

Exhibit #6

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

MR. JAY WALTER TATE, #131879,
APPELLANT

-vs-

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS,
RESPONDENT,

DOCKET NO: 23-ALJ-04-0059 AP
GRIEVANCE NO: ECI-657-2021

HON. ROBERT L. REIBOLD, ALJ

APPELLANT'S MOTION TO PROCEED
IN PURSUANT TO AL-SHABAZZ v STATE
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 FOLLOEED- 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

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

MR. JAY WALTER TATE, #131879,) DOCKET NO: 23--ALJ-04--0059--AP
APPELLANT,) GRIEVANCE NO: PCI-657-221
) HON. ROBERT L. REIBOLD
--VS--)
)
SOUTH CAROLINA DEPARTMENT OF) PROOF OF SERVICE
CORRECTIONS,)
RESPONDENT,)

PROOF OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING APPELLANT'S MOTION TO PROCEED WAS, SERVED ON THIS 15 DAY OF May, 2023, upon the following: THE HON. ROBERT L. REIBOLD, SOUTH CAROLINA ADMINISTRATIVE LAW COURT, EDGAR A. BROWN BUILDING, SUITE 224, 1205 PENDLETON STREET, COLUMBIA, S.C. 29201, and CHERON HESS, ADMINISTRATIVE COORDINATOR, OFFICE OF GENERAL COUNSEL, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, P.O. BOX 21787, COLUMBIA, S.C. 29221-1787.

DATED: 5-15-2023

RESPECTFULLY SUBMITTED,

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

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, -----)	

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 (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:

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
KCI, HICKORY D#140
4848 GOLDMINE HWY.
KERSHAW, S.C. 29067
PRO-SE APPELLANT

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.)	
	)	RESPONDENT'S MOTION TO
South Carolina Department of Corrections,	)	DISMISS PURSUANT TO HOWARD
	)	V. S.C. DEPT OF CORR. AND S.C.
Respondent.	)	CODE ANN. § 1-23-600(D)
_____)	

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,¹ Appellant is serving a life² sentence and is not

¹ 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.³

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.

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

³ 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.

CMF1330D

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.....:

FFKEYS: 5:HISTORY OF DATE CHANGES

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 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


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

May 5, 2023
Columbia, South Carolina

GT: Q

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCDC#: 131879
Living Area: BY18 Job: LOCK UP Custody: ST
Offense Date: 10/13/2022 Offense Time: 03:05 AM PM 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.

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

Date & Time Notified: 10-25-22 1:10 AM PM By: [Signature] SCDC#: 131879 Date: 10-28-22

HEARING INFORMATION:
Hearing Date: 11-2-22 Hearing Title: [Signature]
Number of Witnesses: NMH Reading Level: 10.4

Off: Assigned Counsel Substitute: [Signature]

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 GUILT: (A) ADMISSION OF GUILT, (B) OFFICER'S REPORT, (C) WITNESS TESTIMONY, (D) OTHER. EXPLAIN IN DETAIL.
WITH SIGNATURE AND TESTIMONY OF ACCUSED, AUDIOCD

SANCTIONS:
Loss of Privileges (Days)
Property (Days)
Canteen (Days)
Disciplinary Detention (Days)
Reprimand
Extra Duty (Hours)
Visit Suspensions (Days)
Loss of Good Time (Days)
Restitution (\$)
Cell Restriction (Days)
Other (Days)

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED:
Level 2 (1000) offense 1-15 (on charge) is generally of level 3 (900) offense 1-15 (on charge) charge

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 14 days
DATE INMATE PLACED IN PHD: 10/12/22 DATE INMATE RELEASED FROM PHD
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 11-7-2022

HEARING OFFICER (PRINT NAME) G. NOUGA

APPROVED FOR MODIFICATION ONLY WARDEN
CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM

Exhibit #7

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.)	
	)	RESPONDENT'S MOTION TO
South Carolina Department of Corrections,	)	DISMISS PURSUANT TO HOWARD
	)	V. S.C. DEPT OF CORR. AND S.C.
Respondent.	)	CODE ANN. § 1-23-600(D)
_____)	

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,¹ Appellant is serving a life² 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.³

