

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

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

William McKinnedy, Appellant,

v.

South Carolina Department of
Corrections, Respondent.

Appeal from the Administrative Law Court
John D. McLeod, Administrative Law Court Judge

Unpublished Opinion No. 2011-UP-400
Submitted August 15, 2011 – Filed August 22, 2011

AFFIRMED

William C. McKinnedy, III, pro se, for Appellant.

Christopher D. Florian, of Columbia, for Respondent.

PER CURIAM: William C. McKinney, III, appeals the Administrative Law Court's (ALC) order affirming the Department of Corrections' (the Department) correction of his sentence classification. He argues he was denied due process of law when the Department recalculated his sentence after an audit revealed his offense was a no parole offense.¹ We affirm,² finding substantial evidence supports the ALC's decision McKinney was not deprived of a liberty interest and thus not denied due process of law. See S.C. Code Ann. § 1-23-610(B) (Supp. 2010) (limiting reversal of an ALC decision unless "in violation of constitutional or statutory provisions; . . . [or] clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"); U.S. Const. amend. XIV, § 1 (guaranteeing due process of law only when the deprivation of life, liberty, or property is at stake).

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

¹ McKinney's remaining arguments are unpreserved for our review because they were never ruled on by the ALC. State v. Al-Shabazz, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000) ("Consequently, issues or arguments that were not raised to and ruled on by the [ALC] ordinarily are not preserved for review.").

² We decide this case without oral argument pursuant to Rule 215, SCACR.

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
John D. McLeod, Administrative Law Court Judge

Case No. 2009-ALJ-04-00631-AP

Mr. William C. Kennedy, III, #256024 Appellant,
vs.
South Carolina Department of Corrections Respondents

Petition For Rehearing

August 29th 2011
Fairfax, S.C.

Mr. William C. Kennedy, III
#256024
Allendale Cmn. Inst. 3 E-2; B-37
1057 Revolutionary Trail
P.O. Box 1151
Fairfax, S.C. 29827

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SC Court of Appeals

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I. Statutes:

- 1) S.C. Code Ann. § 1-23-360 _____
- 2) S.C. Code Ann. § 1-23-380 _____ 3
- 3) S.C. Code Ann. § 1-23-610(B) _____ 3
- 4) S.C. Code Ann. § 16-1-10(d) _____ 4, 5
- 5) S.C. Code Ann. § 24-13-150 _____ 5
- 6) S.C. Code Ann. § 24-13-230(B) _____ 5
- 7) S.C. Code Ann. § 0112 § 44-53-375(A)(2) § 44-53-110 _____ 4, 5

II. Cases:

- 1) Al-Shabazz vs State, 527 SE2d 712 (2000) _____ 3
- 2) Deese vs S.C. Bd. Dentistry, 332 SE2d 539 _____ 3
- 3) Freeman vs. Rudecort, 808 F2d 949, cert. denied _____ 5
108 S.Ct. 1273 (1987) _____ 5
- 4) Hodges vs Rainey, 533 SE2d 578, 581 (2000) _____ 6
- 5) Jones, 612 SE2d 719, 724 (Ct. App. 2005) _____ 6
- 6) Lake, 498 SE2d 650, 653 (Ct. App. 1998) _____ 3
- 7) Vaughn, 547 SE2d 869, 870 _____ 6
- 8) Wolff vs. McDonnell, 94 S.Ct. 2987, 79-80 _____ 5

III. Constitutional Provisions:

- 1) S.C. Const. Art 1 § 3 _____ 6
- 2) U.S. Const. 5th Amct. _____ 6
- 3) U.S. Const. 14th Amct. _____ 6

IV. Rules:

- 1) 211(b) SCACR _____ 8

Statement Of The Issues On Appeal

- I. The Administrative Law Court ("ALC") Judge [John D. McLeod] Incorrectly Dismissed The Appeal Of The Appellants [Mr. McKinnedy ~~III~~]'s Miscalculation Of Sentence - Goodtime And Is An Error Of Law Or Etc...
- II. The Administrative Law Court ("ALC") Judge [John D. McLeod] Abused His Discretion When He Have Been Recused-Off ~~All~~ Of The Appellants [Mr. McKinnedy ~~III~~]'s (Case(s)) And Have Prejudiced The Appellant By Hearing And Ruling On This Instant Case,

Statement Of The Case

This instant case is before this Honorable Court of Appeals for South Carolina pursuant to the Appellant's appeals from the filing of a Step (1) Grievance with SCDC on or by 12/13/08 complaining that SCDC Inmate Records Classification have "miscalculated" my original sentence of (18) years imposed by the Court, that was a paroleable offense pursuant the Court (J. J. Watson) on or by 02/03/99. So, the Appellant's Step (2) Grievance was denied on or by 06/25/09, which I appealed to the Administrative Law Court ("ALC") by way of a Notice of Appeal, that was filed timely and denied by the "ALC" Judge Mead and I filed a Notice of Appeal to the South Carolina Court of Appeals, that affirmed the "ALC's" decision and now this Petition for Rehearing follows.

Respectfully, the Appellant requests that the "ALC's" decision be overturned / Reversed.

Standard of Review

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review 3 (Emphasis added); see also S.C. Code Ann. § 1-23-380; Lake, 498 SE2d 650, 653 (Ct. App. 1998).

The ALC's jurisdiction to hear an inmate's appeal from SCOC's final agency decision is derived from S.C. Code Ann. § 1-23-380 (G) and what it provides. Which Al-Shabazz vs State, 527 SE2d 742 (2000) is only for, if an inmate's sentence was erroneously miscalculated or, if sentence related credits, or custody status has been taken when the "ALC" failed to protect the Appellant's Mr. McKennedy / it's limited rights it is noted to be "arbitrary & capricious" actions of the ALC.

When an agency fails to follow its own published rules, the action is rendered arbitrary & capricious and therefore is "Reversible" (See, S.C. Code Ann. § 1-23-380(a)(6)(F)).

Administrative decisions is "arbitrary", if it is without rational basis, is based alone on ones will and not upon any course of reasoning, exercise of judgment, is made at pleasure, without adequate determining principals, or is governed by no fixed rules or standards. (See, Deese vs S.C. Bd. of Dentistry, 332 SE2d 539).

Argument And Citation of Authority

I. The Administrative Law Court ("ALC") Judge [John D. McLeod] Incorrectly Dismissed The Appeal of The Appellant's [Mr. McKennedy, III's] Miscalculation of Sentence - Goodtime And Is An Error of Law Or Etc...

On 02/03/99, the Appellant [Mr. McKennedy, III] plead guilty involuntarily / Coerced guilty plea without any plea negotiations for a reduction on charges to one (1) count of Possession, Selling, Distribution or Manufacture of Crack Cocaine for less than a gram (.15 grams & a gram) for an allegedly sell to an undercover police officer for thirty-dollars (See, Police Incident Report(s), dated 03/17/98, already in the record) which is my alleged second offense and I was indicted by the Grand Jury of Greenville County on 06/09/98 under S.C. Code Ann. § 0112(COR Code for a Paroleable Offense) § 44-53-375(A)(2) § 44-53-110 "et seq", but I was not sentenced to what the above mentioned statutes carries is a maximum of ten (10) years or a \$10,000 dollar fine or both, that is less than (20) years and is a "Paroleable Offense", that is not listed under the No-Parole Offense(s) listed under the 1996 Crime Bill, But I was sentenced by an incompetent judge (J. J. Watson) to an Excessive (18) years (5) Sentence, that he made into a paroleable offense (See McKennedy vs State, In Trans. pp. 1-, dated, 02/03/99, already in the record) So upon arrival to SCDC's R & E Center at Kinkland Cor. Inst. I sent a Request to Staff Member to inquire about, where I would be sent to do my bid at? When will I be eligible for parole? And, when is my max-out dated? (See, Exhibit(s): ATT, dated, 02/15/99 & response from ECC Ab. Brown dated, 02/22/99, already in the record) So, I was being calculated as getting goodtime by SCDC's Inmate Records Classification. Because, I was suppose to be getting it when I was indicted for a charge that carries less than (20) years and is not listed under S.C. Code Ann. § 16-1-10(d) (See.

Exhibits: 155 & 156 (Indictments, already in the record), So, on or by 06/23/00 I was informed that I had been sentenced under the 1996 Crime Bill and I had to serve 85% of a No-parole Offense under S.C. Code Ann. § 24-13-150 (A) or § 24-13-230 (B) (1), that was not told to me at my sentencing by the Court (J.W. Watson) (See, Exhibits: 153 or MIC already in the record), Because, I was indicted for a paroleable offense with CDR (code) "012" (See, Exhibits: 155 & 156 (Indictment, already in the record) § 012 (1) § 44-53-375(A)(2) § 44-53-110 "et seq" (1) which my Due Process & Equal Protections of the Laws have been violated when SCDC's Inmate Classification Records adjusted my sentence from a parole offense by the Courts, that was already in place, to a No-parole Offense by SCDC's Audit on 06/23/00 (See, Exhibits: 153 or MIC and its references incorporated, already in the record) to take away all of my good time (1) without a hearing, right to defend, nor judicial review (See, Wolff, 94 S.Ct. 2987) Wolff also requires that the Appellant Mr. McKennedy III be given a meaningful opportunity to marshal and present evidence in my defense in which I have been deprived of by SCDC's Inmate Records of Classification (See, Wolff, 94 S.Ct. at 2979, 2980), The Due Process requirements established in Wolff and reiterated in Freeman vs. Rickard, 808 F.2d 949, cert. denied, 108 S.Ct. 1273 (1987), The [S.C.] legislature's intent is not for the SCDC Inmate Classification Records to change the meaning of the above mentioned clear and unambiguous statutes would be absurd to do so alone with violating the Appellant's Mr. McKennedy III's Due Process & Equal Protections of the Laws

5

Pursuant to S.C. Code Ann. § 16-1-10 (d) "et seq" I am serving an 85% No-parole Offense, which I only suppose to get (3) days per month or 72 credits per year, but I have not one (1) day of good time and I have been locked up over (13) years now, I should have (20) days good time for every month I have been incarcerated. Because I was not sentenced under the 1996 Crime Bill for being indicted for S.C. Code Ann. § 012 § 44-53-375(A)(2) § 44-53-110 "et seq" is a paroleable offense, that carries only (10) years maximum or a \$10,000 dollar fine or both and (18) years is "Excessive".

5th / or 14th Amendment) of the U.S. Const. that applies to S.C. Const. Art I § 3 and what it provides is an "Errors of Law", that the Administrative Law Court ("ALC") agreed upon when my claims was dismissed with prejudice is "Unfounded".

The Cardinal Rule of statutory construction for the State of South Carolina is to ascertain and effectuate the intent of the legislatures (See, Hodges vs Rainey, 533 S.E2d 578, 581 (2000)) All rules of statutory construction are subservient to the one the legislature's intended "MUST" prevail, if it can be construed in light of the intended purpose of the statutes mentioned above. Under the 'plain meaning rule' it is not the South Carolina Department of Corrections ("SCDC's"), nor this Court of Appeals by affirming the ALC's decision to change the meaning of a clear and unambiguous statute(s). (See, Jones, 612 S.E2d 719, 724 (Ct. App. 2005); Vaughn, 547 S.E2d 869, 870 (2001) ("Where the statute(s) language is plain and unambiguous, and conveys a clear and definite meaning the rules of statutory interpretation are not needed this Court of Appeals, ALC, nor SCDC's Inmate Classification Records have no right(s) to impose another meaning").

II. The Administrative Law Court ("ALC") Judge John D. McLeod / Abused His Discretion When He Have Been Recused - Off All of the Appellant's Case(s) And Have Prejudiced The Appellant By Hearing This Instant Case. The Appellant have already placed in the record the recusal of Judge McLeod and it have been noted (approved) by the Adm. Judge Kittredge for Judge McLeod not to hear my case(s) period and he did hear and ruled on the above mentioned case shows and proves his partiality that is bias(ness) / prejudice(ness) to keep me from having a fair and impartial hearing is enough grounds for "Rehearing / Reversal", that is preserved for the record. Furthermore, this S.C. Court of Appeals Chief Judge (Eau) should also "Recuse" himself, Because he have already ruled on the same issues / claims against the Appellant in a PCR-Application in McKinney v State (PCR-2009), while he was on the bench for Greenville County Courthouse and it would be bias(ness) / prejudice(ness) for any decision(s) he makes against the Appellant / McKinney, ~~and~~ instant case as well, it being grounds for a "Reversal for this Rehearing".

Conclusion

Wherefore, for all reasons stated above, the Appellant Mr. McAnnedly III (requests) for relief that is competent on any grounds appearing in the record on appeal in the Appellant's favor that will support this petition for rehearing.

Respectfully Submitted,

Mr. William C. Kennedy III #256024

Mr. William C. Kennedy III #256024
Allendale Com. Inst. 3E-2/B-37
1057 Revolutionary Trail
P.O. Box 1151
Fairfax, S.C. 29827

WMCK III PC 246

August 29th 2019
Fairfax, S.C.

Certificate of Compliance

The undersigned hereby certifies that this Petition for Rehearing of the Appellant complies with Rule 21(b) SCACR and the Supreme Court order of August 13, 2007.

