STATE of South Carolina
In the Court of Appeals

Appeal from Administrative Law Court
Ralph King Anderson, III Judge

Robert Watkins, Appellant

v

South Carolina Department of Corrections, Respondent

Appellate case NO 2023-001603

Final Brief of Appellant

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Statement of issue on Appeal

Did the Administrative Law court abuse its discretion in it's order dated March 30. 2023 Docket NO 22-ALJ-04-0297-AP filed with the S.C. Court of Appeals on April 14. 2023 in its findings that Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed pursuant to Porter v S.C Pub. Serv Comm'n, 333 S.C. 12, 20. 507 S.E.2d 328, 332 (1998)

Statement of the case and Procedural History

On 12-19-01 Appellant was arrested, after being interrogated and giving a statement of his where abouts, arrest warrant G865977 for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery was issued, along with a search warrant, to search the residence appellant lived at, inwhich a Gun and mask was obtained. On 12-21-01 arrest warrant G865988 for violation of S.C. 1976 Code of law §16-23-490 Possession of a weapon during the commission of or attempt to commit a violent Crime (PWDCVC) were issued. On January 14, 2002 the solicitors office prepared an Indictment for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery and §16-23-490 PWDCVC and assigned docket number 2002-GS-23-1063. On October 23-25 2002 Appellant was tried before the Honorable Judge Victor C. Pyle Jr. of the 13th Judicial Circuit Court of Greenville County in a jury trial inwhich he was convicted. Judge Pyle sentenced Appellant to SCDC for a period of 30 years for armed robbery and a concurrent 5 year sentence for PWDCVC, time to begin from 12-19-01.

Appellant filed a timely Notice of appeal with S.C. Court of Appeals. The appeal was dismissed pursuant to Anders v California 386 U.S. 73 (1967) State v Watkins Op. No 2004-UP-406 (S.C. Ct App June 22, 2004.

On October 22, 2004 Appellant filed an Application for Post-Conviction Relief case 2004-CP-23-7064 An evidentiary hearing was held before Judge Larry. R. Patterson. on January 17. 2006 Judge Patterson issued an order denying and dismissing the application for Post-conviction Relief with prejudice..

Appellant PCR counsel Rodney Richey filed a timely Notice of Appeal with S.C. Supreme Court. The S.C. Supreme Court granted Appellants Petition for a Writ of habeas Corpus and issued an order reversing Judge Patterson order denying Appellants application for PCR, and granting Appellant a new trial. see Watkins v State, Memorandum Opinion No. 2008-mo-001.

On September 22-24, 2008 Appellant was retried a second time by the Solicitors office of Greenville County

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under the same Indictment 2002-GS 23-1063 for violation of S.C. 1976 Code of Law §16-11-330(A) armed robbery and §16-23-490 PWDCVC that was used to try him and convict him back on October 23-25th 2002 before Judge Victor C. Pyle, Jr. Only this time after being retried a second time for the same offenses and based upon the same facts and evidence, Appellant was sentenced to the SCDC By Judge Larry R Patterson under Indictment 2002-GS23-1063 to 25 years for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery and 5 years consecutive for violation of S.C. 1976 Code of law § 16-23-490 PWDCVC.

Judge Larry R. Patterson denied Appellant his 9 months, 5 days, 6 years for the time he had served from 12-19-01 to 9-24-2008 that he was entitled to pursuant to S.C 1976 Code of law § 24-13-40 which provides: The computation of the time served by prisoners under sentence imposed by the courts of this state shall be reckoned from the date of the imposition of the sentence .... In every case in computing the time served by a prisoner full credit against the sentence shall be given for time served prior to trial and

sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense. in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.; when Judge Patterson didnt check the Box on the sentencing sheets inwhich he sentenced Appellant to 25 years for violation of S.C. 1976 Code of law § 16-11-330(A) armed robbery and 5 years Consecutive for violation of S.C. 1976 Code of law § § 16-23-490 PWDCVC, which provides: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the Department of Corrections.

Section § 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the two exception applies State v McCord, 349. S.C 478, 487, 562 S.E.2d. 689, 694 (C.t. App. 2002).

