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THE STATE OF SOUTH CAROLINA SC Court of Appeals
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000487

Curtis Johnson #337543,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

FINAL BRIEF

Curtis T. Johnson
Curtis T. Johnson, 337543
Allendale C.I. - F3/Hampton A46
1057 Revolutionary Trail
Fairfax, S.C. 29827
Pro-se Appellant
January 21, 2025

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STATEMENT OF ISSUE ON APPEAL

The Administrative Law Court erred in affirming the South Carolina Department of Corrections' decision when it determined; the South Carolina Department of Corrections correctly applied Appellant's jail time credit to his sentence and the Appellant failed to carry his burden of proving the South Carolina Department of Corrections improperly calculated his sentence. Thus, the Administrative Law Court violated Appellant's Due Process Rights (of liberty interest) and violated Appellant's rights to Equal Protection of the laws rights of the U.S. Const. Amend. 14/1 and S.C. Const. Art. 6/3.

STATEMENT OF THE CASE

On June 21, 2023, Appellant informally talked to the South Carolina Department of Correction (SCDC) classification about his jail time served credit being applied to both of his consecutive sentences. SCDC classification denied Appellant's request. On June 26, 2023, Appellant formally wrote a Kiosk request (Kiosk Reference # 23-03155785) to SCDC classification pertaining to and requesting his jail time served credit be applied to both his consecutive sentences. (R.p.8) on June 27, 2023, SCDC classification responded, "Documents are required for any calculation adjustments" to Appellant's consecutive sentences. (R.p.8) On June 27, 2023, Appellant filed his Step 1 grievance. (R.p.9) on July 6, 2023, the Warden of Allendale C.I. denied Appellant's Step 1 grievance. (R.p.10) on July 9, 2023, Appellant filed his Step 2 grievance. (R.p.11) on September 12, 2023, the Responsible official denied Appellant's Step 2 grievance. (R.p.11) on September 26, 2023, Appellant submitted and filed his "Notice of Appeal form" to the Administrative Law court, clerk of court, and to the office of General Counsel at the Department of corrections. On October 3, 2023, the Administrative Law court, filed Appellant's "Notice of Appeal form" in their office. On October 26, 2023, the Honorable Ralph King Anderson, III, was assigned to Appellant's case. On December 29, 2023, SCDC filed its "Record on Appeal" on January 12, 2024, Appellant submitted and filed his "Original Brief of Appellant." (R.p.p.12-21) SCDC filed its "Respondent's Brief" on February 7, 2024. (R.p.p.22-28) Appellant received SCDC's "Respondent's Brief" on February 12, 2024. On February 21, 2024, Appellant submitted and filed his "Reply Brief of Appellant." (R.p.p.29-34) On February 27, 2024, the Administrative Law Court ordered that SCDC's final agency decision be affirmed. (R.p.p.35-41) Appellant received the Administrative Law court's Order on March 1, 2024.

On March 18, 2024, Appellant submitted and filed his "Notice of Appeal" to the South Carolina Court of Appeals, clerk of court, the Administrative Law Court, and to the office of General Counsel at the Department of corrections. On April 4, 2024, Appellant received documents from the South Carolina Court of Appeals, clerk of court, stating Appellant's notice of appeal was received and Appellant's case was assigned an appellate case number. Appellant was also advised that he was required to pay a filing fee. On April 10, 2024, Appellant submitted and filed a "Motion To Proceed In Forma Pauperis" and a "Refiled Notice of Appeal" motion. (The South Carolina Court of Appeals clerk of court received Appellant's "Refiled Notice of Appeal" motion, "Motion for leave to proceed in forma pauperis", "Affidavit in support of motion to proceed without payment of cost and fees", and "certificate of service" on May 24, 2024.)

