respondent's motion to strike Appellant's final brief and attached documents is granted. Within thirty days of the date of this order, Appellant must serve and file an amended final brief that complies with the South Carolina Appellate Court Rules. See Rule 211(b), SCACR ("The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except . . . [t]he references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal" and "[t]he party may correct obvious typographical errors and misspellings which were contained in the initial brief").

Amended Record
Moreover, Appellant's record on appeal, filed March 20, 2023, is stricken. Within thirty days of the date of this order, Appellant shall file an amended record on appeal that complies with the South Carolina Appellate Court Rules. See Rule 210, SCACR (providing for the content and format of the record on appeal and stating the record "shall include all matter designated to be included by any party under Rule 209" and "shall not . . . include matter which was not presented to the lower court").

Appellant's motion to strike Respondent's initial brief and designation of matter as untimely is denied. Appellant refers to this court's letter of January 20, 2023, in which the court notified Respondent that its initial Respondent's brief and designation of matter (were overdue) and gave Respondent ten days to file the items. (However) Respondent filed them less than ten days later, on January 27, 2023.



FOR THE COURT

Columbia, South Carolina

cc:

Shaheen Cabbagestalk, 295567
Joseph R Shakibanasab, Esquire

FILED
Apr 19 2023

The South Carolina Court of Appeals

Shaheen Cabbagestalk, #295567, Appellant,

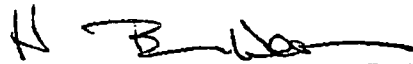
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-001560.

ORDER

After careful consideration, Appellant's "Objection to Late Entry of Appearance," is denied.



FOR THE COURT

Columbia, South Carolina

cc:

Shaheen Cabbagestalk, 295567
Joseph R Shakibanasab, Esquire

FILED
Mar 01 2023

The South Carolina Court of Appeals

Shaheen Cabbagestalk, #295567, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-001560

ORDER

The motion to proceed *in forma pauperis* is granted pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant's motion for the appointment of outside counsel is denied.



FOR THE COURT

Columbia, South Carolina

cc:
Shaheen Cabbagestalk, 295567
Christina Catoe Bigelow, Esquire

FILED
Jan 05 2023

In the Court of Appeals
State of South Carolina

In the Court of Appeals
of South Carolina

Case No: 2022-001560

RECEIVED

MAR 16 2023

SC Court of Appeals

Shaheen Cabbagestalk
Appellate v.

South Carolina Department of Corrections

Certificate of Counsel

I certify my final brief complies
with the rules

Shaheen Cabbagestalk
610 hwy 9 west
[EVANS C.T.]
Bennettsville SC. 29512
[pro se]

[3/10/23]

By: Shaheen Cabbagestalk
[3/10/23]

Proof of Service

I, Shahen Cabbagestalk
Filed Amended Final Brief, Amended
Record on Appeal and served
S.C. Courts of Appeals as
well (Joseph R. Shaliban) for
SCDC case #: 2022-001560

By: Shahen Cabbagestalk
(without prejudice)
(sovereign)

[4/27/23]

Notary name: Suscha Outler

My Commission Expires: 2/17/24

Date: 5/2/23

2 A0196

Shaheen Cabbage Sta 1K #295567
Evans C. T. (Kawah-Aside #196)
610 Hwy 9 West
Bennettsville S.C. 29512



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SC Court of Appeals

S.C. Court of Appeals
P.O. Box 11629

Columbia S.C. 29211

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