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STANDARD of review

In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review." Kiawah Dev. Partners, II v S.C. Dep't of Health & Env't Control, 411 S.C 16, 28, 766 S.E.2d 707, 715 (2014). "Section 1-23-610(B) South Carolina Code (Supp. 2020) sets forth an administrative agency." S.C Dep't of Corr v. Mitchell, 377 S.C 256, 258, 659 S.E.2d 233, 234 (Ct App. 2008). "The review of the [ALC's] order must be confined to the record." S.C Code Ann. §1-23-610(B). (Supp. 2020). "[This] court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on question of fact." Id. "In determining whether the [ALC's] decision was supported by substantial evidence, [this] court need only find.... evidence from which reasonable minds could reach the same conclusion as the ALC." Kiawah, 411 S.C at 28, 766 S.E.2d at 715. However, when the issue on review raises a question of law, this court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." Id Statutory interpretation is a question of law." Chapman v S.C. Dep't of Soc. Servs., 420 S.C. 184, 188, 801 S.E.2d 701, 703 (Ct App 2017) (quoting S.C. Coastal Conservation League v. S.C. Dep't of Health & Control, 390 S.C. 418, 425, 702

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S.E.2d. 246, 250 (2010) "Unless there is a compelling reason to the contrary, appellate courts 'defer to an administrative agency's interpretations with respect to the Statutes entrusted to its administration or its own regulations." Id at 188, 701 S.E.2d at 403 (quoting Kiawah, 411 S.C. at 34, 766 S.E.2d at 718); see Kiawah, 411 S.C. at 34-35, 768 S.E.2d at 718 ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the Statute.'" (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844; 104 S.Ct. 2778, 81 L.Ed.2d. 694 (1984)).

Argument

Appellant argues that S.C Court administration Law in Court Judge Ralph K. Anderson, III order issued on March 30, 2023 Docket NO 22-ALJ-04-0297-AP that Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence and the Department's decision must be affirmed Id ROA pages 1-5 exhibit #(1) ..... is arbitrary, capricious or manifestly contrary to the Statute §24-13-45 and an abuse of discretion. The Administrative Law Court Judge Anderson in his discussion Id in ROA page 3 through page 4 of exhibit (1), states, the Department argues it properly gave Appellant credit for time served. The Department explains that Appellant first served five years for the weapon conviction, which was calculated from the date of his arrest, December 19, 2001, and completed on December 18 2006. Because Appellant's robbery conviction is consecutive, the start date for Appellant's robbery charge was December 18, 2006. Additionally, because the robbery conviction is a "NO parole" offense, Appellant must serve eighty-five percent of the sentence or approximately twenty-one years, two months, and

twenty nine days. When twenty-one years, two months, and twenty nine days is added to the start date of December 18, 2006, it results in a projected max out date of approximately March 12, 2028. Judge Anderson III found the Department's sentence calculation is correct, quoting S.C. 1976 Code of Laws § 24-13-40. further stating, This statute requires that prisoners be given credit for all time served prior to sentencing unless either of the two statutory exceptions applies See Id. Neither of the two exception applies here., and the Record shows Appellant was given credit for time served. Appellant has been incarcerated since December 19, 2001 when he was originally arrested. The Department has calculated Appellant's sentence from that start date and therefore given him credit for his time served before his final convictions on September 24, 2008.

On September 24, 2008, Appellant was convicted of Armed Robbery under section § 16-11-330 and Possession of a Weapon During the Commission of a crime under section § 16-23-0490. He was sentenced to twenty-five years' incarceration and five years incarceration respectively. Importantly, these sentences were to

run consecutively. The Department applied the five year weapon sentence starting on December 19, 2001, and properly calculated that Appellant finished that sentence on December 18, 2006. Then, since Appellants robbery conviction ran consecutive to the weapons conviction, the start date of the twenty-five-year sentence for his robbery conviction began on December 18, 2006. As the Department correctly notes, conviction for armed robbery under section 16-11-330 is a no-parole offense. See S.C. Code Ann. § 16-1-90 (Classifying robbery while armed with a deadly weapon as a class A felony); S.C. Code Ann. § 24-13-100 (defining a class A felony as a no-parole offense") Because it is a no-parole offense, Appellant must serve eighty-five percent of his twenty-five year sentence, or as the Department correctly calculated, twenty-one years, two months, and twenty--nine days. See S.C. Code Ann. § 24-13-150(A) (requiring an inmate convicted of a no-parole offense to serve at least eighty-five percent of their sentence.) Once twenty-one years, two months, and twenty-nine days is added to the start date of December 18, 2006 it results in a projected max out date of approximately