On May 21, 2024, Appellant received from the Court of Appeals an "order of Dismissal" which was filed April 24, 2024 and a "Remittitur" which was dated May 15, 2024; both included in the same envelope that had a Postage Date of May 14, 2024. The Allendale C.I. mailroom received this envelope on May 20, 2024. The South Carolina court of Appeals clerk of court received Appellant's "Refiled Notice of Appeal" motion, "Motion for leave to proceed in forma pauperis",

"Affidavit in support of motion to proceed without payment of costs and fees", and "Certificate of service" on May 24, 2024.

On June 4, 2024, Appellant received an "order" that was filed on May 30, 2024 by the South Carolina Court of Appeals which recalled the "Remitter", directing the clerk of the Administrative Law Court to return the "Remitter" to the South Carolina Court of Appeals. On June 10, 2024, Appellant received a letter, dated June 4, 2024, from the clerk of the Administrative Law Court acknowledging returning the "Remittitur" to the South Carolina Court of Appeals. The South Carolina Court of Appeals filed an "order" on July 26, 2024 granting Appellant's "Motion to proceed in forma pauperis". The Allendale C.I. mailroom received the Appellant's legal mail from the South Carolina Court of Appeals on July 30, 2024. On July 31, 2024, Appellant received the South Carolina Court of Appeals' "order" and "Letter" informing Appellant that he had 30 days from the date of the July 26, 2024, to serve and file his "Initial Brief of Appellant" and "Designation of Matter To Be Included In The Record on Appeal." On August 22, 2024, Appellant mailed his "Initial Brief of Appellant" and "Designation of Matter To Be Included In The Record on Appeal" to the South Carolina Court of Appeals and SCDC General Counsel/Respondent.

On September 17, 2024, Appellant received an "Order of Dismissal of Appeal" which was filed on September 12, 2024. On September 17, 2024, the Court of Appeals had received Appellant's "Initial Brief of Appellant" and "Designation of matter To Be Included In The Record of Appeal", envelope postmarked received on August 22, 2024. On October 28, 2024, Appellant received an "Order, Reinstatement of Appeal", which was filed on October 22, 2024.

On November 26, 2024, Appellant received "Respondent's Brief." On December 6, 2024, Appellant mailed his "Reply Brief" to the Court of Appeals and Respondent. On December 30, 2024, Appellant mailed his "Record on Appeal" to the Court of Appeals and Respondent.

Now Appellant submits his "Final Brief."

STANDARD OF REVIEW

Section 1-23-610 (B) of the South Carolina code (Supp. 2022) sets forth the standard of review for this [Appellate] court when sitting in review of a decision by the ALC. See S.C. Dept of Corr. v. Mitchell, 659 S.E. 2d 233, 234 (Ct. App. 2008) The court of appeals may... reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610 (B). "The review of the administrative law courts order must be confined to the record." Id. "In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence." Sanders v. S.C. Dept of Corr. 665 S.E. 2d 231, 234 (Ct. App. 2008) "However, when the issue on review raises a question of law, this court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." Terrence v. S.C. Dept of Corr. 861 S.E. 2d 36, 41 (Ct. App. 2021)

ARGUMENT

The Administrative Law Court erred in affirming the South Carolina Department of Corrections' decision when it determined: the South Carolina Department of Corrections correctly applied Appellant's jail time credit to his sentence and the Appellant failed to carry his burden of proving the South Carolina Department of Corrections improperly calculated his sentence. Thus, the Administrative Law Court violated Appellant's Due Process Rights (of liberty interest) and violated Appellant's rights to Equal Protection of the laws rights of the U.S. Const. Amend. 14 and S.C. Const. Art. 1, § 3.

