

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000487

Curtis Johnson, #337543,

Appellant

v.

South Carolina Department of Corrections,

Respondent.

RECORD ON APPEAL

RECEIVED

JAN 02 2025

SC Court of Appeals

Curtis T. Johnson

Curtis T. Johnson, 337543
Allendale C.I. - F31 Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827
Pro-se Appellant
December 30, 2024

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE

INDICTMENT/CASE#: 2007-GS-32-1473

VS.
Curtis T Johnson

AW#: J053026

AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

Date of Offense: 11/20/2006
S.C. Code §: 16-03-0050
CDR Code #: 0217

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Manslaughter / Voluntary manslaughter

CONVICTED OF or PLEADS

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 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 State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____ Substance Abuse Counseling

*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
§47.12 (Public Def/Prb) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25
§14-1-213 (Drug Court Surcharge) \$100 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
§90.7 (SCCJA Surcharge) \$5 \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ 1300

Random Drug/Alcohol Testing
Fine may be pd. In equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk Beth A Carver Judge Code: 2158

Court Reporter: Berna Thomas Sentence Date: 21 OCT 2008

SCCA/217 (06/2009)

A TRUE COPY

Lex. Ct. C.C.P., G.S. & P.C.

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STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE

VS. Curtis T Johnson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1474

AW#: J053029

Date of Offense: 11/20/2006

S.C. Code §: Common Law

CDR Code #: 0013

AKA:
Race: Sex: Age:
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)

In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser Included Offense.

The plea is: Without Negotiations or Recommendation,

Defendant Waives Presentment to Grand Jury. (defendants initials)
 Negotiated Sentence, Recommendation by the State.

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 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 State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	
§14-1-211 (A)(2)(DUI Surcharge)	\$100	100
§56-5-2995 (DUI Assessment)	\$12	
§56-1-286 (DUI Breath Test)	\$25	
§47.12 (Public Def/Prob)	\$500	
§14-1-212 (Law Enforce. Funding)	\$25	
§14-1-213 (Drug Court, Surcharge)	\$100	25
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	
§90.7 (SCJA Surcharge)	\$5	
3% to County (if paid in installments)		5
TOTAL		130

PTUP _____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____
Substance Abuse Counseling

Random Drug/Alcohol Testing
Fine may be pd. In equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 2158

Sentence Date 21 OCT 2008

Clerk of Court/Deputy Clerk: Beth A Carnegie

Court Reporter: Lina Thomas

SCCA/217 (06/2009)

at Rept for sentencing only
at Rept for Trial was Priscilla Nay
[Record on Appeal - Page 2 of 43]

A TRUE COPY

Lex. Cl. P. O. C. P. G. S. REC.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE

VS.
Curtis T Johnson

AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery of a High and Aggravated Nature

In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser/Included Offense, Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State
ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 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 State Department
of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>130.00</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1476

AW#: J053031
Date of Offense: 11/20/2006
S.C. Code §: Common Law
CDR Code #: 0013

SENTENCE SHEET

CONVICTED OF or PLEADS

Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

Defendant Waives Presentation to Grand Jury, (defendant's initials)
 Negotiated Sentence, Recommendation by the State

Attorney for Defendant _____ SC Bar # _____

County Detention Center, _____

under the Youthful Offender Act not to exceed _____ years

and or payment _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

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 State Department

of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. In equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]

Judge Code: 2158

Sentence Date: 21 OCT 08

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (06/2009)

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A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE

VS.
Curtis T Johnson

INDICTMENT/CASE#: 2007-GS-32-1475

AW#: J053027 J053030

Date of Offense: 4/30/2007

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

AKA:
Race: [redacted] Sex: [redacted] Age: [redacted]
DOB: [redacted] SS#: [redacted]
Address:
City, State, Zip:
DL# SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Possession of a Weapon during the commission of a violent crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST-SERIOUS Mandatory GPS §17-25-45

The charge is As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

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 State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____ Substance Abuse Counseling

*Fine: \$ _____ Random Drug/Alcohol Testing
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ _____
\$47.12 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25
\$14-1-213 (Drug Court Surcharge) \$100 \$ _____
\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
\$90.7 (SCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$ _____
TOTAL \$ 130.00

Other: _____

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk _____ Judge Code: 2158

Court Reporter: Rena Thomas _____ Sentence Date: 21 OCT 08

SCCA/217 (06/2009)

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A TRUE COPY

Clerk of Court

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 12/28/23
 OMCOMITA CONVICTION INQUIRY
 SCDC #: 337543 YOA NONCONFORM SENT: CURR LOC: ALLENDAL
 JOHNSON, CURTIS T NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00002 INDICT NUM: 07-GS-321473 WARRANT NUM: J053026
 DATE SENTENCED..: 10/21/2009 JUDGE LAST..: STILWELL FI: R
 STATUTE: 16-03-0050 CDR CODE.: 0217 GPS IND: N
 OFFENSE: 0919 VOLUNTARY MANSLAUGHTER OFFENSE DATE: 11/20/2006
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 32 LEXINGTON
 PLEA...: N NOT GUILTY TYPE OF COURT....: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE..: 11/20/2006
 TOTAL SENTENCE...: 030 00 000 MAND SERV REQMT..: 025 06 000
 INCARC SENTENCE...: 030 00 000 PAROLE FACTOR....: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 999 99 999
 HIP SENT.....: 000 00 000 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT; .00 JAIL CRED: 00000 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 11/20/2006 DOM.IND:
 CONSECUTIVE IND...: Y SPOUSE ABUSE: STATUTE CLASS: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y DEATH UTERO: SCDC CLASS...: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: L MILES DATE: 11/24/20
 NO PAROLE: NO PAROLE CREATED BY.: H ROGERS DATE: 10/23/09

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

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CMTI200D

SCDC OFFENDER MANAGEMENT SYSTEM
CONVICTION INQUIRY

12/28/23

OMCOMITA

SCDC #: 337543

YOA NONCONFORM SENT:

CURR LOC: ALLENDAL

JOHNSON, CURTIS T

NONCONFORM SENT: N RTRN TO COURT: N

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

CONVICTION NUM: S00003 INDICT NUM: 07-GS-321474 WARRANT NUM: J053029+

DATE SENTENCED...: 10/21/2009 JUDGE LAST...: STILWELL FI: R

STATUTE: COMMON LAW CDR CODE.: 0013 GPS IND: N

OFFENSE: 1317 ASSLT&BATTERY-HIGH&AGG NAT OFFENSE DATE: 11/20/2006

CHARACT: F FACILITATION OF COUNTS: 02 OFFENSE CNTY: 32 LEXINGTON

PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO

TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 11/20/2006

TOTAL SENTENCE...: 010 00 000 MAND SERV REQMT...: 000 00 000

INCARC SENTENCE...: 010 00 000 PAROLE FACTOR...: 1 1/4 SENT. REQ.

PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000

HIP SENT...: 000 00 000 HAYES CRED: 00000

RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 EXTRA CRED: 00000

CONVICTION STATUS: AC ACTIVE SENT START DATE: 11/20/2006 DOM.IND: Y

CONSECUTIVE IND...: Y SPOUSE ABUSE: STATUTE CLASS: NON-VIOLENT

DNA OFFENSE IND...: Y EEC ELIG: Y DEATH UTERO: SCDC CLASS...: NON-VIOLENT

SEX REG: N PRED OFF: N LAST UPDATE: L MILES DATE: 11/24/20

NO PAROLE: NOT APPLIC CREATED BY.: H ROGERS DATE: 10/23/09

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID (FA ONLY)

[Record on Appeal - Page 6 of 43]

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 12/28/23
 OMCOMITA CONVICTION INQUIRY
 SCDC #: 337543 YOA NONCONFORM SENT: CURR LOC: ALLENDAL
 JOHNSON, CURTIS T NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00001 INDICT NUM: 07-GS-321475 WARRANT NUM: J053027+
 DATE SENTENCED.: 10/21/2009 JUDGE LAST.: STILLWELL FI: R
 STATUTE: 16-23-0490 CDR CODE.: 0549 GPS IND: N
 OFFENSE: 5221 FIREARMS PROVISION OFFENSE DATE: 04/30/2007
 CHARACT: F FACILITATION OF COUNTS: 02 OFFENSE CNTY: 32 LEXINGTON
 PLEA...: N NOT GUILTY TYPE OF COURT....: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 10/21/2009
 TOTAL SENTENCE...: 005 00 000 MAND SERV REQMT...: 005 00 000
 INCARC SENTENCE...: 005 00 000 PAROLE FACTOR....: 1 1/4 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000
 HIP SENT.....: 000 00 000 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 01066 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 11/20/2006 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASS: NON-VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y DEATH UTERO: SCDC CLASS...: NON-VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: L MILES DATE: 11/24/20
 NO PAROLE: NOT APPLIC CREATED BY.: H ROGERS DATE: 10/23/09

PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

[Record on Appeal - Page 7 of 43]

Inmate Request - General

Today's Date: 7/5/2023 9:46

Name: JOHNSON, CURTIS T
 Booking #: 337543
 Permanent #: 337543

Reference #: 23-03155785
 Date Requested: 06/26/23 07:58
 Request Type: Classification
 Requested By: Kiosk

Request Details: THIS COMES TO GET A DOCUMENTED RESPONSE ON RECORD FOR FURTHER LITIGATION. I TALKED WITH CLASSIFICATION ON JUNE 21, PERTAINING TO MY REQUEST THAT MY JAIL TIME SERVED CREDIT SHOULD HAVE BEEN DEDUCTED FROM EACH OF MY SENTENCES AND NOT JUST THE AGGREGATE OF MY CONSECUTIVE SENTENCES. I WAS TOLD THAT MY TIME SERVED CREDIT WILL REMAIN APPLIED ONLY TO THE AGGREGATE OF MY CONSECUTIVE SENTENCE, UNLESS I PROVIDE LEGAL DOCUMENTATION TO SUPPORT THAT MY TIME SERVED CREDIT SHOULD HAVE BEEN DEDUCTED FROM EACH SENTENCE AND THAT MY CURRENT MAXOUT DATE IS A MISCALCULATION. CLASSIFICATION IS IN ERROR AND MY TIME SERVED CREDIT SHOULD HAVE BEEN DEDUCTED FROM EACH OF MY SENTENCES PURSUANT TO [1] ALL MY SENTENCING SHEETS SAY I'M TO RECEIVE TIME SERVED FOR EACH SENTENCE .[2]STATUTE 24-13-40 MAKES IT MANDATORY THAT I RECEIVE TIME SERVED FOR ALL MY SENTENCES UNLESS TWO EXCEPTIONS EXIST, EITHER (1) THE PRISONER WAS AN ESCAPEE OR (2) THE PRISONER WAS SERVING A SENTENCE ON A DIFFERENT OFFENSE.(NEITHER OF THESE TWO EXCEPTIONS APPLIES TO MY SENTENCES.) [3] IN THE CASE MASSEY V. SCDC, 2021 WL 1997295, SCDC APPLIED MASSEY'S TIME SERVED CREDIT TO ALL HIS CONSECUTIVE SENTENCES.I REQUEST THAT CLASSIFICATION DEDUCT MY TIME SERVED CREDIT FROM ALL OF MY SENTENCES AND CORRECT MY MAXOUT DATE, AS MANDATED BY STATUTE 24-13-40 AND MY SENTENCING SHEETS. BY CLASSIFICATION NOT DEDUCTING MY TIME SERVED CREDIT FROM EACH OF MY SENTENCES AND NOT CORRECTING MY MAXOUT DATE CLASSIFICATION IS VIOLATING MY DUE PROCESS RIGHTS (OF LIBERTY INTEREST) AND VIOLATING MY RIGHTS TO EQUAL PROTECTION OF THE LAWS PURSUANT TO U.S. CONST. AMEND. 14,1 AND S.C. CONST. ART. 1,3.

Disposition: Complete
 Officer:
 Disposition Date: 06/27/23 10:47

Request Responses		
Date	Author	Note
06/27/23 10:50	c068064	Documents are required for any calculation adjustments.

[Record on Appeal - Page 8 of 43]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

PMOD: 051337

INMATE NAME: <u>Curtis T. Johnson</u> SCDC NUMBER: <u>337543</u> INSTITUTION: <u>Allendale C.I.</u> JUN 29 2023 HOUSING UNIT: <u>F3/Hampton A460</u> WORK ASSIGNMENT: <u>Dorm Worker</u> WARDEN'S AREA <u>F3 AM</u>	OFFICE USE ONLY Grievance No. <u>ACI-0185-23</u> Code: General _____ Policy _____ Disc. Hear. _____ Class. <u>etc</u> _____ PREA _____ Date Received <u>6/27/23</u> IGC Initials <u>MS</u> <u>RR/323</u>
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STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

This grievance comes pertaining to kiosk number 23-03155785. I talked with classification on June 21, pertaining to my request that my jail time served credit should have been deducted from each of my sentences and not just the aggregate of my consecutive sentences. I was told that my time served credit will remain applied only to the aggregate of my consecutive sentences, unless I provide legal documentation to support that my time served credit should have been deducted from each of my sentences. My time served credit should have been deducted from each of my sentences pursuant to (1) All my sentencing sheets say I'm to receive time served for each sentence. (2) statute 24-13-40 makes it mandatory that I receive time served for all my sentences unless two exceptions exist, either (1) the prisoner was an escapee or (2) the prisoner was serving a sentence on a different offense. (Neither of these two exceptions applies to my sentences.) (3) In the case Massey v. South Carolina Dept of Corr, 2021 WL 1997295, SCDC applied Massey's time served credit to all his consecutive sentences. By classification not deducting my time served credit from each of my sentences and not correcting my maxout date, classification is violating my due process rights (of liberty interest) and violating my rights to Equal Protection of the Laws pursuant to US Const. Amend. 14, 1 and S.C. Const. Art. 1, 3.

Curtis T. Johnson 6/27/2023
 Grievant Signature Date

ACTION REQUESTED: I request that my time served credit be deducted from all of my sentences and my maxout date be corrected, as mandated by statute 24-13-40 and my sentencing sheets.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

This grievance has been processed. Please see the Warden's Decision (decision) on the reverse side.