Mr. William C. Kennedy III #250024

Mr. William C. Kennedy III #250024

Allendale Cmr. Just. #2; B-37

1057 Revolutionary Trail

P.O. Box 1151

Fairfax, S.C. 29827

The State of South Carolina
In the Court of Appeals

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Appeal From Administrative Law Court
John D. Mead, Administrative Law Court
SC Court of Appeals

Case No.: 2009-ALJ-04-00631-AP

Mr. William C. McKinney, III, #256024 Appellant,
South Carolina Department of Corrections vs.
Respondents

Certificate of Service

I, Mr. William C. McKinney, III, #256024 certify, that I have served the Respondents a copy of the Appellant's Mr. McKinney, III's Petition for Rehearing, pp. 9 of 9 by placing it in the Allendale Corr. Inst. mailroom system with first-class postage prepaid for the U.S. Postal Services and addressed to the following:

The South Carolina Court of Appeals
Hon. Tanya A. Gree, Clerk
P.O. Box 11629
Columbia, S.C. 29211 ; 9

Christopher D. Florian, Esq.,
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

~~Mr. William C. McKinney, III, #256024~~
Mr. William C. McKinney, III, #256024
Allendale Corr. Inst. #2; B-37
P.O. Box 1151
Fairfax, S.C. 29827
UNMAILED FILE

August 29th, 2011
Fairfax, S.C.

The South Carolina Court of Appeals

William McKinney,

Appellant,

v.

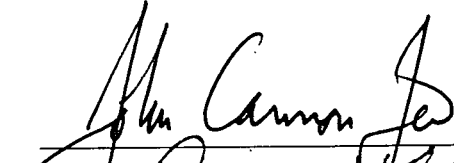
South Carolina Department of
Corrections,

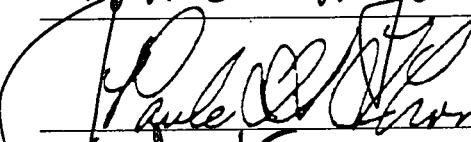
Respondent.

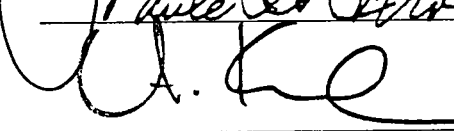
The Honorable John D. McLeod
Administrative Law Court
Case No. 2009-AL-04-00631

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



C.J.


J.


Columbia, South Carolina

FILED

OCT 10 2011

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The State of South Carolina
In The Court of Appeals

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FEB 19 2010

Appeal from Administrative Law Court SC Court of Appeals
Hon. John D. McLeod, Adm. Law Judge

Case No.: 09-ALJ-04-00631-AP

Entrance No.: KER-1523-08

or
Docket No.: 2009145826

Mr. William C. McKinnedy III, #256024 ("Pro Se") Appellant,
South Carolina Department of Corrections ("SCDC") Respondents.

Record On Appeal

February 14th, 2010
Kershaw, S.C.

Mr. William C. McKinnedy III
#256024
Kershaw Cor. Inst. Oak East (A) #16
4848 Goldmine Hwy
Kershaw, S.C. 29067-8069
(Pro Se)
WCMC III / PC file
Christopher D. Floridan, Esq.
P.O. Box 21787
Columbia, S.C. 29221-1787
(Respondents Attorney)

Index

- 1) The Appellant's Trial Transcript dated 02/03/99, pp. 1, 13, 14, 21, 38-39 — pp. 1-6
- 2) The Appellant's Sentencing Sheet for Indictment No.: 98-GS-23-3643, with it being Exhibit (i); M, p. 7 & attachment Exhibit (i); MIA & MIB, pp. 8-9 (Original Indictment, with references incorporated); Ex.: AII, p. 11 (Request to Staff); Classification/C.L. Brown, dated: 02/15/99 & response dated: 02/22/99, Ex.: MLC, p. 10 (Letter from Inmate Classification Records) dated: 6/23/00 — pp. 7-11
- 3) The Appellant's Amended Indictment, CDR-Codes from 0112 to 0113; or Ex.: 185 & 186
- 4) The Letter from the 13th Circuit Solicitor's Office, dated: July 21st, 1998, p. 144 — pp. 12-13
- 5) Exhibit: (CXI) (What's Community Supervision?) — p. 14
- 6) The Appellant's Inmate Dated Calculation Worksheet dated: 10/17/00; or Ex.: (A) — p. 15
- 7) The Appellant's Inmate Dated Calculation Worksheet dated: 11/01/00; or Ex.: (B) — p. 16
- 8) The Appellant's Exhibit: dated 12/27/06 (Relevance would be on page (i) for the Statement of Facts) — p. 17
- 9) The Drug Analysis for Quantity or etc... Ex.: (A)(B)(C)(D), dated: 03/17/98 — pp. 18-20
- 10) The Appellant's Order "Affirmed" by the South Carolina Court of Appeals (Relevance would be that the Court projected that I was only serving 7 1/2 years & not 18 years for the quantity, CDR-Codes or as indicted for on 06/08/98 (See, pp. 8-9; or Ex.: MIA & MIB) Order, dated: 3/2000 (Ct. App.) — p. 25
- 11) The Appellant's Opinion & Order In Mckinney v. Faulkenberry / A No.: 6:06-cv-00641-HMH, dated: 02/12/07, pp. 1-3, 7, 13 of 13 — pp. 26-30
- 12) The South Carolina Attorney General's Waiver, better head, 1/cr etc... dated: June 13th, 2008; or Ex.: (C)(4) & (b)(4) & (E) — pp. 31-34
- 13) The Appellant's Denial by the U.S. Supreme Court, dated: 10/06/08; or Ex.: (C)(5) — p. 35
- 14) The Appellant's Rehearing Denial by the U.S. Supreme Court, dated: 11/17/08; or Ex.: (C)(a) — p. 36

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- 15) The Appellant's Grievance No.: KER-1523-08, Step 1 dated: 12/13/08 & Step 2, dated: 01/03/09, with sentencing sheet attached for an indictment No.: 98-GS-23-3643 _____ pp. 37-39
- 16) The Recusal of Hon. John D. McLeod for Case No.: C8-ALJ-04-01108-AP & Hon. Ralph K. Anderson was re-assigned with new case No's.: 09-ALJ-04-0009-AP; or Ex.: (A) (1, 2, 3, & 4), dated: 01/21/09 _____ pp. 40-41
- 17) The Order of Dismissal with Prejudice by the Hon. John D. McLeod for Case No.: C8-ALJ-04-01108-AP; or Ex.: (B) (1) (2) & (3) _____ pp. 42-44
- 18) The Appellant's Order of Dismissal without Prejudice by the Hon. Ralph K. Anderson for Case No.: 09-ALJ-04-0009-AP; or Ex.: (F) & F(1) _____ pp. 45-46
- 19) The Appellant's Appeal was assigned to the Hon. John D. McLeod for Grievance No.: KER-1482-07 & Hon. John D. McLeod was recused & the Hon. Ralph K. Anderson was re-assigned; or Ex.: (ii) & (iii) _____ pp. 47-48
- 20) The Appellant's appeal to the "ALC" for Grievance No.: KER-1523-08 was assigned to the Hon. John D. McLeod under "ALC's" No.: 09C0631-AP; or Ex.: (e), dated 07/16/09 & Assigned to the Hon. John D. McLeod on 07/22/09 _____ p. 49
- 21) The Respondent's Brief & Motion to Dismiss for Case No.: 09C0631-AP, dated 09/08/09 & received by KER-mailroom on 09/10/09 _____ pp. 65-70
- 22) The Appellant's Brief under Rule 60, ALCR for Case No.: 09-ALJ-04-00631-AP, dated: 09/18/09, pp. 1-13 & 13 _____ pp. 50-64
- 23) The "ALC's" Order for Respondents to Reply, dated: 09/21/09 _____ pp. 71-72
- 24) The Respondent's Reply, dated: 10/20/09 for Case No.: 09C0631-AP _____ pp. 73-82
- 25) The "ALC's" letter to Mr. Peele to rule in the favor of the Respondents (Department) for Case No.: 09-ALJ-04-00631-AP, dated: 10/22/09 _____ pp. 83-84
- 26) The "ALC's" Order of Dismissal with Prejudice by the Hon. John D. McLeod for Case No.: 09-ALJ-04-00631-AP, dated: 10/29/09; or Ex.: (ix), (c), & (d) & (i)(e) _____ pp. 85-88
- 27) The Appellant's (PCR) Hearing Transcript for Case No.: 02-CP-23-6904, dated 12/03/03, pp. 56-117 _____ pp. 89-150
- 28) The Order of Dismissal with Prejudice by the Hon. J. Michael Baxely for the PCR Case No.: 02-CP-23-6904, dated: 01/30/04, pp. 118-125 _____ pp. 151-158

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- 29) The Appellant's 59(e) & (e)(6) Motion For Case No. : 02-CP-23-6964,
dated : 02/14/04, pp. 126-142, & 148 ————— pp. 159-176
- 30) The Order of Dismissal by the Hon. J. Michael Baxely For the Appellant's
59(e) & (e)(6) Motions, dated : 04/05/04 / For Case No. : 02-CP-23-6964;
or Exhibit 1 ————— p. 177

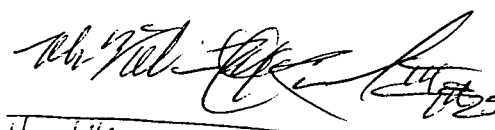
The Appellant's Notice of Appeal For South Carolina Supreme Court
(Needed for the Record on Appeal);
The Appellant's Order of Dismissal by South Carolina Supreme Court,
dated : 10/06/05 ;
The Appellant's Order of Denial For Rehearing in the South Carolina
Supreme Court, dated : 11/17/05 ;
The Appellant's Original Filings of Habeas Corpus In McKinnedy vs. Faulken-
berry, # No. : 06-06-CV-00641-HMH for all events, dated 02/12/07, as
mentioned above, that is needed, but not included in the record on
appeal in there entirely, but they are mentioned for the relevancy for
the Record on Appeal.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal
contains all materials proposed to be included & is relevant by any of
the party(s) & not any other material(s).

February 14th, 2010
Kershaw, S.C.

iii of iii


Mr. William C. McKinnedy / ITU #256024
Kershaw Coun. Inst. Oak East (CA) #16
4848 Goldmine Hwy
Kershaw, S.C. 29067-8069
WMCKIN/EC-File
(Appellant Is Pro Se)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE

: 98-GS-23-3643

VERSUS

: TRANSCRIPT OF RECORD

WILLIAM C. MCKENNEDY,

: FEBRUARY 3, 1999

DEFENDANT.

: GREENVILLE, SC

B E F O R E:

THE HONORABLE JOSEPH WATSON, JUDGE

A P P E A R A N C E S:

SIDNEY P. MITCHELL, ESQUIRE
FOR AND ON BEHALF OF THE STATE

GREG NEWELL, ESQUIRE
FOR AND ON BEHALF OF THE DEFENDANT

ANN DICKEY CAMPBELL, CVR
COURT REPORTER

1 THE COURT: ALL RIGHT, NOW, ANYTHING ELSE
2 BEFORE WE BRING IN THE JURY?

3 MR. MITCHELL: YOUR HONOR, I DO HAVE A MINOR
4 MOTION.

5 THE COURT: WHAT'S YOUR MOTION?

6 MR. MITCHELL: TO AMEND THE INDICTMENT.
7 THERE WAS A TYPOGRAPHICAL ERROR ON THAT. WILLIAM CLAY
8 MCKENNEDY, THERE'S A MISSPELLING THE MIDDLE NAME. THE
9 A AND Y ARE JUXTAPOSED.

10 THE COURT: ALL RIGHT. ANY OBJECTION, MR.
11 NEWELL?

12 MR. NEWELL: YOUR HONOR, MY CLIENT, IN
13 TALKING WITH HIM, HAS DECIDED HE WISHES TO ENTER A
14 GUILTY PLEA TO THIS CHARGE.

15 THE COURT: ALL RIGHT, THAT'S FINE.

16 CLERK: YOUR HONOR, THIS IS CASE NUMBER 98-
17 GS-3643, THE STATE VERSUS WILLIAM CLAY MCKENNEDY. HE
18 IS INDICTED AND PLEADING GUILTY TO DISTRIBUTION OF
19 CRACK COCAINE AND CONSENTS TO SENTENCING ON THIS DAY.

20 MR. MITCHELL: IT'S A SECOND OFFENSE, YOUR
21 HONOR.

22 THE COURT: WHAT DOES THAT CARRY?

23 MR. MITCHELL: UP TO TWENTY-FIVE.

24 THE COURT: NO MINIMUM?

25 MR. MITCHELL: NO, SIR.

99. 2)

W/S Director 1-9 85

STATE V. WILLIAM C. MCKENNEDY

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THE COURT: ALL RIGHT, IS IT A CRIME OF
VIOLENCE? I MEAN -

MR. NEWELL: YOUR HONOR, I BELIEVE IT IS
CLASSIFIED AS VIOLENT. I THINK IT'S CLASSIFIED AS
MOST SERIOUS - OR SERIOUS -

MR. MITCHELL: THAT IS CORRECT.

THE COURT: WELL, THAT'S MY REAL QUESTION,
DOES IT CARRY NO PAROLE?

MR. MITCHELL: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, MR. NEWELL, YOU
REPRESENT WILLIAM CLAYTON MCKENNEDY?