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

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

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

³ 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* Release 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
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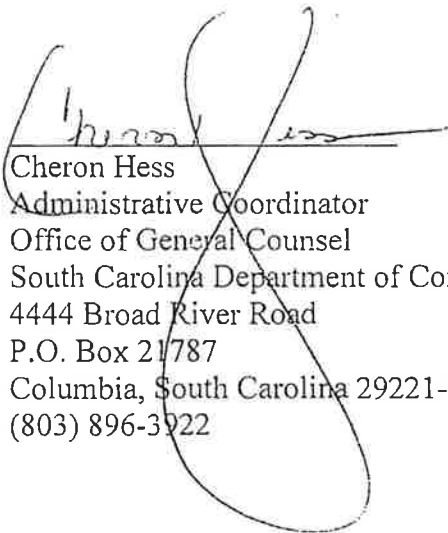
May 5, 2023
Columbia, South Carolina

**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

CMTI330D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

05/05/23
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

ST: Q

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCDC#: 131879
Living Area: BY18 Job: LOCK UP Custody: ST
Offense Date: 10/13/2022 Offense Time: 05:06 AM PM 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. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING. Includes inmate signature and date.

HEARING INFORMATION: Hearing Date: 11/7/22 Hearing Time: 11:00 AM/PM Mediators: 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, None), FINDINGS (G, NG, DS) (NGMI) (GMI). Contains handwritten entries for offenses 855 and 903.

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: WITH WITNESS TESTIMONY OF ACCUSER, AUDIO OF OFF. PROCC. CHOC

SANCTIONS: List of penalties including Loss of Privileges, Property, Canteen, Disciplinary Detention, Reprimand, Extra Duty, Visit Suspensions, Restitution, Cell Restriction, Other.

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED: Level 2 (855) (DEFENSE) 1-15 of 855 charge, 1 sentence of level 1 (903) (DEFENSE) 1-15 of 903 charge, 1 charge.

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 19 days
DATE INMATE PLACED IN PHD: 10/14/22 DATE INMATE RELEASED FROM PHD
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: G. THOUGH DATE: 11-7-2022

HEARING OFFICER (PRINT NAME) G. THOUGH
APPROVED MODIFICATION ONLY REASON

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

m/o: 9999

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.

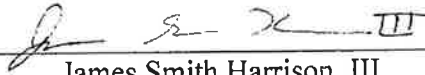


Robert L. Reibold
Administrative Law Judge

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.

On May 17, 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 (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. 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.

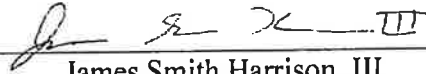


Robert L. Reibold
Administrative Law Judge

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

Exhibit # ~~3~~ 4

Appellant,

vs.

NOTICE OF APPEAL

South Carolina Department of Corrections,

Respondent.

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

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

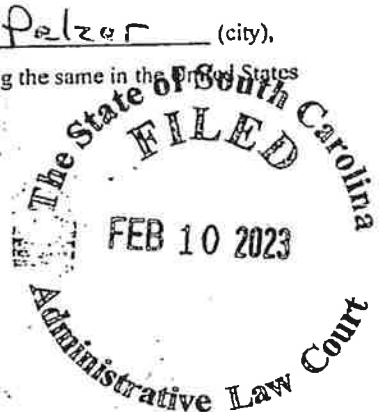
Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Clerk's Office - ALC
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 confront 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 SEDC 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, 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)

DEC 01 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due: 12/3/22

GRIEVANCE

STEP 2

INMATE NAME: Jay Tate
SCDC NUMBER: 131879
INSTITUTION: Perry
HOUSING UNIT: Bravo Y 18
WORK ASSIGNMENT: NONE

RECEIVED

DEC 06 2022

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 most important part of the hearing was the 711 Department Policies by DHO Hearing Officer P. Hoag requesting an alleged Audio Recording from Sgt. Itester 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 terms of the phone call. Substitute counsel never reviewed the charge 855 with as required by policy. The Warden admittedly said the evidence was false and misleading used 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.