Background

Appellant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment by the Lexington County clerk of court. On November 20, 2006, Appellant was arrested and placed in custody for the four offenses of: One count of Murder, two counts of Assault and Battery with Intent to Kill, and 1 count of Possession of a firearm or Knife during the commission of a violent crime. In April 2009, Appellant was indicted on all charges by the Lexington County Grand Jury. Appellant was tried by jury from September 14-18, 2009. The jury found Appellant guilty of the lesser-included offense of Voluntary manslaughter, two counts of the lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN), and the possession of a firearm or Knife during the commission of a violent crime charge. On October 21, 2009, Appellant was sentenced to an aggregate of thirty-five years imprisonment, thirty years for Voluntary manslaughter, ten years concurrent for each count of ABHAN, and five years consecutive for the possession of a firearm or Knife during the commission of a violent crime charge. All Appellant's sentencing sheets state that Appellant was to be given credit for time served (jail time credit) pursuant to S.C. Code Ann. 24-13-40. Computation of time served by Prisoners, to be calculated and applied to all Appellant's sentences by the South Carolina Department of Corrections (SCDC). (See: All four of Appellant's "sentencing sheets") (R.p. 1-4) In addition, Appellant's sentence start date for all four convictions was November 20, 2006. (See: All three "SCDC offender Management system conviction Inquiry" sheets for all Appellant's convictions.) (R.p. 5-7) Appellant has stated in this brief's "statement of the case" the procedural history of this case for this issue. Appellant's jail time credit was 1,066 days (2 years and 336 days), which should have been applied to all Appellant's sentences pursuant to statute 24-13-40. Computation of time served by prisoners, Appellant's sentencing sheets, and Massey v. South Carolina Department of Corrections, 2021 WL 1997295. Appellant has continuously stated these facts throughout all his filings. (See: Appellant's "offender Management system Inmate Request - General sheet" (R.p. 8); "SCDC Inmate Grievance Form Step 1, Front sheet" (R.p. 9); "SCDC Inmate Grievance Form Step 1, back sheet" (R.p. 10); "SCDC Inmate Grievance form Step 2 sheet" (R.p. 11); "original Brief of Appellant, for the Administrative Law Court" (R.p. 12-21); and "Reply Brief of Appellant, for the Administrative Law Court," (R.p. 29-34)

LAW and ANALYSIS

"Prison inmates do not shed all fundamental protections of the Constitution at the prison gates. Rather, inmates retain those constitutional rights that are not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system. A regulation that impinges on inmate's constitutional rights is therefore valid only if it is reasonably related to legitimate penological interests." Powel v. Schriver, 175 F.3d 107, 112 (1999) "Prison inmate is not stripped of all rights during incarceration, subject to the legitimate requirements of prison discipline and security, he retains his constitutional rights to due process, to equal protection and to protection against cruel and unusual punishment." Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854, 859 (1975) "Rights of prisoner to due process, to equal protection and to protection against cruel and Unusual punishment are binding on the States." Id. at 859 "Courts can and should intervene when any due process, equal protection or Eight Amendment rights of prison inmates are violated, and this is true whether the prisoner is in segregated confinement either for administrative or protective reasons, or in the general prison population." Id. at 859. "Penal statutes will be strictly construed against the state." State v. Elwell, 743 S.E.2d 802, 806 (2013) "Ambiguity or doubts relative to a sentence should be resolved in favor of the accused." State v. Deangelis, 183 S.E.2d 906, 909 (1971)

The Administrative Law Court erred when it affirmed the decision of the South Department of corrections. The Appellant's substantive rights have been prejudiced because the Administrative Law Court's decision is in violation of constitutional and statutory provisions; in excess of the statutory authority of SCDC; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; arbitrary and capricious.

(1) Violation of statutory provisions

S.C. code Ann. 24-13-40. Computation of time served by prisoners states: "The computation of the time served by prisoners under sentences imposed by the courts of this state must be calculated from the date of the sentence. In every case in computing time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) When the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; (2) When the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense; (3) When the prisoner commits a subsequent crime while out on bond; or (4) has bond revoked on any charge prior to trial or plea."