MR. NEWELL: YES, YOUR HONOR, I DO.

THE COURT: AND YOU'VE BEEN OVER THIS
INDICTMENT WITH HIM, THE POSSIBLE PUNISHMENT HE'S
FACING AND HIS CONSTITUTIONAL RIGHTS WITH HIM?

MR. NEWELL: I HAVE, YOUR HONOR.

THE COURT: IN YOUR OPINION HAS MR. MCKENNEDY
UNDERSTOOD YOUR CONVERSATIONS TOGETHER?

MR. NEWELL: HE HAS, YOUR HONOR.

THE COURT: HE INDICATES HE WANTS TO PLEAD...
GUILTY?

MR. NEWELL: HE DOES, YOUR HONOR.

THE COURT: AND DO YOU AGREE WITH THAT
DECISION?

MR. NEWELL: I DO.

pp. 3)

1 THE COURT: ALL RIGHT, AND DO YOU AGREE THAT
2 YOU HAVE AT LEAST ONE PRIOR DRUG CONVICTION ON YOUR
3 RECORD?

4 MR. MCKENNEDY: YES, SIR.

5 THE COURT: BECAUSE OF THAT DO YOU UNDERSTAND
6 THAT THE PENALTY ESCALATES AND THAT YOU ARE FACING UP
7 TO THIRTY YEARS IN JAIL -

8 MR. MITCHELL: TWENTY-FIVE.

9 THE COURT: EXCUSE ME, TWENTY-FIVE YEARS IN
10 JAIL; DO YOU UNDERSTAND THAT?

11 MR. MCKENNEDY: YES, SIR.

12 THE COURT: NOW, UNDERSTANDING THE CHARGE AND
13 UNDERSTANDING THE PENALTY, DO YOU WANT TO PLEAD GUILTY
14 OR NOT GUILTY?

15 MR. MCKENNEDY: I WANT TO PLEAD GUILTY, SIR.

16 THE COURT: ALL RIGHT, NOW, DO YOU UNDERSTAND
17 ALSO THAT IF YOU GET CONVICTED AGAIN OF A DRUG OFFENSE
18 THE PENALTIES WILL BE EVEN GREATER? IN OTHER WORDS,
19 THEY ESCALATE EVEN MORE FOR A THIRD OFFENSE OR ABOVE;
20 DO YOU UNDERSTAND THAT?

21 MR. MCKENNEDY: YES, SIR.

22 THE COURT: ALL RIGHT, AND UNDERSTANDING
23 THAT, YOU STILL WANT TO PLEAD GUILTY?

24 MR. MCKENNEDY: YES, SIR.

25 THE COURT: ALL RIGHT. NOW, I WAS AT THE

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THE COURT: ALL RIGHT, I APPRECIATE THAT.

11

12

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14

15

ALL RIGHT, ON 98-GS-23-3643, THE SENTENCE OF THE COURT IS THAT YOU, WILLIAM C. MCKENNEDY, BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF EIGHTEEN YEARS. I WILL BEGIN THAT SENTENCE ON APRIL. WHAT DAY DID YOU TELL ME?

16

MR. MITCHELL: APRIL 1ST, YOUR HONOR.

17

18

THE COURT: APRIL 1ST OF '98. GOOD LUCK TO YOU. THANK YOU VERY MUCH.

19

20

(WHEREUPON, THE FOREGOING HEARING WAS CONCLUDED)

21

* * *

22

23

24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED ANN DICKEY CAMPBELL, OFFICIAL COURT REPORTER OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF FEBRUARY, 1999.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MAY 10, 1999

Ann Dickey Campbell

ANN DICKEY CAMPBELL

State of South Carolina
County of Greenville

The State of S.C.

v

William C. McKenna

#2 JOE LOUIS AP 25
Greenville 29611

Race B Male ✓ Female

DL

SS

DOB AP-3-68

Atty: G. N. Mann

Ap Ret

Change of Address

Now comes the above named defendant who in open court pleads guilty:

☐ to the within indictment and consents to sentence.

☐ waives a finding of a True Bill by the Grand Jury and consents to sentence.

date:

Fletcher C. Mann, Jr. Clerk of Court

Defendant

SENTENCE

The above named defendant is committed to the State Dept. Of Corrections/County for a term of 18
 days/months/years and/or to pay a fine of \$; provided upon the service of
 days/months/years and/or payment of \$, plus pay/waive costs and assessments as applicable,
the balance suspended with probation for months/years.

Conditions: Sentence begin 4/1/98

Restitution (Yes/No) Total \$

to Clerk for

Public Defender Funds (Yes/No) Total \$

Date: 2/3/98

Court Reporter: Ann Campbell

Solicitor: SPM

Presiding Judge, Thirteenth Judicial Circuit

Print Judge Name: Watson

ALL 864 667 8753

P.O

☒ General S. Court ☐ Magistrates Court

Indictment No. 98 GS-23 3643

Warrant # F 51807a

Warrant Offense dist. crack

Date of Offense 3-17-98

Offense convicted/pled to: dist. crack

Degree # of Offense 2nd

Offense Code ORS 113

Violent NON Violent

DUSDUI related? Yes No

DL SUSPENDS

Did Clerk Receive Drivers License? Yes No

If No explain

Defendant

No Special Parole
Conditions for
an 85% No
Parole Offense

BLACKBURN

01/98

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 1998

THE STATE

VS:

ARREST WARRANT NUMBER

F 518072

WILLIAM-CLYATON MCKENNEDY

ACTION OF GRAND JURY

TRUE BILL

Marion A. Tyson

FOREMAN GRAND JURY

representerson of Grand Jury

VERDICT

Indictment for

0112

DISTRIBUTION OF CRACK COCAINE

VIOLATION § 44-53-375

Exhibit MIA & MIB (body of Indictment)

See Exhibits M; MZ B; MIC, & AII

(CR Cocles was change to 113 to make me do 55% (See Exhibit MIC; AII & M) by SDC & not the Court)

representerson of Petit Jury

Date:

pp
(8)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on JUNE 9, 1998 the Grand

Jurors of Greenville County present upon their oath:

That WILLIAM CLYATON MCKENNEDY did in Greenville County on or about the 17th day of March, 1998 distribute to a confidential informant a quantity of Crack Cocaine, a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-110, *et. seq.* of the South Carolina Code of Laws (1976) as amended.

Exhibit MIB (See MIA the face of the Indictment) Original Indictment

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Robert M. Anis pp. 9)
SOLICITOR

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION AND INMATE RECORDS

INMATE CORRESPONDENCE

INMATE: William C. McKennedy
SCDC #: 256024 (Kershaw)
FROM: Nathaniel Hughes, Jr., Division Director - Classification & Inmate Records
SUBJECT: NO PAROLABLE OFFENSES - DATE CHANGE
DATE: June 23, 2000

Exhibit MJC
(See Exhibit M, MZA, MZC, MZD, MZE, MZF, MZG, MZH, MZI, MJG, MJH, MJJ, MJK, MJL, MJM, MJN, MJO, MJP, MJQ, MJR, MJS, MJT, MJU, MJV, MJW, MJX, MJY, MJZ)

An audit was conducted by the South Carolina Department of Corrections (SCDC) regarding Earned Work Credits (EWC) and Earned Educational Credits (EEC) for inmates sentenced under the 1995 Crime Bill. The audit revealed you received more EWC's than statute allows. Inmates sentenced under the crime bill are required to serve 85% of their sentence and may not earn more than six (6) EWC credits per month or (72) credits per year. This is to inform you that your EWC's will be adjusted to comply with the 1995 Crime Bill.

Your classification Caseworker will address any date changes with you.

S/ Nathaniel Hughes, Jr.
Nathaniel Hughes, Jr.

H, Jr./sjr

William D. Catoe
Benjamin Montgomery
Wardens
Joette Scarborough
Case Managers

Exhibit 153

pp. 10)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

(ALL)

Date: <u>2/15/99</u>	TO: (Name and Title of Staff Member) <u>Classification M.B. Brown</u>
SCDC # <u>256024</u>	NAME: <u>Mr. William C. McKinnedy III</u>
WORK ASSIGNMENT	LIVING QUARTERS <u>A-2/49</u>

REQUEST (State completely, giving full details. Use back of page if necessary)

I would like to know my max out date. I was arrested on 4/1/88 & I stayed in Greenville County til I got sentenced on 2/3/99. I also would like to know if I am eligible for parole & if so, what's my parole date or day. I would also like to know where am I assigned to do my bid at?

Thank you!

(See Exhibits: AA; MIA; MIB; MIC & ATT)

now see, Trial pgs. 1, 38, 43, McKinnedy vs State

[Signature]

DISPOSITION BY STAFF MEMBER

your projected max out date is 2-12-2009.
your parole 9-29-2002 you're been assigned to Kershaw.

DATE: <u>2-22-99</u>	SIGNATURE: <u>[Signature]</u>
----------------------	-------------------------------

M. 11)

THE STATE OF SOUTH CAROLINA

County of Greenville

COURT OF GENERAL SESSIONS

JUNE TERM 1998

2/3/99

THE STATE

VS.

CLAYTON

WILLIAM CLAYTON MCKENNEY

was not Amended at trial (Cee McKenney vs State
in trans pp. 13:1-9)

Was Amended at trial
Signed by Sydney P. Mitchell or the
Court (Cee)

(12)

SCANNED

Exhibit (C): 185

ACTION OF GRAND JURY

TRUE BILL

Marion A. Tyson

FOREMAN GRAND JURY

Person of Grand Jury

VERDICT

0112

113

Indictment for

DISTRIBUTION OF CRACK COCAINE

VIOLATION § 44-53-375

No Signature, nor dates
verifying when so approved it

Foreperson of Petit Jury

Date:

ENTERED
ACCT.

LOP

Signature

(L.S.)

Judge's Telephone

Issuing Court:

☐ Magistrate

COURT

of Issuing Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on JUNE 9, 1998 the Grand

Jurors of Greenville County present upon their oath:

That WILLIAM ^{CLAYTON} ~~CLAYTON~~ MCKENNEDY _{don} did in Greenville County on or about the 17th day of March, 1998 distribute to a confidential informant a quantity of Crack Cocaine, a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-110, et. seq., of the South Carolina Code of Laws (1976) as amended.

*the only Amendment at trial
See McKennedy v. State, Tr. Trans. pp. 13:6-9*

Exhibit 01: 186

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

35
7

Robert M. Ainsworth pp. 13)
SOLICITOR

Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8670



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

July 21, 1998

Beattie Ashmore, Esquire
222 E. McDuff Avenue
Greenville, S.C. 29601

Re: William Clayton McKennedy

Dear Beattie:

I am writing to follow up on our conversation regarding Mr. McKennedy and his charges for Distribution of Crack Cocaine. On behalf of the State, I would recommend that Mr. McKennedy receive a concurrent sentence on all of these charges. In addition, the State will dismiss a Pointing and Presenting Firearm and an Unlawful Carrying of a Pistol charge against Mr. McKennedy in exchange for a guilty plea to four counts of Distribution of Crack Cocaine. According to my information this will be Mr. McKennedy's second crack cocaine offense. Consequently, Mr. McKennedy is facing up to 25 years in jail and greater than \$50,000.00 fine.

Please let me know whether Mr. McKennedy desires a jury trial on these charges or, in the alternative, he wants to enter a guilty plea. Enclosed you should also find discovery materials regarding these charges and in addition alibi and reciprocal information. I look forward to working with you. Thanks.

Sincerely,

Sidney P. Mitchell

Sidney P. Mitchell
Assistant Solicitor
Thirteenth Judicial Circuit

Enclosures

McKennedy - Call me about this

Beattie Ashmore

I was not given a preliminary hearing and I requested for one which I sent the form in myself before the ten days was up...

Also, I had not been indicted (any charges within 90 days of being served arrest warrant) (Detention of Rule 3)

Arrested 4/1/98 indicted 4/1/98 arrest warrant 4/1/98

What is Community Supervision?

- ***Why am I on Community Supervision?***

Based on South Carolina code of law, section § 24-21-560, any person sentenced for a "no parole" offense must be released to a Community Supervision program after serving 85% of the incarceration time.

- ***What is a "no parole" offense?"***

As defined in section § 24-13-100, it is a Class A, B, or C felony designated as "no parole" in legislation passed by the General Assembly and signed by the Governor.

- ***When did this become law?***

On January 1, 1996.

Exhibit (5): (C)(i)

- ***How long will I be on Community Supervision?***

Two years.

- ***Can I be on probation and Community Supervision at the same time?***

No, not for the same sentence. If you are serving time as part of a probation sentence, you must complete the Community Supervision before the probation can begin.

- ***Can I just max-out my sentence and skip the Community Supervision?***

No, after you serve 85% of your time, SCDC must release you to Community Supervision.

- ***What will happen if I violate the Community Supervision?***

You will be returned to General Sessions Court and can be sent back to SCDC by the judge for up to one year.

- ***What would happen then?***

You would serve 100% of your time and then be released, again, to Community Supervision.