[Signature] 6/27/23
 IGC Signature Date

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

[Handwritten signature] 07/10/23

JUL 18 2023

Office Use Only

INMATE GRIEVANCE

Grievance No. ACT-085-27
Code: General
Policy _____
Disc. Hear. _____
Class CHL
PREA _____
Date Received: 07/10/23
IGC Initials: MS
Date Received: 7/29/23
IGA Initials: MS

INMATE NAME: Curtis T. Johnson
SCDC NUMBER: 337543 RECEIVED
INSTITUTION: Allendale C.I. JUL 10 2023
HOUSING UNIT: F3/Hampton - A46
WORK ASSIGNMENT: Dorm Worker WARDEN'S AREA *M/W*

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

I'm appealing the warden's decision because I do not accept it. The issue that I had on my step 1 grievance and talked to Ms. S. Krebs, Classification Case Manager, was that my jailtime served credit should have been deducted from each of my sentences and not just the aggregate of my consecutive sentences that classification states. The warden's decision is in error because I'm not receiving the jail time credit was not applied to all three of my conviction sentences and my maxout date is wrong. My jail time credit was applied to the aggregate of my sentence, which basically makes my credit being only applied to my first sentence, only. This violates my due process rights and equal protection of the laws rights of the U.S. Const. Amend. 14) and S.C. Const. Art. 1/3.

Grievant Signature Curtis T. Johnson Date 7/9/23

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you state you spoke with Classification about your jail time credits that you say should have been deducted from each of your sentences and not just the aggregate of your consecutive sentences. You request that your credits be deducted from all of your sentences and that your max-out date be corrected as mandated by statute 24-13-40 and your sentencing sheets. Per Ms. Krebs, Classification Case Manager, you were given a release calculation sheet in June 2023, and it matched your projected max-out date. It was also explained that your jail time credit was applied to sentence #1. Sentences #2 and #3 jail time credits were applied in your Juris date, and you have received credit on all 3 convictions. Your projected max out date of May 13, 2037, is correct. You have not shown that SCDC staff have failed to perform their job duties properly.

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.

Responsible Official Signature Stacy [Signature] Date 9/12/27

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)

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW

APPEAL OF THE FINAL AGENCY DECISION FROM THE SOUTH
CAROLINA DEPARTMENT OF CORRECTIONS

ADMINISTRATIVE LAW COURT JUDGE ANDERSON

Case Number - 23C0395

Curtis Johnson, #337543,

Appellant,

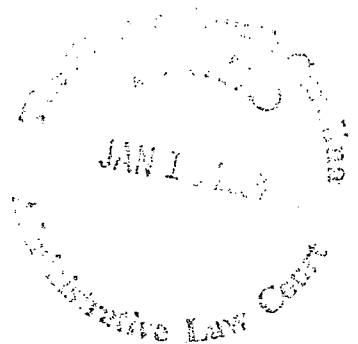
v.

SC DOC,

Respondents.

ORIGINAL BRIEF OF APPELLANT

Curtis T. Johnson, 337543
Allendale C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827
Pro-se Appellant
Curtis T. Johnson



[Record on Appeal - Page 12 of 43]

STATEMENT OF ISSUE ON APPEAL

The South Carolina Department of Corrections (SCDC) failed to properly apply my jail time credit to both of my consecutive sentences pursuant to: my sentencing sheets, statute 24-13-40, Computation of time served by prisoners, and Massey v. South Carolina Dept of Corr. 2021 WL 1997295. By the credit being applied to the aggregate of my sentences, the credit is only applied to the first sentence and not both consecutive sentences. SCDC is violating my Due Process Rights (of liberty interest) and violating my rights to Equal Protection of the laws rights of the U.S. Const. Amend. 14 and S.C. Const. Art. 1, 3. I request that my jail time served credit be applied to both of my consecutive sentences and my max out date be corrected.

STATEMENT OF THE CASE

On June 21, 2023, Appellant informally talked to SCDC Classification about his jail time served credit being applied to both of his consecutive sentences. SCDC Classification denied Appellant's request. On June 26, 2023, Appellant formally wrote a Kiosk request (Kiosk Reference # 23-03155985) to SCDC Classification pertaining to and requesting his jail time served credit be applied to both his consecutive sentences. On June 27, 2023, SCDC Classification responded, "Documents are required for any calculation adjustments" to Appellant's consecutive sentences. On June 27, 2023, Appellant filed his Step 1 grievance. On July 6, 2023, the Warden of Allendale C. I. denied Appellant's Step 1 grievance. On July 9, 2023, Appellant filed his Step 2 grievance. On September 12, 2023, the Responsible Official denied Appellant's Step 2 grievance. On September 26, 2023, Appellant submitted and filed his "Notice of Appeal form" to the Administrative Law Court, clerk of court, and to the office of General Counsel at the Department of Corrections. On October 3, 2023, the Administrative Law Court, clerk of court, filed Appellant's "Notice of Appeal form" in their office. On October 20, 2023, the Honorable. Ralph King Anderson, III was assigned to Appellant's case. On December 29, 2023, SCDC filed its "Record on Appeal." Appellant now submits his "original Brief."

ARGUMENT

The South Carolina Department of Corrections (SCDC) failed to properly apply my jail time credit to both of my consecutive sentences pursuant to my sentencing sheets, statute 24-13-40. Computation of time served by prisoners, and Massey v. South Carolina Dept of Corr., 2021 WL 1997295. By the credit being applied to the aggregate of my sentences, the credit is only applied to the first sentence and not both consecutive sentences. SCDC is violating my Due Process Rights (of liberty interest) and violating my rights to Equal Protection of the laws, rights of the U.S. Const. Amend. 14 and S.C. Const. Art. 1, § 3. I request that my jail time served credit be applied to both of my consecutive sentences and my max out date be corrected.

The South Carolina Department of Corrections (SCDC) erred when it failed to properly apply Appellant's jail time served credit to both of his consecutive sentences pursuant to statute 24-13-40. Computation of time served by prisoners, Appellant's sentencing sheets, and Massey v. South Carolina Department of Corrections, 2021 WL 1997295. By SCDC applying the credit only to the aggregate of Appellant's sentences, the credit is only applied to the first sentence and not both consecutive sentences; this prejudiced Appellant because Appellant's jail time served credit is not applied to all his sentences, his max out date is incorrect, and Appellant has to serve more time than the law allows. SCDC is violating Appellant's Due Process Rights (of liberty interest) and violating Appellant's rights to Equal Protection of the laws, rights of the U.S. Const. Amend. 14 and S.C. Const. Art. 1, § 3. Appellant request that his jail time served credit be applied to both of his consecutive sentences and his max out date be corrected. Although the intent of the Judge is controlling in determining whether sentences run concurrently or consecutively, "Ambiguity or doubts relative to a sentence should be resolved in favor of the accused." State v. Deangelis, 183 S.E. 2d 906, 909 (1991); State v. Elwell, 743 S.E. 2d 802, 806 (2013) (stating "penal statutes will be strictly construed against the state")

"Prison inmates do not shed all fundamental protections of the constitution at the prison gates. Rather, inmates retain those constitutional rights that are not inconsistent with their status as ... prisoners or with the legitimate penological objectives of the corrections system. A regulation that impinges on inmates' constitutional rights is therefore valid only if it is reasonably related to legitimate penological interests." Powel v. Schriver, 175 F.3d 107, 112 (1999) "Prison inmate is not stripped of all rights during incarceration, subject to the legitimate requirements of prison discipline and security, he retains his constitutional rights to due process, to equal protection and to protection against cruel and unusual punishment." Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854, 859 (1975) "Rights of prisoner to due process, to equal protection and to protection against cruel and unusual punishment"

statute 24-13-40. Computation of time served by prisoners states:

