

The South Carolina Court Of Appeals

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JAN 13 2025

SC Court of Appeals

Jay Tate #131879,

Appellant.

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No.:2023-001002  
The Honorable Robert Lawrence Reibold  
Trial Court Case No.:2023ALJ040060AP  
And 2023ALJ040059AP

Motion To Obtain Leave Of Court,  
Request To Obtain A Court Order To Compel  
General Counsel To Provide Requested Material

NOW COMES, THE Applicant in the above-caption action on his own behalf as Pro Se, hereby moving before this Honorable Court of Appeals requesting to obtain an thirty (30) days Leave of Court in order to obtain some much needed discovery material that South Carolina Department of Corrections General Counsel has been denying me, since I have been unjustly found guilty on two (2) major disciplinary institutional chargers. The requested documents being requested are needed so I can properly and effectively submit a complete record to the Honorable Court.

The Appellant has attempted unsuccessfully to obtain the following documents and if these documents are not obtain the Applicant's would continue to suffer a gross miscarriage of justice.

The Applicant further states that the Disciplinary Hearing Officer and or General Counsel failure to provide the following documents seriously deprives me of a fair opportunity of a bite of the apple.


The following documents from the Disciplinary Hearing dated November 2, 2022 is being requested:

- a. Transcript of the DHO for the above date
- b. Indicents Reports of Charge
- c. Copies of documented evidence
- d. Any statements of officials regarding the charge

C O N C L U S I O N

IT IS MY PRAYER, THAT THIS Honorable Court shall grant this Motion that would allow me to proceed in an legal manner of presenting my issues to this Honorable Court to correct the miscarriage of injustice that is causing me setbacks in my Classification advancement. These documents per my request should have been provided from the initial filing of my appeal of the institutional major chargers.

December 28, 2024

  
Jay Walker Tate Jr., 131879  
4848 Gold Mine Hwy  
Kershaw, SC 29067

The State of South Carolina  
In The Court of Appeals

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Appeal From The Administrative Law Court  
Robert L. Reibold, ALJ

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Appellate Case No: 2023-001002  
Administrative Law Case No: 23-ALJ-04-59 and 60

Jay Walter Tate, Jr. #131879

Appellant

v.

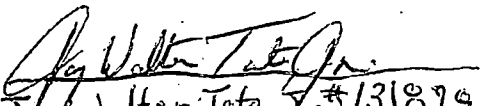
South Carolina Department of Corrections Respondent

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Final Brief of Appellant

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Dated October 12, 2024

  
Jay Walter Tate, Jr. #131879  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, S.C. 29067  
PRO-SE Appellant

Other Counsel of Record:  
Christina Catoe Bigelow, Esquire  
South Carolina Department of Corrections  
Office of General Counsel  
Post Office Box 21787  
Columbia, South Carolina

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OCT 22 2024  
SC Court of Appeals

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# TABLE OF AUTHORITIES

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## Statement of Case

On October 14, 2022 Appellant received an incident report while he was an inmate at the Perry Correctional Institution. The incident was initiated by reporting Official Sgt. Hester, charging Appellant with the following offenses: (903) Trafficking Use, Possession, Narcotics, Marijuana, ect level 1 offense and (855) Conspiring to Smuggle Contraband into Institution level 2 offense. Both are Major Offenses and serious. The incident was referred to a Disciplinary Hearing on October 18, 2022. On November 2, 2022 a disciplinary hearing was conducted and Appellant convicted of both offenses. On November 9, 2022, Appellant filed his Step 1 grievances on both offenses. On November 28, 2022, Appellant received the Warden's response denying his grievances. On November 30, 2022, Appellant filed his Step 2 grievances stating his dissatisfaction with the Warden's response. On January 4, 2023, Appellant received the Responsible Official's decision and reason for denying both grievances. On February 10, 2023, Appellant filed his Notice of Appeal with the South Carolina Administrative Law Court on both grievances (No: PCI-0657-22 and PCI-0660-22). On February 24, 2023, the case was assigned to the Honorable Robert H. Reibold, Case Numbers 23-0059, Grievance No: PCI-0657-22 and #230060, Grievance No: PCI-660-22. The Respondent's filed two Motions to Dismiss Pursuant to Howard v South Carolina Department of Corrections and S.C. Code Ann: Section 1-23-600(0) Docket No: 23-ALJ-04-AP, 23-ALJ-04-0059 and 060. Grievances No: PCI-660-22 and PCI-657-22. These motions had the most important document attach was the Disciplinary Report and Hearing Record. Respondent's was dishonest about allege material off the record. Disciplinary Hearing Officer requested an allege Audio phone recording that was not part of the Incident Report and reviewed it in secrecy. Appellant had a right to hear all the evidence. Also the Disciplinary Report and Hearing revealed the Disciplinary Hearing Officer never had the Mandatory SCDC Form 19-79 "Controlled Substance Testing and Disposition Form". Appellant filed two Motions to Proceed IN Pursuant Al-Shabazz v State and S.C. Code Ann: Section 1-23-610. Docket No: 23-ALJ-04-0059. Appellant assert that these grievances:

was not properly investigated. The Agency's finding of guilt was made off the record and used to convict him. Appellant also asserts that the drugs were not properly tested in this motion.

Appellant received two Order Granting Motion to Dismiss Docket No: 23-AHJ-04-0060 and 23-AHJ-04-0059-AP.

Appellant filed Initial Brief on September 7, 2023.

On November 28, 2023 Appellant filed a Motion to Obtain leave of Court to amend Initial Brief and Expand the Designation of Matter to be included.

Order granting Appellant motion to Amend his Designation of matter and Initial Brief filed on June 20, 2024. Appellant filed his Amended Initial Brief and Expanded the Designation of Matter to be included on July 19, 2024.

## Argument

The Administrative law Judge showed willful blindness to dismiss the appeal for Failure to Implicate a State created liberty or Property Interest and Appellant was denied Due Process.

Appellant Filed 2 Properly Filed grievances PCI-0657-22 and PCI-0660-22. Appellant Stated in his motion to Proceed In Pursuant to *Al-Shabazz v State* and SC Code ANN: Section 1-23-610. Docket No: 23-ALJ-04-060 and 23-ALJ-04-0059. Appellant clearly stated the drugs were not properly tested. Appellant never Filed any grievance(s) on Step 1 or Step 2 on good time credits. The grievance(s) were not properly investigated by the Warden or Responsible Official.

Appellant did not hear the evidence. An inmate can hear all the evidence, *Al-Shabazz v State* 338 SC.35 527 SE2d 742. (Headnote 8) 2000. South Carolina Department of Corrections Policies and Procedures OP-22:14 Inmate Disciplinary System 13 Presence of inmate at Disciplinary Hearing 13:2 Inmate may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life, safety of person or the security and order of the institution. This evidence was used to determine Appellant guilt. Appellant was denied Due Process on this ground.

Appellant was denied due process because the Disciplinary Hearing Officer did not have the SCDC 19-79 Form "Controlled Substance Testing and Disposition Form". The language of the South Carolina Department of Corrections Policies and Procedures OP-22:14, This regulation contain mandatory language and specific directives to decisionmaker that if the substantive predicates are present, a particular outcome must follow. *Allen v South Carolina Department of Corrections*

433 SC. 114, 862 SE2d 268, OP-22:14 (14) Presentation of evidence at hearing) 14:1 at the start of the hearing the Hearing Officer will advise the inmate to enter a plea to each charge. If one or more the charges involved the possession of contraband the item(s) of contraband, a sample of the contraband or a picture of the item should be produced at the hearing. Also if the contraband involved tobacco or a controlled substance, such marijuana or alcohol, the hearing Officer must have ~~to~~ available a copy of the SCDC Form 19-79 "Controlled Substance Testing and Disposition Form" that establishes the exact type of illegal drug was found in possession of the inmate. This mandatory SCDC Form 19-79 was not part of the Disciplinary Report and Hearing Record. I was denied due process on this ground.

The Incident Report should shed light on the requested allege Audio Phone Recording, because the incident Report stated GTL Screenshot as evidence.

Appellant is asking this court to order the South Carolina Department of Corrections to release the discovery and transcript copy of the disciplinary hearing that was held on November 2, 2022.

Appellant never had any possession of any illegal drugs. Appellant never conspired to smuggle any drug or contraband into ~~any~~ the Perry Correctional Institution.

Dated October 12, 2024

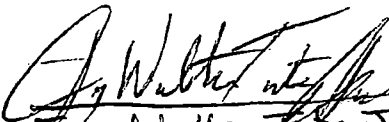
#### Footnotes

Inmate Scotty Shelton #385004 was never charged

## Conclusion

For the foregoing reasons this Court should reverse the Administrative law court decision. Asking this court to vacate both disciplinary with the evidence on the record and remove from my disciplinary records, or what the court deem just and proper

Dated October 12, 2024

  
Jay Walter Tate, Jr. #131  
Kershaw Correctional In  
4848 Goldmine Highway  
Kershaw, South Carolina 290

The State of South Carolina  
In The Court of Appeals

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Appeal From The Administrative Law Court

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Administrative Law Court Case No: 23-ALJ-04-54 and 60  
Appellate Case No: 2023-001002

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Jay Tate # 131879

**RECEIVED** Appellate

v.

OCT 22 2024

SC Court of Appeals

South Carolina Department of Corrections

Respondent

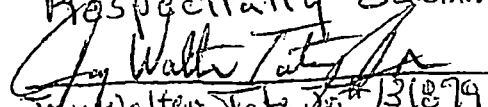
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Proof of Service

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I hereby certify that a true copy of the Appellant's Final Brief have been served this 12<sup>th</sup> day of October, 2024 on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, Post Office Box 21787, Columbia, South Carolina 29221 and The South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court, Post Office Box 11629, Columbia, South Carolina 29211

Dated: October 12, 2024

Respectfully Submitted  
  
Jay Walter Tate, # 131879  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29065  
PRO-SE Appellant

The State of South Carolina  
In The Court of Appeals

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Appeal From The Administrative Law Court

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Administrative Law Court Case No: 23-ALJ-04-54 and 60  
Appellate Case No: 2023-001002

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Jay Tate # 131879

RECEIVED Appellate

v.

OCT 22 2024

SC Court of Appeals

South Carolina Department of Corrections

Respondent

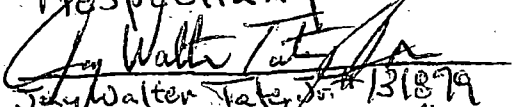
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I hereby certify that a true copy of the Appellant's Final Brief have been served this 12<sup>th</sup> day of October, 2024 on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, Post Office Box 21287, Columbia, South Carolina 29221 and The South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court, Post Office Box 11629, Columbia, South Carolina 29211.

Dated: October 12, 2024

Respectfully Submitted  
  
Jay Walter Tate, #131879  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 2906  
PRO-SE Appellant

State of South Carolina  
In The Court of Appeals

---

Appeal From The Administrative Law Court  
Administrative Law Judge Robert L. Reibold

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ALC case No.:23-ALJ-04-59 and 60  
Appellate Case No.:2023-001002

Jay Tate #131879

Appellant

v.

