



good behavior credits should be calculated into this time as well. The Warden denied the grievance, noting Appellant is currently receiving work credits and does not receive good behavior credits because he is serving 85% of the sentence. On March 24, 2022, Appellant filed a Step 2 Grievance which was also denied.

### ISSUE ON APPEAL

Whether there is substantial evidence in the record to support the Department's decision and max-out date of October 15, 2024.<sup>1</sup>

### 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). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such a liberty interest is at stake in the calculation of an inmate's sentence. *See Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *See also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 and recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (2013). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the Appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and

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<sup>1</sup> Originally, During the course of preparing the Respondent's Brief Appellant's projected max out date was adjusted from January 11, 2026 to October 15, 2024, once it was discovered an entry to the system needed to be made.

substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

## **DISCUSSION**

### **I. Convictions/No Parole**

In the instant case, Appellant was convicted of (1) Kidnapping in violation of S.C. Code Ann. § 16-03-0910, (2) Assault and Battery with the Intent to Kill in violation of S.C. Code Ann. § 16-03-0620, and (3) Armed Robbery in violation of S.C. Code Ann. §16-11-330(A). All three convictions are listed offenses exempt from classification as enumerated in S.C. Code Ann. § 16-1-10(D), and as such, are “no parole offenses.” Appellant is serving sentences that are classified as “no-parole” offenses, meaning that Appellant must serve a minimum of eighty-five percent of his twenty-year sentence. *See* S.C. Code Ann. § 24-13-150(A). Section 24-13-100 defines a “no parole offense” as “a class A, B, or C felony, or an offense exempt from classification as enumerated in section 16-1-10(D), which is punishable by a maximum term of imprisonment for twenty years or more.” S.C. Code Ann. § 24-13-210(B).

As set forth in relevant portions of section 24-13-150 (A), “a prisoner convicted of a “no parole offense” as defined in section 24-13-100 and sentenced to the custody of the Department of Corrections..., is not eligible for early release, discharge, or community supervision..., until the prisoner has served at least eighty-five (85) percent of the actual term of imprisonment imposed”. Thus, no good time credits may be assessed until an inmate has served eighty-five (85) percent of their sentence.

Initially, the Department’s projected release date was September 12, 2025. However, this was changed due to Appellant’s earned credits and disciplinary history. Appellants corrected projected release date is October 15, 2024. The Department states that Appellant was sentenced to twenty (20) years to begin from the date of June 15, 2007. Because Appellant is serving a “no-parole” offense, Appellant must serve eighty-five (85) percent of his sentence. Eighty-five percent (85) of twenty (20) years is seventeen (17) years. Thus, the earliest possible date of release is seventeen years from June 15, 2007, which would be June 15, 2024.

Each month Appellant commits a disciplinary offense, he fails to earn good time for the month which the infraction occurred. *See* S.C. Code Ann. § 24-13-210 (B). Furthermore, whenever an inmate is in disciplinary detention or does not have a job assignment, the inmate is not earning work credits which has an impact on their release date. In the present case, Appellant

has been convicted of twenty-three (23) disciplinary offenses during his present term of incarceration. Appellant's offenses resulted in a loss of Good Time days which resulted in the recalculation finding the max out date to be October 15, 2024.

Appellant acknowledges that he has lost some good-time credits due to disciplinary infractions and that his last disciplinary infraction was August 3, 2016. Appellant contends that he should have earned back those credits lost plus more. South Carolina Department of Corrections Policy states that "Restoration of good time under this procedure is completely discretionary..." See SCDC OP-22-57 section 5. The Good Time Restore History screen included in the Record shows that 15 days of good time was restored to Appellant for cases numbered 28, 41, and 46. However, it is important to note that Appellant never earned good time credit for the months that these disciplinary offense occurred.

## **II. Award of credit for EEC**

Appellant contends that he was never given credit for the programs that he has completed while incarcerated. Appellant's appeal argument only addresses his contention that the Department incorrectly calculated his sentence. However, the question of Appellant's education credit was not preserved for this Court's review. An issue that was not raised to and ruled upon by a lower court cannot be considered for the first time on appeal. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2D 731, 733 (1998) (citing *Creech v. S.C. Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2D 571 (1997)).

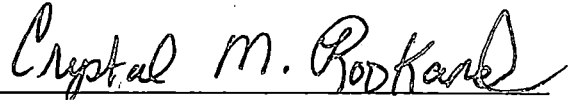
## **CONCLUSION**

After carefully and thoroughly reviewing this matter, the Court finds substantial evidence supporting the Department's calculation of Appellant's sentence and determination of his projected release date of October 15, 2024. The Court also finds that the substantial rights of Appellant have not been prejudiced. Thus, the Court affirms the Department's decision.

## **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that the Department's decision is **AFFIRMED.**

**AND IT IS SO ORDERED.**



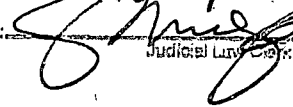
**CRYSTAL M. ROOKARD**  
Administrative Law Judge

September 15, 2023  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 18 day of September

By:   
Judicial Law Clerk