Statute 24-13-40. Mandates prisoners receive credit for time served prior to trial unless one of the above exceptions exist. Neither of these four exceptions applies to Appellant's sentences. Having a consecutive sentence is not one of the exceptions to the mandatory language in statute 24-13-40. and a consecutive sentence does not bar Appellant from receiving time served credit deducted from each of his sentences. "The requirement that a prisoner received credit for time served is mandatory." Hayes v. State, 777 S.E.2d 6, 10 (2015) "Where the terms of a statute are clear, the court must apply those terms according to their literal

meaning." Paschal v. State Election Comm'n, 454 S.E.2d 890, 892 (1995) If the language of a statute is "unambiguous and conveys a clear meaning," the court must determine the intent of the legislature exclusively from that language, and other "rules of statutory interpretation are not needed." State v. Elwell, 743 S.E.2d 802, 806 (2013) "The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope." Durham v. United Companies Financial Corp., 503 S.E.2d 465, 468 (1998)

All Appellant's sentencing sheets state he was to receive time served credit deducted from each of his four sentences pursuant to statute 24-13-40. (R.P.P. 1-4) This statute made it mandatory that SCDC apply Appellant's jail time served credit to all both of his consecutive sentences and give Appellant a correct maxout date. The SCDC violated this statutory provision when SCDC applied the jail time credit only to the aggregate of Appellant's sentences, thus making the jail time credit only being applied to the first sentence and not both consecutive sentences. The Appellant's "SCDC Offender Management System Conviction Inquiry Sheets" it shows that Appellant received 1,066 days of jail time served credit only applied to his firearms provision gun charge (possession of a weapon) sentence and not his other sentences. (R.P.P. 5-17, Jail cred.) This prejudiced Appellant because Appellant's jail time served credit was not applied to all his sentences, his maxout date is incorrect, and Appellant has to serve more time than the law allows. SCDC should have applied Appellant's jail time credit to all his sentences, even when the sentences are consecutive. "The Department [SCDC] is confined to an unambiguous sentencing sheet in determining an inmate's sentence...." Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 404 (2014) "The Department (SCDC) performs an administrative function in recording an inmate's sentence.... The Department (SCDC) has no independent sentencing authority...." Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 401 (2014) In Tant v. S.C. Dep't of Corr., 759 S.E.2d 398, 402 (2014) the South Carolina supreme court held that absent ambiguity in the sentencing sheet, SCDC is confined to the face of that order for its interpretation of an inmate's sentence. SCDC is allowed to assume a sentencing sheet, signed by the judge and attorney without objection is a memorialization of the judge's intent "no less than what was pronounced from the bench." Id. at 403. "The requirement that a prisoner receive credit for time served is mandatory." Hayes v. State, 777 S.E.2d 610 (2015); S.C. Code Ann. 24-13-40.

The Administrative Law Court violated this 24-13-40 statutory provision when it erred in its decision when it affirmed the SCDC's decision that SCDC correctly applied Appellant's jail time credit to the aggregate of Appellant's sentence and not all of Appellant's sentences. The 24-13-40 statute and Appellant's sentencing sheets are unambiguous, and they both mandated that Appellate receive his jail time credit applied to each and everyone of Appellate's sentences. The Administrative Law Court acknowledges and states in its order: "The sentencing sheets also indicate Appellant was to be given credit for time served (jail time credit) pursuant to section 24-13-40 of the South Carolina Code (Supp. 2023) to be calculated and applied by the Department." (R.p. 35); "According to the sentencing sheets, Appellant is entitled to time served." (R.p. 38); "In this case, neither exception to section 24-13-40 applies to Appellant." (R.p. 40) Appellant's sentencing sheets are unambiguous and the sentencing court's sentence is correct which is also acknowledged and stated in the order: "Absent any ambiguity in the

sentencing sheet, the Court must presume that the sentencing court's sentence is correct." (R.p. 38) Thus, the Administrative Law court should have ordered Appellate's time served credit applied to all his sentences and his max out date corrected.