South Carolina Department of Corrections

Respondent

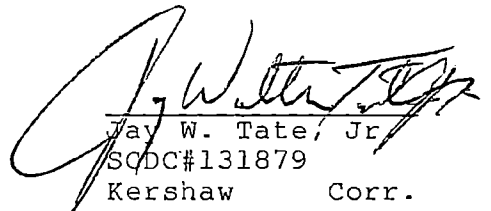
Appellant Designation of matter  
To Be Included In The Record On Appeal

APPENDIX

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OCT 22 2024

SC Court of Appeals



Jay W. Tate, Jr.  
SCDC#131879  
Kershaw Corr.  
Insti., Syc-A  
4848 Gold mine  
Hwy  
Kershaw, SC29067  
Pro se

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NOV 10 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

GRIEVANCE

STEP 1

INMATE NAME: <u>Jay Tate</u>	OFFICE USE ONLY
SCDC NUMBER: <u>131879</u>	Grievance No: <u>PCT-0657-22</u>
INSTITUTION: <u>Ferry</u>	Code: <u>General</u>
HOUSING UNIT: <u>Bravo Y 18</u>	Policy: <u>Disc. Hear 11/2/22 (903)</u>
WORK ASSIGNMENT: <u>NONE</u>	Class: <u>PREA</u>
	Date Received: <u>11/10/22</u>
	IGC Initials: <u>RM</u>

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.) On November 2, 2022 a disciplinary hearing was held. DHO Hearing Officer P. Hough requested a allege Audio Recording from Sgt. Lester. DHO Hearing Officer P. Hough violated a 7th Department Policy by committing a unlawful procedure by going off the record to review this allege Audio Recording in secrecy to determine my guilt. This allege Audio Recording is not part of the Incident Report as evidence. See Exhibit 1

I had a created liberty interest right to hear the allege Audio recording and that directly affected me as a inmate. I am requesting that Charge #8 (903) Possession of unauthorized drugs to be dismiss at this time. No drugs found on my person.

DHO Hearing Officer P. Hough also committed another unlawful procedure by adding the time served credit days to the following sanctions: Canfeen (903) 120+19=139 Phone (903) 120+19=139 Visitation Suspension (903) 120+19=139. I am requesting that the above sanctions of Charge (903) be dismiss at this time. See Exhibit 2. Gobal Tel Link also violated the terms of the phone call by providing a allege screenshot of a phone call. Gobal Tel Link said this phone call can be monitored or recorded. This makes Gobal Tel Link liable for violating the terms of the call. Substitute counsel never reviewed the charge of 903 within the 24 hours of the hearing as required by Policy.

Jay Tate 11/9/22  
Grievant Signature Date

PCT-0653 told me to file separate Grievance Form for the charge #8.

ACTION REQUESTED: I am requesting that Charge #8 (903) Possession of unauthorized drug to be dismiss and Expunged From the South Carolina Department of Corrections Computer System.

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

See reverse for Warden's Decision  
[Signature] 11/10/22  
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

**WARDEN'S DECISION AND REASON**

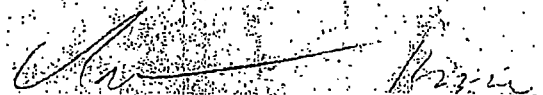
Tate, Jay -131879

PCL0657-22

I have reviewed your concern. In your grievance you have appealed the results of the Disciplinary Hearing that was conducted on 11/02/22 where you were convicted of violating SCDC Charge 903, Trafficking/Use/Poss. Narcotics, Marijuana, etc. In your grievance you are requesting that the DHO findings be dismissed and sanctions be restored. No documentation, procedural errors, or misrepresentation of the evidence was noted, and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The sanctions imposed are not excessive but proportionate to the rule violation. Based on this information your appeal is without merit.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

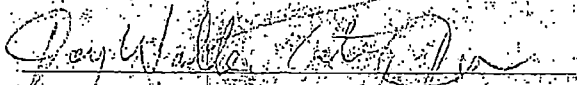


Warden Signature

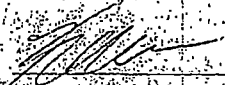
Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

  
Grievant Signature

Date

  
IGC Signature

Date

11/28/22

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

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DEC 01 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

Due: 12/3/22

GRIEVANCE

STEP 2

Office Use Only

INMATE NAME: Jay Tate

RECEIVED

Grievance No. PT-0657-22

SCDC NUMBER: 131879

DEC 06 2022

Code: General

INSTITUTION: Perry

Policy

Disc. Hear. 11/2/22 (903)

HOUSING UNIT: Bravo Y 18

INMATE GRIEVANCE

Class. #8

Date Received 12/1/22

WORK ASSIGNMENT: NONE

IGC Initials: MM

RCVD: 12/9/22 BNL

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The fact is the Warden disregarded the most important part hearing was the 7:1 Department policies by DHO hearing officer to go off the record to review this allege Audio recording evidence in secrecy to commit a unlawful procedure. I had a create d interest right to hear and review this allege Audio record because my liberty was put at stake and this also affected me as an inmate. This allege Audio recording was not part of the incident report. Global Tel link provided an allege screenshot of a phone call and violated the terms of the phone call. Substit counsel never reviewed the charge of 903 with me as required by policy.

The warden admittedly said the evidence False and misleading, noted in his decision without dismissing the 903 charge of possession of unauthorized drugs. I never had no possession of drugs. The warden decision was bias and unconstitutional. I am requesting that the charge of Jay Tate 11-30-22 be dismissed and expunged from the SCDC computer system. The original was not returned to me.

Grievant Signature Jay Tate Date 11-30-22

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the (903) Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics in case #8 conducted on November 2, 2022 under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -60- days accrued good time, were appropriate for the rules violation. There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

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.

Dele Alan 1-4-23  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Jay Tate 1-13-23  
Grievant Signature Date

K McK 1/13/23  
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM**

**STEP 1**

INMATE NAME: <u>Jay Tate</u> SCDC NUMBER: <u>131899</u> INSTITUTION: <u>Perry</u> HOUSING UNIT: <u>Bravo Y 10</u> WORK ASSIGNMENT: <u>NONE</u>	<b>RECEIVED</b>  NOV 10 2022	OFFICE USE ONLY Grievance No. <u>PCI-0660-22</u> Code: General Policy #1 <u>Disc Hear: 11/2/22 (855)</u> Class: <u>PREA</u> Date Received: <u>11/10/22</u> IGC Initials: <u>LM</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 RFSM or Kiosk reference number.) On November 2, 2022 a disciplinary hearing was held. DHO Hearing Officer P. Hoagh requested a allege Audio Recording from Sgt. Foster. DHO Hearing Officer P. Hoagh violated a 71 Department Policy by committing a unlawful procedure by going off the record to review this allege Audio Recording in SECRET to determine my guilt. This allege Audio Recording is not part of the Incident Report as evidence. See Exhibit 1. I had a created liberty interest right to hear the allege Audio Recording and that directly affected me as a inmate. I requesting charge # 7 (855) Conspire to smuggle contraband into institution and dismiss at this time. DHO Hearing Officer P. Hoagh also committed another unlawful procedure by adding the time served credit days to the following sanctions: Carter (855) 90+19+109 Visitation Suspension (855) 90+19+109 Phone (855) 90+19+109. I am requesting that charge 8 (855) be dismiss at this time. See Exhibit 2. Gobid Talk also violated the terms of the phone call by providing a allege screenshot of a phone call. Gobid Talk said this phone call can be monitored or recorded. This makes Gobid Talk liable for violating the terms of the call. Substrate Counsel never reviewed the charge (855) within the 24 hours of the hearing as required by Policy. Jay Tate 11-9-22  
 PCI-0653-22. told me to file separate grievance for the charge.

**ACTION REQUESTED:** I am requesting that charge (855) Conspire to smuggle contraband into institution be dismiss and Expunged from the SCDC Computer System.

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

**\*\*\*\*\* PLEASE SEE REVERSE FOR WARDENS DECISION \*\*\*\*\***

  
 IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

**WARDEN'S DECISION AND REASON**


Date: Jay - 131879

PCI-0660-22


I have reviewed your concern. In your grievance you have appealed the results of the Disciplinary Hearing that was conducted on 11/02/22 where you were convicted of violating SCDC Charge 855 Smuggling and/or Conspiracy to Smuggle in Contraband. In your grievance you are requesting that the DHO findings be dismissed and sanctions be restored. No documentation, procedural errors, or misrepresentation of the evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The sanctions imposed are not excessive but proportionate to the rule violation. Based on this information your appeal is without merit.

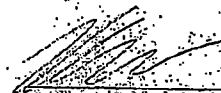
Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Inmate Grievance Form 10-5A provided to you while serving you this Decision and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

  
Warden Signature Date 11/28/22

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

  
Grievant Signature Date 11/28/22

  
IGC Signature Date 11/28/22

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

DEC 01 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

Due: 12/3/22

GRIEVANCE

STEP 2

INMATE NAME: Jay Tate RECEIVED  
SCDC NUMBER: 131879  
INSTITUTION: Perry DEC 06 2022  
HOUSING UNIT: Bravo Y 18 INMATE GRIEVANCE  
WORK ASSIGNMENT: NONE

Office Use Only  
Grievance No. PCI-0660-22  
Code: General  
Policy  
Disc. Hear 11/2/22 (855)  
Class. #7  
Date Received 12/2/22  
IGC Initials KM  
RLVD 12/9/22 BW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The fact is that the warden disregarded the most important part of the hearing was the 711 Department Policies by DHO Hearing Officer P. Hough questioning an alleged Audio Recording from Sgt. Hester and to go off the record to review the evidence in secrecy to commit an unlawful procedure. I had a created interest right and review the alleged audio recording, because my liberty was put at stake and this also affected me as an inmate. This alleged audio recording was not part of the incident report evidence. Global Tel link provided an alleged screenshot of a phone call and violated the terms of the phone call. Substitute counsel never reviewed the charge 855 with as required by policy. (The warden admitted said the evidence was false and misleadingly stated in decision without dismissing the charge of 855 conspire to smuggle contraband into Institution) I am requesting that the charge of 855 conspire to smuggle contraband into Institution be dismissed and expunged from the SCDC Computer System. The original grievance was not returned to me.

Jay Tate 11-30-22  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Smuggling and/or Conspiracy to Smuggle in Contraband (855) in case #7, conducted on November 2, 2022, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -30- days accrued good time, were appropriate for the rules violation. There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

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.

Michelle Nlan 1-4-23  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Jay Tate 1-13-23  
Grievant Signature Date

J. Mc... 1/13/23  
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Jay Tate # 131879

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Exhibit # 4

NOTICE OF APPEAL

DOCKET NO 23-ALJ-04-0060-AP  
GRIEVANCE NO.: PCI-0660-22

Notice is hereby given that Jay Tate # 131879 does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-4-23 and received on 1-13-23, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Appellant hereby appeals the Department's final decision based on (but not limited) the following: 1. the Appellant was not allowed to confront his accuser, by not see (and/or hearing) the evidence against him. 2. the accuser had witness on the incident report then also signed as both the supervisor and the Major/Responsible Authority, to refer to the DHO. That violates SCDC Policy and Procedure. Further more that violates both due process rights under State/Federal laws.

Jay Tate # 131879  
Appellant's Name

Jay Tate  
Signed

430 Oaklawn Rd  
Mailing Address

February 10, 2023  
Dated

Pelzer, S.C.