M. 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

J. 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>	RECEIVED NOV 10 2022 GRIEVANCE	OFFICE USE ONLY
SCDC NUMBER: <u>131899</u>		Grievance No. <u>PCI-0660-22</u>
INSTITUTION: <u>Perry</u>		Code: General Policy
HOUSING UNIT: <u>Bravo Y 18</u>		#1 <u>Disc. Hear. 11/2/22 (855)</u>
WORK ASSIGNMENT: <u>NONE</u>		Class. <u>PREA</u>
	Date Received <u>11/10/22</u>	IGC Initials <u>KM</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
 alleged Audio Recording from Sgt Kester. DHO Hearing Officer P. Hough
 violated a 7.1 Department Policies by committing a unlawful procedure by
 going off the record to review this alleged Audio Recording in Secrecy
 to determine my guilt. This alleged Audio Recording is not part of
the Incident Report as evidence. See Exhibit 1. I had a created
 liberty interest right to hear the alleged Audio Recording and that
 directly affected me as a inmate. I requesting charge # 7 (855) Conspire to
 smuggle contraband into institution dismiss at this time.
 DHO Hearing Officer P. Hough also committed another unlawful procedure
 by adding the time served credit days to the following sanctions. Carteen (855)
90+192/09 Visitation suspension (855) 90+192/09 Phone (855) 90+192/09. I am
 requesting that Charge of (855) be dismiss at this time See Exhibit 2. Gobal Telink
 also violated the terms of the phone call by providing a alleged screenshot of a phone
 call. Gobal Telink said this phone call can be monitored or recorded. This more Gobal Tel
link liable for violating the terms of the call. Substitute Counsel NEVER reviewed
 the Charge (855) within the 24 hours of the hearing as required by Policy.
Jay Tate 11-9-22
 Grievant Signature Date
PCI-0653-22 told me to file separate grievance from 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*****

[Signature] [Signature]
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:


Tate, Jay -131879

PCI-0660-22

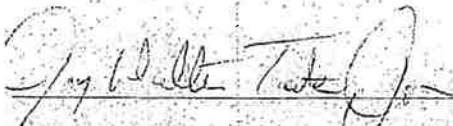
I have reviewed your concern. In your grievance you have appealed the results of the Disciplinary Hearing that was conducted on 11/02/22 where you were convicted of violating SCDC Charge 855, Smuggling and/or Conspiracy to Smuggle in Contraband. In your grievance you are requesting that the DHO findings 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.

 11/23/22
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.

 11/28/22
Grievant Signature Date

 11/28/22
IGC Signature Date

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.

RECEIVED

DEC 01 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due: 12/3/22

STEP 2
RECEIVED

GRIEVANCE
INMATE NAME: Jay Tate

SCDC NUMBER: 131879

INSTITUTION: Perry
HOUSING UNIT: Bravo Y 18

WORK ASSIGNMENT: NONE

DEC 06 2022

INMATE GRIEVANCE

Office Use Only

Grievance No. PCT-0657-22

Code: General

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

Class. #8

Date Received 12/1/22

IGC Initials KM

RCVD: 12/9/22 BW

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 created interest right to hear and review this allege audio recording 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. Substituted 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 be dismissed and expunged from the SCDC computer system. The original was not returned to me. 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.

Michelle Nwan 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
Grievant Signature

1-13-23
Date

KM
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.

NOV 10 2022

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

GRIEVANCE

INMATE NAME: <u>Jay Tate</u>	OFFICE USE ONLY
SCDC NUMBER: <u>131899</u>	Grievance No. <u>PCI-0657-22</u>
INSTITUTION: <u>Perry</u>	Code: General
HOUSING UNIT: <u>Bravo Y 18</u>	Policy
WORK ASSIGNMENT: <u>NONE</u>	#8 <u>Disc. Hear</u> <u>11/2/22 (903)</u>
	Class.
	PREA
	Date Received <u>11/10/22</u>
	IGC Initials <u>JM</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. Hester. DHO Hearing Officer P. Hough violated a 7th Department Policies 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: Canteen (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. Gopal Tel Hink also violated the terms of the phone call by providing a allege screenshot of a phone call. Gopal Tel Hink said this phone call can be monitored or recorded. This makes Gopal Tel Hink liable for violating the terms of the call. Substitute counsel never reviewed the charge of 903 within the 24 hours of the hearing is required by Policy.

Jay Tate 11-9-22
Grievant Signature Date

PCI-0653 told me to file separate Grievance form for the charge.

ACTION REQUESTED: I am requesting that Charge #8 (903) possession of unauthorized drugs 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

PCI-0657-22


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.

 11/23/22
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

 11/28/22
IGC Signature Date

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.

Exhibit 1

INMATE COPY

#7 #8

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page 1 of 1


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.

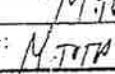
Evidence: GTL SCREENSHOT

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee
REFER TO MAJOR	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown

Printed Name: Dominic Boccabello	This incident is DRUG related	
Signature:  Title: SGT Date/Time: 10-14-22 3:25 pm	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Unknown

Major/Responsible Authority: JMX	Responsible Authority Action Taken
855/903	

Printed Name: M. TIT	Date/Time: 10-14-22
Signature:  Title: CAPT Date/Time: APPROX 2:50 pm	<input type="checkbox"/> Informal Resolution
	<input type="checkbox"/> Administrative Resolution
	<input checked="" type="checkbox"/> Refer to Disciplinary Hearing

4710

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 7 & 8 Inmate Name: TATE, JAY SCDC#: 131879
Living Area: B118 Job: LOCK UP Custody: ST
Offense Date: 10/13/22 Offense Time: 03:06 AM PM 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. I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING.