ME57T

NAME: McKennedy, William

SCDC# 256024

60 DATE CALCULATION - (Year = 360) Month = 30 Day = Day)
 65 DATE CALCULATION - (Year = 365) Month = 30.42 Day = Day)
 Sentence Length: 18 yr (1) Sentence Length in Days: 6570 (2)

Total credits earned as of next cycle date:

Sentence Start Date: 4/1/198 (3) Next Cycle Date: 4/1/199 (4)

Service Credit: (Calendar Days)

(+) 945 (5)

Good Time Credit (Gross): 93 (6)

Good Time Forfeited: (-) 15 (7)

Good Time Days Loss: (-) 15 (8)

TOTAL GOOD TIME CREDIT EARNED:

(+) 78 (9)

Earned Work Credit/Earned Educational Credit:

Earned Work Credit:

(+) 70.943 (10)

Earned Education Credit:

(+) 0 (11)

Earned Extra Credits:

(+) N/A (12)

TOTAL CREDIT: (Lines 5 + 9 + 10 + 11 + 12) =

(-) 1093.943 (13)

Remaining to earn as of next cycle date (enter line 4):

11/1/199 (14)

(=) 5476.057 (15)

Monthly Accrual Rate: (Average)

Service Days + Good Time + EWC + EEC
30411 (16) + 3 (17) + 0 (18) + 0 (19) = 32.416 (20)

Divide Line 15 by Line 20 = 11.3 (21) Remainder = 8.75 (22)

Enter next cycle date from line 14

11/1/199 (23)

Complete cycles from line 21:

(+) 71 (24)

Estimated final cycle:

(=) 6/1/199 (25)

Projection of Remaining Time to Serve:

Next cycle date from line 23: 11/1/199 (26) Estimated final cycle (from line 25) Date 6/1/199 (27)

Service Credit: (Calendar Days):

(+) 4960 (28)

Good Time Credit:

(+) 489 (29)

Earned Work Credit:

(+) 0 (30)

Earned Education Credit:

(+) 0 (31)

TOTAL PROJECTED CREDITS: (lines 28 + 29 + 30 + 31)

(-) 5449 (32)

Remaining to earn as of estimated final cycle (line 25):

6/1/199 (33)

(=) 27.057 (34)

Daily accrual rate:

Service 1 (35) + EWC Coefficient 0 (36) + EEC Coefficient 0 (37)
 = 1 (38)

Divide time remaining to earn (line 34) by daily accrual (line 38) = 27 (39)

Enter estimated final cycle (line 33):

(+) 6/1/199 (40)

Add days from line 39:

1271 (41)

Calculate to month, day and year:

6/28/199 (42)

(Line 43 is lesser of Line 42 or next cycle date from line 40)

(=) 6/28/199 (43)

PROJECTED RELEASE DATE:

A. Hardin

Caseworker/Inmate Records Office

10-17-00

Date

PRISON DATE CALCULATION WORKSHEET

NAME: McKenney, William

SCDC# 256024

160 DATE CALCULATION - (Year = 360

Month = 30 Day = Day)

165 DATE CALCULATION - (Year = 365

Month = 30.42 Day = Day)

Sentence Length: 18 yr (1)

Sentence Length in Days: 6570 (2)

Total credits earned as of next cycle date:

Sentence Start Date: 4 / 1 / 198 (3)
mm dd yy

Next Cycle Date: 11 / 1 / 100 (4)
mm dd yy

Service Credit: (Calendar Days)

(+) 945 (5)

Good Time Credit (Gross): 93 (6)

Good Time Forfeited: (-) 15 (7)

Good Time Days Loss: (-) 0 (8)

TOTAL GOOD TIME CREDIT EARNED:

(+) 78 (9)

Earned Work Credit/Earned Educational Credit:

Earned Work Credit:

(+) 70.943 (10)

Earned Education Credit:

(+) 0 (11)

Earned Extra Credits:

(+) N/A (12)

TOTAL CREDIT: (Lines 5 + 9 + 10 + 11 + 12) =

(-) 1093.943 (13)

Remaining to earn as of next cycle date (enter line 4):

11 / 1 / 100 (14)

(=) 5476.057 (15)

Monthly Accrual Rate: (Average)

Service Days + Good Time + EWC + EEC

30416 (16) + 3 (17) + 7.238 (18) + 0 (19) = 40.655 (20)

Divide Line 15 by Line 20 = 134 (21) Remainder = .625 (22)
(whole number)

Enter next cycle date from line 14

11 / 1 / 100 (23)

Complete cycles from line 21:

(+) 2 / 1 / 11 (24)

Estimated final cycle:

(-) 1 / 1 / 112 (25)

Projection of Remaining Time to Serve:

Next cycle date from line 23: 11 / 1 / 100 (26) Estimated final cycle (from line 25) Date 1 / 1 / 112 (27)

Service Credit: (Calendar Days):

(+) 4078 (28)

Good Time Credit:

(+) 402 (29)

Earned Work Credit:

(+) 970.835 (30)

Earned Education Credit:

(+) 0 (31)

TOTAL PROJECTED CREDITS: (lines 28 + 29 + 30 + 31)

(-) 5450.835 (32)

Remaining to earn as of estimated final cycle (line 25):

1 / 1 / 112 (33)

(=) 25.222 (34)

Daily accrual rate:

Service 1 (35) + EWC Coefficient .238 (36) + EEC Coefficient 0 (37)
= 1.238 (38)

Divide time remaining to earn (line 34) by daily accrual (line 38) = 20.373 (39)

Enter estimated final cycle (line 33):

(+) 1 / 1 / 112 (40)

Add days from line 39:

120 / (41)

Calculate to month, day and year:

1 / 21 / 112 (42)

Line 43 is lesser of Line 42 or next cycle date from line 40)

PROJECTED RELEASE DATE:

(=) 1 / 21 / 112 (43)

A. Hendon

Caseworker/Inmate Records Office

22

Date

Modified 03/21/00

If working by 11-1-00 at 3FS credits, no pp. 17)



MARK SANFORD, Governor
JON OZMINT, Director

December 27, 2006

(5)

Exhibit 03 12/27/06

The Honorable Paige J. Gossett
Administrative Law Court
Edgar A. Brown Bldg.,
1205 Pendleton St., Ste. 224
Columbia, SC 29201

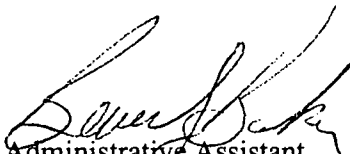
Re: William McKinnedy, #256024 v. SCDC
Docket No. 06-ALJ-04-00973-AP

Dear Judge Gossett:

Please find enclosed a copy of **Respondent's Record** that consists of *Inmate Grievance # KER 75-06* in the above-referenced matter.

In addition, I have enclosed an original and one copy of **Respondent's Brief & Motion To Dismiss** in the above-captioned case. Please file the original in your office and return a clocked-in copy to me for my file in the enclosed self-addressed envelope.

Sincerely,


Administrative Assistant
Office of General Counsel

Enclosures

cc: William McKinnedy, #256024

12

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

<http://www.state.sc.us/scdc>

E-mail: corrections.info@doc.state.sc.us

pp. (8) - 20

30

Appellant,

v.

Respondent.

RESPONDENT'S BRIEF AND MOTION
TO DISMISS
Honorable Paige Gossett

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of William McKinney ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC") since 3 February 1999, after being convicted of Possession of Crack Cocaine with Intent to Distribute 2nd. Appellant filed a Step One Grievance on 26 January 2006, complaining either or both that he was not receiving legal mail in a timely matter and that he was not transported to a court hearing. This grievance was investigated and answered. Appellant filed a Step Two grievance on 3 March 2006. This grievance, also, was investigated and answered. In his Notice of Appeal, Appellant complains that he is not receiving proper access to the courts.

३

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS
CASE UNDER *SLEZAK V. SCDC*, 361 S.C. 327; 605 S.E.2D 506 (2004)

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over

pp. 19)

33

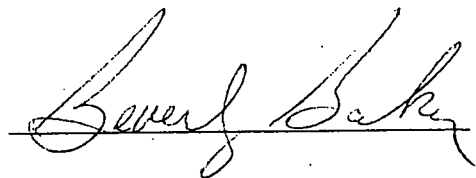
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States Mail, postage prepaid, and sent to his/her last known address as follows:

First Class Mail

William McKinnedy, #256024
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

Columbia, South Carolina
December 27, 2006



Administrative Assistant
Office of General Counsel
SC Department of Corrections

ARREST WARRANT

F- 510072

STATE OF SOUTH CAROLINA

GREENVILLE Municipality of

98-27220

THE STATE
against

WILLIAM CLAYTON MCKENNEDY

JOE LOUIS ST NO
GREENVILLE SC

Race: B Height: 5 SS: 8 Weight: 175

DOB: 03/03/1963

GREENVILLE POLICE DEPTM

Prosecuting Agency: C B BLACKBURN

Prosecution: CRACK COCAINE

Offense: DISTRIBUTION 44-53-

44-53-375

Code/Ordinance Sec.

This warrant is CERTIFIED FOR SERVICE in the
County/Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy WILLIAM CLAYTON MCKENNEDY
defendant

on 4-1-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
GREENVILLE MUNICIPAL COURT
426 NORTH MAIN STREET
GREENVILLE SC 29601 - 0000

STATE OF SOUTH CAROLINA

GREENVILLE Municipality of

AFFIDAVIT

C B BLACKBURN

Personally appeared before me the affiant WILLIAM CLAYTON MCKENNEDY who
being duly sworn deposes and says that 3/17/98
did within this county and state on violate the criminal laws of the
State of South Carolina (or ordinance of County/Municipality of)
in the following particulars: CRACK COCAINE - DISTRIBUTION

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:
AFFIANT STATES THAT ON 3-17-98, THE ACCUSED WILLIAM CLAYTON
MCKENNEDY, DID DISTRIBUTE A QUANTITY OF A BEIGE ROCK LIKE
SUBSTANCE TO AN UNDERCOVER POLICE OFFICER OF THE GREENVILLE
POLICE DEPT. USING GREENVILLE POLICE FUNDS. SAID SUBSTANCE
FIELD TESTED POSITIVE FOR CRACK COCAINE. INCIDENT OCCURRED AT
JOE LOUIS/ENDEL ST., GREENVILLE, S.C.Sworn to and subscribed before me
on 3/24/98Signature of Affiant
Signature of Issuing Judge (L.S.)Signature of Affiant
Affiant's Address: MC GEE ST
GREENVILLE SC 29601

Affiant's Telephone

STATE OF SOUTH CAROLINA

GREENVILLE Municipality of

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

3/17/98 from the above affidavit that there are reasonable grounds to believe that
on defendant

did violate the criminal laws of the State of South Carolina (or ordinance of

County/Municipality of) set forth below:

DESCRIPTION OF OFFENSE:

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge
Judge Code:Judge's Address: 426 N MAIN ST
GREENVILLE SC 29601

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Exhibit 1 - A

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

pp: 21 - 24



County of Greenville

"...At Your Service"

DEPARTMENT OF COMMUNITY SERVICES

Exhibit(s): B

GREENVILLE CRIME LABORATORY REPORT

DEPT: GREENVILLE CITY POLICE DEPARTMENT
OFFICER: BLACKBURN, C.

SUBJECT: MCKINNEDY, WILLIAM CLAYTON

CASE NUMBER: 2-98-027220
CONTROL NUMBER:
INCIDENT DATE: 3/17/98
RECEIVED FROM: PROPERTY & EVIDENCE
DATE: 3/18/98

PAGE: 1

THIS IS AN OFFICIAL REPORT OF THE GREENVILLE COUNTY DEPARTMENT OF COMMUNITY SERVICES CRIME LABORATORY AND IS TO BE USED IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION. THESE EXAMINATIONS WERE CONDUCTED UNDER YOUR ASSURANCE THAT NO PREVIOUS EXAMINATIONS OF EVIDENCE SUBMITTED IN THIS CASE, HAS BEEN OR WILL BE CONDUCTED BY ANY OTHER LABORATORY OR AGENCY.

PERRY R. EICHOR, DIRECTOR
DEPARTMENT OF COMMUNITY SERVICES

EXAMINATIONS CONDUCTED:

X CHEMICAL TEST

MICROSCOPIC

INFRARED SPECTROSCOPY

ULTRAVIOLET SPECTROSCOPY X GAS CHROMATOGRAPHY

X MASS SPECTROSCOPY

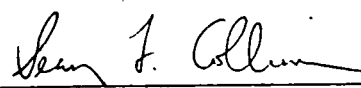
ITEM(S) SUBMITTED

A) ROCK SUBSTANCE

RESULTS OF EXAMINATION(S)

A) COCAINE (CRACK) FOUND, 0.15 GRAMS
C-II

I AM A CRIMINALIST EMPLOYED BY GREENVILLE COUNTY TO PERFORM CHEMICAL AND PHYSICAL EXAMINATION(S) ON EVIDENCE SUBMITTED BY LAW ENFORCEMENT AGENCIES IN CRIMINAL CASES, AND HAVE BEEN QUALIFIED IN COURTS OF RECORD IN THE STATE OF SOUTH CAROLINA TO TESTIFY ON SUCH EXAMINATION(S).


SEAN F. COLLINS

3/19/98

pp. 22)

AGENCY I.D.
SC0230200

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

9 8 0 0 0 2 7 2 2 0

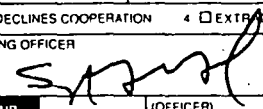
INO. ENT.