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Jay Tate (your name), on the 10 day of February, 2023, in Pelzer (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States

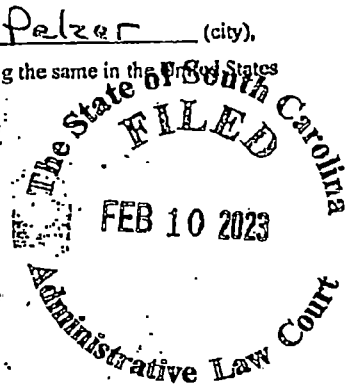
Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Clerk's Office - ALC  
405 Pendleton Street, Suite 224

Address: Columbia, S.C. 29201

City, State, Zip Code: \_\_\_\_\_

Jay Tate Jay Tate  
Print your name Sign your name  
(See reverse side for instructions)



STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Exhibit #4

Jay Tate #131879

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO 23-ALJ-04-0059-AP  
GRIEVANCE NO.: PCI-0657-22

Notice is hereby given that Jay Tate #131879 does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-4-23 and received on 1-13-23, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Appellant hereby appeals the Department's final decision based on (but not limited) the following: 1. the Appellant was not allowed to confer his accuser, by not see (and/or hearing) the evidence against him, 2. the accuser had witnesses on the incident report then also signed as both the supervisor and the Major/Responsible Authority to refer to the DHO. That violates SCDc Policy. Furthermore that violates both due process rights under State/Federal law

Jay Tate #131879  
Appellant's Name

Jay Tate  
Signed

430 Oaklawn Rd  
Mailing Address

February  
Dated

Palzer S.C.  
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Jay Tate (your name), on the 10 day of February, 2023, in Palzer (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Clerk's Office - ALC  
Address: 1205 Pendleton Street, Suite 224

City, State, Zip Code: Columbia, SC 29201

Print your name: Jay Tate

Sign your name: Jay Tate

(See reverse side for instructions)

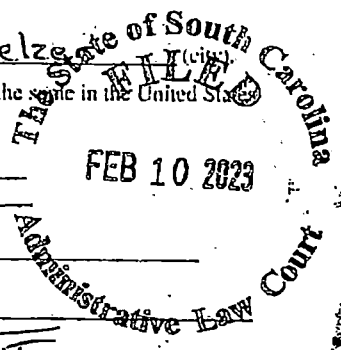


Exhibit #17

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

Jay Walter Tate, #131879,	)	Docket No.: 23-ALJ-04-0059-AP
	)	[Grievance No.: PCI 657-22]
Appellant,	)	
	)	Hon. Robert L. Reibold
v.	)	
	)	<b>RESPONDENT'S MOTION TO</b>
South Carolina Department of Corrections,	)	<b>DISMISS PURSUANT TO HOWARD</b>
	)	<b>V. S.C. DEPT OF CORR. AND S.C.</b>
Respondent.	)	<b>CODE ANN. § 1-23-600(D)</b>
_____	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Jay Walter Tate ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing SCDC's final agency decision of January 4, 2023, that denied Appellant's Step Two grievance.

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." Appellant alleged that material not on the record was used to determine his guilt. Appellant requested his conviction be overturned. On November 23, 2022, Appellant's Step One grievance was investigated and denied. Thereafter, on November 30, 2022, Appellant filed a Step Two grievance alleging, again, that material off the record was used at his disciplinary hearing. This grievance was investigated and denied on January 4, 2023. This appeal followed.

To clarify, although Appellant was sanctioned with a loss of 60 days good time per the Disciplinary Report and Hearing Record,<sup>1</sup> Appellant is serving a life<sup>2</sup> sentence and is not eligible to earn good time credits, and therefore there is no practical effect regarding the loss of good time credits. Pursuant to S.C. Code Ann. § 24-13-210, inmates convicted of crimes against the State may earn good-time credits; these credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior. S.C. Code Ann. §§ 24-13-210(A)–(B). Inmates convicted of offenses other than “no-parole” offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month. *Id.* However, these same provisions—*i.e.*, §§ 24-13-210(A) and (B)—make the earning of good time for a particular month contingent upon an inmate’s good behavior. *See, e.g.*, § 24-13-210(A) (granting good time credits for a month of time served, *provided that* the inmate “has not been subjected to punishment for misbehavior”) (emphasis added). In concert with this statutory language, SCDC, Policy OP-21.11, *Loss of Statutory Good Time*, provides for an inmate’s failure to earn good time for a given month upon the inmate’s violation of a rule.<sup>3</sup>

However, section (B) of 24-13-210 in pertinent part states, “... [h]owever, *no 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. ...” S.C. Code Ann. § 24-13-210(B) (emphasis added). Likewise SCDC Policy states that inmates will

---

<sup>1</sup> A copy of the disciplinary report and hearing record is attached for the Court’s and parties’ convenience.

<sup>2</sup> A copy of Appellant’s Release Date Screen is attached for the Court’s and parties’ convenience.

<sup>3</sup> A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept informal resolution, the incident may be referred to a disciplinary hearing, where the inmate may plead guilty to the infraction, or be found guilty of

not be eligible to earn good time credits if they are serving a life sentence. See Section 2.3 of SCDC Policy OP-21.11.

### STANDARD OF REVIEW

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 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 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.*, ---S.E.2d ---, ---, 2023 WL 2778609 (S.C. 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)). SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (*emphasis added*).

The law governing this specific type of inmate appeal is clear. S.C. Code Ann. § 1-23-600(D) provides:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)...

By its plain meaning, § 1-23-600(D) precludes the ALC from hearing all inmate appeals involving the loss of the opportunity to earn sentence-related credits. *See Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012) (holding that “the plain terms of section 1-23-600(D) precludes [*sic*] the ALC from hearing *all* inmate appeals involving the loss of the opportunity to earn sentence-related credits” and that “the Legislature definitively limited the parameters of the ALC’s subject matter jurisdiction” regarding this specific type of inmate appeals) (emphasis in original). Although the ALC “may not summarily decline to hear an inmate appeal solely on the ground that it involves the loss of the opportunity to earn sentence-related credits[,]” this case does not involve a separate and distinct state-created liberty or property interest as contemplated by *Howard. Id.* at 629, 733 S.E.2d at 218.

#### ARGUMENT IN SUPPORT OF MOTION TO DISMISS

In the instant case, Appellant claims that his conviction for offense 903, “The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, Inhalants, Intoxicants and Synthetics” should be overturned and his privileges reinstated. However, Appellant lost no good time due to this conviction because he is not eligible to earn good time credits as he is serving a life sentence. *See* S.C. Code Ann. 24-13-210(B); *see also* Releasee Date Screen. No other state-created liberty or property interest is implicated in this case. Appellant’s claim does not trigger due process guarantees. Therefore, pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D), the ALC should dismiss Docket No. 23-ALJ-04-0059-AP

this appeal.

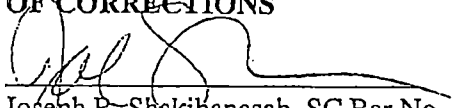
**CONCLUSION**

For the foregoing reasons, SCDC respectfully requests that the Court dismiss this appeal pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D).

Alternatively, if this Court is not inclined to dismiss this appeal, Respondent request sixty (60) days from the date of the order denying the motion to file the record on appeal.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

  
Joseph R. Shakibanasab, SC Bar No. 102825  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
Phone: (803) 896-1278  
Email: [shakibanasab.joseph@doc.sc.gov](mailto:shakibanasab.joseph@doc.sc.gov)

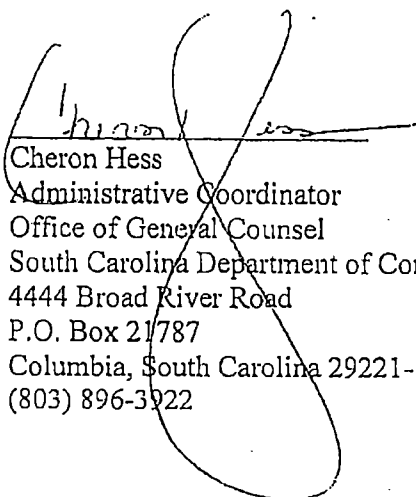
May 5, 2023  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Jay Walter Tate, Jr., #131879, )  
 )  
 Appellant, )  
 ) **Certificate of Service**  
 vs. )  
 ) Docket# 23-ALJ-04-0059-AP  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )

I hereby certify that a copy of the foregoing *Respondent's Motion to Dismiss* was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Jay Walter Tate, Jr.  
Inmate Number: 131879  
Kershaw Correctional Institution  
Dorm-Room-Bunk: HD-0140-B

  
Cheron Hess  
Administrative Coordinator  
Office of General Counsel  
South Carolina Department of Corrections  
4444 Broad River Road  
P.O. Box 21787  
Columbia, South Carolina 29221-1787  
(803) 896-3922

May 5, 2023

10:28:46 Friday, May 5, 2023

: CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/05/23  
OMCOMITA RELEASE DATE SCREEN C052640

SCDC# > 131879 LOC: KERSHAW  
TATE, JR., JAY WALTER SCDC CLASSIFICATION...: VIOLENT  
LEGAL NAME: SEXUAL REGISTRY...: N  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...:  
TABLET ELIGIBLE.: Y DNA STATUS...: COMPLETED  
GPS REQUIREMENT...: N  
PREA DECISION...:

PREA VICTIM...: [REDACTED] PREA PERP...:  
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...:  
LIFE CURRENT SENT START DATE: 06/04/1994

PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 99/99/9999 CURRENT EWC ..:  
YOA SIX YEAR DATE: CURRENT EEC ..:  
INITIAL PAROLE DATE: 06/04/2014 NEXT PAROLE HEARING DATE: 02/22/2025

TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 000000 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

GT: Q

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCD#: 131879
Living Area: BY18 Job: LOCK UP Custody: ST
Offense Date: 10/13/2022 Offense Time: 08:06 AM Institution: Perry Correctional Institution

Offense Description:
#7 855 Conspire to smuggle contraband into institution
#8 903 possess unauthorized drugs

Charging Officer/Employee: A. HESTER Title: INTEL SGT

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

Form with checkboxes: I GIVE UP MY RIGHT TO 48-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING. I DO NOT WANT TO BE PRESENT AT MY HEARING. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING.

Date & Time Notified: 10-25-22 1:10 AM By (Print): J. P. ... SCD#: 131879 Date: 10-25-22

HEARING INFORMATION:
Hearing Date: 11-7-22 Hearing Time: 11:00 AM Medals: NMH Reading Level: 10.4
DD: Assigned Counsel Substitute: Mr. McCarthy

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING OR (7) IF HEARING WAS DELAYED

Table with columns: OFFENSE CODES, INMATE PLEA (G, NG, Wens), FINDINGS (G, NG, DS) (NGMI) (GMI). Contains handwritten entries like 'NG' and 'G'.