March 12 2028 as the Department calculated. see Exhibit #1 ROA pages 3 and 6 [illegible] Judge Anderson Basicallyu confirmed and agreed with what the Respondent Joseph R. Shakibanasab argued in his Respondents Brief of Docket NO: 22-ALJ-04-0297-AP Grievance NO: PCI 292-221 dated March 7 2023 see Id in Exhibit #2 ROA pages 6 through 11 [illegible] SCDC interpetation of S.C. 1976 Code of law §24-13-40 is arbitary, capricious and Manifestly contrary to S.C. 1976 Code of law § 24-13-40 1st SCDC Pursuant to Major v S.C. Dept of Prob. Parole & Pardon Servs. 384 S.C. 457, 469, 682 S.E.2d 795, 801 (2009) restructured Appellants Calculation of his sentence pursuant to S.C. 1976 Code of law §24-13-40 as though Appellant was eligible for parole, and conscruing that the 5 year consecutive sentence for violation of S.C 1976 Code of law §16-23-490 PWDCVC in which is a no-parole offense, prevented Appellant from Making parole on the 25 year armed robbery sentence imposed for vidation of S.C. 1976 Code of law §16-11-330(A)

see Id in ROA page 12-17 Exhibit #3..... The state interpretation of §24-13-40 under Major v S.C Dept of Prob. Parole & Pardon Servs, Supra was that When a defendant receives a consecutive sentence, the prior sentence(s) and the consecutive sentence(s) are considered one sentence for the purpose of providing jail time credit. Jail time credit is counted once toward the string of sentences. S.C. Code Ann §24-1-30 charges SCDC with carrying out S.C. Code Ann § 24-13-40 As such, the agency's interpretation of this statute is entitled to deference. see Id in ROA pages 8,9 Exhibit #2.

Neither offense inwhich Appellant was convicted for and sentence to SCDC for on 9-24-2008 Tis an parole eligible offense. Id in ROA page 16&17 of Exhibit #3..... So The Majors v S.C. Dept of Prob Parole & Pardon Servs Supra doesn't apply to Appellant, because neithe offenses, Id in ROA page 16-17 of exhibit #3, for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery and §16-23-490 PWODVC. So Appellant 5 year consecutive sentence for violation of S.C. 1976 Code of law §16-23-490 PWODVC should not have been calculated first, before the aggregated 25 year armed robbery

Sentence for violation of S.C. 1976 Code of law §16-11-330(A) armed robbery; for the trial Judge sentenced Appellant first to 25 years for armed robbery and then secondly to 5 year consecutive for violation of S.C. 1976 Code of law § 16-23-490. see Id in R.O.A page 16-17 of exhibit #3 In which pursuant to S.C. 1976 Code of law §24-13-40 in calculating the 25 year armed robbery sentence. Id in exhibit #(3) imposed on 9-24-2008. Appellant was sentenced to 25 years for armed robbery. pursuant to S.C. 1976 Code of law 24-13-150(A) Appellant is to serve 85% percent of 25 years, which is 21 years, 2 months, 29 days. 21 years, 2 months, 29 days, from 9-24-2008 = 12-23-29 According to Appellant's Oct 25, 2002 Conviction in which he was given credit from 12-19-01 Id in R.O.A page 14, 15 of exhibit #3... and Sentence to 30 yrs for armed robbery and 5 years Concurrent for Pnolve. and the sentence he received in a retrial and conviction under the same Indictment # 2002-GS-23-1063 25 years for armed robbery and 5 years Consecutive for Pnolve on 9-24-2008. Id in ROA page 16-17 Exhibit #3 Appellant was entitled to credit for time served under Indictment 2002-GS-23-1063 from 12-19-01 to 9-24-2008 in which is 9 months, 5 days, 6 years; So 12-23-29 minus 9 months, 5 days, 6 years, gives Appellant a projected

mayout date of 3-18-23 inwhich has, expired. under Indictment 2002-GS-23-1063 September 24, 2008 Conviction for 25 years armed robbery Id in R.O.A. page 16 a Exhibit # 3