☒ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	DISTRIBUTION CRACK COCAINE/PWITD
☐ SUPPLEMENTAL REPORT	☐	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	D
				PAGE	2 OF 2 PAGES

I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #	MCKINNEY, WILLIAM CLAYTON		#1	#2	#3	JSOU	B	M	29	100368		
	☒ SUBJECT #	2											
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE		EVENING PHONE			
	☐ WANTED	#2 JOE LOUIS ST. APT#5		GREENVILLE	SC	29611	D						
	☐ WARRANT	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.							
	☐ ARREST	5'9	170	blk	brn	GLASSES, BLK/COAT, TAN SWEATPANTS, BLK/STOCKINGCAP, RED/WHT AIR JORDANS							
	☐ MISSING	VICTIM NO. _____		VISIBLE INJURY: ☐ YES ☐ NO		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPL. ASMT. ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
	☐ JAIL	SUBJECT NO. 2		USING ALCOHOL: ☐ NO ☐ YES ☒ UNK.		USING DRUGS: ☐ NO ☐ YES		TYPE:		☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE			
	☐	ARRESTEE ARMED ☐ YES ☐ NO		WEAPON TYPE:		SEMI-AUTO ☐ FULL-AUTO ☐		☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY					

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

Exhibit 1: C

PROPERTY	TYPE								TOTAL VALUE
	STOLEN								
	DAMAGED								
	BURNED								
	RECOVERED								
ADMIN.	SEIZED								
	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☒ ADMIN. CLOSED		☐ ARRESTED UNDER 18		☐ EX CLEAR UNDER 18
	☒ YES ☐ NO		☐ YES ☒ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH. 2 ☐ NO PROSECUTION 3 ☐ VICTIM/DECLINES COOPERATION 4 ☐ EXT. JUDITION DENIED 5 ☐ JUVENILE-NO ARREST								
	REPORTING OFFICER(S)	DATE	UNIT NO.	APPROVING OFFICER			DATE	UNIT NO.	
BLACKBURN CB	*17	031798	76				4-20-98	71	
			FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER			

pp. 23)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, ... Respondent,

v.

William C. McKennedy, ... Appellant.

Appeal From Greenville County
Joseph J. Watson, Circuit Court Judge

Unpublished Opinion No. 2000-UP-154
Submitted February 8, 2000 - Filed March 2, 2000

FILED CLERK OF COURT
PAUL B. THOMPSON
CLERK OF COURT
SC

2002 MAR - 1 AM 11:30

AFFIRMED

Assistant Appellate Defender Aileen P. Clare, of SC Office
of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh and Assistant Deputy
Attorney General Salley W. Elliott, all of Columbia; and
Solicitor Robert M. Ariail, of Greenville, for respondent.

PER CURIAM: Appellant William C. McKennedy pled guilty to the
distribution of crack cocaine and sentenced to seven years and six months confinement.
is Anders appeal follows. McKennedy has filed a pro se response.¹ We dismiss
pellant's appeal pursuant to Anders v. California, 386 U.S. 738 (1967); and State v.
lliams, 305 S.C. 116, 406 S.E.2d 357 (1991) and grant counsel's petition to be
missed as counsel.

APPEAL DISMISSED.

CURETON, ANDERSON and HUFF, JJ., concur.

Exhibit: 163

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case
out oral argument pursuant to Rule 215, SCACR.

pp 25)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

William C. McKennedy, III, #256024,)

Petitioner,)

vs.)

Mr. Faulkenberry; Attorney General
of the State of South Carolina,)

Respondents.)

C.A. No. 6:06-641-HMH-WMC

OPINION & ORDER

Exhibit (1) 2/12/07

This matter is before the court with the Report and Recommendation of United States Magistrate Judge William M. Catoe, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.¹ William C. McKennedy, III ("McKennedy") is a pro se state prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In his Report and Recommendation, Magistrate Judge Catoe recommends granting the Respondents' motion for summary judgment and denying McKennedy's motion for summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

McKennedy is currently incarcerated at Kershaw Correctional Institution of the South Carolina Department of Corrections ("SCDC"). In June 1998, McKennedy was indicted for

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

e.g., Appendix B (13 of 13) + (2 of 2)

pp. 26-30

distribution of crack cocaine. (PCR Appendix 185-86.) The case was called for trial on February 3, 1999. (Id. 2.) Greg Newell ("Newell") represented McKennedy at his pretrial proceedings. On February 3, 1999, after the trial court ruled on several pretrial motions, McKennedy decided to plead guilty. (Id. 14.) After pleading guilty, the trial court sentenced McKennedy to 18 years' imprisonment. (Id. 39.) McKennedy appealed his conviction and sentence.

Aileen P. Clare ("Clare") represented McKennedy on appeal and filed an Anders brief raising the issue of whether the "trial court abused its discretion in denying [McKennedy's] pre-trial motion for a continuance." (Anders Brief 3.) The South Carolina Court of Appeals affirmed McKennedy's conviction on March 2, 2000. Clare filed a request for rehearing, which was denied on May 11, 2000. Clare filed a petition for writ of certiorari in the South Carolina Supreme Court on June 27, 2000, asserting the following issues: (1) whether "direct appeal to the court of appeals under Anders v. California satisfies the procedural requirements of Matthews v. Evatt;" and (2) whether the "trial court abused its discretion in denying [McKennedy's] pre-trial motion for a continuance." (Petition. 2.) After briefing and oral argument, the South Carolina Supreme Court affirmed McKennedy's conviction. (PCR Appendix 165-73.)

McKennedy filed a pro-se application for post-conviction relief ("PCR") on October 10, 2002, which was dismissed on January 30, 2004. (Id. 41-42.) In his PCR application, McKennedy alleged ineffective assistance of counsel; involuntary guilty plea; coerced plea; "misdirection of attorney, solicitor, and judge;" prosecutorial misconduct; and conflict of interest by Newell. (Id.) Hugh M. Claytor ("Claytor") represented McKennedy on appeal

and filed a petition for writ of certiorari on August 17, 2004, which the South Carolina Supreme Court denied on October 6, 2005. Claytor argued that the circuit court erred in not allowing McKennedy to amend his pleadings at the PCR hearing and in not allowing McKennedy to question witnesses about Newell's definite suspension from practicing law. The South Carolina Supreme Court denied McKennedy's petition for rehearing on November 17, 2005. On December 8, 2005, McKennedy filed the instant petition pursuant to § 2254.²

In his petition, McKennedy raised four grounds: (1) ex post facto violations because he was convicted of a paroleable offense, but after he was convicted, the SCDC designated the offense a non-parole offense, and he lost some of his earned work credits ("EWC"); (2) the court lacked subject matter jurisdiction to convict him because the indictment was invalid; (3) the "identification procedure was in violation of the 5th and 14th Amendments of the U.S. Constitution;" and (4) ineffective assistance of trial and appellate counsel.

II. REPORT AND RECOMMENDATION

The Magistrate Judge recommended granting the Respondents' motion for summary judgment because (1) McKennedy's ex post facto argument is procedurally barred and fails on the merits as McKennedy was sentenced to a no-parole sentence, and "the only change by the SCDC was to correct an incorrect parole eligibility designation;" (2) McKennedy's subject matter jurisdiction claim is an issue of state law that is not cognizable in a federal habeas case; (3) the trial judge appropriately applied the law in evaluating the identification procedure; and

²Houston v. Lack, 487 U.S. 266 (1988).

1. Ex Post Facto Claim

McKennedy argues that some of his EWCs were removed and his sentence changed to a no-parole sentence without notice, a hearing, and judicial review, which constitutes an ex post facto and due process violation. This contention is without merit. S.C. Code Ann. § 24-13-100 defines a "no-parole offense" as a "class A, B, or C felony or an offense exempt from classification as enumerated in section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more." McKennedy was convicted of distribution of crack cocaine, second offense, which is a no-parole offense. State v. Mills, 602 S.E.2d 750, 751 n.1 (S.C. 2004); S.C. Code Ann. § 44-53-375; (PCR Appendix 13, 183).

McKennedy was notified by the SCDC Division of Classification and Inmate Records that he had received more EWCs than permitted for a no-parole offense under the 1995 Crime Bill, effective January 1, 1996, prior to his conviction. S.C. Code Ann. § 24-21-560 requires that McKennedy serve 85% of his sentence. Further, pursuant to S.C. Code Ann. § 24-13-230(B), McKennedy cannot earn more than 6 EWCs per month or 72 EWCs per year. These statutes were in place prior to McKennedy's conviction and sentence. Therefore, McKennedy was never entitled to earn EWCs at a different rate, and he was sentenced to a no-parole offense. Hence, this objection is without merit as there was no ex post facto or due process violation when the SCDC corrected McKennedy's EWCs to comply with the 1995 Crime Bill under which McKennedy was sentenced.

2. Identification Procedure

McKennedy objects to the Magistrate Judge's conclusion that the admission of identification evidence did not violate clearly-established federal law. It is clearly-established

the PCR hearing that he would not have knowingly misled the trial court concerning the number of times the case was called to trial. Based on the foregoing, this claim is without merit.

Moreover, McKennedy alleges that the state courts and the Magistrate Judge have failed to address other claims that he has raised in his pleadings. The court is unable to discern any other claims. However, after a review of the entire record, the court finds that the decisions of the state courts related to McKennedy's direct appeal and PCR action are neither in violation of clearly-established federal law nor unreasonable. Therefore, after a thorough review of the Magistrate Judge's Report and the record in this case, the court adopts Magistrate Judge Catoe's Report and Recommendation.

It is therefore

ORDERED that the Respondents' motion for summary judgment, docket number 14, is granted, and McKennedy's motion for summary judgment, docket number 23, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
February 12, 2007

NOTICE OF RIGHT TO APPEAL

The petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

RECEIVED

JUN 16 2008

KerCI
MAILROOM

OBS8

William C. McKinnedy, #256024
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Kershaw, SC 29067-8069



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\$00.420

06/13/2008

Mailed From 29201
US POSTAGE

2906788136 R003



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Exhibit (C)(4)(a)(b)(c)

pp. 31-34



HENRY McMASTER
ATTORNEY GENERAL

(12)

June 13, 2008

Exhibit (C)(4)(b)

The Honorable William K. Suter
Clerk, United States Supreme Court
1 First Street, N.E.
Washington, DC 20543

Re: McKinnedy v. McMaster, Attorney General of South Carolina;
No. 07-10664.

Dear Mr. Suter:

Enclosed please find a waiver informing the Court that Respondent does not intend to file a response unless one is requested. Respondent notes that the brief in opposition was due on May 30, 2008. Please be advised, however, that the notice of filing and waiver form was just received in our office June 9, 2008, forwarded to me on June 10, 2008, and reviewed by me on June 12, 2008. Also enclosed is a copy of Petitioner's letter dated June 5, 2008, confirming the date the notice and waiver form was forwarded to Respondent.

Though the time for filing has lapsed, as of June 12, 2008, the Docket reflected that the matter had not yet been set for conference or otherwise addressed. Therefore, as the matter has not yet been resolved, and in an effort to comply with the waiver procedure, I am now forwarding the waiver to you.

Sincerely,

Melody J. Brown
Assistant Attorney General

Enclosures

cc: William C. McKinnedy

WAIVER

Supreme Court of the United States

No. 07-10664

(13)

William C. McKinnedy

v. Henry McMaster, Attorney General of
South Carolina
(Respondent)

(Petitioner)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

- ☒ Please enter my appearance as Counsel of Record for all respondents.
- ☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

Exhibit(s) (C)(4)(C)

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature

Melody J. Brown

Date:

June 13, 2008

(Type or print) Name Melody J. Brown

☐ Mr.

☒ Ms.

☐ Mrs.

☐ Miss

Firm Office of the Attorney General, State of South Carolina

Address P.O. Box 11549

City & State Cola. SC

Zip 29211

Phone (803) 734-6305

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc: William C. McKinnedy, # 256024
Kershaw Corr. Inst.
4848 Goldmine Hwy
Kershaw SC Exhibit (C)
29067-8069

30

27

pp. 33

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at <http://www.supremecourtus.gov>. Have the Supreme Court docket number available.