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER, EXPLAIN IN DETAIL: 10-24-22 3:20 PM

SANCTIONS:
Loss of Privilege (Days): 30
Property (Days): 30
Canteen (Days): 30
Disciplinary Detention (Days): 30
Reprimand:
Extra Duty (Hours): 0
Visit Suspension (Days): 0
Cell Restriction (Days): 5
Other: 30

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED:
Level 2 (903) offense - 15-055 charge - summary of charge
Level 1 (903) offense - 15-055 charge - summary of charge
CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 14 days
DATE INMATE PLACED IN PHD: 10/14/22 DATE INMATE RELEASED FROM PHD:
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: G. TATE DATE: 11-7-2022

HEARING OFFICER (PRINT NAME) G. TATE
APPROVED FOR MODIFICATION ONLY WARDEN REASON

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.
Warden - Institutional Record, County - Inmate Services of Disciplinary Report, Chain of Custody - Inmate Services of Disciplinary Hearing Equipment, File - Central Record

M/O: 9999

Exhibit #7

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

Jay Walter Tate, #131879,	)	Docket No.: 23-ALJ-04-0060-AP
	)	[Grievance No.: PCI 660-22]
Appellant,	)	
	)	Hon. Robert L. Reibold
v.	)	
	)	<b>RESPONDENT'S MOTION TO</b>
South Carolina Department of Corrections,	)	<b>DISMISS PURSUANT TO HOWARD</b>
	)	<b>V. S.C. DEPT OF CORR. AND S.C.</b>
Respondent.	)	<b>CODE ANN. § 1-23-600(D)</b>
_____	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Jay Walter Tate ("Appellant"), an inmate incarcerated with the South-Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing SCDC's final agency decision of January 4, 2023, that denied Appellant's Step Two grievance.

On November 9, 2022, Appellant filed a Step One grievance to challenge his November 2, 2022, conviction for offense 855, "Smuggling and/or Conspiracy to Smuggle in Contraband." Appellant alleged that material not on the record was used to determine his guilt. Appellant requested his conviction be overturned. On November 23, 2022, Appellant's Step One grievance was investigated and denied. Thereafter, on November 30, 2022, Appellant filed a Step Two grievance alleging, again, that material off the record was used at his disciplinary hearing. This grievance was investigated and denied on January 4, 2023. This appeal followed.

To clarify, although Appellant was sanctioned with a loss of 30 days good time per the Disciplinary Report and Hearing Record,<sup>1</sup> Appellant is serving a life<sup>2</sup> sentence and is not

<sup>1</sup> A copy of the disciplinary report and hearing record is attached for the Court's and parties' convenience.

eligible to earn good time credits, and therefore there is no practical effect regarding the loss of good time credits. Pursuant to S.C. Code Ann. § 24-13-210, inmates convicted of crimes against the State may earn good-time credits; these credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior. S.C. Code Ann. §§ 24-13-210(A)–(B). Inmates convicted of offenses other than “no-parole” offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month. *Id.* However, these same provisions—*i.e.*, §§ 24-13-210(A) and (B)—make the earning of good time for a particular month contingent upon an inmate’s good behavior. *See, e.g.*, § 24-13-210(A) (granting good time credits for a month of time served, *provided that* the inmate “has not been subjected to punishment for misbehavior”) (emphasis added). In concert with this statutory language, SCDC, Policy OP-21.11, *Loss of Statutory Good Time*, provides for an inmate’s failure to earn good time for a given month upon the inmate’s violation of a rule.<sup>3</sup>

However, section (B) of 24-13-210 in pertinent part states, “... [h]owever, *no 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. ...” S.C. Code Ann. § 24-13-210(B) (emphasis added). Likewise SCDC Policy states that inmates will not be eligible to earn good time credits if they are serving a life sentence. *See* Section 2.3 of SCDC Policy OP-21.11.

---

<sup>2</sup> A copy of Appellant’s Release Date Screen is attached for the Court’s and parties’ convenience.

<sup>3</sup> A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept informal resolution, the incident may be referred to a disciplinary hearing, where the inmate may plead guilty to the infraction, or be found guilty of the infraction following the hearing.

## STANDARD OF REVIEW

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).

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[t]hat the ALC has subject matter jurisdiction over inmate grievance appeals that have 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 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.*, ---S.E.2d ---, ---, 2023 WL 2778609 (S.C. 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)). SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (*emphasis added*).

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[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)...

By its plain meaning, § 1-23-600(D) precludes the ALC from hearing all inmate appeals

involving the loss of the opportunity to earn sentence-related credits. See *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012) (holding that “the plain terms of section 1–23–600(D) precludes [*sic*] the ALC from hearing *all* inmate appeals involving the loss of the opportunity to earn sentence-related credits” and that “the Legislature definitively limited the parameters of the ALC’s subject matter jurisdiction” regarding this specific type of inmate appeals) (emphasis in original). Although the ALC “may not summarily decline to hear an inmate appeal solely on the ground that it involves the loss of the opportunity to earn sentence-related credits[.]” this case does not involve a separate and distinct state-created liberty or property interest as contemplated by *Howard. Id.* at 629, 733 S.E.2d at 218.

#### **ARGUMENT IN SUPPORT OF MOTION TO DISMISS**

In the instant case, Appellant claims that his conviction for offense 855, “Smuggling and/or Conspiracy to Smuggle in Contraband” should be overturned and his privileges reinstated. However, Appellant lost no good time due to this conviction because he is not eligible to earn good time credits as he is serving a life sentence. See S.C. Code Ann. 24-13-210 (B); see also Releasee Date Screen. No other state-created liberty or property interest is implicated in this case. Appellant’s claim does not trigger due process guarantees. Therefore, pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D), the ALC should dismiss this appeal.

**CONCLUSION AND SIGNATURE PAGE TO FOLLOW**

10:28:46 Friday, May 5, 2023

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/05/23  
OMCOMITA RELEASE DATE SCREEN C052640  
SCDC# > 131879 LOC: KERSHAW  
TATE, JR., JAY WALTER SCDC CLASSIFICATION...: VIOLENT  
LEGAL NAME: SEXUAL REGISTRY...: N  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...:  
TABLET ELIGIBLE.: Y DNA STATUS.....: COMPLETED  
GPS REQUIREMENT...: N  
PREA DECISION.....:  
PREA VICTIM.....: PREA PERP...:  
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...:  
LIFE CURRENT SENT START DATE: 06/04/1994  
PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 99/99/9999 CURRENT EWC ..:  
YOA SIX YEAR DATE: CURRENT EEC ..:  
INITIAL PAROLE DATE: 06/04/2014 NEXT PAROLE HEARING DATE: 02/22/2025  
TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 000000 ISS.....:  
PFKEYS: 5:HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

DISCIPLINARY REPORT AND HEARING RECORD

9710

Case#: 7 & 8 Inmate Name: TATE, JAY SCDCA: 131879  
Living Area: BY13 Job: LOCK UP Custody: ST  
Offense Date: 10/13/2022 Offense Time: 09:36 AM PM Institution: Perry Correctional Institution

Offense Descriptions:

#7 855 Conspire to smuggle contraband into institution  
#8 903 possess unauthorized drugs

Charging Officer/Employee: A. HESTER Title: INTEL. SGT  
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.  
 I GIVE UP MY RIGHT TO 48-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING  
 I DO NOT WANT TO BE PRESENT AT MY HEARING  
 I DO WANT MY ACCUSER PRESENT AT MY HEARING  
 I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING  
RHUCPH SEGREGATION ONLY  
I WANT A COUNSEL SUBSTITUTE  
I DO NOT WANT A COUNSEL SUBSTITUTE  
Date & Time Notified: 10/25/22 11:10 AM By (Print): [Signature]  
Inmate Signature: [Signature] SCDCA#: 131879 Date: 10/25/22

HEARING INFORMATION  
Hearing Date: 11/2/22 Hearing Time: 11:00 AM Modclass: NMH Reading Level: 10.4  
DD: Assigned Counsel Substitute: Mr. McGarvey

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING OR (7) IF HEARING WAS DELAYED.

OFFENSE CODES		
INMATE PLEA (G, NG, None)	NG	NG
FINDINGS (G, NG, DS) (NGM) (GMI)	NG	NG

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT, (B) OFFICER'S REPORT, (C) WITNESS TESTIMONY, (D) OTHER. EXPLAIN IN DETAIL: [Handwritten notes]

SANCTIONS:  
Loss of Privileges (Days): [Handwritten] Reprimand: [Handwritten] Loss of Good Time (Days): [Handwritten]  
Extra Duty (Hours): [Handwritten] Restitution: \$ [Handwritten]  
Canteen (Days): [Handwritten] Visit Suspension (Days): [Handwritten] Cell Restriction (Days): [Handwritten]  
Disciplinary Detention (Days): [Handwritten] Phone (Days): [Handwritten] Other: [Handwritten]

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED:  
[Handwritten text]  
CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS [Handwritten]  
DATE INMATE PLACED IN PHD: [Handwritten] DATE INMATE RELEASED FROM PHD: [Handwritten]  
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: [Handwritten]

HEARING OFFICER (PRINT NAME): [Signature]  
APPROVED - MODIFICATION ONLY REASON: [Handwritten]  
WARDEN  
CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

M/O: 9999

Exhibit #6

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

MR. JAY WALTER TATE, #131879,	)	DOCKET NO: 23-ALJ-04-0059 AP
APPELLANT	)	GRIEVANCE NO: ECL-657-221
	)	
-vs-	)	HON. ROBERT L. REIBOLD, ALJ
	)	
SOUTH CAROLINA DEPARTMENT OF	)	APPELLANT'S MOTION TO PROCEED
CORRECTIONS,	)	IN PURSUANT TO AL-SHABAZZ v STATE
RESPONDENT,	)	AND S.C. CODE ANNS 1-23-610

**COPY**

STATEMENT OF FACTS

THIS MATTER IS BEFORE THE ADMINISTRATIVE LAW COURT IN PURSUANT TO AN APPEAL BY MR. JAY WALTER TATE, #131879, ("APPELLANT") AN INMATE CURRENTLY AT THE KERSHAW CORRECTIONAL INSTITUTION IN KERSHAW, S.C.. APPELLANT IS APPEALING THE FINAL DECISION OF (SCDC) SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. ON NOVEMBER 9TH, 2022, APPELLANT WAS CONFINED AT THE PERRY CORRECTIONAL INSTITUTION, WHERE HE FILED HIS STEP#1 GRIEVANCE TO CHALLENGE HIS CONVICTION FOR THE OFFENSE OF AN (903) " THE TRAFFICKING, USE, AND/OR POSSESSION OF NARCOTICS, MARIJUANA, OR UNAUTHORIZED DRUGS, INCLUDING PRESCRIPTION DRUGS, INHALANTS, INTOXICANTS, AND SYNTHETICS. APPELLANT ASSERTS THAT THE AGENCY'S DECISION TO FIND HIM GUILTY WAS NOT BASED UPON MATERIALS AS EVIDENCE, NO OVERWHELMING EVIDENCE OF ANY NARCOTICS, MARIJUANA OR UNAUTHORIZED DRUGS FOUND IN HIS SYSTEM NOR IN HIS POSSESSION. THERE WERE NO POSITIVE TESTING FOR EITHER OF THESE ALLEGED DRUGS. THE AGENCY'S DECISION OF FINDING THE APPELLANT GUILTY WAS BASED UPON A THEORY AND NOT BASED UPON ACTUAL FACTS.