When SCDC starts Appellant 25 year sentence from 12-18-2006, that calculation is arbitrary and capricious and in violation of Appellant statutory created liberty interest in violation of Appellants due process and equal Protection of right of S.C. Const. article 1 section 3 and U.S.C.A. 14th to S.C. 1976 Code of law §24-13-40. The 25 year armed robbery sentence imposed on 9-24-2008, shall be reckoned from the date of imposition of that sentence, inwhich SCDC failed to do or comply with, and Appellant is to be given full credit. SCDC calculating Appellants start date for the 25 year armed robbery sentence imposed on 9-29-2008 from 12-18-2006 is arbitrary, capricious and manifestly contrary to S.C. 1976 Code of law §24-13-40, and is not giving Appellant full credit for the time he has served against the newly imposed 25 year sentence for armed robbery, making SCDC calculation In ROA page 1-5 Exhibit #1 and ROA page 6-11 Ex #2 incorrect 25 year armed robbery sentence imposed on 9-24-2008 has expired on 3-18-23. Appellant's 5 year consecutive Sentence for Pwiaave Id in ROA page 12 imposed on 9-24-2008 under Indictment 2002-GS-23-1063

is an illegal sentence imposed on 9-24-2008 in violation of S.C. Const. article I section 12 and U.S.C.A 5th 14th Double Jeopardy clause against second prosecution for same offense after Conviction and multiple punishments for the same offense. North Carolina v Pearce, 395 U.S. 711, Benton v Maryland 395 U.S. 784. SCDC is aware that, in reference to Appellants 1st trial and Conviction under Indictment 2002-GS 23-1063 of October 25 2002 (R. in ROA page 14-15) in which Appellant received 30 yrs for armed robbery and 5 years concurrent for PWDCVC, that Appellant complete that 5 year Concurrent sentence for PWDCVC on 12-18-2006 and had expired as of 12-18-2006. The only sentence Appellant was being held under Indictment 2002-GS-23-1063 Oct. 25 2002 Conviction for, is the 30yr armed robbery sentence that he had to finish doing the remainder of that sentence, minus the time he had already served from 12-19-01 to the date S.C. Supreme Court granted Appellant a new trial on January 14, 2008 in Watkins v State, 2008 MO-001. SCDC released Appellant on Feb. 6, 2008 into the custody of Greenville County Detention Center.

12-19-01 to Feb. 6. 2008 is how much time Appellant had served on the 30 year armed robbery sentence before he was released on Feb 6, 2008. on 9-24-2008 he was retried and convicted a second time in which he was entitled to

9 months, 5 days, 6 years credit for time served. But only could be retried and convicted for the armed robbery offense, not the pwocve offense. So for SCDC to use the 5 year concurrent sentence imposed on October 25, 2002 under Indictment 2002-GS-23-2063 that Appellate has already enacted the time for, and not subtract the time Appellant has already served from the 5 years consecutive sentence imposed on 9-24-2008, and use that already served sentence to calculated the time the 25 year armed robbery sentence begins, is a violation of the Double jeopardy clause, subjecting Appellant to multiple punishment. By calculating Appellant time served or the end date of which Appellant has served the 5 year Concurrent sentence imposed on Oct 25 2002 to end on 12-18-2006. is not giving Appellant full credit for the time he has served from 12-19-01 to 9-24-2008 as required by S.C. 1976 Code of law §24-13-40. It is an obuse of SCDC discretion and an arbitrary and carpicious manifestly contrary to S.C. 1976 Code of law §24-13-40 to begin the 5 year consecutive sentence imposed on 9-24-2008, from 12-19-01, because S.C. 1976 Code of law §24-13-40 requires that the 5 year consecutive sentence for pwocve, be reckon from the date of imposition of that sentence. which is 9-24-2008

It doesn't provide how to calculate a consecutive sentence. Where the terms of a statute are clear, the court must apply those terms according to their literal meaning. Paschal v State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope. Durham v United Companies Financial Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). See Id in R.O.A page 8-9 Respondents Brief Exhibit #2 ... Judge is expanding the statutory provisions of S.C. 1976 Code of Law §24-13-40 based on its interpretation of S.C. 1976 Code of Law §24-13-40 and the Administrative Law Court Judge Anderson is abusing his discretion, and his decision is arbitrary and capricious and manifestly contrary to S.C. 1976 Code of Law §24-13-40 In his order Id on R.O.A. page 1-5 Exhibit #1 ... The 5 year consecutive sentence is to be reckoned from 9-24-2008 in which under section §16-23-490 is a Mandatory 5 year day for day penalty. 9-24-2008 + 5 years = 9-24-2013. It's not 85% percent, it's day for day. So it can't be calculated with the 25 year armed robbery sentence as follows 25 yrs + 5 years = 30 years the 85% percent law

§24-13-150(A) can not be applied to §16-23-490 of S.C. 1976 Code of law. On Id in R.O.A page 8-9 Exhibit # 2, Respondent Brief SCDC claims that Jail time credit is counted once toward the string of sentences, that §24-1-30 charges SCDC with carrying and S.C. Code Ann §24-13-40. As such, the agency's interpretation of this statute is entitled to deference ..... SC. 1976 Code of law §24-13-40 doesn't authorized that Jail time credit is counted once toward the string of sentences. This is arbitrary and carpicious and manifestly contrary to S.C. 1976 Code of law §24-13-40 and an abused of SCDC discretion and Judge Anderson's discretion for relying on SCDC argument in its Respondent's brief.

