

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S. Phillip Lenski Administrative Law Judge.

Case No. 2026-001053

Leonard Lee Foster

Appellant

v

South Carolina Department
of Correction

Respondent

REPLY BRIEF

Leonard Lee Foster #174576
Waterlee Corr. Inst.
P.O. Box 189
Nembert S.C. 29128

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Statement of issue on Appeal

1. Did court error by affirming Respondent's contention that Department has correctly applied the applicable good time credit to Appellant's sentence?

Statement of Case

Appellant is currently in South Carolina Department of Correction Wateree Institution serving consecutive sentences totaling 40 years imposed on March 20, 2002 in Cherokee County.

25 years Felony DUI, 10 years Reckless Homicide and 5 years Habitual traffic offense.

On February 20, 2025 Appellant asserted Department failed to accurately compute and apply good time credit from February 5, 2022 completed 25 year Felony DUI sentence to current 10 year Reckless Homicide sentence and release him. Thereupon both Step 1 and Step 2 grievances was denied.

On June 5, 2025 the case was assigned to Administrative Law Judge Lenski on August 13, 2025 Respondent moved to dismiss the case as duplicate to Case No. 2022 - ALJ-04-0178

On August 21, 2025 Appellant filed objection to August 13, 2025 motion and asserted Respondent violated his 14 Amendment by failing to provide a hearing before depriving him of Felony DUI good time credits.

On August 29, 2025 the Court denied and dismissed Respondent's motion because Respondent failed to address Appellant's issue.

On September 23, 2025 Respondent filed Record on Appeal thereupon Appellant moved to Dismissal of Appeal for failure to comply with Rule 36 on September 29, 2025

On March 23, 2026 Respondent filed its brief contending Department properly applied the applicable good time credit to Appellant's sentence.

And stated the good time credit Appellant did earn cannot be used to reduce his 25 year Felony DUI sentence below 85 %

On March 27, 2026 Appellant filed objection asking the court to dismiss Respondent's Appeal for failure to comply with Rules.

STANDARD OF REVIEW

This court has jurisdiction pursuant S.C. Code 1-23-380 judicial review upon exhaustion of administrative remedies

Issue

1. Did court error by affirming Respondent's contention Department has correctly applied the applicable good time credit to Appellant's sentence?

Argument

Judge, Lenski abuse his discretion by affirming Department contention the good time credit Appellant did earn can not be used to reduce his 25 year Felony DUI sentence below the mandatory 85% is unsupported by evidence.

Appellant's start date for Felony DUI sentence is November 10, 2000 and the sentence was served in accordance policy DP-21.09 12.9.5 on February 5, 2022.

Appellant began serving 10 year Reckless Homicide sentence which 12.22 provides. When serving a consecutive sentence good time earned during the service of a sentence in the consecutive structure can not be lost or forfeited once that sentence is completed and the inmate has began service on the other sentence in the consecutive structure. *Busby v Moore* 330 S.C. 201, 498 S.E. 883 when two or more consecutive sentences are to be served the aggregated of the several sentences is based upon which the good conduct credit is computed.

Pursuant S.C. Code 24-13-210 the statutory right to sentence related credit is a protected liberty interest under 14 Amendment entitling an inmate to minimum due process to ensure the State created right was not arbitrarily abrogated.

As the record reflect Appellant was deprived of the minimum requirement of due process as delineated in *Wolff v McDonnell* 418 U.S. at 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) whereas Department forfeited Appellant of Felony DUI good time credit without disciplinary charge, notice or hearing.

The court also concurred Department's contention Appellant has failed to earn good time and lost good time through the disciplinary process is unsupported by evidence.

OFFENDER MANAGEMENT SYSTEM DISCIPLINARY display R. page 26 of 30 indicate "No" good time was lost while serving 25 year Felony DUI sentence although R. page 28 of 30 indicate 110 days was restored on August 9, 2020

However Appellant did lose good time while serving a different sentence for cocaine distribution in the early 1990's See. R. page 27 of 30 which is irrelevant to Felony DUI sentence.

Al-Shabazz v State 338 S.C. 354, 527 S.E. 2d 742 substantial evidence for purpose of reviewing an Agency's decision under the Administrative Procedures Act, is relevant evidence that considering the record as a whole a reasonable mind would accept to support the Agency's action.

Conclusion

For the reasons stated this court should reverse the judgment of Administrative Law Court.

Date.

Respectfully Submitted
Leonard Forts