Supreme Court of the United States
Office of the Clerk

Attorney General of South Carolina
Henry D. McMaster
P.O. Box 11549
Columbia, S.C. 29211-1549

Exhibit (C)(f)(d)

Mr. William C. McKinney, III
#256024
Kershaw Corr. Inst. Case #58
4848 Goldmine Hwy
Kershaw, S.C. 29067-8069

(19)

June 5, 2008

RE: Mr. William C. McKinney, III, #256024 vs. Henry D. McMaster
No. 07-10664

Dear Attorney:

I received a letter on or by May 4, 2008 that was dated April 30, 2008 (See Exhibit (A)) in which it also had Exhibits (B) & (C), that is self-explanatory. Which my point is that I have not received Exhibit (C) (The Waiver). Because I have not received a response to my Writ of Certiorari that was filed on or by April 30, 2008, which your (Respondents) time has expired to respond on or by May 30, 2008. Which, if Detitioner is responsible for respondents not responding it was not done for delay, but in good faith do to my incompetency or pro se status. So, if the court will allow respondents (your) any time enlargements is at the Court's discretion in which I believe I have done all I can do as a layman of law, which this has been done, with my warmest regards,

Cc: file

U.S. Supreme Court
U.S. Solicitor General
S.C. Attorney General

Sincerely,


Mr. William C. McKinney, III
#256024
cc: file

(See enclosed letter head for McKinney vs. Appellate Defense Office c/s South Carolina)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 6, 2008

Mr. William Clayton McKinnedy, III
Prisoner ID #256024
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067-8069

Exhibit (C)(5)

received 10/15/08
at Kershaw Cor. Inst. Mailroom

Re: William C. McKinnedy
v. Henry McMaster, Attorney General of South Carolina
No. 07-10664

Dear Mr. McKinnedy:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter
William K. Suter, Clerk

(17)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

November 17, 2008

Mr. William Clayton McKinnedy, III
Prisoner ID #256024
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067-8069

(C) (u)

Re: William C. McKinnedy
v. Henry McMaster, Attorney General of South Carolina
No. 07-10664

Dear Mr. McKinnedy:

The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

pp. 36

33

4

(u)

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

STEP 1 DEC 15 2008

INMATE NAME: Mr. Wm. C. Kennedy, III
 SCDC NUMBER: #256024
 INSTITUTION: Kershaw Corr. Inst.
 HOUSING UNIT: Oak East (A) #29 (T)
 WORK ASSIGNMENT: N/A

(No)

3083

Office Use Only
 Grievance No. KRCI-1523-08
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received 12/15/08
 IGC Initials PK

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 12/11/08
 I went before the classification board (Mr. Pittman, Lt. Clanton, & Mr. Drakeford), which I was recommended to be taken out of the Puke Jumpsuit (PJ), for me to advance from M1E to M1Z, which my max-out is for 12/2013, which makes me to do 85% of my 18 yrs, which I was not sentenced to by the Court (Judge: Joseph J. Watson) on 2/3/99 & given credit from 4/1/98, which SCDC has changed my max-out without earned work credits (EWCs) from 2/2009 to 12/2013, which I have had several disciplinary convictions since 99 to 2008, that has taken all of my good time credits, which would till make my max-out come to 2/2009 without good time as sentenced on 2/3/99 51% by the Court.

ACTION REQUESTED: That I be re-instated all of my good time credits (EWCs) that was taken by SCDC on 4/2000 that I have had to do 85% of my 18 yrs, sentence, that I only have to do 51% as sentenced for on 2/3/99, with me being compensated for every day that I do over my 51% max-out date 2/2007-09

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: I told classification worker Mr. Pittman for the record & on the record on 12/11/08 before the board (Lt. Clanton, Mr. Drakeford, & Mr. Pittman), that I was to max out with good time on or by 2/2007 & without good time on or by 2/2009 & that SCDC changed my sentence into an 85% no parole offense on or by 6/2000 & that the sentencing Judge (J. J. Watson) never explained to me that I was not eligible for parole now. I had to do 85% 12/13/08

ACTION TAKEN BY IGC: Of the 18 yrs sentenced to on 2/3/99, 51%

Reviewed all pertinent information and documentation. Due to nature of grievance, see Warden's Response for decision.

34

13

☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

P. Nough 12/19/08
 IGC Signature _____ Date _____
W/A 12/31/08
 Grievant Signature _____ Date _____

due 1/7/09

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: Mr. Wm. C. Kennedy, III
SCDC NUMBER: #256024
INSTITUTION: Kershaw Corr. Inst.
HOUSING UNIT: Oak East (A) #29 (F)
WORK ASSIGNMENT: N/A

JAN 06 2009

RECEIVED

JAN 08 2009

INMATE GRIEVANCE

Office Use Only
Grievance No. KRCI-1523-02
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 1/6/09
IGC Initials PM

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Because the sentencing sheet has been "Amended" without the knowledge of the court or by the court on 2/3/99, which the court only "Amended" the indictment for the misspelling of my name (Clayton), and not to Amend the CDR locks from 0112 to 0113 that makes me do 85% of 18 yrs. (See Appendix pp. 14, 15, 39, with 40 Certificate of Reporter of McKennedy vs. State, 2/3/99) which I was not sentenced to a no parole offense as shown approved by the court on 2/3/99 or McKennedy vs. State pp. 14, 15, 39. Further more, I was sent an audit by SCDC Classification telling me that they (SCDC) would adjust my EWCs to meet the 85% no parole offense on 6/23/00 that is totally contrary to my RTS dated 2/15/99 to Classification that reflects my max-out without EWCs is projected at 2/12/2009, parole eligibility 9/29/2002 with EWCs max-out came to 2/2007 if parole eligibility was due to 9/2000 that was taken away 90 days before I was scheduled to go before the parole board as per by the court on 2/3/99 upon being indicted Mr. Wm. C. Kennedy, III 6/03/99 for a paroleable offense under CDR code 0112 (See Exhibits if needed, etc.)

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your grievance. Documentation provided revealed that you appeared before the Institutional Classification Committee (ICC) on December 11, 2008 for a status review. The ICC recommended your custody level remain at Minimum In Custody Level 2 Security Status in accordance with Agency Policy OP-21.04, "Inmate Classification System". It is noted your max-out date changed to December 8, 2013 due to your Earned Work Credits (EWCs) status being terminated when you were placed in lock-up on November 20, 2008 pending a disciplinary charge. Your EWCs were reinstated on January 6, 2009 and your max-out date returned to July 15, 2013.

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.

36

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.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

pp. 38)

State of South Carolina
County of Greenville

The State of S.C.

v

William C. McKennedy
#2 JOE LOUIS AP 25
Greenville 29611

Race B Male ☒ Female ☐
DL
SS
DOB 10-3-68
Atty: G. Newell
Ap Ret.

Change of Address

☒ General Sessions Court ☐ Magistrates Court

Indictment No. 98 CS-23-3643
Warrant # 518072
Warrant Offense dist. crack
Date of Offense 2-17-98

Offense convicted/pled to: distrib. crack

Degree # of Offense 2nd

Offense Code ORS 113

Violent NON Violent
DUS/DUI related? Yes No

DL SUSPENDS

Did Clerk Receive Drivers License? Yes ☒ No ☐
If No explain

William C. McKennedy
Defendant

Now comes the above named defendant who in open court pleads guilty:

☐ to the within indictment and consents to sentence.

☐ waives a finding of a True Bill by the Grand Jury and consents to sentence.

date:

Fletcher C. Mann, Jr.
Fletcher C. Mann, Jr. Clerk of Court

William C. McKennedy
Defendant

SENTENCE

The above named defendant is committed to the State Dept. Of Corrections/County for a term of 18
 day/months/years and/or to pay a fine of \$; provided upon the service of
 days/months/years and/ or payment of \$, plus pay/waive costs and assessments as applicable,
the balance: suspended with probation for months/years.

Conditions: sentence begin 4/1/98

Restitution (Yes/No) Total \$

to Clerk for:

Public Defender Funds (Yes/No) YES NO Total \$

Date:

Court Reporter: Ann Campbell

Presiding Judge, Thirteenth Judicial Circuit

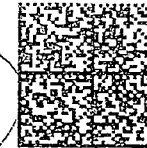
Solicitor: SPM

Print Judge Name: Watson

SC0015 (6/98) Insufficient

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201

JAN 22 2009



UNITED STATES POSTAGE
PITNEY BOWES
02 1M \$ 00.42⁰
0004222511 JAN 21 2009
MAILED FROM ZIP CODE 29201

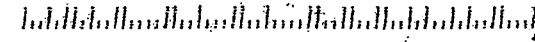
William McKinney, III #256024
Kershaw C.I.
4848 Gold Mine Highway
Kershaw, SC 29067

DA 29

⊙ (Exhibit (A))

LEGAL MAIL

2906738136 F003



291-401-411

myCaseLoad

Welcome: Janet Williams

[About](#)[Logout](#)[Intake](#) [Search](#) [Generate](#) [Tools](#) [Accounts Receivable](#)Case Search[Return to List](#)

Case Information

Number:

09C0009

Status:

Assigned

Title:

William McKInnedy III, #256024 v. South Carolina Department of CorrectionsKRCI 1195-08

Assignment

Assignment Type:

ALJ

Resource Name:

Anderson, Ralph King

Subject:

Assigned Administrative Law Judge to case.

Status

Status:

Active

Effective Date:

01-21-2009

Inactive Reason:

Inactive Date:

Inactive Subject:

Available
None Available

Timestamp	Function	User
01-21-2009 12:06 PM	Inserted	Williams, Janet

(Exhibit(s) (A) 1, 2, 3, 44)

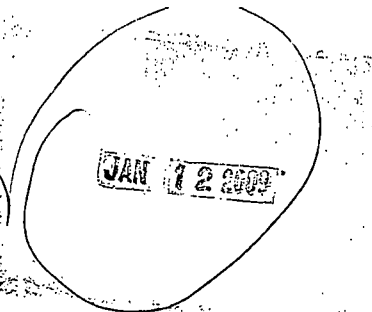
②

pp. 41

47

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201

(Exhibit (C)) (1)
2/93



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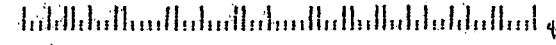
LEGAL MAIL

William C. McKinney, III, #256024
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067

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MP. 42-44)

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William C. McKinnedy, III, #256024

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 08-ALJ-04-01108-AP

ORDER OF DISMISSAL

Exhibit (B)(1) (2) 3

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC denying his Step 2 Grievance in which his conviction for Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14 Inmate Disciplinary System. He (a) was not sanctioned with the loss of any good time credits; (b) made no claim for the loss of any other state created liberty or property interest; and, (c) made no contention that his sentence, sentence related credits or custody status has been erroneously calculated. There is clearly no state created liberty interest implicated here.

Under Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E. 2d 506, (2004), the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but "summary dismissal may be appropriate where the inmate's grievance does not implicate a state created liberty or property interest." Such is the case here.

④

1082

pp. 43)

Therefore, for the foregoing reasons this appeal is hereby **DISMISSED**,
WITH PREJUDICE.

Columbia, S.C.
January 9, 2009

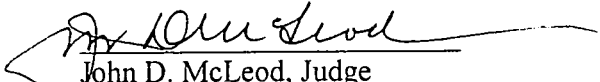

John D. McLeod, Judge
S.C. Administrative Law Court

Exhibit (B), (3)

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 9 day of January, 2009
By: Antony R. Goldman
Judicial Law Clerk

FILED

JAN 09 2009

SC ADMIN. LAW COURT

246

⑤

242

pp. 44)

Copies

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
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COLUMBIA, SOUTH CAROLINA 29201

Exhibit (c) 3 F-4 F(1)

RECEIVED

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KerCI
MAILROOM

William McKinnedy, #256024
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

2906738136 F003



0050

111-457-462

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William McKinney, #256024,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 09-ALJ-04-00009-AP

ORDER OF DISMISSAL

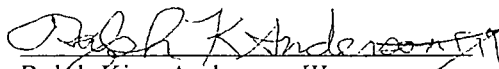
Exhibit 3 F (1)

This matter comes before the Administrative Law Court (ALC or Court) pursuant to the appeal of William McKinney, an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant was convicted of violating SCDC Code § 854, Exhibitionism and Public Masturbation. Although he did not lose any accrued good time credits, McKinney was not permitted to earn good time credits for a period of time as a result of his conviction.

The Administrative Law Court has appellate jurisdiction over any properly perfected appeal. Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004). However, the South Carolina Administrative Procedures Act (APA) was amended effective June 16, 2008. Specifically, S.C. Code Ann. § 1-23-600(D) now provides: "An 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). . . ." S.C. Code Ann. § 1-23-600(D) (as amended by 2008 S.C. Act No. 334). This amendment to the APA clearly provides that the ALC shall not hear appeals involving the loss of the opportunity to earn good time credits. Because the Appellant has not otherwise alleged a deprivation of a state-created liberty or property interest in this matter, the court finds Slezak, 361 S.C. 327, 605 S.E.2d 506, to be controlling. Accordingly,

IT IS HEREBY ORDERED that this appeal is DISMISSED

AND IT IS SO ORDERED.


Ralph King Anderson, III
Administrative Law Judge

March 25, 2009
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 25th day of March, 2009
By: Amanda M. Scott

FILED

MAR 25 2009

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201

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KerCI
MAILROOM

LEGAL MAIL

William McKinney #256024
Kershaw Correctional Inst
4848 Goldmine Hwy
Kershaw, SC 29067



Exhibit(s)

OB 58

11-11-08

2906748065



Dear Appellant:

Reassigned

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedures (enclosed) for the time frames on filing briefs and to other matters.

Exhibit (ii)

11-48

ADMINISTRATIVE LAW JUDGE DIVISION																
DOCKET NUMBER					INMATE NUMBER	INMATE NAME	GRIEVANCE NUMBER	RESPONDENT	FILED	DATE ASSIGNED	JUDGE	DECISION	CLOSED	APPEALED	NOTES	
08	ALJ	04	00186	AP	256024	William McKinney	KER 1482-07	DOC	3/3/2008	3/19/2008	MCLEOD					Reassigned to Anderson on

You must file all original documents and correspondence regarding this case directly with the above-named Judge and must serve a copy on the Dept. of General Counsel, SC Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

Dear Appellant:

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and to other matters.

case number	Inmate Number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
09C0631	256024	WILLIAM	MCKINNEDY	KRCI 1523-08	DOC	7/16/2009	7/22/2009	MCLEOD

Exhibit (2)

FILED

JUL 22 2009

SC ADMIN. LAW COURT

You must file all original documents and correspondence regarding this case directly with the above named Judge and must serve a copy on the Dept. of General Counsel, SC Dept of Corrections, PO Box 21787, Columbia, SC 29221.