(2.) Violation of Constitutional Provisions! Equal Protection and Due Process

The Equal Protection clauses of our Federal and State Constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. Amend. 14, 1 and S.C. Const. Art. 1, 3. Equal protection "requires that all persons be treated alike under like circumstances and conditions, privileges conferred and liabilities imposed. The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment." Doe v. State, 808 S.E.2d 807, 814 (2017) "Protection of Equal Protection clause of the Fourteenth Amendment covers criminal sentencing." Williams v. Currie, 103 F. Supp. 2d 858, 863 (2000) "A criminal sentence violates the Equal Protection clause only if it reflects disparate treatment of similarly situated defendants lacking only rational basis." U.S. v. Pierce, 409 F.3d 228, 235 (2005) "Protection of Equal Protection clause of the Fourteenth Amendment is applicable not only to discriminatory legislative action, but also to discriminatory government and enforcement of the laws." Williams v. Currie, 103 F. Supp. 2d 858, 863 (2000) "In order to establish an equal protection violation, a party must show that similarly situated persons received disparate treatment." TNS Mills, Inc. v. S.C. Dep't. of Revenue, 503 S.E.2d 471, 479 (1998)

"state action is unconstitutional when it creates 'arbitrary or irrational' distinctions between classes of people out of 'a bare... desire to harm a politically unpopular group.'" Grimm v. Gloucester cnty. sch. Bd., 972 F.3d 586, 607 (4th Cir. 2020) "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001) Once that showing is made, the court must determine whether the disparity in treatment is justified under the requisite level of scrutiny. Id. "When equal protection challenges arise in a prison context, however, courts must adjust the level of scrutiny to ensure that prison officials are afforded the necessary discretion to operate their facilities in a safe and secure manner." Veney v. Wyche, 293 F.3d 726 (4th Cir. 2002) In a prison context, therefore, courts must determine whether the disparate treatment is "reasonably related to [any] legitimate penological interests!" Shaw v. Murphy, 532 U.S. 223, 225 (2001) "In inmate's action alleging violation of Fourteenth Amendment right to equal protection, discriminatory purpose can be proved with various kinds of direct and circumstantial evidence but it is most often proved with evidence that similarly situated inmates were treated differently." Lewis v. Jacks, 486 F.3d 1025, 1028 (2007)

Here is Appellant's evidence that proves he was treated differently than another similarly situated inmate. In the case John K. Massey v. S.C. Dep't of Corr., 2021 WL 1997295, Massey argued that SCDC failed to properly apply his jail time credit to both his consecutive sentences. After Massey filed his appeal with the Administrative Law Court, SCDC eventually conceded

and informed the Administrative Law Court that it had amended Massey's jail time credit to reflect his time served for both his consecutive sentences; thus SCDC agreed with Massey and applied his jail time served credit to both his consecutive sentences and corrected Massey's maxout date.

Appellant's argument is the same as Massey's, that SCDC failed to properly apply his jail time served credit to both his consecutive sentences. Thus, Appellant should have his jail time served credit applied to both his consecutive sentences and his maxout date corrected because Appellant is similarly situated like Massey with the same issue, circumstance, and condition when it came to having jail time served credit being applied to all his consecutive sentences just like SCDC did to Massey's consecutive sentences and have his maxout date corrected. This unequal treatment was the result of intentional and purposeful discrimination against Appellant by SCDC. Appellant provided SCDC with informal and formal notice of their error and gave SCDC an opportunity to correct its error and resolve Appellant's complaint through: "Offender Management System Inmate Request" (R.p.8); "step 1 Grievance" (R.p.p. 9-10); and "step 2 Grievance" (R.p.11) Appellant notified the Administrative Law Court of the same through his "Original Brief of Appellant" (R.P.P.12-21) and "Reply Brief of Appellant" (R.p.p.29-34). (see: "offender Management system Inmate Request - General sheet"; "SCDC Inmate Grievance Form step 1, Front and Back sheets"; "SCDC Inmate Grievance Form step 2 sheet"; "Original Brief of Appellant, for the Administrative Law Court" and "Reply Brief of Appellant, for the Administrative Law Court.")