"The computation of the 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... In every case in computing time served by a prisoner, full credit against the sentence must 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; (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; (3) When the prisoner commits a subsequent crime while on bond; or (4) has bond revoked on any charge prior to trial or plea."

statute 24-13-40. Mandates prisoners receive credit for time served prior to trial unless one of the four above exceptions exists. Neither of these four exceptions applies to appellant's sentences. Having a consecutive sentence is not one of the exceptions to the mandatory language in statute 24-13-40. and a consecutive sentence does not bar me from receiving time served credit deducted from each of my sentences. As such, I must deduct my time served credit from each of my sentences because the language of statute 24-13-40 is mandatory. "The requirement that a prisoner receive credit for time served is mandatory." Hayes v. State, 199 S.E.2d 610 (2015) "Where the terms of a statute are clear, the court must apply those terms according to their literal meaning." Paschal v. State Election Commission, 454 S.E.2d 890, 892 (1995). If the language of a statute is "unambiguous and conveys a clear meaning, the court must determine the intent of the legislature exclusively from that language, and other 'rules of statutory interpretation are not needed.'" State v. Etwell, 193 S.E.2d 802, 806 (2013) "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., 503 S.E.2d 465, 468 (1998); Allen v. State, 529 S.E.2d 541, 542 (2000)

(11) S.C. Code Ann. 24-13-40-Computation of time served by prisoners

Appellant's jail time served credit should have been deducted from each of appellant's sentences pursuant to:

his sentences. "Sandin v. Conner, 515 U.S. 479, 487 (1995) demonstrates that the state's action... inevitably affected the duration of prison inmates' confinement either for administrative or protective reasons, or in the general prison population. Id. at 859. An inmate may obtain relief for the deprivation of sentence related credits if he can demonstrate that the state's action... inevitably affected the duration of his sentences." Id. at 859 "Courts can and should intervene when any due process, equal protection or eight amendment rights of prison inmates are violated, and this is true whether the prisoner is in segregated confinement either for administrative or protective reasons, or in the general prison population. Id. at 859. An inmate may obtain relief for the deprivation of sentence related credits if he can demonstrate that the state's action... inevitably affected the duration of his sentences." Sandin v. Conner, 515 U.S. 479, 487 (1995)

(2.) Appellant's Sentencing Sheets

All Appellant's sentencing sheets state he was to receive time served credit deducted from each of his sentences. Pursuant to Appellant's sentencing sheets, SCDC should have deducted Appellant's jail time served credit from his sentence. "The Department [SCDC] is confined to an unambiguous sentencing sheet in determining an inmate's sentence... " Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 404 (2014) "The Department (SCDC) performs an administrative function in recording an inmate's sentence... The Department (SCDC) has no independent sentencing authority... " Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 401 (2014) In Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 402 (2014), the South Carolina Supreme Court held that absent ambiguity in the sentencing sheet, SCDC is confined to the face of that order for its interpretation of an inmate's sentence. SCDC is allowed to assume a sentencing sheet, signed by the judge and attorney without objection, is a memorialization of the judge's intent no less than what was pronounced from the bench. Id. at 403. "The requirement that a prisoner receive credit for time served is mandatory." Hayes v. State, 777 S.E.2d 6, 10 (2015); S.C. Code Ann. 24-13-40.

(3) Appellant's Due Process Rights (of liberty interest) and Equal Protection of the Laws Rights.

"The United States Constitution does not provide an inmate with a guarantee of sentence related credits... while incarcerated." Wolff v. McDonnell, 418 U.S. 539, 557 (1974) "However, in some instances, a state may create a liberty interest which is protected by the Due Process clause of the Fourteenth Amendment." Sandin v. Conner, 515 U.S. 472, 484 (1995) A state creates a liberty interest in sentence-related credits only where an inmate has a legitimate expectation of receiving such credits." Bd of Pardon's v. Allen, 482 U.S. 369, 373 (1987) "An inmate may obtain relief for the deprivation of sentence related credits if he can demonstrate that the state's action... inevitably affected the duration of his sentence." Sandin v. Conner, 515 U.S. 472, 487 (1995) As the South Carolina Supreme Court stated in Al-Shabazz v. State, 527 S.E.2d 742, 750 (2000) "the withholding or forfeiture of earned... credit directly implicates a protected liberty interest." "Today we add ~~credit~~ credits - related issues and other conditions of imprisonment to the list of administrative matters." Al-Shabazz v. State, 527 S.E.2d 742, 749-750 (2000) "the statutory right to sentence-related credits is a protected liberty interest under the fourteenth Amendment entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated." Al-Shabazz v. State, 527 S.E.2d 742, 750 (2000) "There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest." Tant v. S.C. Dep't. of Corr., 759 S.E.2d 398, 401 (2014) "Under both our state and federal due process clauses, no person shall be deprived of life, liberty or property without due process of law." Tant v. S.C. Dep't. of Corr., 759 S.E.2d 398, 401 (2014) Appellant's Due Process Rights (of liberty interest) were violated when SCDC didn't apply his jail time served credit to both of his consecutive sentences and correct Appellant's maxout date.

The Equal Protection Clause of the Fourteenth Amendment provides that "no state shall... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. 14, 1 "Turning to the substance of equal protection jurisprudence, our Constitution provides, 'nor shall any person be denied the equal protection of the laws.'" S.C. Const. Art. 1, 3; Planned Parenthood South Atlantic v. State, 882 S.E.2d 770, 798 (2023) The Equal Protection Clauses of our Federal and State constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. Amend. 14, 1 and S.C. Const. Art. 1, 3. Equal protection "requires that all persons be treated alike under like circumstances and conditions, privileges conferred and liabilities imposed. The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment." Doe v. State, 808 S.E.2d 807, 814 (2017)

"The Equal Protection clause is essentially a direction that all persons similarly situated should be treated alike." Love v. City of Charleston, 547 F.Supp. 3d 855, 854 (2022) "Protection of Equal Protection Clause of the Fourteenth Amendment covers criminal sentencing." Williams v. Currie, 103 F.Supp.2d 858, 863 (2000) "A criminal sentence violates the Equal protection clause only if it reflects disparate treatment of similarly situated defendants lacking any rational basis." U.S. v. Pierce, 409 F.3d 228, 235 (2005) "Ambiguity or doubts relative to a sentence should be resolved in favor of the Appellant." State v. Deangelis, 183 S.E.2d 906, 909 (1971) "Protection of Equal Protection Clause of the Fourteenth Amendment is applicable not only to discriminatory legislative action, but also to discriminatory government action in the administration and enforcement of the laws." Williams v. Currie, 103 F.Supp.2d 858, 863 (2000) "Where the state officials have 'abdicated their affirmative remedial duty, that failure to act in and of itself, is a constitutional violation." Liddell v. Board of Educ., 491 F.Supp. 351, 359 (1980) accord Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 459 (1979) In other words, inaction in the face of an affirmative duty to act violates the Fourteenth Amendment." Milliken v. Bradley, 433 U.S. 261 (1977) Furthermore, "each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment." Penick, 443 U.S. at 459 "In order to establish an equal protection violation, a party must show that similarly situated persons received disparate treatment." TNS Mills, Inc. v. S.C. Dept. of Revenue, 503 S.E.2d 471, 479 (1998)