The 5 year concurred sentence imposed on 9-24-2008 = 9-24-2013 minus 9 months 5 days, 6 years, equals a maxout date of 12-18-2007. If SCDC calculates that the 5 year consecutive sentence imposed on 9-24-2008 Id in R.O.A page 16-17 Exhibit # 3 was served in full and ended based upon the October 25 2002 conviction for the same offense, that begun on 12-19-01 and ended on 12-18-2006 Id in R.O.A page 14-15 Exhibit # 3. Then SCDC is not actually giving Appellant the

time he has already served against the 5 year consecutive sentence imposed on 9-24-2008 as required by SC 1976 Code of law §24-13-40. Because in order to give appellant credit for time served, SCDC must subtract the time served from the new 5 year consecutive sentence imposed, that will leave Appellant with 0 time to serve for the 5 year consecutive sentence imposed on 9-24-2008; and Appellate has pursuant to §24-13-40 in reference the 25 year armed robbery sentence imposed on 9-24-2008, pursuant to §24-13-40 has expired on 3-18-23.

See SC 1976 Code of law § 24-13-40 which provides The computation of the time served by prisoners under sentence imposed by the Courts of this State shall be reckoned from the date of the imposition of sentence..... SCDC isn't computing Appellants time served from the date of imposition of the sentences inwhich is on 9-24-2008 Id at 10 pg. 16, 17 Exhibit #3. SCDC computed Appellants time from 12-18-2006 (the The 5 year Consecutive sentence for violation of SC 1976 Code of law 16-11330(A) armed robbery and 12-19-01 for violation of SC 1976 Code of law

§16-23-490 Possession of a weapon during the commission of or attempt to commit a violent crime, in violation of S.C. 1976 Code of law 24-13-40, see Id in R.O.A, pg 7-10. Exhibit #2, is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion in violation of SC. 1976 Code of law §24-13-40, in which Applicants 25 year sentence for armed robbery and 5 year consecutive sentence for the poss. of weapon charge during a violent crime imposed on 9-24-2008 Id in R.O.A pgs 16,17 The time Appellant has already served was'nt computed from the date of the reckoning of Theses sentences as is mandatory under S.C. 1976 Code of law §24-13-40. It was an abuse of Judge Ralph King Anderson discretion to find SCDC correctly calculated his sentencing sheets correctly; and his decision is controlled by errors of law and clearly erroneous in view that it is unsupported by substantial Evidence, i.SCDC interpretation of S.C. 1976 Code of law 24-13-40 Id in R.O.A page 9-10. The Words of the state must be given their plain and ordinary meaning without resorting to subtle or

Forced construction to limit or expand its scope
Durham v United Companies Financial Corp:
331 S.C. 600, 503 S.E.2d 465 (1998). The court must
apply those terms according to their literal
meaning Paschal v State Election Comm'n, 317 S.C 434,
454 S.E 2d 890 (1995).

SC1976 Code of law 24-13-40 further
provides ..... In every case in computing the time
served by a prisoner full credit against the
sentence shall be given for time served prior to trial
and sentencing ..... SCDC in its interpretation
of S.C. 1976 Code of law 24-13-40 is not giving
Appellant his full credit against the 25 year armed
robbery sentence imposed on 9-24-2008 when SCDC
pursuant to its interpretation of S.C. Code 24-13-40
is computing Appellants 25 year armed robbery
sentence imposed on 9-24-2008 to begin on 12-18-2006
in which to give appellant a max out date of March
12-16, 2028. see Id in R.O.A pages 8, 9, 40.