HEARING INFORMATION: Hearing Date: 11/2/22 Hearing Title: [unclear] Modclass: NMH Ranking Level: 10.4

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) (NOMI) (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.

SANCTIONS: List of penalties including Loss of Privileges, Reprimand, Extra Duty, Loss of Good Time, Canteen, Visit Suspension, Disciplinary Detention, Phone, Other.

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED: Level 2 (903) 1-10-22

Form with fields: CREDIT FOR PHD TIME SERVED?, DATE INMATE PLACED IN PHD, INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT, HEARING OFFICER (PRINT NAME)

APPROVAL AND MODIFICATION ONLY: WARDEN REASON

W/O: 9999

The State of South Carolina
In The Court of Appeals

RECEIVED

Appeal From the Administrative Law Court NOV 07 2024
Robert L. Reibold, ALJ
SC Court of Appeals

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

Jay Tate #131879

Appellant

v.

South Carolina Department of Corrections

Respondent

Motion to Allow late Filing of
The Record on Appeal

The South Carolina Department of Corrections Failed to turn over the record from the disciplinary hearing that was held on November 2, 2022 to hide the misconduct that was employed at that hearing and to deny Appellant due process under Article 1 section 3 of the South Carolina Constitution as well to the Fourteenth Amendment of the United State Constitution.

Please see Respondent's Motion to Dismiss Pursuant to Howard v South Carolina Department of Corrections and South Carolina Code Ann: 1-23-600(D) in the conclusion where the Respondent's never filed the record on appeal.

The are level 1 and level 2 disciplinarys considered

State of South Carolina
In The Court of Appeal

Appeal From The Administrative

major disciplinarys and the record should have been released. Al-Shabazz v State 338 S.C. 354, 527 S.E.2d 742 Headnote 16.

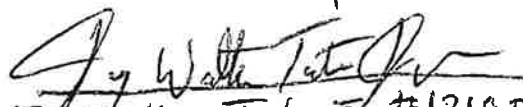
These motions are included in the Designation of Matter.

Conclusion

For the forgoing reasons, Appellate request that both the 903 and 855 disciplinarys be dismiss for not following the rules or what the court deem just and proper.

Dated November 1, 2024

Respectfully Submitted


Jay Walter Tate, Sr. #131870
Kershaw Correctional Inst.
4848 Goldmine Highway
Kershaw, S.C. 29067

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court

Administrative Law Court Case No: 23-AHS-04-59 and 6C
Appellate Case No: 2023-001002

Jay Tate #131879

Appellate
RECEIVED

NOV 07 2024

SC Court of Appeals

v.

South Carolina Department of Corrections

Respondent

Proof of Service

I hereby certify that a true copy of the Appellant's Motion to Allow late filing of the Record on Appeal have been served this 1st day of November, 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 11627, Columbia, South Carolina 29211

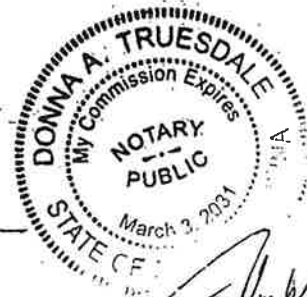
Sworn To And Subscribed Before Me
this 1st day of November 2024

Donna A. Truesdale March 03, 2031

Notary Public For South Carolina

My Commission Expires

dated this 1st day November 2024



Jay Tate

11-11-2024

Jay Walter Lamy Jr. 10101
Kershaw Correctional Inst
4848 Goldmine Highway
Kershaw, South Carolina 29046

November 1, 2024

RECEIVED

NOV 07 2024

SC Court of Appeals

Honorable Jenny A. Kitchings
Clerk of Court
Post Office Box 11627
Columbia, South Carolina 29211

RE: Appellate Case No: 2023-001002

Dear Ms. Kitchings,

At this present moment can your office please notify me if I have properly argued my motion to be allowed late filing of the record on appeal and if I haven't then may I please obtain a continuance so I can fix my mistake.

Now please find enclosed within this letter of request the motion to allow late filing. The South Department of Corrections never released the record from the hearing held on November 2, 2022. If you have any questions, please feel free to contact me.

IF it's possible can your office please provide
General Counsel a copy of this motion. Thank
you for your time into this important matter.