ON NOVEMBER 23RD, 2022, APPELLANT'S STEP#1 GRIEVANCE WAS NOT PROPERLY INVESTIGATED, BUT WAS DENIED. APPELLANT FOLLOWED- UP FILING HIS STEP#2 GRIEVANCE, WHERE APPELLANT ALLEGED THAT NO MATERIAL FACTS OR FINDING OF MATERIAL EVIDENCE WAS USED TO CONVICT ON THE RECORD. BUT, INSTEAD THE AGENCY'S FINDING OF GUILT WERE MADE OFF THE RECORD AND USED TO CONVICT HIM AT THE DISCIPLINARY HEARING AND VIOLATED HIS DUE PROCESS RIGHTS. THIS GRIEVANCE WAS NOT PROPERLY INVESTIGATED, BUT WAS DENIED ON JANUARY 4TH, 2023.

THE APPEAL FOLLOWS:

State of South Carolina  
FILED  
MAY 18 2023  
Administrative Law Court





Exhibit #6

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

MR. JAY WALTER TATE, #131879,	)	DOCKET NO: 23-ALJ-04-0060-AP
APPELLANT,	)	GRIEVANCE NO: PCI-660-221
	)	HON. ROBERT L. REIBOLD, ALJ
-VS-	)	
	)	APPELLANT'S MOTION TO PROCEED
SOUTH CAROLINA DEPARTMENT OF	)	IN PURSUANT TO AL-SHABAZZ v. STATE
CORRECTIONS,	)	AND S.C. CODE ANN. § 1-23-610
RESPONDENT,	)	

STATEMENT OF FACTS

THIS MATTER IS BEFORE THE ADMINISTRATIVE LAW COURT IN PURSUANT TO AN APPEAL BY MR. JAY WALTER TATE, #131879, ("APPELLANT") AN INMATE CURRENTLY AT THE KERSHAW CORRECTIONAL INSTITUTION IN KERSHAW, S.C. APPELLANT IS APPEALING THE FINAL DECISION OF (SCDC) SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. ON NOVEMBER 9TH, 2022, APPELLANT WAS CONFINED AT THE PERRY CORRECTIONAL INSTITUTION, WHERE HE FILED HIS STEP#1 GRIEVANCE TO CHALLENGE HIS CONVICTION FOR THE OFFENSE OF (855), "SMUGGLING AND/OR CONSPIRACY TO SMUGGLE IN CONTRABAND". APPELLANT ASSERT'S THAT THE AGENCY'S DECISION TO FIND HIM GUILTY FOR THE OFFENSE OF (855) WAS NOT BASED UPON MATERIAL EVIDENCE, NO OVERWHELMING EVIDENCE OF ANY DRUGS OR CONTRABAND BEING SMUGGLED INTO THE INSTITUTION BY HIM. THERE WERE NO POSITIVE TESTING, NOR ANY MATERIAL EVIDENCE FOUND ON THE RECORD. THE AGENCY'S DECISION OF FINDING THE APPELLANT GUILTY WAS BASED UPON A THEORY AND NOT ACTUAL FINDINGS OF FACTS. ON NOVEMBER 23RD, 2022, APPELLANT'S STEP#1 GRIEVANCE WAS IMPROPERLY INVESTIGATED AND DENIED. APPELLANT FOLLOWED-UP WITH AN STEP#2 GRIEVANCE ON NOVEMBER 30TH, 2022, ALLEGING THAT NO MATERIAL FACTS WERE MADE ON THE RECORD, BUT FINDING OF GUILT WERE MADE OFF THE RECORD AND USED TO CONVICT HIM AT THE HEARING. THIS GRIEVANCE WAS IMPROPERLY INVESTIGATED AND DENIED ON JANUARY 4TH, 2023. THIS APPEAL FOLLOWS:

COPY

The State of South Carolina  
**FILED**  
MAY 17 2023  
Administrative Law Court



CONCLUSION

FOR THE FOREGOING REASONS, APPELLANT RESPECTFULLY ASKS THIS HONRABLE COURT, TO DECLINE DISMISSING THIS MATTER, AND PRAYS THAT THIS COURT WILL ALLOW THIS MATTER TO PROCEED IN PURSUANT TO THE S.C. SUPREME COURT DECISION OF AL-SHABAZZ V. STATE, AND GRANT ANY AND ALL RELIEFS AVAILABLE TO THE APPELLANT AS JUSTICE IS SO REQUIRED, AS A MATTER OF LAW.

DATED: 5-15, 2023

RESPECTFULLY SUBMITTED,

1s/ Jay Walter Tate  
MR. JAY WALTER TATE, #131879  
KOL. HICKORY D#140  
4848 GOLDMINE HWY.  
KERSHAW, S.C. 29067  
PRO-SE APPELLANT

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Jay Tate, #131879,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0059-AP

ORDER GRANTING MOTION TO  
DISMISS

RECEIVED

JUN 16 2023

SC Court of Appeals

STATEMENT OF CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Jay Tate (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). In his notice of appeal filed on February 10, 2023, Appellant alleged issues with his hearing on a charge for trafficking, use, and/or possession of narcotics, marijuana, or unauthorized drugs, including prescription drugs, inhalants, intoxicants and synthetics (903). Appellant attached his step 1 and step 2 grievances to the notice of appeal and included the Department's decisions as to the grievances. This matter was assigned to the undersigned on February 24, 2023.

On May 8, 2023, the Department filed a motion to dismiss pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022) and *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012), because Appellant is serving a life sentence, the loss of good-time credit has no impact on Appellant's sentence, and no state-created liberty or property interest is implicated in this case. To support its position, the Department attached the disciplinary report and hearing record and a printout of the Department's offender management system to its motion. The disciplinary report and hearing record show Appellant received the following sanctions for his conviction (903): no tablet for 90 days, no canteen for 159 days, no phone privileges for 139 days, no visitation for 139 days, extra duty for a period of time, disciplinary detention for a period of time, and a loss of 60 days of good-time credit. The offender management printout shows Appellant is serving a life sentence.

On May 18, 2023, Appellant filed "Appellant's motion to proceed in pursuant to *Al-Shabazz v. State* and S.C. Code Ann § 1-23-610." which the Court construes as a response to

the Department's motion to dismiss. According to Appellant, the Department "initiated the rights of the appellant when it triggered his claim of 'liberty interest' when it decided to sanction him to loss of accrued good-time credits." Appellant asserts that he was improperly sanctioned and that his conviction and sentence are still pending on appeal.

### DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2022); *Allen v. S.C. Dep't of Corr.*, Op. No. 28147 (S.C. Sup. Ct. filed Apr. 5, 2023) (Howard Adv. Sh. No. 13 at 32) ("[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed."); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331 605 S.E.2d 506, 507 (2004); *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (stating the ALC's jurisdiction in inmate appeals is generally 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 because of a serious rule violation).

However, the Court may summarily dismiss an inmate's appeal when the appeal does not implicate state-created liberty or property interests, or when the inmate is not subjected to atypical and significant hardships. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest"); *id.* (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life" (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 272-74, 633 S.E.2d 910, 913-14 (2006). "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757.

Further, section 1-23-600(D) prohibits the Court from hearing appeals from "an appeal from an inmate in the custody of the Department . . . involving the loss of the opportunity to earn sentence-related credits pursuant to [s]ection 24-13-210(A) or [s]ection 24-13-230(A)." In *Howard*, 374 S.C. at 629-30, 649 S.E.2d at 217-18, our supreme court addressed section

1-23-600(D) and the Legislature's amendment of that section post *Furtick v. South Carolina Department of Corrections*, 374 S.C. 334, 649 S.E.2d 35 (2007). Our supreme court acknowledged "the Legislature's authority to limit the jurisdiction of the ALC" and noted "an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest." *Howard*, 374 S.C. at 629, 733 S.E.2d at 217. Nevertheless, a matter involving loss of the opportunity to earn credits is reviewable by the ALC where an inmate's appeal *also* implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits." *Id.* at 630, 733 S.E.2d at 218.

Presently, the Department seeks an order of dismissal from the Court because it asserts Appellant's appeal does not implicate any state-created liberty or property interests. Appellant asserts the Court should not dismiss and that his liberty interests are implicated by the removal of good-time credits. The Court agrees with the Department. Appellant received the following sanctions for his conviction (903): no tablet for 90 days, no canteen for 159 days, no phone privileges for 139 days, no visitation for 139 days, extra duty for a period of time, disciplinary detention for a period of time, and a loss of 60 days of good-time credit. These sanctions do not warrant due process protections. *See Al-Shabazz*, 338 S.C. at 372 n.8, 527 S.E.2d at 751 n.8 (stating "lesser penalties such as extra duty, loss of television privileges, or cell restriction" are not afforded due process protections); *Dumas v. State*, 675 So. 2d 87, 89 (Ala. Crim. App. 1995) (stating store, telephone, and visitation privileges are not liberty interests and thus an inmate has "no liberty interest in the loss of those privileges"). Traditionally, the loss of accrued good-time credits for an inmate who could use the credits would be sufficient to trigger due process protections. *See Howard*, 399 S.C. at 630, 733 S.E.2d at 218; *see also Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972))); *id.* at 369-70, 527 S.E.2d at 750 ("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.").

However, Appellant is serving a life sentence, and any good-time credits that may have appeared on Appellant's record with the Department have no use to him to reduce his sentence of life imprisonment. Because the credits are of no use to Appellant, the loss of the credits do not

trigger due process protections. See generally *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 766-67 (2005) (indicating that although a property interest can take different forms, they must generally have "some ascertainable monetary value" to qualify for due process protection); *Bd. of Regents of State Coll.*, 408 U.S. at 577 ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it."); *Whiting v. Univ. of S. Miss.*, 451 F.3d 339, 345 (5th Cir. 2006) ("A mere breach of contract will not suffice for [a due process action] . . . unless [appellant's] constitutional rights have been denied or his exercise of those rights penalized in some way."), *abrogated on other grounds by Sims v. City of Madisonville*, 894 F.3d 632, 640 (5th Cir. 2018); *Portman v. County of Santa Clara*, 995 F.2d 898, 905 (9th Cir. 1993) ("Deprivation of a benefit to which one is entitled under a statute or a contract does not automatically give rise to a property interest protected by the Due Process Clause."); *Klingler v. Univ. of S. Miss.*, 612 Fed. Appx. 222, 227 (5th Cir. 2015) (holding that a professor who was denied performance reviews that he needed to satisfy tenure criteria had no legitimate expectation in obtaining tenure because the decision would still have been entirely at the discretion of the board, and thus, he was not deprived of a constitutionally protected right). Based on the foregoing, the Court finds that summary dismissal is appropriate.

**ORDER**

**IT IS THEREFORE ORDERED** that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



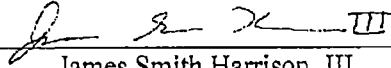
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Robert L. Reibold  
Administrative Law Judge

May 22, 2023  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



---

James Smith Harrison, III  
Judicial Law Clerk

May 22, 2023  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Jay Tate, #131879,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0060-AP

ORDER GRANTING MOTION TO  
DISMISS

STATEMENT OF CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Jay Tate (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). In his notice of appeal filed on February 10, 2023, Appellant alleged issues with his hearing on a charge for smuggling and/or conspiracy to smuggle in contraband (855). Appellant attached his step 1 and step 2 grievances to the notice of appeal and included the Department's decisions as to the grievances. This matter was assigned to the undersigned on February 24, 2023.