Inreference to Appellant sentencing sheets, under
Indictment 2002-GS-23-1063 for violation of SC 1976 Code of
law 16-11-330 (B) and 16-23-490 of Oct 25-2002 and 9-24-2008
Id in R.O.A pages 13-18 Applicant is entitled to credit for
time served from 12-19-01 to 9-24-2008.

which is 9 months, 5 day, 6 years for punishment he has already enacted. Pursuant to S.C. 1976 Code of law 24-13-40 This credit for time served is to calculated against the 25 year armed robbery sentence imposed on 9-24-2008. 9-24-2008 + 25 years at 85% (21 months, 29 days, 21 years) 9-24-2008 + 21-29-21 equals 12-24-29 in calculating the 9 months, 5 days, 6 years against the 25 year sentence imposed on 9-24-2008 at 85% equal a max out date of 3-18-23. for the 25 year armed robbery sentence imposed on 9-24-2008 Id in R.O.A page 17. pursuant to the requirement of S.C. 1976 Code of law §24-13-40. In applying the same standard of §24-13-40 to the 5 year Consecutive sentence for violation of SC 1976 Code of law §16-23-490 Proviso Id in R.O.A page 17, the 5 year consecutive sentence under S.C Code §16-23-490 is a day for day sentence, that pursuant to S.C. Code §24-13-40 would be reckoned from the date of imposition of that sentence, in which full credit against that sentence shall be given for the 9 months, 5 day, 6 years credit for the time Appellant has already served on this offense. (5 years from 9-24-2008 is 9-24-2013) (9-24-2013 minus 9 months, 5 day, 6 years time served gives Appellant a max out date for Violation of S.C. 1976 Code § 16-23-490

PWDUVL Id in ROA page 18, that has expired on 12-18-2007.
Applicant argues in his step one and step 2 grievances
Id in the SCDC ROA. That he has already served the
5 yr A five year sentence under Indictment 2002-GS-23-7063
imposed on October 25 2002 for count two violation of
SC 1976 Code of laws §16-23-490 PWDUVL as an concurrent
sentence under, in which begin from 12-29-01 and ended
on 12-18-2006, Id in ROA page 16. That using the same
Indictment 2002-GS-23-7063 retry Appellant for the same
offense count two violation of SC 1976 Code of laws §
§16-23-490 PWDUVL and convict him a second time for 2008
the same offense on 9-24-2008 after the October 25 2002
Conviction, and Sentence Appellant to 5 year consecutive for
violation of SC 1976 Code of laws 16-23-490 Id in ROA
page 8 violated SC Const article 1 section 12 and the
USCA 5th Mode Applicable against the States Through
the 14th Amendment against the Double Jeopardy clauses
against multiple punishment for the same offense.
North Carolina v Pearce 395 US 711, Benton v Maryland
395 US 707. see Id in SCDC ROA step 1 and step 2
grievances. The way S.C Dept is interpreting SC 1976
Code of law 24-13-40, SCDC is not giving Appellant
his credit for the time he has served against the
5 year consecutive Sentence imposed on 9-24-2008

On 9-24-2008 Appellant was sentenced under Indictment 2008-GS-23-1063 to 25 years for armed robbery, and 5 years consecutive for (PWIDCDRC). Id R&A page 17, 18 Neither offense is parole eligible. So the "Mayors v S.C. Dept of Prob. Parole and Pardon Servs case doesn't apply, no need for structured arraignment." to calculate the 5 year sentence first, so that Appellant will be eligible for parole on the 25 year armed robbery sentence, because the 25 years armed robbery sentence is non parolable. S.C. 1976 Code of Law 24-13-40, provides that Appellant is to be given credit for time served, to be reckoned from the date of the imposition of the sentence. Therefore The 25 year sentence is to begin from 9-24-2008. in which 85% of 25 years is 21 months, 29 days, 21 years from 9-24-2008 equal a projected maximum date of 12-24-29. (Pursuant to 24-13-40 Appellant is entitled to credit from the time he has already served from his initial conviction of October 25 2007 to his second conviction of 9-24-2008 Id R&A pages 13, 14, 17, 18 in which is 9 months 5 days, 6 years. That time is to be credited against the 25 years sentence imposed on 9-24-2008 for armed robbery at 85% which is 21 months, 29 days, 21 years from 9-24-2008 = 12-18-29 minus time served 9 months 5 days, 6 years = 3-18-23

max out date for the 28 year armed robbery sentence. Id
Ref page 17. SCDC has this max out date for
the 28 year armed robbery charge, Beginning on 12-18-2006
and ending on 3-12-28 in which is incorrect See Id
ROA page 4. Because of how it interprets SC
1976 Code of Law 24-13-40. in which Appellate finds
although in determining whether the ALC
decision is supported by substantial evidence,
was that Appellant has not carried his burden
to demonstrate SCDC is incorrectly calculating
his sentence., Appellant argues that the SCDC
substantial Evidence is based on erroneous
interpretation of SC 1976 Code of Law 24-13-40 and
§16-23-490 of his sentencing sheets Id R.O.A pg 17.18.
and that Appellant failed to carry his burden of
proving that SCDC improperly calculated his
Sentence and the Departments decision must be
affirmed pursuant to Porter Supra is arbitrary,
capricious and Manifestly contrary to SC 1976
Code of law 24-13-40 amounting to an abuse
of discretion and error of law. Id ROA page 4.
of Exhibit A(1).

