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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Robert L. Reibold

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ALC Case No. 23-ALJ-04-59 & -60  
Appellate Case No. 2023-001002

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JAY TATE, # 131879,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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**AMENDED INITIAL BRIEF OF RESPONDENT**

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**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Christina Catoe Bigelow**  
Deputy General Counsel  
Office of General Counsel  
South Carolina Dept. of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

**ATTORNEY FOR RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL FOR FAILURE TO IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT, WHO IS SERVING A LIFE SENTENCE, IS NOT STATUTORILY ENTITLED TO EARN GOOD TIME CREDIT AND THEREFORE CANNOT FORFEIT OR LOSE GOOD TIME CREDIT.**

## STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Jay Walter Tate, Jr., an inmate in the custody of the South Carolina Department of Corrections (SCDC). On November 9, 2022, Appellant filed a Step One grievance to challenge his November 2, 2022, conviction for 903, “The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, Inhalants, Intoxicants and Synthetics.” He also filed a Step One grievance relating to his conviction for 855, smuggling and/or conspiracy to smuggle contraband. On November 23, 2022, Appellant’s Step One grievances were investigated and denied. Thereafter, on November 30, 2022, Appellant filed Step Two grievances. These grievances were investigated and denied on January 4, 2023.

Appellant appealed to the Administrative Law Court on February 10, 2023. On May 8, 2023, Respondent filed a Motion to Dismiss, arguing that there were no state-created liberty or property interests implicated in Appellant’s grievances. On May 22, 2023, Administrative Law Judge Robert L. Reibold issued two Orders of Dismissal. In these Orders, Judge Reibold agreed with Respondent that Appellant’s grievances did not implicate state-created liberty or property interests. This appeal follows. The appeal consolidates ALC case # 23-ALJ-04-0059-AP and # 23-ALJ-04-0060-AP.

Appellant served his Initial Brief in September of 2023 and his Designation of Matter to be Included in the Record in October 2023. Respondent filed and served its Initial Brief and Designation of Matter on November 6, 2023. Later in November 2023, Appellant submitted a motion to amend his Initial Brief and Designation of Matter. This motion was granted over Respondent’s objection on June 20, 2024, and Appellant served his Amended Initial Brief and Amended Designation of Matter on July 19, 2024. This Amended Brief of Respondent follows.

## 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.

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 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

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL FOR FAILURE TO IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT, WHO IS SERVING A LIFE SENTENCE, IS NOT STATUTORILY ENTITLED TO EARN GOOD TIME CREDIT AND THEREFORE CANNOT FORFEIT OR LOSE GOOD TIME CREDIT.**

Initially, the issues presented in Appellant’s Brief and Amended Brief are not preserved for review because they were not the issues that were ruled upon by the Administrative Law Court (ALC). The ALC only ruled on one issue – whether Appellant’s grievances implicated a state-created liberty or property interest. (See Orders). The ALC dismissed the case on the sole ground that the grievances did not implicate state-created liberty or property interests. (See Orders, p. 3-5). Accordingly, the unrelated issues presented in Appellant’s Brief and Amended Brief are not preserved for review. See State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004) (“Arguments not raised to or ruled upon by the trial court are not preserved for appellate review.”); State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, it must have been raised and ruled upon below).

Secondly, the ALC was correct in finding that Appellant’s grievances did not implicate state-created liberty or property interests. Traditionally, loss of good time credits for an inmate who can use the credits is sufficient to trigger due process protections. See Howard v. South Carolina Dept. of Corrections, 399 S.C. 618, 629-30, 733 S.E.2d 211, 217-18 (2012); see also Al-Shabazz v. State, 338 S.C. 354, 375, 527 S.E.2d 742, 753 (2000). However, in this case, Appellant is serving a life sentence for murder,<sup>1</sup> and accordingly, by statute, he is not entitled to earn any credits to reduce his sentence. See S.C. Code 16-3-20 (A) (1992 version) (“A person who is convicted of or pleads guilty

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<sup>1</sup> See Appellant’s Inmate Search Detail Report: <https://public.doc.state.sc.us/scdc->

to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. ... No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, *nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section.*”); see also S.C. Code 24-13-210 (B) (“...[N]o inmate serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision.”).

Accordingly, Appellant has no good time credits to take away, and a “removal” of credits that do not exist has no effect on the length of his life sentence. Compare Slezak v. South Carolina Dept. of Corrections, 361 S.C. 327, 332, 605 S.E.2d 506, 508 (2004) (“Appellant also complains about a DOC policy that provides for the loss of ‘good time’ credits in certain circumstances. The record establishes that appellant is not eligible to receive such credits, and accordingly lacks standing to challenge the DOC policy.”). Therefore, the fictitious “taking” of non-existent credits does not trigger due process protections, and the Administrative Law Court properly dismissed the appeal for failure to implicate a state-created liberty or property interest.

**CONCLUSION**

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:

  
**CHRISTINA CATOE BIGELOW**

Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

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