"state action is unconstitutional when it creates 'arbitrary or irrational' distinctions between classes of people out of 'a bare... desire to harm a politically unpopular group.'" Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586, 607 (4th Cir. 2020) "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garrahy, 239 F.3d 648, 654 (4th Cir. 2001) once that showing is made, the court must determine whether the disparity in treatment is justified under the requisite level of scrutiny. Id. "When equal protection challenges arise in a prison context, however, courts must adjust the level of scrutiny to ensure that prison officials are afforded the necessary discretion to operate their facilities in a safe and secure manner." Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002) In a prison context, therefore, courts must determine whether the disparate treatment is "reasonably related to [any] legitimate penological interests." Shaw v. Murphy, 532 U.S. 223, 225 (2001) "In

inmate's action alleging violation of fourteenth Amendment right to equal protection, discriminatory purpose can be proved with various kinds of direct and circumstantial evidence but it is most often proved with evidence that similarly situated inmates were treated differently." Lewis v. Sacks, 486 F.3d 1025, 1028 (2007)

Here is Appellant's evidence that proves he was treated differently than another similarly situated inmate. In the case John K. Massey v. S.C. Dept of Corr., 2021 WL 1997295, Massey argued that SCDC failed to properly apply his jail time credit to both his consecutive sentences. After Massey filed his appeal with the Administrative Law Court, SCDC eventually conceded and informed the Administrative Law Court that it had amended Massey's jail time credit to reflect his time served for both his consecutive sentences; thus SCDC agreed with Massey and applied his jail time served credit to both his consecutive sentences and corrected Massey's max out date.

Appellant's argument is the same as Massey's; that SCDC failed to properly apply his jail time served credit to both his consecutive sentences. Thus, Appellant should have his jail time served credit applied to both his consecutive sentences and his max out date corrected because Appellant is similarly situated like Massey with the same issue, circumstance, and condition when it came to having jail time served credit being applied to all his consecutive sentences just like SCDC did to Massey's consecutive sentences and have his max out date corrected. This unequal treatment was the result of intentional and purposeful discrimination against Appellant by SCDC. Appellant provided SCDC with informal and formal notice of their error, and gave SCDC an opportunity to correct its error and resolve Appellant's complaint through: Kiask Request #23-03155785; Step 1 Grievance; and Step 2 Grievance. Appellant informed SCDC that pursuant to statute 24-13-40, his sentencing sheets, and the case Massey v. S.C. Dept of Corr., 2021 WL 1997295 he was entitled to have his jail time served credit applied to both his consecutive sentences, but SCDC still intentionally and purposefully didn't comply and violated Appellant's constitutional rights of Due Process (of liberty interest) and Equal Protection of the laws rights of the United States and South Carolina constitutions. SCDC's disparate treatment against Appellant was not justified under the appropriate level of scrutiny because the disparate treatment is not reasonably related to any legitimate penological interest.

In SCDC's "Record on Appeal" pages 7, 9, 11, and 12, showing Appellant's sentencing sheets, SCDC has "Coincidentally" all the boxes that are marked that "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 State Department of Corrections" cut off from these pages so that it couldn't show the Court that all Appellant's sentencing sheets are marked he was to be given time served applied to all his sentences. Appellant has enclosed complete copies of his sentencing sheets, showing he was to be given time served on all his sentences. Also, SCDC's "Record on Appeal" pages 6, 8, 10 of showing Appellant's "SCDC offender Management system conviction Inquiry" sheets, shows only on page 10 that Appellant received 1066 days of jail time served credit only applied to his firearms provision gun charge sentence and not his other sentences.

CONCLUSION

As such, Appellant's jail time served credit should be applied to both of Appellant's consecutive sentences and Appellant's max out date should be corrected.

This 12th day of January, 2024

respectfully submitted,

Curtis T. Johnson
Pro-se Appellant

Curtis T. Johnson, 337543
Allendale, C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Curtis T. Johnson, #337543)	Docket No.: 23-ALJ-04-0395-AP
)	Grievance No.: ACI 185-23
Appellant,)	
)	RESPONDENT'S BRIEF
v.)	
)	<i>Honorable Ralph King Anderson, III</i>
South Carolina Department of Corrections,)	
)	
Respondent.)	
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STATEMENT OF THE CASE

This case is before the Administrative Law Court (“ALC”) pursuant to the appeal of Curtis T. Johnson (“Appellant”), an inmate incarcerated with the Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on June 27, 2023, claiming his jail time credit was not being properly applied. This grievance was investigated and denied on July 6, 2023. Appellant filed a Step Two Grievance on July 9, 2023. This grievance was investigated and denied on September 12, 2023. 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). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Recently the South Carolina Supreme Court clarified the Administrative Law Court’s jurisdiction as:

[t]hat the ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed. (*internal citations omitted*) . . . [h]owever, the ALC is not required to hold a hearing in every matter and

may summarily dismiss an inmates grievance if it does not implicate a state-created liberty, or property interest sufficient to trigger procedural due process guarantees. The ALC may not grant an inmate relief from an erroneous administrative decision by SCDC, however, unless the inmate demonstrates the error deprived him of due process... (*internal citations omitted*)

Allen vs. S.C. Dep't of Corr., 439 S.C. 164, 170-71, 886 S.E.2d 671, 674 (2023).

“The requirement of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (*quoting Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705 (1972)).

Appellant alleges his sentence is improperly calculated; therefore, jurisdiction is proper in this Court.

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).

ARGUMENT

I. THE FINAL AGENCY DECISION SHOULD BE AFFIRMED BECAUSE APPELLANT'S JAIL TIME CREDIT HAS BEEN PROPERLY APPLIED.

On October 21, 2009, Appellant was convicted and sentenced to four crimes. Rec. pp. 6-12. Appellant was convicted of two separate indictments for assault and battery of a high and aggravated nature ("ABHAN") (indictments 2007-GS-32-1474 and 2007-GS-32-1476) and sentenced to ten-years incarceration; Rec. pp. 6-7, & 12. Appellant was convicted of voluntary manslaughter and sentenced to thirty-years incarceration. Rec. pp. 8-9. And lastly, Appellant was convicted of possession of weapon during the commission of a violent crime and sentenced to five-years incarceration. Rec. pp. 10-11. Appellant's sentencing sheet for possession of a weapon during the commission of a violent crime is the only sentence marked as a consecutive sentence. Rec. p. 11.

Pursuant to S.C. Code Ann. § 24-13-40, Appellant is entitled to any pre-detention jail time he served. ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing[.]"). SCDC must adhere to an unambiguous sentencing sheet. *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 759 S.E.2d 398 (2014), *reh'g denied* (July 10, 2014).

By its very nature, a consecutive sentence cannot begin until the sentence that it is consecutive to is complete. *See State v. Richardson*, 295 N.C. 309, 319, 245 S.E.2d 754, 761 (1978); *see also Major vs. S.C. Dept. of PPP.*, 384 S.C. 457, 682 S.E.2d 795 (2009). When a defendant receives consecutive sentences, all sentences are considered one aggregate sentence for the purpose of providing jail time credit. *See Richardson*, 295 N.C. at 319, 245 S.E.2d at 761. Jail time credit is counted once toward the string of sentences. *See Id.* Appellant's sentencing sheet for possession of a weapon during the

commission of a violent crime is the only sentence marked as a consecutive sentence. Rec. p. 11. Jail time credit is applied at the beginning of the string of sentences.