See Respondents Initial Brief of Respondent Exhibit 4 R.O.A. page 25 through page 28 is not support by the substantial Evidence of SC 1976 Code of Law 24-13-40, and the case law of Major v. SC Dept of Prob. Parole and Pardon Servs. 384 S.C. 457, 682, S.E.2d 795 (2009) is an erroneous application of law applied by the SCDC in its interpretation of SC 1976 Code of Law §24-13-40 which is arbitrary, capricious to the contrary of SC 1976 Code of Law 24-13-40 resulting in an abuse of discretion. This court will find in the Respondents argument that it doesn't not inform this court of how much credit for time served under 24-13-40 Appellant is entitled to due to his Oct 28 2002 Conviction to his second Conviction of 9-29-2005 for the same offense Id in R.O.A pg (13-14) (page 17,18). Inwhich is 9 months, 5 days, 6 years. Nor does it provide what SC 1976 Code of Law 24-13-40 States, to inform this court of that statute application Inwhich provides: The computation of the time served by prisoners under Sentences imposed by the Courts of this State shall be reckoned from the date of the imposition of the sentence ... In every case in computing the time served by a prisoner, full

credit against the sentence shall be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense. Therefore this court is not able to make an accessment of how much credit Appellant is entitled to for time served under § 24-13-40 see Id in L.O.A page 25 to 28. The Respondent argues pursuant to S.C. Code § 24-13-40 (§ C) (24-13-40) charges SCDC with carrying out S.C. Code § 24-13-40. As such, the agency's interpretation of this statute is entitled to deference. Dunton v S.C. Bd Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133, (1987) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.") (Citing Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986)

Appellant brings to this courts attention that the following compelling reasons that Respondents interpretation of state statute 24-13-40 should be overruled is because its arbitrary, capricious and is in violation of SC 1976 Code of law §24-13-40 and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record and is arbitrary or capricious or characterized by abuse of discretion and is clearly unwarranted exercise of discretion when it applied the structured practice of Majors v S.C Dept of Prob & Pardon Servies, 384 S.C. 457, 682 S.E. 2d 795 (2009) when neither of Appellants offense for which he was convicted and sentenced for on 9-29-2008 Id. R at page 17, 18. where paroleable offenses.

Respondents further argued that Appellant is receiving credit for all of the time served prior to his second sentencing proceeding because his sentence start date is December 19 2001 - the date of his original arrest (See R p___) This also gives him credit for all the time he served in prison before he was tried and convicted the second time after his PCR was granted. To the extent Appellant is arguing he should have

additional credit. Respondent unable to make sense of this argument. Appellant was clearly given a consecutive sentence in this second sentencing proceeding, and it makes no difference which sentence runs first or last, since neither offense is parole eligible. Appellant is required to serve the same amount of time on each offense regardless of which runs first or last. However, SCDC's practice, per the logic of Major v SC Dept of Prob. Parole & Pardon Servs. 384 SC 457, 682 S.E.2d 795 (2009), is to run the weapon offense sentence first since it is a day for day offense. See SC Code Ann § 16-23-490 (). . . .

. . . . . .

The Respondent is challenging the purpose all Judicial language of Major v SC Dept of Prob. Parole & Pardon Servs. Supra in the argument in its initial Brief of Respondent ID Rob pgs 26, 27 in its interpretation of SC 1976 Code of Laws 16-23-490 which is arbitrary or capricious and an unwarranted exercise of discretion. Respondent further argues that Regarding the specific calculations, five years from December 19 2001 is December 18 2006 which the start date for the 25 year armed robbery sentence (R p ___) As stated above, the armed

robbery offense is an 85% no parole offense under SC Code 24-13-100 since it is a class A felony punishment by twenty years or more See SC Code 16-1-90 (A) Accordingly, Appellant is required to serve at least eighty five percent 85% of the 25 year sentence SC 1976 Code 24-13-150 (A) . . . . . 85% of 25 years is equivalent to 21 years, two month, and twenty-nine days. (R.p—) Adding this amount of time to Dec 18 2006 results in the date of March 18 2028 (Even there are six leap years in between the sentence start date and the release date. So Appellant's release dude is six days earlier on March 12 2028. Id Roa page 27.