On May 8, 2023, the Department filed a motion to dismiss pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022) and *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012), because Appellant is serving a life sentence, the loss of good-time credit has no impact on Appellant's sentence, and no state-created liberty or property interest is implicated in this case. To support its position, the Department attached the disciplinary report and hearing record and a printout of the Department's offender management system to its motion. The disciplinary report and hearing record show Appellant received the following sanctions for his conviction (855): no tablet for 20 days, no canteen for 109 days, no phone privileges for 109 days, no visitation for 109 days, extra duty for a period of time, disciplinary detention for a period of time, and a loss of 30 days of good-time credit. The offender management printout shows Appellant is serving a life sentence.

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of the appellant when it triggered his claim of 'liberty interest' when it decided to sanction him to loss of accrued good-time credits." Appellant asserts that he was improperly sanctioned and that his conviction and sentence are still pending on appeal.

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*Department of Corrections*, 374 S.C. 334, 649 S.E.2d 35 (2007). Our supreme court acknowledged "the Legislature's authority to limit the jurisdiction of the ALC" and noted "an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest." *Howard*, 374 S.C. at 629, 733 S.E.2d at 217. Nevertheless, a matter involving loss of the opportunity to earn credits is reviewable by the ALC where an inmate's appeal *also* implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits." *Id.* at 630, 733 S.E.2d at 218.

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However, Appellant is serving a life sentence, and any good-time credits that may have appeared on Appellant's record with the Department have no use to him to reduce his sentence of life imprisonment. Because the credits are of no use to Appellant, the loss of the credits do not trigger due process protections. *See generally Town of Castle Rock v. Gonzales*, 545 U.S. 748,

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**ORDER**

**IT IS THEREFORE ORDERED** that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



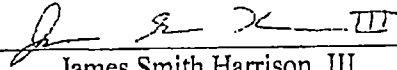
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Robert L. Reibold  
Administrative Law Judge

May 22, 2023  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



---

James Smith Harrison, III  
Judicial Law Clerk

May 22, 2023  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, ALJ

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APPELLATE CASE NO: 2023-001002

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Mr. Jay Walter Tate, Jr. #131879,

Appellant,

V.

South Carolina Department of Corrections,

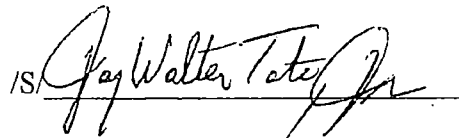
Respondent,

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Initial Brief of Appellant

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Dated: ~~August~~ Sept 7, 2023

18/ 

Mr. Jay Walter Tate, Jr. #131879  
Kershaw Correctional Institution HD-140  
4848 Gold Mine Hwy  
Kershaw, SC 29067  
Pro-Se Appellant

OTHER Counsel of Record:  
Christina Catoe Bigelow, Esquire  
South Carolina Department of Corrections  
Office of General Counsel  
P.O. Box 21787  
Columbia, SC 29221

15-78-10

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## TABLE OF AUTHORITIES

### CASES

Wolff v. McDonnell, 418 U.S. 539, 94. S. Ct 2963 (1974)

Al-Shabazz v. State, 338 S.E. 354, 527 SE 2d 742 (2000)

Article 1 Section 3 of the South Carolina Constitution USCA Const., Amend. 14

### STATUES

S.C. Code Ann. §1-23-600 Hearings and Proceedings

South Carolina Department of Corrections Policies and Procedures

## STATEMENT OF THE CASE

On October 14, 2022 Appellant received an incident report while he was an inmate at the Perry Correctional Institution. The incident was initiated by reporting Official Sgt. Hester, charging Appellant with the following offenses: (903) Trafficking/Use/Possession, Narcotics, Marijuana, etc. Level 1 offense and (855) Conspiring to Smuggle Contraband into Institution Level 2 offense. Both are serious offenses. The incident was referred to a Disciplinary hearing on October 18, 2022. On November 2, 2022, a disciplinary hearing was conducted and Appellant was convicted of both offenses. On November 9, 2022, Appellant shared his Step 1 grievances on both offenses. On November 28, 2022, Appellant received the Warden's response denying his grievances. On November 30, 2022, Appellant started his Step 2 grievances stating his dissatisfaction with the Warden's response. On January 4, 2023, Appellant received the Responsible official's decision and reason for denying his grievances. On February 10, 2023, Appellant filed his notice of appeal with the South Carolina Administrative Law Court. On February 24, 2023, the case was assigned to the Hon. Robert L. Reibold, Case numbers 23C0059, Grievance No: PCI 065-7-22 and #23C0060, Grievance No: PCI 660-22. Appeal as follows with the South Carolina Court of Appeals filed on June 22, 2023, Appellate Case No: 2023-001002.

## ARGUMENTS

Hearing Officer P. Hough never used the South Carolina Department of Corrections Form 19-79 "Controlled Substance Testing and Disposition Form" that establishes the exact type of illegal drug that was found. This violates the South Carolina Department of Corrections Policies and Procedures. This was not documented on the South Carolina Department of Corrections 19-69 Disciplinary Report and Hearing Record.

Appellant never heard this alleged phone audio recording and an inmate can hear all the evidence at a disciplinary hearing unless it jeopardizes prison security of life or safety of other persons. Citing, *Al-Shabazz* 527 S.E. 2d 942, *Wolff v. McDonnell*, 418 U.S. 539 and South Carolina Department of Corrections Policies and Procedures 13.1., USCA 14 Amend., Article 1 §3 of the South Carolina Constitution.

**Appellant is asking this court to order the South Carolina Department of Corrections to release the discovery and transcript copy of the disciplinary hearing that was held on November 2, 2022.**

Appellant asserts that Global Tel Link Corporation violated the terms and agreement by providing the South Carolina Department of Corrections with this screenshot of this alleged phone conversation picture.

Appellant never had any possession of any illegal drugs. Appellant never conspired to smuggle any contraband into the Perry Correctional Institution.

## Footnotes

Inmate Shelton, Scotty #385004 was never charged.

Jay Walter Tate, Jr. #131879  
Kershaw C.I. HD-140  
4848 Gold Mine Hwy  
Kershaw, S.C. 29067

September 7, 2023

Jenny Abbott Kitchings (Clerk)  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, S.C. 29211

Re: Jay Tate #131879 v. SCDC  
Appellate Case No. 2023-001002

Dear Ms. Kitchings:

I sent a check for the amount of \$150.00 toward the filing fee in my case. To my understanding, the filing fee is \$250.00. I will pay the remaining balance when I get it into my Cooper Trust Fund Account.

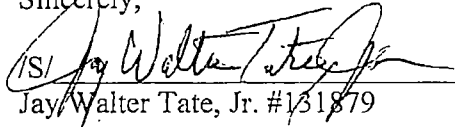
At this point, there will be no record or appeal because the South Carolina Department of Corrections has not turned over the discovery to the disciplinary hearing that was held on November 2, 2022. I sent the motions and dismissal when I filed the Notice to Appeal. I asked the court to order SCDC to turn over the discovery. I filed the motions and the dismissal with the Notice to Appeal.

### Argument

Appellant was denied effective assistance on November 2, 2022. Appellant was assigned a Counsel Substitute, Mr. McCarthy, which helped the state's agency to bolster their case against appellant. Counsel Substitute was inadequate for failing to move and have both charges 903 and 855 dismissed because there was no testing of the illegal drugs on the required South Carolina Department of Corrections 19-79 Form and failing to have the alleged audio recording of the Global Tel Link phone call suppressed. Appellant alleges a "Brady Violation" in which this evidence was never disclosed to the Counsel Substitute, Mr. McCarthy. Before the disciplinary hearing, Appellant asserts that Counsel Substitute never consulted with him prior to the disciplinary hearing and that is stated on the record. Counsel Substitute also violated the South Carolina Department of Corrections, Policies and Procedures.

I appreciate your time and consideration of this very important matter.

Sincerely,

  
Jay Walter Tate, Jr. #131879

Cc: Christina Cate Bigelow, Esquire  
South Carolina Department of Corrections  
Office of General Counsel

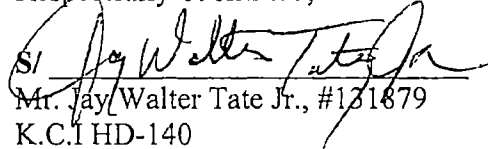
Footnote: I believe that Counsel Substitute Mr. McCarthy was a Former Disciplinary Hearing Officer.

**CONCLUSION**

Wherefore for all reasons stated, Appellant respectfully asks this Honorable Court to reverse the decision to deny, made by the Administrative Law Court, for further proceedings in compliance with the SCRCF Rule 52(a), and this court deems just and proper.

Executed on this 7th day of September, 2023.

Respectfully Submitted,

*SI* 

Mr. Jay Walter Tate Jr., #131879

K.C.I HD-140

4848 Gold Mine Hwy

Kershaw, S.C. 29067

Pro-Se Appellant

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
THE HON. ROBERT L. REIBOLD, ALJ

---

APPELLATE CASE NO: 2023-001002

---

Mr. Jay Walter Tate, Jr. #131879,

Appellant,

v.

South Carolina Department of Corrections,

Respondent,

---

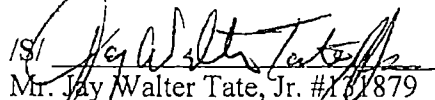
Proof of Service

---

I hereby certify, that a true copy of the Appellant's Initial Brief, have been served this 7<sup>th</sup> day of September, 2023, on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, P.O. Box 21787, Columbia, S.C., 29221, and the S.C. Court of Appeals, Jenny A. Kitchings, Clerk of Court, P.O. Box 11629, Columbia, S.C. 29211.

Dated: September 7, 2023

Respectfully Submitted,



Mr. Jay Walter Tate, Jr. #131879

K.C.I. HD-140

4848 Gold Mine Hwy

Kershaw, SC 29067

Pro-Se Appellant

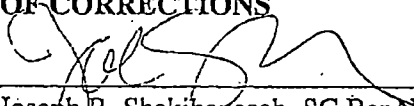
**CONCLUSION**

For the foregoing reasons, SCDC respectfully requests that the Court dismiss this appeal pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D).

Alternatively, if this Court is not inclined to dismiss this appeal, Respondent request sixty (60) days from the date of the order denying the motion to file the record on appeal.

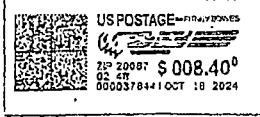
Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

  
\_\_\_\_\_  
Joseph R. Shakibanasab, SC Bar No. 102825  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
Phone: (803) 896-1278  
Email: [shakibanasab.joseph@doc.sc.gov](mailto:shakibanasab.joseph@doc.sc.gov)

May 5, 2023  
Columbia, South Carolina

Jay Tate #131879 JA-55  
Kershaw Correctional Institution  
4848 Coldwidge Highway  
Kershaw, South Carolina 29067



Mr. Jenny Abbott KiteKings (Clerk)  
The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED  
OCT 14 2024  
KERSHAW  
SOUTH CAROLINA

RECEIVED  
OCT 22 2024  
SC Court of Appeals

The State of South Carolina  
IN THE COURT OF APPEALS

---

Appeal From The Administrative Law Court  
Administrative Law Judge Robert L. Reibold

---

Administrative Law Court Case No: 23-ALJ-04-59 and 60  
Appellate Case No: 2023-001002

Jay Tate #131879

OCT 22 2024

Appellate

v.