Sincerely,
Jy Walter, Jr

Jay Walter Tate, Jr. #131899
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067



Honorable Jenny A. Kitchings Clerk of Court
Post Office Box 11627
Columbia, South Carolina 29211

RECEIVED

NOV 07 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 H. Reibold

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

Jay Walter Tate, Jr. #131879

Appellant

v.
South Carolina Department of Corrections

Respondent

Final Brief

RECEIVED

FEB 19 2025

SC Court of Appeals

Dated: February 10, 2025

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

Jay Walter Tate Jr. #131879
Jay Walter Tate, Jr. #131879
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29061
Pro-Se Appellant

TABLE OF AUTHORITIES

Statement of the Case	Page 1
Statement of Issue on Appeal	Page 2

Wolff v McDonnell 418 U.S. 539, 94 S.Ct. 2963	Page 3
Al-Shabazz v State 338 S.C. 354, 527 S.E.2d 772	Page 3, 4

Statutes

OP-22:14 Inmate Disciplinary Systems	Page 3, 4
Article 1 section 3 South Carolina Constitution	Page 3
Fourteen Amendment United States Constitution	Page 3

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 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 started his Step (2) grievances stating 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 Courts. On February 24, 2023, the case was assigned to the Honorable Robert L. Reibold, Case numbers 23C0059, Grievance No: PCI 0657-22 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. The Respondent's filed two motions to dismiss pursuant to Howard v. South Carolina Department of Correction Docket No: 23-AJ-04-060 and 23-AJ-04-05; Grievance No: PCI 660-221 and PCI 657-221, Appellant filed two motions to proceed pursuant to Al-Shabazz v. State and S.C. Code 1-23-610. Order Granting Motion to Dismiss Docket No. 23-AJ-04-0059 and 60 AP.

Statement of Issue on Appeal

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

Respondent's was dishonest in a Motion to Dismiss Pursuant to Howard v. South Carolina Department of Corrections, Appellant stated in both Step 1 and 2 that this off record material was a audio phone Recording and Appellant never filed any grievances on any earned credits.

Argument

Appellant filed two properly filed grievances No: PCI-660-221 and PCI 657-221. Appellant never filed any grievance on his Step 1 or Step 2 on any earned good time credits. Appellant stated in motion to Proceed that the grievance was never properly investigated and the alleged drugs was not properly tested. Appellant was denied due process under Article 1 section 3 of the South Carolina Constitution as well as the Fourteen Amendment of the United States Constitution.

These were 2 properly filed grievances and appellant did not hear the evidence that determine his guilt. *Wolff v McDonnell* 418 U.S. 539, 94 S.Ct 2963 An inmate can hear all the evidence. *Al-Shabazz v State* 338 S.C. 354, 527 S.E.2d 742 (Headnote 8) 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 of the Security and order of the institution. Appellant did not hear this alleged audio phone recording. Appellant was denied due process.

Appellant was denied due process, because, because Discipline Hearing Officer did not have the South Carolina Department of Corrections 19-79 Form "Controlled Substance Testing and Disposition Form". The language of the South Carolina Department of Corrections Policies and Procedure 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: (OP-22-14 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 or a picture of the item should be produced at the hearing. Also if the contraband involved tobacco or a controlled substance such as Marijuana or Alcohol, the Hearing Officer must have available a copy of the SCDL 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 19-79 Form is not part of the Disciplinary Report and Hearing Record that was attach with the Respondent's motion to Dismiss. Appellant was denied due process

Respondent's Failed to provide the Discovery From the November 2, 2022 disciplinary hearing. These are 2 Major disciplinary and should have been provided by rule in Ak-Shaba22.

Respondent's was dishonest in their motion to dismiss, because that off the record material was an allege audio phone recording and appellant never filed any grievances on earned credits.

Conclusion

For the foregoing reason this should reverse the Administrative law Court decision, or what this Court deem just and proper

Respectfully Submitted
Jay Walter Tate, Jr #131879
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067

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-AKS-04-59 and 60
Appellate Case No: 2023-001002

Jay Walter Tate, Jr. #131879

Appellant

v.

South Carolina Department of Corrections

Respondent

Proof of Service

I hereby certify, that a true copy of Appellants Final Brief, have been served this 10th day of February, 2025 on the Respondent, Christina Catoe Bigelow, Esquire South Carolina Department of Corrections, Office of General Counsel Post Office Box 21787, Columbia South Carolina 29211; The South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court Post Office Box 11629, Columbia, South Carolina 29211

Dated: February 10, 2025

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FEB 19 2025

SC Court of Appeals

Respectfully Submitted
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SC Court of Appeals

Honorable Jenny Abbott Kitahings (Clerk)
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