State of South Carolina
Administrative Law Court Division

Mr. William C. McKennedy, III, #256024 (Inmate) Appellant,
Vs.
South Carolina Department of Corrections, Respondents.
("SCDC")

) Docket No.: 2008-ALJ-04-00631-AP
;) Grievance No. # KRCI-1523-08
;) The Appellants (Reply) Initial Brief & Memorandum of Law In Support of Is
;) A Verified Complaint of the Appellant
;) Mr. William C. McKennedy, III, Hon.
;) Ralph K. Anderson, III for Hon. John D. Michael

Cases new 3

Statement of Facts

The Appellant, Mr. McKennedy, III, #256024 filed a Step 1 Grievance on or by 12/13/08, complaining that "SCDC" Inmate Classification has miscalculated my sentence imposed by the Court (Hon. Joseph J. Watson), which Step 1 was denied by Warden C. Reynolds on or by 12/30/08 & I filed a Step 2 Grievance on or by 01/06/09 & it was denied by D. Patterson on or by 06/25/09. Which I appealed to the Administrative Law Court ("ALC") by way of Notice of Appeal & this Brief follows.

A loss of good time &/or earned work credits (EWCs) is an issue, when it makes my sentence to be miscalculated when I had earned work credits (EWCs) or good time taken away (adjusted) from 04/01/98 to 06/23/00, which also took away my established parole eligibility & early release dates from 2/2007 with "EWCs" & 2/2009 without EWCs or good time & I was told I had to serve 85% of my 18 years sentence, that had been calculated as a paroleable offense under "0112" CDR-Codes, as indicted by the Grand Jury of Greenville County on or by June 9th, 1998, which CDR-Codes of "0113" was not "Amended" on or by trial day/date of February 3rd, 1999.

Argument

The "ALC" should Grant the Appellant Mr. McKennedy et al Relief under Wolff vs McDonnell, 94 S.Ct. 2963, 2973 et seq for the State (S.C. or SCDC) - created liberty or property interests such as S.C. Code Ann. § 24-13-210 (A) & what it provides for certain inmates including the Appellant Mr. McKennedy et al, earned twenty (20) days of good time or earned work credits (EWCS) for each month they are free from SCDC's disciplinary violations, which my good time (EWCS) was not forfeited for misbehavior, but because SCDC's "Inmate Classification" discovered that this is my second drug offense (allegedly) & I have to serve 85% & they (Respondents/SCDC) made it a "No-parole offense" & not the Court on 02/03/99 (See Ex. 1: MIC for 153 & Tr. Trans, pp. 38:10-18 & Ex. 1: Sentencing sheet) which was not a "Fair Notice", Right to Marshall, Right to Face my Accuser & Right to Defend, nor the Right to Judicial Review, which violates & deprives me of my "Substantive & Procedural Due Process &/or Equal Protection Rights" of the 14th Amendment of the U.S. Const. & Art. I § 3 of S.C. Const. which deals with conditions of confinement as in Sandin vs Conner, 575 US 472, 484 (1995) (explaining state-created liberty interests are protected by the Due Process Clause, but "these interests will be generally limited to freedom from restraint which... imposes a typical & significant hardship on the inmate in relation to the ordinary incidents of prison life") which SCDC did not have "Subject Matter Jurisdiction" to had changed my sentence by the Court (Hon. J. J. Watson), that was a paroleable offense & max-out without EWCS or good time was 2/2009 with EWCS 2/2007 (See Ex. 10: Att. dated 02/15/99 signed off by Ch. Brown/Classification on 02/22/99) which I was sentenced to on or by 02/03/99, which now my max-out without EWCS is 12/2013 & with EWCS is 7/2013 is a total miscalculation of my sentence originally in which I was sentenced to on 02/03/99 (See McKennedy vs. State, Tr. Trans, pp. 1, 13, 14, 21:1-15, & 38:10-18)

Argument I - Citation of Authority

The ALU's jurisdiction to hear this instant matter appealed by the Appellant Mr. McKennedy from SCDC's final agency decision is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALU's appellate jurisdiction over inmates appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In Sullivan, the Supreme Court held that the "ALU's" jurisdiction was limited to cases in which inmates contends prison officials have erroneously calculated their sentences, sentence-related credits, or custody status, cases in which SCDC has taken inmates state-created liberty interest as punishment in major disciplinary hearings, or cases in which inmates' confinement duplicates a state-created liberty interest. Id. at 443, 586 S.E.2d at 127.

Which the instant case of the Appellant Mr. McKennedy has liberty interest have been taken without committing any disciplinary infractions. In addition, SCDC reading of the statute comports with the legislative intent underlying South Carolina's statutory law concerning good-time credits (EWCs), S.C. Code Ann. § 24-13-210(A) & S.C. Code Ann. § 24-13-230. Chief Justice J. Toal, in her dissenting opinion in Furlock stated that the majority's decision ignore the legislature's intent to reward inmates with good-time credits (EWCs) only after they exhibit good behavior (See, Furlock, 374 S.C. at 343, 649 S.E.2d at 40 (J. Toal, C.J., dissenting)) which the Appellant's Mr. McKennedy good-time was adjusted, forfeited, taken away without committing any rules violations is evil of those in authority that abuse their discretion as a devil, that do not care attitude about inmates constitutional rights that is clearly established without regards to legislature's intent as to the purpose of statutorily created good-time credits (EWCs) (See, Veins v. Daniels, 871 F.2d 1328, 1332-1335 (7th Cir. 1989)). Rewarding inmates for good behavior is a fundamental tool used by SCDC to control the inmate(s).

Argument I, continues - 4 of 13

population etc ... in regards to the restoration of good time in Wolff v. Velas. Hence, as noted in Wolff the State (S.C. or SCAC) is not required to allow the Appellant Mr. McKinnedy III good time credits (ENCs), but if, it has already established such a system it may not arbitrarily deprive the Appellant Mr. McKinnedy III (See, Ex. 153 or MIC) of these credits on the grounds, that I have not engaged in a serious mis conduct or misbehavior, unless its procedures for doing so is constitutionally adequate. (See Wolff, 94 S.Ct. 2974). Wolff, supra, 94 S.Ct. 2979, I have concluded that to hold ... that any substantial deprivations imposed by prison authorities triggers the procedural protections of Due Process Clause would subject to judicial review wide spectrum of discretionary action that traditionally have been the business of prison administrators rather than the Courts (See Meachum v. Fano, supra, 96 S.Ct. 2538). The deprivations imposed in the daily course of operations of an institution are likely to be minor when it comes or compared to the release from custody at issue for the Appellant Mr. McKinnedy III also for parole eligibility decisions & good time credits (ENCs). It has been held by the Supreme Court (US), that if, a State (S.C. or SCAC) does not provide a meaningful post-deprivation remedy for the loss occasioned by intentionally official conduct or misconduct, the State (S.C. or SCAC) will have deprived the Appellant Mr. McKinnedy III of liberty, life, & property in violation of the 14th Amend. of the U.S. Constitution (See, Front Royal & Warren County Indus. Park Corp vs. Town of Front Royal, 135 F3d 275, 287-288 (4th Cir. 1988) (government acting offends substantive due process only when resulting in deprivation of life, liberty, or property is so unjust that no amount of fair procedure can rectify it). Furthermore, in Chief Justice: J. Rehnquist's dissent in Furukawa, she referred to the Court's long-standing hands-off approach to judicial supervision of internal prison disciplinary matters which do amount to a violation of constitutional dimensions. Id. at 341, 649 S.Ct. at 39 (J. Rehnquist, C.J., dissenting). Which this instant case of the Appellant Mr. McKinnedy III is of constitutional dimensions

Argument I, continues — 5 of 13

When the Due Process Clause is fundamental & substantive & or procedurally was not afforded to the Appellant on or by 12/18/08 (See, Grievance No.; KRCI-1523-08, Step 1 & 2, with references incorporated; & Exhibits 1 & 2); 09CO631-AP, docket numbers for "ALC") took place on or by 06/23/00 (See, Exhibits 1: ALC or 153) which I lost good time when it was taken or adjusted to meet an 85% No-parole offense, when the Appellant had not committed any misbehavior, nor rules violations (See, Vitek vs Jones, 100 S.Ct. 1254, 1262, & 1263), which also took my parole eligibility would make my sentence at the Court to be "Involuntarily / Coerced guilty plea", when Respondents ("SCDC") admits that the Court did not make this discovery & that they (SCDC) did who is not empowered to change what has been ordered by the Court. The Respondents ("SCDC") enhanced or increased my sentence for punishment & also they deprived me of my constitutional dimensions (See, Hudoff (Citing Flemming vs Nestor 8 S.Ct. 1367 (1966); Warden vs Markerc, 417 US 653, 94 S.Ct. 2532, 2535-38 (1974) (Parole eligibility provisions are part of the sentence); Lindsey vs Washington, 301 US 387, 57 S.Ct. 797 (1937) (increasing punishment violates the constitution); State vs Matthews, 296 SC 378, 373 SE2d 587 (1988) (to sentence a defendant / appellant of the instant case under statute enacted after commission of crime, providing increase parole eligibility, time would result in an "Ex Post Facto" violation) (See, McKenney vs State, Tr. Trans. pp. 14:1-9; 38:10-18 & sentencing sheet or Ex. 1: M) which there is no mentioning of a special condition of parole, nor two (2) year supervision after I am released (See, Ex. 1: CEI); also see, Ex. 1: M, the "Amended" sentencing sheet & not the Respondent's sentencing sheet attached to Grievance No. 1: KRCI-1523-08, Step 1 & 2 is "Fraudulent & or Insufficient"). The Court (Hon. J. J. Watson) used his discretion & gave me a paroleable offense (See, McKenney vs State, Tr. Trans. pp. 14:1-9; & Ex. 1: ATT) or if, he did not explain the sentencing condition for a special parole & or is part of my conditional release, that the plea of guilt is not knowingly or voluntarily made without a "Fair Notice" of the consequences of the alleged charges, violates "Due Process & Equal Protection", if any sentence is imposed. It

Argument I, continues - 60813

"**VOID**" (See, SCRC or Etc... that concurs with Federal Rules of Criminal Procedure), Rule 11, Advice to Defendant; Tummon, 99 S.Ct. 2085 & its cited cases, also see, Boykin vs. Ala., 395 US 238, 243 (1969)). The question of whether an inmate Mr. McKennedy may seek judicial review of SCDC's decision of taking away an already established ~~parole~~ parole eligibility unlawfully (good time (EWCs) State-created liberty interests the Courts' has consistently held that some kind of a hearing is required at some time before a person is finally deprived of his liberty or property interests (See, Joint Anti-Fascist Refugee Committee v. AIC Boath, 71 S.Ct. 624, 646 (1951)). The requirement for some kind of hearing applies to taking of private property (See, Grannis v. Orlean, 34 S.Ct. 729, the revocation of licenses, In re Ruffalo, 88 S.Ct. 1222 (1968)). The operation of State (S.C. or SCDC) dispute settlement mechanism, when one person seeks to take property from another, or to government created jobs held/absent "Cause" for termination (See, Board of Regents v. Roth, 92 S.Ct. 2701; Mattews v. Eldridge, 424 US 319, 334-35; Arnett v. Kennedy, 94 S.Ct. 1633, 1649, id. at 206, 94 S.Ct. at 1670; CF, Stanley v. Illinois, 92 S.Ct. 1208, 1213-14; & Bell v. Burson, 91 S.Ct. 1586) the touchstone of due process is protection of the individual against arbitrary actions of government (See, Dent v. West Virginia, 9 S.Ct. 231, 233); also see, Ex.: 153 or MLC, & its references incorporated) which the sentencing sheet & Indictment was "Amended" to "0113" from "0112" a paroleable offense after I had been sentenced (See, Ex.: M or sentencing sheet; Exhibits) 185/186 "Amended Indictments" marked through "0112" & "0113" is written in & is not dated, nor is it signed by whomsoever done it, like the signature for the middle name is done in the original indictment) when the only "Amendment" was for the mis-spelling of my middle name Clayton (See, McKennedy v. State, Tr. Trans., pp. 1331-9 & the original indictment 155 & 156 or Ex.: MIA & MIB) that still have the original CDR-Codes of "0112" intact after the only "Amendment" at trial on 02/03/99 intact. So, the Court would know, that it's a paroleable offense (See, McKennedy v. State, Tr. Trans., pp. 1411-9; 38:10-18; ATT) (explaining it's a paroleable offense)) which the Appellant is entitled

Argument I, continues - 7 of 13

to relief as a matter of law. Because I have not been afforded my fundamental rights of Due Process Clause by SCDC's Inmate Classification when I was deprived of my parole eligibility & good time & earned work credits (EWCs) (See, Exhibit 1) 153; Ex. A & B Good time Calculation dated 10/17/00 & 11/01/00) which the Due Process Clause consists of "Fair Notice, A Hearing, Right to Defend, Right to Face Accusers, & Judicial Review." It also provides an orderly & consistent framework resolving this instant matter, the requirements of Substantive, Substantial & or procedural due process applies only to the deprivations of interest encompassed by the 14th Amendment, protections of liberty or property (See, Board of Regents of State Colleges vs Roth, 408 US 564, 569, 92 S.Ct. 2701, 2705 (1972)) The statutory right to sentence related credits (See, S.C. Code Ann. § 24-13-210) is a protected liberty or property interest under the S.C. Const. Art 1 § 3 & the US Const. 14th Amendment, entitling an inmate such as the Appellant Mr. McKennedy, Mr. to minimal "Due Process" to ensure the State-created rights was not & will not be "arbitrary abrogated," as the Appellant have in fact been deprived of these said rights (See, Wolff vs McDonnell, 418 U.S. 539, 94 S.Ct. 2863 (1974)). In that case, the Supreme Court of the U.S. established minimum constitutional requirements for procedural "Due Process" (See John W. Palmer, Constitutional Rights of Prisoner § 8.3 (1991) (discussing Baxter vs Palmigiano, 425 US 308, 96 S.Ct. 1551 (1976) (a hearing is required by law when an inmate faces the potential loss of sentence related credits) An inmate is entitled to judicial review of the final decision of the agency SCDC's classification (See, Ex. 1: 153 or MIC) which is dated June 23rd, 2000 shows & proves that (Respondents - SCDC) stopped my Earned Work Credits (EWCs) or Good time, & stating I received more EWCs than the statute allows & then states that I am required to serve 85% of my sentence & EWCs or good time credits. For me the Appellant is only entitled to 72 credits per year & 3 per month.