SC Court of Appeals

Respondent

South Carolina Department of Corrections

---

Appellant Designation of Matter To Be  
Included In The Record on Appeal

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

- 1) Step 1 and Step 2 Grievances No: PCI-0660-22
- 2) Step 1 and Step 2 Grievances No: PCI-057-22
- 3) S.C. Administrative Law Court Notice of Appeal Docket No: 23-ALJ-04-0059-AP
- 4) S.C. Administrative Law Court Notice of Appeal Docket No: 23-ALJ-04-0060-AP
- 5) Respondent's Motion to Dismiss Pursuant to Howard v. S.C. DEPT. OF CORR and S.C. Code Ann 1-23-6  
(D) Docket No: 23-ALJ-04-59-AP
- 6) Respondent's Motion to Dismiss Pursuant to Howard v. S.C. DEPT. OF CORR and S.C. Code Ann:  
Section 1-23-60(D) Docket No: 23-ALJ-04-0060-AP
- 7) Appellant's Motion to Proceed In Pursuant to AL Shabazz v. State Code Ann: Section  
1-23-610 Docket No: 23-ALJ-04-0060-AP
- 8) Appellant's Motion to Proceed In Pursuant to AL Shabazz v. State Code Ann:  
Section 1-23-610 Docket No: 23-ALJ-04-0059-AP
- 9) 2 Orders Granting Motion to Dismiss Docket No: 23-ALJ-04-0059 and 0060 AP
- 10) Initial Brief Docket No: 23-ALJ-04-59 and 60 Appellate Case No: 2023-001002
- 11) Motion to Obtain leave of Court to Amend Initial Brief and expand the  
Designation of Matter to be included.
- 12) Order Granting Motion to Amend designation of matter and Initial  
Brief Dated June, 20, 2024

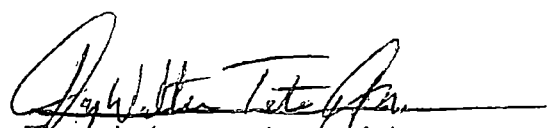
13) Amended Initial Brief and Designation of Matter to be Included  
in the Record on Appeal

(14) South Carolina Department of Corrections Incident Report

(15) South Carolina Department of Corrections Disciplinary Report  
and Hearing Record.

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

Dated: October 12, 2024

  
Jay Walter Tate, Jr. #131829  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, South Carolina 29061

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Administrative Law Judge Robert L. Reibold

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

JAY WALTER TATE, JR. 131679  
Appellate

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Respondant

Motion to obtain leave of court to amend initial Brief  
and expand the Designation of Matter to be included.

Motion to obtain leave of court to amend initial brief.

The Respondents failed to follow their own policy and procedure which resulted in wrong convictions. The Administrative Law Judge showed willful blindness toward the actual issues that was filed to have the appeal approved within their court. The Administrative Law Judge showed a willful blindness toward the requirement of procedural due process apply only to the deprivation of interests encompassed by the fourteenth amendment protection of liberty and property. The Appellate never filed notice of appeal to the Administrative Law Court on any good time credits. The appellate never filed any Step 1 or Step 2 Grievances.

Motion to Expand the Designation of Matter. Appellate will request to have the following expand the Designation of Matter to be included:

1. Notice of appeal docket no 23-ALJ-04-0059-AP
2. Notice of Appeal Docket No. 23-ALJ-04-0060-AP
3. Incident Report
4. Disciplinary Report and Hearing Record

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Administrative Law Judge Robert L. Reibold

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

JAY WALTER TATE JR. § 131879,  
APPELLANT

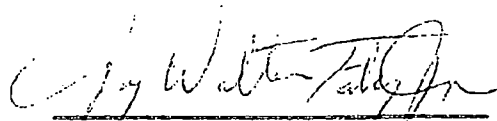
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,  
RESPONDENT

CERTIFICATE OF SERVICE

I, Jay Walter Tate, Jr., hereby certify that a true copy of the Appellant's Motion to Expand the Designation of Matter to be included in the record on Appeal to Respondent addressed as follows:

Christina Catoe Bigelow, Deputy General Counsel  
Office of General Counsel  
South Carolina Department of Corrections  
P.O. Box 21787  
Columbia, South Carolina 29211



Jay Walter Tate, Jr. || |||||1879  
Kershaw Correctional  
4848 Gold Mine Highway  
Kershaw, South Carolina 29067

November 28, 2023

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE **RECEIVED**

Robert L. Reibold AHJ

JUL 25 2024

SC Court of Appeals

APPELLATE CASE NO: 2023-001002

Mr. Jay Walter Tate, Jr #131879

Appellant

v

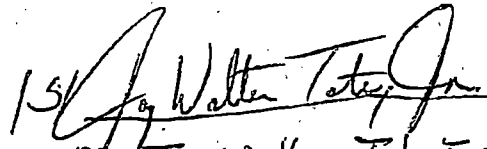
South Carolina Department of Corrections

Respondent

Amended Initial Brief of Appellant

Dated: July 19, 2024

OTIEBA Counsel of Record  
Christina Catoe Bigelow, Esquire  
South Carolina Department of Corrections  
Office of General Counsel  
Post Office Box 21787  
Columbia, South Carolina 29211

15/   
Mr. Jay Walter Tate, Jr. #13187  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 2906  
Pro-Se Appellant

## Statement of Case

The respondent's filed two motions to dismiss pursuant to Howard v. South Carolina Department of Corrections Docket No: 23-ALJ-04-060-AP, 23-ALJ-04-0059 and Grievance No: PCI 660-221 and PCI-657-221. These motions had the most important document attach was the Discipline Report and Hearing record. The respondent's was dishonest about allege material off the record. Disciplinary Hearing Officer request an allege audio phone recording and reviewed it in secrecy. Appellant had a right to hear all the evidence. Also disciplinary report and hearing revealed the Disciplinary Hearing Officer never had the mandatory SCDC form 19-79 "Controlled Substance Testing and Disposition Form.

Appellant filed two motions to proceed. In pursuant to Al-Shakezz v State and S.C. Code Ann Section 1-23-610. These grievances was not properly investigated. The Agency's finding guilt were made off the record and used to convict him. Also assert that the drugs was not properly tested. This appeal follow.

## Argument

The Administrative law Judge showed willful Blindness to dismiss the appeal for Failure to Implicate a State created liberty or property interest and Appellant was denied Due Process.

These were 2 properly filed grievances and appellant did not hear the evidence. An inmate can hear all the evidence *Al-Shabazz v State* 338 S.C. 354, 522 S.E.2d 742 Headnote 8 (2000) South Carolina Department of Corrections Policies and Procedures OP-22.14. Inmate Disciplinary System. 13 Presence of inmate at Disciplinary hearing 13.2 Inmate may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life safety of persons or the security and order of the institution.

Appellant was denied due process because the Disciplinary Hearing Officer did not have S.C.D.C. 19-79 Form. "Controlled Substance Testing and Disposition Form". The language of the South Carolina Department of Corrections Policies and Procedures OP-22.14. This regulation contains mandatory language and specific directives to decisionmaker that if the substantive predicates are present, a particular outcome must follow OP-22.14 (14 Presentation of evidence at hearing) 14.1 at the start of the hearing the Hearing Officer will advise the inmate to enter a plea to each charge. If one or more the charges involved the possession of contraband, the item(s) of contraband, a sample of the contraband or a picture of the item should be produced at the hearing. Also if the contraband involves tobacco or a controlled substance such as marijuana or alcohol, the Hearing Officer must have available a copy of the S.C.D.C. Form 19-79 "Controlled Substance Testing and Disposition Form" that establishes the exact type of illegal drug was found in possession of the inmate.

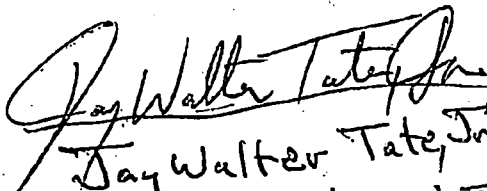
Please see the Disciplinary Report and Hearing Record. It reveals the Hearing Officer never had the mandatory copy of the SCDC Form 19-79 Controlled Substances Testing and Disposition Form.

Appellant never filed any grievances on good time, please see grievances step 1 and step 2. The incident report should shed light on the request allege audio phone recording, because the incident report stated a GTI screenshot as evidence.

Is the SCDC policy is arbitrary and capricious?

### Conclusion

For the foregoing reason this court should reverse the Administrative Law Court decision. Also vacate the disciplinary conviction on both charges, or what the court seem just and proper.

  
Jay Walter Tate, Jr. #131871  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

The State of South Carolina  
In The Court of Appeal

RECEIVED

Appeal From The Administrative Court  
Administrative Law Judge Robert H. Reibold

JUL 25 2024

Administrative Law Court Case No 23-ALJ-04-59 and 60  
Appellate Case No. 2023-001002

Jay Tate #131879

Appellate

v.

South Carolina Department of Corrections Respondent  
Proof of Service

I hereby certify, that a true copy of the Appellant's Amended Initial Brief, have been served this 19<sup>th</sup> day of July, 2024 on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, Post Office Box 21787, Columbia South Carolina 29221 for the South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court Post Office Box 11629, Columbia, South Carolina 29211

Dated: July 19, 2024

Respectfully Submitted,  
*Jay Walter Tate Jr*  
Jay Walter Tate, Jr #13187  
4848 Goldmine Highway  
Kershaw, South Carolina 290  
Pro-Se Appellant

STATE OF SOUTH CAROLINA  
IN THE Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT JUL 25 2024  
Administrative Law Judge Robert L. Reiter of Appeals

ALC Case No: 23-AHJ-04-59 and 60  
Appellate Case No: 2023-001002

Jay Tate #131879

Appellant

v.

South Carolina Department of Corrections Respondent

Appellant Designation of Matter  
To Be Included in the Record on Appeal  
APPENDIX

Jay Walter Tate, Jr  
PAO-SE  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, South Carolina 29066  
PAO-SE

The State of South Carolina  
IN THE COURT OF APPEALS

RECEIVED

Appeal From The Administrative Court  
Administrative law Judge Robert H. Reibold

JUL 25 2024

Court of Appeals

Administrative law Court Case No 23-ALJ-04-59 and 60  
Appellate Case No. 2023-001002

Jay Tate #131879

Appellate

v.

South Carolina Department of Corrections

Respondent

Proof of Service

I hereby certify, that a true copy of the Appellant's Amended Initial Brief, have been served this 19<sup>th</sup> day of July, 2024 on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, Post Office Box 21787, Columbia South Carolina 29221 for the South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court Post Office Box 11629, Columbia, South Carolina 29211

Dated: July 19, 2024

Respectfully Submitted  
*Jay Walter Tate Jr*  
Jay Walter Tate, Jr. #13187  
4848 Goldmine Highway  
Kershaw, South Carolina 290

Pro-Se Appellant

State of South Carolina  
In The Court of Appeals

RECEIVED

JUL 25 2024

Appeal From The Administrative Court  
Administrative law Judge Robert L. Reibold  
SC Court of Appeals

AHC Case No. 23-AHJ-04-59 and 60

Appellate Case No: 2023-001002

Jay Tate # 131879

Appellant

v.

South Carolina Department of Corrections Respondent.