Appellant informed SCDC and the Administrative Law Court that pursuant to statute 24-13-40, his sentencing sheets, and the case Massey v. S.C. Dept of Corr., 2021 WL 1997295 he was entitled to have his jail time served credit applied to both his consecutive sentences, but SCDC and the Administrative Law court still intentionally and purposefully didn't comply and they continued to only apply Appellant's jail time credit only to the aggregate of Appellate's sentences. The Administrative Law court and SCDC violated the Appellant's Equal Protection of the Laws rights of the United States and South Carolina constitutions. The Administrative Law court and SCDC's disparate treatment against Appellant was not justified under the appropriate level of scrutiny because the disparate treatment is not reasonably related to any legitimate penological interests.

The Administrative Law court and SCDC's decisions also violated the constitutional provision and Appellant's constitutional rights of Due Process Rights (of liberty interest) of the U.S. Const. Amend. 14,1 and S.C. Const. Art. 1,3, when they didn't apply Appellant's jail time served credit to both of Appellant's consecutive sentences and correct Appellant's maxout date. "under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law." Tant v. S.C. Dept. of Corr., 759 S.E. 2d 398, 401 (2014) "The statutory right to sentence-related credits is a protected liberty interest under the fourteenth Amendment entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated." Al-Shabazz v. State, 527 S.E. 2d 742, 750 (2000) "Reviewing courts are not obliged to stand aside and rubberstamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute. Such review is always properly

within the judicial province, and courts would abdicate their responsibility if they did not fully review such administrative decisions!" NLRB v. Brown, 380 U.S. 278, 291 (1965) "Courts can hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. While review is limited, the Supreme Court has cautioned that courts must not rubberstamp... administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." Women Involved In Farm Economics v. U.S. Dept. of Agriculture, 682 F. Supp. 599, 607 (1988) "Penal statutes will be strictly construed against the state!" State v. Elwell, 743 S.E.2d 802, 806 (2013) "Ambiguity or doubts relative to a sentence should be resolved in favor of the accused." State v. Deangelis, 183 S.E.2d 906, 909 (1971)

Thus, the Administrative Law Court violated the Constitutional provisions and violated the Appellant's Constitutional rights of Equal Protection of the Laws and Due Process (of liberty interest) of the U.S. Const. Amend. 14, 1 and the S.C. Const. Art. 1, 3, when it erred in affirming the decision of SCDC to only apply Appellant's jail time credit to the aggregate of Appellant's sentences and not all his consecutive sentences as mandated by the law and Appellant's sentencing sheets.

(3.) Excess of the Statutory Authority of SCDC

The Administrative Law Court erred in affirming the SCDC's decision because it exceeded the statutory authority of SCDC. SCDC was supposed to follow the Appellant's unambiguous sentencing sheets. SCDC had no independent sentencing authority and SCDC should have given Appellant his jail time credit applied to each of his sentences as instructed by Appellant's clear and unambiguous sentencing sheets. SCDC should not have applied Appellant's jail time credit to only the aggregate of Appellant's sentence. "The Department [SCDC] is confined to an unambiguous sentencing sheet in determining an inmate's sentence...." Tant v. S.C. Dept. of Corr., 759 S.E.2d 398, 404 (2014) "The Department (SCDC) performs an administrative function in recording an inmate's sentence.... The Department (SCDC) has no independent sentencing authority...." Tant v. S.C. Dept. of Corr., 759 S.E.2d 398, 401 (2014) In Tant v. S.C. Dept. of Corr., 759 S.E.2d 398, 402 (2014), the South Carolina Supreme Court held that absent ambiguity in the sentencing sheet, SCDC is confined to the face of that order for its interpretation of an inmate's sentence. SCDC is allowed to assume a sentencing sheet, signed by the judge and attorney without objection is a memorialization of the judge's intent "no less than what was pronounced from the bench." Id. at 403. "The requirement that a prisoner receive credit for time served is mandatory." Hayes v. State, 777 S.E.2d 610 (2015) The SCDC was wrong and erred in its application of Appellant's time served credits.