Because Appellant's sentence is consecutive, Appellant is serving a thirty-five-year sentence. This is due to the controlling sentences which, are possession of a weapon during the commission of a violent crime and voluntary manslaughter. Rec. pp. 6-12. The Two ABHAN convictions are running concurrently to the voluntary manslaughter charge and are therefore subsumed by the charge. Appellant was arrested and in custody on November 20, 2006. Rec. p. 13. As shown on Appellant's Release Date Screen and Maxout Date Calculation Worksheet, his jail time has been applied by adjusting the sentence start date to November 20, 2006. Rec. pp. 14-15. The same jail time cannot be applied a second time to the convictions for voluntary manslaughter and ABHAN.¹

Therefore the thirty-five-year sentence start date begins to run from November 20, 2006. Rec. pp. 14-15. The five-years for possession of a weapon during the commission of a violent crime runs first because it is a day-for-day sentence. Rec. p. 14; *see also* S.C. Code Ann. § 16-23-490 (C). Five years from November 20, 2006, ends on or about November 20, 2011. Rec. p. 15. Once the first conviction is completed, the thirty-year voluntary manslaughter conviction begins to run. Rec. p. 16.

Voluntary manslaughter is a no-parole offense and therefore Appellant must serve eighty-five percent of the sentence. *See* S.C. Code Ann. § 24-13-150 (A); *see also* S.C. Code Ann. § 24-13-100 (identifying class A felonies as "no parole offenses"); *see also*

¹ If Appellant's jail time credit were also applied again to his convictions for voluntary manslaughter and ABHAN, it would result in a windfall as Appellant only served the jail time once, but would receive credit for it twice.

S.C. Code Ann. § 16-1-90 (A) (identifying the offense of voluntary manslaughter as a class A felony).

Eighty five percent of thirty-years is twenty-five years and six-months. Rec. p. 16. Twenty-five years and six-months from November 20, 2011, makes Appellant's projected max-out date to be on or about May 13, 2037. Rec. pp. 14 & 16. Appellant's sentence is properly calculated by SCDC.

Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying appellant's Step Two Grievance be upheld. *See* Rec. p. 1.

II. RESPONDENT'S FINAL DECISION SHOULD BE AFFIRMED BECAUSE IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

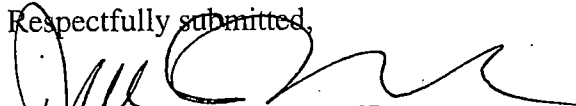
The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v.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

CONCLUSION AND SIGNATURE BLOCK TO FOLLOW

CONCLUSION

Appellant has not met his burden to demonstrate SCDC is incorrectly applying his jail time credit or that his sentence is improperly calculated. SCDC's calculation is supported by the substantial evidence. Therefore, SCDC respectfully requests this Court affirm its decision.

Respectfully submitted,



Joseph R. Shakibanasab, SC Bar No. 102825
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February 7, 2023
Columbia, SC

of Appellant's SDC filed its "Respondent's Brief" on February 7, 2024. Appellant received SDC's "Respondent's Brief" on February 12, 2024. Appellant now submits and files his "Reply Brief of Appellant".

ARGUMENT

Respondent erred when it failed to properly apply Appellant's jail time credit to both of his consecutive sentences pursuant to statute 24-13-40. Computation of time served by prisoners, Appellant's sentencing sheets, and Masssey v. South Carolina Dept of Corr, 2021 WL 1997295. In Respondent's brief, Respondent admits on page 3 that Appellant is entitled to any jail time he served and that SDC must adhere to an unambiguous sentencing sheet, thus agreeing that by statute and Appellant's sentencing sheets, Appellant is entitled to any jail time credit he served. Respondent is in error when it states that Appellant's jail time credit should not be applied to both of Appellant's consecutive sentences, because Respondent is in error for adopting the wording of North Carolina's legislative jurisdiction statute G.S. 15-196.2, which is quoted in State v. Richardson, 205 N.C. 309, 318-319, 245 S.E.2d 754, 760-761 (1978), for its reasoning why Appellant's jail time credit shouldn't be applied to both Appellant's consecutive sentences. South Carolina statute 24-13-40. Computation of time served by prisoners is unambiguous and it conveys clearly that it is mandatory that Appellant receive time served applied to both of his consecutive sentences because none of the four exceptions of the statute applies to Appellant's consecutive sentences. Respondent did not address nor explain in its brief why it applied jail time credit to both consecutive sentences in the Masssey case, but won't apply Appellant's jail time credit to both of Appellant's consecutive sentences. Respondent's actions violate Appellant's due process rights (of liberty interest) and violate Appellant's rights to equal protection of the laws rights of the U.S. const. Amend. 14 and 5. Const. Art. 1, 3. Respondent's actions prejudiced Appellant because Appellant's jail time served credits are not applied to both his consecutive sentences, Appellant's maxout date is incorrect, and Appellant has to serve more time than the laws allow. Appellant and Masssey are the same similarly situated, and Respondent should have applied all Appellant's time served credits to both of Appellant's consecutive sentences, just like Respondent did in Masssey's case. Instead, Respondent consciously and intentionally treated Appellant differently than Masssey when it discriminated against Appellant by not applying Appellant's time served credits to both of Appellant's consecutive sentences. Respondent's disparate treatment against Appellant was not reasonably related to any legitimate penological interests and this disparity was not justified under the appropriate level of scrutiny. "Generally, penal statutes are to be construed strictly against the state and in favor of the inmates." State v. Higgins, 593 S.E.2d 180, 182 (2004). "The requirement that a prisoner receive credit for time served is mandatory." Hayes v. State, 177 S.E.2d 610 (2015). "Denying time served in this scenario would be of odds with the general Assembly's express language in the statute that prisoners receive credit for all time served." Hayes v. State, 177 S.E.2d 610 (2015) [Any] finding that [Appellant] is not entitled to time served credit would conflict with the General Assembly's mandate that prisoners receive credit for all time served." State v. Brown, 844 S.E.2d 476, 479 (2019).