APPELLANT Designation of Matter To Be  
Included In The Record on Appeal

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

- (1) Step 1 and 2 Grievances; NO PCI-0660-22
- (2) Step 1 and 2 Grievances; NO PCI 0657-22
- (3) SC Administrative Law Court Notice of Appeal Docket No 23-AHJ-04-0059-AP
- (4) SE Administrative Law Court Notice of Appeal Docket No 23-AHJ-04-0060-AP
- (5) Respondent Motion to Dismiss Pursuant to Howard. Docket No 23-AHJ-04-0060-AP
- (6) Respondent Motion to Dismiss Pursuant to Howard. Docket No 23-AHJ-04-0059-060-AP
- (7) Two AHC Orders of Dismissal issued May 22, 2023
- (8) 2 Motion Appellant motion to Proceed Docket Nos, 23-AHJ-04-0059-060-AP
- (9) Disciplinary Report and Hearing Record
- (10) Incident Report

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

July 19, 2024

Jay Walter Tate, Jr. #131879 PRO-SE  
Jay Walter Tate, Jr. #131879  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29024  
PRO-SE

Exhibit 1

INMATE COPY

#7 #8

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

10/21/22 (11/10)

Institution/Center: PERRY CORRECTIONAL				Date of Report: 10/14/2022	
Reporting Official (Full Name): HESTER, A				Time of Report: 3:20PM APPROX	
Employee ID #: 062731				Date of Incident: 10/13/2022	
Location of Incident: GTL PHONE SYSTEM				Time of Incident: 5:06PM APPROX	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. TATE, JAY	131879				1. CAPT. TOTH
2. SHELTON, SCOTTY	385004				2. SGT. BOCCABELLO
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

Inmate Tate, Jay #131879 was transferred via bus with 6 other inmates from Lee Correctional on 10/12/2022. I, Sgt. Hester, was reviewing phone calls I started a call by inmate Tate. At Min mark 3:13 inmate Tate told the person he was on the phone with "Man I had two Marijuana vapors when I came here" then stated "I let the white dude hold um that came here, I told him, man you in the same dorm as me don't try nothin. And man they got his ass before 8:00 this morning, and I had told him don't do nothin, this real jail here man." Inmate Tate was transferred with inmate Shelton, Scotty #385004 on 10/12/2022. Inmate Tate and Shelton were both housed in Q1 upon transfer to Perry. On 10/13/2022 inmate Shelton was brought up to the holding cell after raising suspicion to the officer in the dorm he was housed in. Upon a search of inmate Shelton 1 Vape pen was recovered on the inmates person. I tested that vape pen and it did come back positive for THC. Inmate Shelton was the only white male that transferred that day with inmate Tate. Inmate Shelton was questioned in the holding cell on how he acquired the vape pen but he refused to answer. END OF REPORT

INMATE COPY

Signature:

Title: CONTRABAND SGT.

Evidence: GTL SCREENSHOT

Disposition of Evidence:

Supervisor's Comments:

REFER TO MAJOR

Printed Name:

Dominic Boccabello

Signature:

*[Signature]*

Title: SGT

Date/Time: 10-14-22  
3:25 pm

Major/Responsible Authority:

JMH

855/903

Printed Name:

N. TTH

10-16-22

Signature:

*[Signature]*

Title: NOT

Date/Time: APPROX

STG Related - Refer to STG Committee

Yes  No  Unknown

This incident is DRUG related

Yes  No  Unknown

Responsible Authority

Action Taken

Informal Resolution  
 Administrative Resolution  
 Refer to Disciplinary Hearing

155 pm

47:0

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCD#: 131879
Living Area: BY18 Job: LOCK UP Custody: ST
Offense Date: 10/13/22 Offense Time: 08:00 AM-FM Institution: Priority Correctional Institution

Offense Description:

#7 855 Conspire to smuggle contraband into institution
#8 903 possess unauthorized drugs

Charging Officer/Employee: A. HESTER Title: INTEL SGT

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

Form with checkboxes: I GIVE UP MY RIGHT TO 48-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING. I DO NOT WANT TO BE PRESENT AT MY HEARING. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING.

Date & Time Notified: 10/24/22 11:00 AM (M) By (Print): J. P. ... Inmate Signature: J. Tate SCD#: 131879 Date: 10/28/22

HEARING INFORMATION: Hearing Date: 11/2/22 Hearing Time: 11:00 AM (M) Medication: NMH Ranking Level: 10.4

Officer Assigned Counsel Substitute: J. ...

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING OR (7) IF HEARING WAS DELAYED

Table with columns: OFFENSE CODES, INMATE PLEA (C, NG, None), FINDINGS (G, NG, DS) (NGMI) (GMI)

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILTY: (A) ADMISSION OF GUILTY; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: 10-29A ...

SANCTIONS: Loss of Privileges: 14 days; Reprimand; Extra Duty (Hours): 100; Loss of Good Time (Days): 100; Confinement (Days): 14; Other: 14 days

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED: Level 2 ...

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 14 days
DATE INMATE PLACED BY PHD: 10/13/22 DATE INMATE RELEASED FROM PHD

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: J. Tate DATE: 11-7-2022
HEARING OFFICER (PRINT NAME): J. ...

APPROVE AND MODIFICATION ONLY REASON
CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

m/o: 9999

October 12 2024

**RECEIVED**

OCT 22 2024

SC Court of Appeals

Jenny A. Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

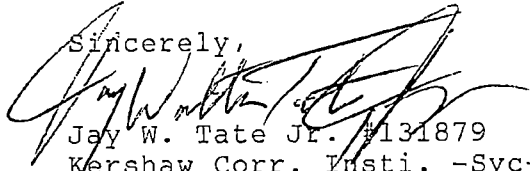
RE: Appellate Case No.:23-001002  
Final Brief and Appellant Designation of matter  
To Be Included in the Record on Appeal

Dear Mrs. Kitchings,

I have enclosed the Final Brief and Designation of Matter to be included in the Record on Appeal. I am not an attorney, and I tried to follow the court rules. If there are any questions please feel free to contact me.

Thank you for your valvable time that you have rendered into this very important matter.

Sincerely,



Jay W. Tate Jr. #131879  
Kershaw Corr. Insti. -Syc-A 52  
4848 Gold Mine Hwy  
Kershaw, SC 290067

October 12 2024

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OCT 22 2024

SC Court of Appeals

Jenny A. Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

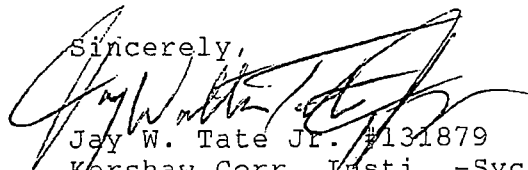
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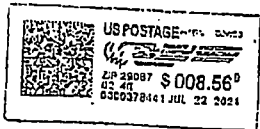
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Jay W. Tate Jr. #131879  
Kershaw Corr. Insti. -Syc-A 52  
4848 Gold Mine Hwy  
Kershaw, SC 290067

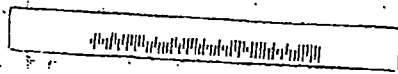
Jan Walker Tate, Sr. #131879/3052  
Kershaw Correctional Institution  
4898 Goldmine Highway  
Kershaw, South Carolina 29067



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JUL 25 2024  
SC Court of Appeals

Mrs. Jenny A. Ritching, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

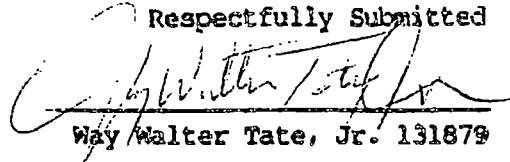
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MAIL ROOM



CONCLUSION

For the forgoing reasons, Appellate request that both motions be granted.

Respectfully Submitted



Walter Tate, Jr. 131879  
Kershaw Correctional  
4848 Gold Mine Highway  
Kershaw, South Carolina, 29067

November 28, 2023

# The South Carolina Court of Appeals

Jay Tate, #131879, Appellant,

v.

South Carolina Department of Corrections, Respondent.

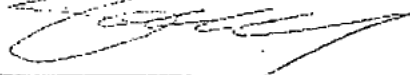
Appellate Case No. 2023-001002

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## ORDER

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After careful consideration, Appellant's motion to amend his designation of matter and initial brief is granted. Appellant's amended initial brief and designation of matter shall comply with Rules 208(b)(1) and 209 of the South Carolina Appellate Court Rules, and shall not include or reference any matter that was not presented to the Administrative Law Court. *See* Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal."). Within thirty days of the date of this order, Appellant shall serve and file his amended initial brief and designation of matter. Respondent shall have thirty days from the date of service of Appellant's brief and designation to file its own amended initial brief and designation, if it so chooses.



---

FOR THE COURT

Columbia, South Carolina

cc:  
Jay Walter Tate, Jr., 131879  
Christina Catoe Bigelow, Esquire

**FILED**  
**Jun 20 2024**

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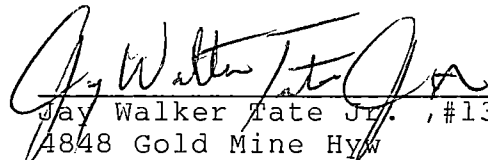
The South Carolina Court Of Appeals

Jay Walker Tate Jr. #131879 )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Deptment of Corrections, )  
 )  
 Respondent. )

RECEIVED  
JAN 13 2025  
SC Court of Appeals

PROFF OF SERVICE

I, hereby certify that a true copy of the Appellant Motion to Obtain Leave of Court and Request to Obtain a Court Order to Compel General Counsel to provide requested material have been served this 28, December, 2024, on the Respondent Christina Catoe Bigelaw, Esquire, South Carolina Department of Corrections. Office of General Counsel, Post Office Box 21787, Columbia, South Carolina 29221, and the Clerk Of Court of Appeals, Jonny A. Kitchings, Post Office Box 11629, Columbia, South Carolina 29211.

  
Jay Walker Tate Jr. #131879  
4848 Gold Mine Hwy  
Kershaw, SC 29067

December 28, 2024

Clerk of Court  
SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29201

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JAN 13 2025  
SC Court of Appeals

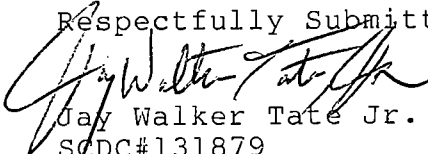
Dear Clerk of Court:

At this present moment can you please assist me at processing and filing my Pro se Motion to obtain a thirty (30) day Leave of Court and Request to obtain a Court Order to compel the South Carolina Department of General Counsel to provide me with some much discovery material so I can properly submit a complete record to the honorable Court of Appeals.

It would also be appreciated if your office might provide me with two (2) stamped copies of this Motion so I can properly provide the Department of Corrections office of General Counsel with notice of my intent and actions.

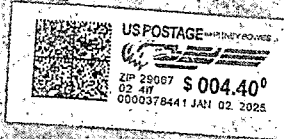
Thank you in advance for your time and consideration, and I hope to hear from your office soon as possible.

Respectfully Submitted,

  
Jay Walker Tate Jr.  
SODC#131879  
4848 Gold Mine Hwy  
Kershaw, SC 29067

cc: JWT

Jay Walker Tate, Jr. #131879 SA-44  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067



Honorable Jenny Abbott Kitchings (Clerk of Court)  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
JAN 13 2025  
SC Court of Appeals