Appellant argues he is not being given under SC 1976 Code of law 24-13-90 his full credit for the time he has already service, in which is 9 months, 5 days, 6 years against the new sentences imposed on 9-24-2008 Id Roa page 17-18 in which the time served is suppose to be substracted from those 2 new sentences imposed on 9-24-2008 for the same offense in which Appellant has served time for from 12-19-01 to 9-24-2008. The Respondent doesn't wont to subtract the time, because it will show when Appellants

has exactly finished surving that offense, if it complied with SC 1976 Code of law §24-13-40 instead of applying the interpretation of SC 1976 Code of law 24-13-990. back dating the new imposed sentence from the original arrest date. For example if in calculating the 5 year consecutive Sentence for Possess Id ROA page 18 Imposed on 9-24-2008 from 12-19-01 and coming up with a max out date on 12-18-2006. Appellant Lesslie served that sentence in full. Under §24-13-40 Appellant is entitled to full credit for the time he has already served to be calculated against the 25 year armed robbery Sentence as well, imposed on 9-24-2008. Id ROA page 17 Which 25 years at 85% which is 2 months, 29 days, 21 years from 12-19-01! 12-19-01 + 2 months, 29 days, 21 year which give Appellant a max out date of approximately around on or on 3-17-22 in which has expired

S.C 1976 Code of law 24-13-40 provides that Appellant must be give full credit for time served in which the Respondent is not doing. Although SC 1976 Code of law 24-13-40 doesn't instruct on how credit must be calculated in reference to consecutive sentence imposed upon retrial for an offense a defendant has already served the

time for. The Respondent SCDC interpretation of how a consecutive Sentence should be calculated under §24-13-40 is a violation of S.C Const article I § 8 Seperation of Powers, and is unsupported by the evidence. Respondent did not give Appellate his full credit from 12-19-01 against his 25 year armed robbery sentence because had it; Appellant mayound date would have been on or approximately 3-17-22 and SCDC would have to release Appellant from custody.

Appellant has a state created liberty interest under SC 1976 Code of Laws §24-13-40 which places substantive limitations on the Dept of Corrections official discretion. Id at 462, 109 Sct. 1904 (quoting Olim v. Wakinekona, 461 US. 238, 249, 103 Sct. 1741 75 LEd 2d 813 (1983) where the terms of a statute are clear, the court must apply those terms according to their literal meaning. Paschal v State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope. Durham v United Companies financial Corp, 331 SC 600, 503 S.E.2d 465 (1998).

Appellant argues that the Respondent argument

Credit for time served to begin from 12-19-01 for the 5 year Consecutive Sentence imposed on 9-24-2008 in which it came up with a maxout date of 12-18-2006 see Tel in ROA page 29 of Exhibit "4". Because had SCDC calculated the 25 year Sentence from 12-19-01 the maxout date would be 3-12-22 approximately or on 3-17-22.. 12-19-01 + 2 months, 29 days 21 years is 3-12-22 SCDC would have had to released Appellant from custody in which on 12-18-2006 the 5 year consecutive Sentence for PWIDCDC ended pursuant to 24-13-40 Tel ROA page 27 But Notice when it come to calculating the 25 year Sentence for armed robbery SCDC denied give Appellant his full credit from 12-19-01, but instead only gave Appellant credit for time served from 12-18-2006 against the 25 year armed robbery sentence, in which violates Appellant's State Created Liberty Interest.

In Conclusion

Appellant asks this court to order SCDC to calculate his 25 year armed robbery Sentence from 12-19-01 that was imposed on 9-24-2008 Tel in ROA page 12 in which will be calculated as follows: 12-19-01 + 25 year sentence for armed robbery at 85% which is 2 months, 29 day, 21 years.) will come to a maxout

of 3-17-22 in which has expired. and since SCDC has already determined that the 5 year consecutive Sentence for PWDCWC Ed RoA page 18 has Expired on 12-18-2006 Ed RoA page 26, 27. Appellant would be entitled to his immediate release from custody of SCDC under the 9-29-2005 Conviction Ed RoA page 17, 18. By way of order issued by this court in its finding according to law where SCDC is abusing its discretion in only giving Appellant credit for time served from 12-18-2006 instead of from 12-19-01 as required by SC Code 24-13-40 in which Appellant is to be given full credit for time served..