"An equal protection claim arises when, without adequate justification, similarly-situated persons are treated differently by a governmental entity." U.S. const. amend. 14, Chisolm v. Moultrie, 2023 WL 3631798 at 6. The Equal protection clause of the Fourteenth Amendment provides that a state may not deny to any person within its jurisdiction the equal protection of the laws. U.S. const. amend. 14/1. The Equal protection clause thus directs that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1982) "The Equal Protection clause, which prohibits states from denying persons the equal protection of the laws, keeps governmental decision makers from treating differently persons who are in all relevant respects alike." Fauconier v. Clarke, 966 F.3d 265, 277 (4th Cir. 2020) In essence, the clause "mandates that similarly situated persons be treated alike." Plyer v. Doe, 457 U.S. 202, 216 (1982)

STATUTORY AUTHORITY

"All Courts are bound to follow clear and unambiguous statutory law" State v. Price, 895 S.E.2d 633, 639 (2023) "Reviewing courts are not obliged to stand aside and rubberstamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute. Such review is always properly within the judicial province and courts would abdicate their responsibility if they didn't fully review such administrative decisions." NLRB v. Brown, 380 U.S. 278, 291 (1965) "Courts can hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. While review is limited, the Supreme Court has cautioned that courts must not rubberstamp... administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." Women Involved In Farms Economics v. U.S. Dept. of Agriculture, 682 F. Supp. 599, 609 (1988)

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 533 S.E.2d 578, 581 (2000) "The plain language of a statute is the best evidence of legislative intent." Grier v. AMISUR of S.E. Inc., 725 S.E.2d 693, 697 (2012) "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 S.E.2d 578, 581 (2000) "When statutes words are clear, courts inquiry is complete, and it must instead presume that congress says in statute what it means and means in statute what it says. Accordingly, there is nothing left for the court to consider." United States v. Jones, 60 F.4th 230, 234 (2023) "We are mindful that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning." State v. Miles, 805 S.E.2d 204, 208 (2017) "There is no need to consult extratextual sources ~~when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms.~~" McGirt v. Oklahoma, 140 S.Ct. 2452, 2469 (2020) "If the statute is unambiguous, the inquiry ends and the court applies the statute 'as-written'." City of Arlington v. FCC, 569 U.S. 290, 296 (2013)

"In determining legislative intent, the prevailing rule of statutory interpretation is that the use of ~~the~~ words such as "shall" or "must" indicates the legislature's intent to enact a mandatory requirement."

Strickland v. Richland County Legislative-Delegation, 892 S.E.2d 288, 290 (2022) "Even the most formidable policy arguments cannot overcome a clear statutory directive." Badgerow v. Walters, 596 U.S. 1, 16 (2022) "The Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." Brown v. Bi-Lo, Inc., 581 S.E.2d 836, 838 (2003) "If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 766 S.E.2d 707, 717 (2014) "When a court reviews an agency's construction of the statute which it administers it is confronted with two questions: first, applying ordinary tools of statutory construction, court must determine whether congress has directly spoken to precise question at issue, and if intent of congress is clear, that is the end of the matter for court, as well as agency, must give effect to unambiguously expressed intent of congress; but if statute is silent or ambiguous with respect to specific issue, question for court is whether agency's answer is based on a permissible construction of statute." City of Arlington, Tex. v. F.C.C., 569 U.S. 290, 296 (2013) "However, where the plain language of the statute is contrary to the agency's interpretation." Brown v. Bi-Lo, Inc., 581 S.E.2d 836, 838 (2003) "When interpreting limitations provisions, a court begins by analyzing the statutory language, and if the words of the statute are unambiguous, this first step of the interpretive inquiry is the court's last." Rotkiske v. Klemm, 140 S.Ct. 355, 360 (2019)

As such, Respondent is in error when it states that Appellant's jail time served credits shouldn't be applied to both Appellant's consecutive sentences. Respondent is in error for adopting North Carolina's legislative jurisdiction statute to support its position, because South Carolina statute "24-13-40. Computation of time served by prisoners" is unambiguous, clear, and is a statutory mandate that only needs application and no interpretation. It mandates that prisoners receive all time served; the only limitations being the four exceptions in the statute, to which these four exceptions don't apply to Appellant's sentences. Respondent admitted in its brief Appellant is entitled to time served and SCDC must adhere to Appellant's unambiguous sentencing sheets that state Appellant must receive his jail time served credit applied to all his sentences. Respondent didn't address, refute, nor engage the point that Appellant made in his "original Brief of Appellant" that Respondent applied Massey's time served to both of Massey's consecutive sentences; and Respondent has not explained why it didn't apply Appellant's time served credit to both of Appellant's consecutive sentences also pursuant to equal protection laws of the U.S. Const. Amend. 14 and S.C. Const. Art. 1, 3.

Thus, pursuant to the above stated reasons, Appellant has carried his burden to demonstrate SCDC is incorrectly calculating his sentence. The record of evidence establishes that the "substantial evidence on the whole record" does not support the Department's Final agency decision. Appellant has met the burden of proving that the decision of the Department is clearly erroneous, arbitrary, capricious, and an abuse of discretion. Appellant has met this burden and therefore the final agency's decision should not be affirmed.

CONCLUSION

Appellant has met his burden to demonstrate SCDC has incorrectly applied Appellant's jail time credit and his sentence is improperly calculated. SCDC calculations are not supported by the substantial evidence and Appellant's time served credits should also be applied to Appellant's voluntary manslaughter and ABH/AN sentences. Therefore, Appellant respectfully request this court to not affirm SCDC's decision and request that this court order SCDC to apply Appellant's jail time credit to both of Appellant's consecutive sentences and correct his maxout date.

February 21, 2024

Respectfully submitted,

Curtis T. Johnson

Curtis T. Johnson, 337543
Allendale C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Curtis T. Johnson, #337543, Appellant, v. SC Doc, Respondent.)	South Carolina Administrative Law Court The Honorable Ralph K. Anderson, III Case # 23-ALJ-04-0395-AP CERTIFICATE OF SERVICE
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I, Curtis T. Johnson, do hereby certify that on this date, I served the "Reply Brief of Appellant" and "Certificate of Service" in the foregoing action on Administrative Law Court Judge Anderson, and the Respondent by depositing one copy of same in the United States mail, first-class postage prepaid, and addressed as follows:

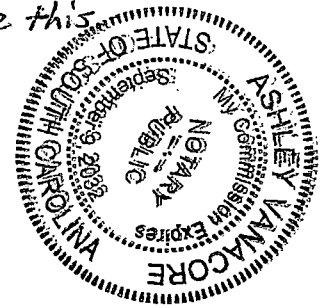
The Honorable Ralph K. Anderson, III
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, S.C. 29201

Dept. of General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221

SWORN or AFFIRMED to and Subscribed before me this

21st day of February, 2024

Ornella Vancore
Notary Public
My Commission Expires: 9/9/32



Curtis T. Johnson

Curtis T. Johnson, 337543
Allendale C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827
February 21, 2024

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Curtis Johnson, #337543,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 23-ALJ-04-0395-AP

ORDER

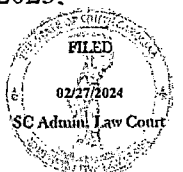
This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Curtis Johnson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant challenges the Department's calculation of his sentence-related credits and his max out date.

BACKGROUND

On November 20, 2006, Appellant was arrested and placed in custody for four offenses: one count of voluntary manslaughter, two counts of assault and battery of a high and aggravated nature (ABHAN), and one count of possession of a weapon during the commission of a violent crime (possession of a weapon). On October 21, 2009, Appellant was tried and convicted of all four offenses. He was sentenced to thirty years' incarceration for voluntary manslaughter, ten years' incarceration for each conviction of ABHAN, and five years' incarceration for possession of a weapon. Pursuant to the sentencing sheets, Appellant's conviction for possession of a weapon is the only sentence ordered to be consecutive. Therefore, Appellant's sentences for voluntary manslaughter and ABHAN run concurrently. In addition, the sentencing sheets indicate Appellant's sentence start date for all four convictions was October 21, 2008. The sentencing sheets also indicate Appellant was to be given credit for time served (jail time credit) pursuant to section 24-13-40 of the South Carolina Code (Supp. 2023). to be calculated and applied by the Department.