SCDC was instructed by Appellant's sentencing sheets to apply Appellant's jail time credit of 1,066 days (2 years and 336 days) to all of his consecutive sentences; which would have made Appellant's max out date to be in the year of 2034. (R.P.P. 1-4) SCDC states Appellant's max out is the date of May 13, 2037; but, when Appellant's jail time credit is applied the correct max out date would be in the year 2034. Thus, the Administrative Law Court erred in affirming the SCDC's decision, which was in excess of the statutory authority of SCDC. The Administrative Law Court's decision was clearly erroneous in view

of the reliable, probative, and substantial evidence on the whole record that Appellant has provided.

The SCDC in its "Respondent's Brief" to the Administrative Law Court stated its reasons for applying Appellant's jail time credit to the aggregate of his sentence, but the SCDC didn't acknowledge nor refute why it applied Massey's jail time credit to both Massey's consecutive sentences and not Appellant's consecutive sentences also. (R. pp. 22-28) (see: "Respondent's Brief of SCDC for the Administrative Law court") The Administrative Law court in its Order affirmed the SCDC's decision, but the Administrative Law court didn't acknowledge that SCDC gave Massey his jail time credit applied to both of his consecutive sentences. (R. pp. 35-41) The Administrative Law court's decision to affirm the decision of SCDC was arbitrary and capricious. The decision was prejudice against the Appellant because it was contrary to the evidence that Appellant used to prove that he carried his burden of proving that SCDC improperly calculated his sentence and the decision was contrary to the law. Thus, pursuant to the above evidence and laws, the Administrative law court's decision and findings are not supported by substantial evidence. The Appellant has proven that SCDC improperly calculated his sentence and the decision of the Administrative Law Court to affirm SCDC's final decision should be reversed. This Appellate court should reverse the Administrative Law court's decision and order SCDC to apply Appellant's jail time credit to both of Appellant's consecutive sentences and correct his maxout date pursuant to statute 24-13-40 Appellant's sentencing sheets; the constitutional rights of Equal protection of the Laws and Due Process (of liberty interest) of the U.S. Const. Amend. 14 and the S. C. Const. Art. 13, and Massey v. S. C. Dept of corr., 2021 WL 1997295.

CONCLUSION

For the reasons stated, Appellant ask this court to reverse and remand the Administrative Law court's decision, and the South Carolina Department of corrections should be ordered to apply Appellant's jail time served credit to both of Appellant's consecutive sentences and Appellant's maxout date should be corrected.

January 21, 2025

Respectfully Submitted,

Curtis T. Johnson

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JAN 27 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000487

Curtis Johnson, # 337543,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

CERTIFICATE
OF
SERVICE

I, Curtis T. Johnson, do hereby certify that on this date, I served the "Final Brief", "Certificate of Service", and "Certificate of Counsel In Final Brief" in the foregoing action upon the Court of Appeals, clerk, and Respondent by depositing one copy to Respondent and two copies to the Court of Appeals, clerk, of the same in the United States mail, first class postage prepaid, and addressed as follows:

South Carolina Court of Appeals
Jenny Abbott Kitchings, clerk
1220 Senate Street
Columbia, S.C. 29201

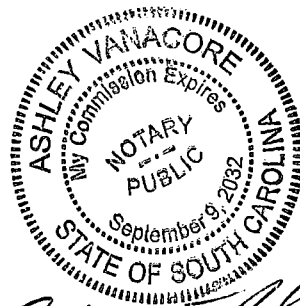
Dept. of General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221

SWORN or AFFIRMED to and subscribed before me this

21 day of January, 2025

Ashley Vanacore

Notary Public
My Commission Expires: 9/9/32



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} CERTIFICATE
} OF COUNSEL
} IN FINAL BRIEF

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

January 21, 2025

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