On June 27, 2023, Appellant filed a Step 1 Grievance alleging his jail time credit was not properly applied. The Department denied his Step 1 Grievance on July 6, 2023. Appellant then filed a Step 2 Grievance, which was also denied. In its denial of the Step 2 Grievance, the Department stated Appellant's max out date of May 13, 2037, was correct. On October 3, 2023,

[Record on Appeal - Page 35 of 43]



Appellant filed a Notice of Appeal with the Court, in which he asserts his jail time credit should be applied to both of his consecutive sentences¹ and his max out date corrected. The case was assigned on October 20, 2023. The Department filed the Record on Appeal on January 2, 2024. Appellant filed his brief on January 12, 2024.² The Department filed its brief on February 8, 2024.

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) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Al-Shabazz*, the court held the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382; 527 S.E.2d at 757.³ Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2023) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

¹ Appellant appears to be referring to his sentences for possession of a weapon and voluntary manslaughter.

² Appellant attached documents to his brief to support his appeal. However, these documents are not part of the Record on Appeal. Rule 65 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) sets forth that "[t]he Administrative Law Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." Since the documents attached to Appellant's brief do not appear in the Record, they will not be addressed by the Court. *See id.*; S.C. Code Ann. § 1-23-380(4) (Supp. 2023) ("The review must be conducted by the court and must be confined to the record.")

³ In *Sullivan v. South Carolina Department of Corrections*, the Supreme Court also found that other conditions of confinement could potentially implicate state-created liberty interests. 355 S.C. 437, 586 S.E.2d 124 (2003). However, those interests are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 442, 586 S.E.2d at 126 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

- (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) (Supp. 2023).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, 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, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant asserts his jail time credit should be applied to both of his consecutive sentences and thus requests his max out date be corrected to reflect his credit for time served. However, the Department asserts Appellant’s jail time credit has been properly applied and his max out date has been correctly calculated. Specifically, the Department argues Appellant’s sentence for possession of a weapon runs consecutively to his sentences for voluntary manslaughter and ABHAN, and his sentence for possession of a weapon is “a day for day” sentence that began the day Appellant was arrested: November 20, 2006. Thus, once Appellant’s five-year sentence was completed, on or

around November 20, 2011, Appellant began serving his sentences for voluntary manslaughter and ABHAN. Voluntary manslaughter is a “no parole offense,” and thus, Appellant is required to serve 85% of his thirty-year sentence. As a result, Appellant’s projected max out date is May 13, 2037.

Absent any ambiguity in the sentencing sheet, the Court must presume that the sentencing court’s sentence is correct. *See Tant v. S.C. Dep’t of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh’g denied* (July 10, 2014). (“[T]he Department is generally confined to the face of the sentencing sheets in determining the length of a sentence. . . . [unless] there is an ambiguity in the sentencing sheets.”). According to the sentencing sheets, Appellant is entitled to time served. The sentencing sheets also unambiguously state Appellant was sentenced to thirty years’ imprisonment for voluntary manslaughter under section 16-3-50 and five years’ incarceration for possession of a weapon under section 16-23-490. Although Appellant was also convicted of two counts of ABHAN, because these sentences run concurrently to the voluntary manslaughter conviction, which is a longer sentence, the sentence for voluntary manslaughter is controlling for the purpose of calculating Appellant’s max out date.

Turning to the controlling statutes, section 16-3-50 provides that a person convicted of voluntary manslaughter “must be imprisoned not more than thirty years or less than two years.” S.C. Code Ann. § 16-3-50. In addition, voluntary manslaughter is a Class A felony under section 16-1-90(A) of the South Carolina Code (Supp. 2023). “[A] class A, B, or C felony” is a “no parole offense.”⁴ S.C. Code Ann. § 24-13-100 (2007). Regarding no parole offenses, section 24-13-150(A) provides:

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate 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,

⁴ In reviewing this case, the Court considered whether the South Carolina Court of Appeals’ decision in *Bolin v. South Carolina Department of Corrections* applied. 415 S.C. 276, 781 S.E. 2d 914 (Ct. App. 2016). In *Bolin*, the Court of Appeals held the amended version of section 44-53-375(B) (pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010) repealed section 24-13-100 to the extent section 24-13-100’s classification of no-parole offenses conflicted with the amended section’s granting of parole eligibility. *Id.* at 286, 781 S.E.2d at 919. More specifically, the amended version of 44-53-375(B) made certain offenses parole-eligible that were previously classified as no-parole offenses under section 24-13-100. *Id.* Reviewing the legislative history of section 16-3-50 for the purposes of this case, it is clear that it has not been amended to include the repealing language at issue in *Bolin* such that Appellant’s sentence is a parole-eligible conviction. Therefore, the application of *Bolin* to this case does not change the parole eligibility of Appellant’s sentence and the Department correctly classified Appellant’s conviction as a “no parole” offense.

or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. . . . Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (Supp. 2023) (emphasis added). Accordingly, because Appellant's voluntary manslaughter offense is a "no parole offense," he is required eighty-five (85) percent of his thirty-year sentence before being eligible for release from imprisonment.

Additionally, Appellant's conviction for possession of a weapon under section 16-23-490 requires a mandatory five-year sentence:

(B) Service of the five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run consecutively or concurrently.

© Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. **The five years may not be suspended** and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment.

S.C. Code Ann. § 16-23-490 (2015) (emphasis added). Thus, because Appellant's sentence for possession of a weapon is a mandatory five years and runs consecutive to his conviction for voluntary manslaughter, Appellant is required to serve at minimum five years' incarceration for the weapon conviction and then eighty-five percent of his thirty-year sentence for voluntary manslaughter. § 16-23-490; § 24-13-150(A). Eighty-five percent of thirty years is twenty-five years and six months. Therefore, in total, Appellant must serve, at minimum, thirty years and six months.

Next, the Department must give Appellant credit for jail time served when calculating Appellant's max out date. Section 24-13-40 of the South Carolina Code (Supp. 2023) provides, in pertinent part:

In every case in computing the time served by a prisoner, full credit against the sentence must 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.

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.* In this case, neither exception to section 24-13-40 applies to Appellant. Although Appellant was not convicted until October 21, 2009, under section 24-13-40, Appellant is entitled to jail time credit starting when he was arrested and placed in custody on November 20, 2006. As a result, Appellant's max out date is calculated from November 20, 2006. Appellant's five-year sentence for possession of a weapon ran first because it was a day-for-day sentence. *See* S.C. Code Ann. § 16-23-490 (2015). Five years from November 20, 2006 is November 20, 2011. Thus, Appellant's thirty-year sentence for manslaughter began running, for which he is required to serve eighty-five percent or twenty-five years and six months, started on November 20, 2011. Twenty-five years and six months from November 20, 2011, is May 13, 2037. Therefore, the Department has correctly applied Appellant's jail time credit to his sentence.

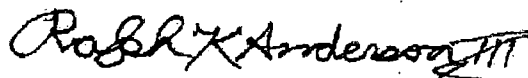
In sum, Appellant failed to carry his burden of proving the Department improperly calculated his sentence and the Department's decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding "the party challenging [an administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.").

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

February 27, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

February 27, 2024
Columbia, South Carolina

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ Curtis T. Johnson
Curtis T. Johnson, 337543
Allendale C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827
December 30, 2024

RECEIVED

JAN 02 2025

SC Court of Appeals

[Record on Appeal - Page 42 of 43]