Argument I, continues - 8 of 13

(See, Exhibit: A) dated 10/17/00 & (B) dated 11/01/00 Good time Calculations & etc. (..). The last sentence of Exhibit: MIC or 153 states verbatim: (This is to inform you that your EWCs will be adjusted to comply with the 1995 Crime Bill) that is a year & about four (4) months after I had been sentenced & two years & about two (2) months after I was given good time Credits & for EWCs from 04/01/98 to 02/03/99 & my sentence of 18 years had "Crystallized" by then (See, McKennedy vs. State, Tr. Trans., pp. 38:10-18) Alone with it being 90 days before my first scheduled parole hearing date (See, Ex.: ATT, parole eligibility without EWCs, but with EWCs it would have been for 9/2000) So, the EWCs or Goodtime Credits for 51% I was earning seven month & about twenty days a year good time up until June 23rd 2000 (See, Ex.: 153 or MIC & Ex.: (A) & (B)) & my max-out changed from 2/2007 with EWCs to 12/2013 without EWCs (See, Cerecence No.: KRCI-1523-08, Step 1 & 2, with references incorporated)

- * Which the Appellant Mr. McKennedy III (admits that I have been sentenced to an "Excessive Sentence" of 18 years for *Selling, *Possession, *Distribution & for *Manufacturing Crack Cocaine (Second offense allegedly) (See, Ex.: 12/27/00 dated Statement of Case (Facts), p 1.) Under S.C. Code Ann § "0112" § 44-53-375 (No Subsections, but should have been (A)(2) for the alleged second offense) (*less than a gram - 15 & a milligrams for \$50 dollars See, Exhibit: A, B, C & D; dated 03/17/00) § 44-53-110 et seq., that carries only 10 years or a \$10,000 dollar fine or both (1998)) I was sentenced to 18 years & I was told I was facing up to 25 years & a \$50,000 dollar fine or both (See, Letter from 13th Circuit Solicitor dated July 21st 1998) is "Mis-direction" of the Solicitor, Judge, & Attorney & is "Extrinsic Fraud" upon the Court & grounds for reversal to be granted, which the Appellant Mr. McKennedy III have been sentenced to more than the statute of S.C. Code Ann § "0112" § 44-53-375(A)(2) § 44-53-110 "et seq" allows when the Grand Jury of Greenville County indicted me for a paroleable offense & the Court (Hon. J. J. Watson) sentenced me to a paroleable offense (See, Ex.: ATT, dated 02/15/99; McKennedy vs State, Tr. Trans., pp. 14:1-9, & 38:10-18, with sentencing sheet or Exhibit: A & its references incorporated) which the 1995 Crime Bill

Argument I, continues - 9 of 13

would not apply to the Appellant Mr. McKinnedy III due to the fact that the Indictments (See Ex: 155 & 156 or MIA & MIB, original indictments) carries less than 20 years & is a non-violent offense is why the CDK Codes was "0112" & True Billed on or by ~~the~~ 06/02/98. So, the indictment was sufficient, but the sentence of 18 years was "Excessive" & the enhanced (ment) to an 85% No parole sentence is insufficient, but it also offends the State/Federal Constitution Rights of Due Process & Equal Protections under S.C. Const. Art. 1 § 3 / for U.S. Const. 14th Amend. which is a "Subject Matter Jurisdiction" issue raised by the Appellant Mr. McKinnedy III prior to Gentry vs State, 610 SE2d 494; also see, S.C. Code Ann. § 17-19-10; S.C. Const. Art. 1 § 11 (Citation omitted & emphasis added); & Small vs State, 336 SC 301, 519 SE2d 793 (1998), by the Appellant in McKinnedy vs State (PCR) No. 2002-CP-23-6964, pp. 56-117, never ruled on the above mentioned matters merits & I appealed to S.C. Supreme Court it was denied without argument, so, I appealed to the Federal Court U.S. District on Writ of Habeas Corpus, denied appealed to the Fourth Circuit it was denied & to the U.S. Supreme Court & on Re-hearing denied (See Exhibits 3 (C)(5) & (C)(6); also see McKinnedy vs Faulkenberry, 6:06-cv-0641-HMH-AME, pp. 1-3, 7, & 13 of 13; (C)(5) & (C)(6)), with (C)(5) & (C)(6). So the Appellant is making it be known for the record & on the record that the "Statute of Limitations" is not an issue. Because the above mentioned contentions have been the same from beginning up until the filing of Step 1 Grievance No.: KRCI-1523-08, Step 1 & 2 dated 12/13/08 & 01/03/09 is timely.

Therefore, the Court (J. J. Watson) did not have (lacked) "Subject Matter Jurisdiction" & or deprived the Appellant Mr. McKinnedy III of Due Process & Equal Protection "when Respondent (SCDC's Inmate Classification Records)" changed or increased & enhanced my punishment to a greater punishment than that I was sentenced to on 02/03/99. So, I the Appellant could not have known what I was called to answer to on trial day/date of 02/03/99 or to be punished for, nor did the Court (Hon. J. J. Watson) know what sentence to pronounce & the Appellant have been prejudiced thereby & I have been deprived of Constitutional Rights that is guaranteed

Argument I, continues - 10 of 13

by the Bill of Rights to me by the 14th Amend of the U.S. Const. for Due Process & Equal Protections by the State (S.C. or SCDC) Art 1 & 3 Const. of South Carolina as mentioned above. I was not given a fair & impartial (hearing) trial (See, Ex. 153 or MIC & its references incorporated), the right to call witnesses, to Marshall, nor to defend myself from a
* Second conviction that enhanced or increased my original sentence of 18 years (See McKennedy vs State, Tr. Trans. pp. 1, 38 & 10-18; Ex. 1: M1A & M1B) I was placed in "Double Jeopardy" when I had already been sentenced by the Court on 02/03/99 to an "Excessive 18 years" & to do 51% & was paroleable offense (See McKennedy vs State, Tr. Trans. pp. 14 & 1-9; A-II; RTS dated 2/15/99 to Kirkland Com Just. Classification & response on 2/22/99 by C.L. Brown, also see, Ex. 153 or MIC & its references incorporated) or by 06/23/00 SCDC's "Inmate Classification Records" placed me in "Double Jeopardy" when my COR-Codes "0112" is paroleable & was changed to "0113" w - parole offense & to serve 85% of the 18 years sentence imposed by the Court (Hon. J. T. Watson) on or by 02/03/99 was enhanced by Respondents (USDC). The prohibition against re-prosecution after acquittal or conviction protect individuals from the continued embarrassment, anxiety, & expense of representation, while decreasing the risk of an erroneous conviction or an impermissibly enhanced sentence (See, Ohio vs. Johnson, 407 US 493, 498-499 (1981) or "Double Jeopardy" The 14th Amend's "Due Process Clause" extends to the "Double Jeopardy Clause" protections to State prosecutions (See, Benton vs. Md, 395 US 784, 794 (1969); e.g., Crist vs Bretz, 437 US 28, 37-38 (1978) / also see, Ex parte Lange, 85 US, (18 Wall) 163, 168-69 (1873) (double jeopardy protections
* applies to every indictment or information charging party with crime or misdeemeanor) or increase without a hearing for resentencing after trial date 02/03/99 (See, McKennedy vs State Warrant / Indictment No: 98-GS-23-3643) / pp. 1, 38 & 10-18; A-II / also see, Ex. 1: M1C or 153; (A) & (B) & (C) & Ex. 185 & 186 Amended Indictments) (See, Garrett vs US, 471 US 773, 783 (1985) (double jeopardy prevents courts from imposing greater sentences than what legislature's intended) which the only "Amendment" at trial on 02/03/99 was for my middle name & not to enhance or increase my sentence to a No -

Argument I, continues - 11 of 13

Parole 85% sentence, which an * Insufficient Indictment can be raised for the first time on an appeal as in US v. Loayza, 107 F3d 257, 260 (4th Cir. 1997); US v. Santos-Rivera, 183 F3d 367, 369 (5th Cir. 1999); see, Rule 208(b), (1)(B) / SCAJR Ordinarily no point will be considered which is not set forth in the Statement of the Issues on Appeal & that placed me in * "Double Jeopardy" after already being sentenced by the Court. (See, US v. Wicks, 187 F3d 426, 427 (4th Cir. 1999) (to meet constitutional guarantees, an indictment must enable a defendant to plead an acquittal or conviction in bar of future prosecutions for the same offense); US v. Santos-Rivera, 183 F3d 367, 369 (5th Cir. 1999) (1 of the elements required of an indictment is that it provide a defendant with double jeopardy defense against future prosecutions); US v. Scott, 993 F2d 1520, 1521-22 (11th Cir. 1993) * "Indictment Insufficient" because it failed to allege essential element of offense(s) that defendant detained mail unlawfully (which the Appellant Mr. McKennedy III / Indictments (see, Ex.: MIA & MIB pr 85 & 186 (Amended to "0113") does not have the alleged essential element of offense(s), that defendant / Appellant Mr. McKennedy III has committed in violation of § "0112" § 44-53-375 (also offense, no subsection presented) § 44-53-110 "et. seq."; US v. Caldwell, 176 F3d 898, 903 (6th Cir. 1999) "Indictment must be sufficient" to enable a defendant to plead double jeopardy in subsequent proceeding, if charged with same crime based on same facts); & US v. Frankel, 721 F2d 917-19 (3rd Cir. 1983) (Indictment charging false statements is insufficient, because presentation of worthless check did not constitute false statement) which is like the instant case at hand when the "Amended" CDR Codes of "0113" is false in which was done after trial day / date 02/03/99 (see, Exhibits) = 153 or MLC / McKennedy update, Tr. Trans. pp. 1, 13:1-9, 38:10-18; Original Indictments; or Ex.: MIA & MIB pr 155 & 156; & AII, RTS dated 02/15/99) Because it was not done before the Court, nor at Court on 02/03/99, when CDR Codes "0112" was done by the Grand Jury on or by 04/09/98 & was sufficient, but was changed to "0113" for the same offense & enhanced the sentence to an 85% No-Parole

Argument I, continues - 12 of 13

Offense placed me in "Double Jeopardy" & prejudiced me (See, U.S. vs. Duncan, 850 F2d 1104, 1108 n.4 (6th Cir. 1988); U.S. vs. Kimberlin, 781 F2d 1247, 1249-50 (7th Cir. 1985) (duplicate indictment may produce trial records inadequate to protect defendant against further prosecution for same offense); Ala. vs. Smith, 490 US 794 (1989); & N.C. vs. Pearce, 395 US 711, 717)

Conclusion

There is no iron curtain drawn between the Constitution & the prisons of this country (See, Wolff v. McDonnell, 418 US at 555-556, 94 S.Ct. at 2874; accord S.C. Court, Art. I § 22; Bounds, 97 S.Ct. 1491) Reaffirming Appellant's Mr. McKinnedy, Att. 5 basic rights of "Access to the Courts", but disapproving of certain broad language in Bounds v. Smith, & explaining that the tools the State (S.C. or SCDC) must provide are those in which the Appellant "need to attack my sentence, directly, or collaterally & in order to challenge the conditions of my confinement, which the above mentioned "Substantive & Substantial Evidence" is relevant evidence that considering the record as a whole, a reasonable mind would accept to support an administrative agency's actions. Which substantial evidence exists when, if the case were presented to a jury the Court would refuse to direct a verdict, because the evidence that the Appellant Mr. McKinnedy, Att. 5 has shown & presented raises questions of fact for the "Jury". It is more than a mere scintilla of evidence that respondents (SCDC) has alleged, but is something less than the weight of the evidence to show that the Appellant Mr. McKinnedy, Att. 5 is entitled to relief as a matter of law.

Wherefore, the Appellant Mr. McKinnedy, Att. 5 is seeking to have my good-time / or earned work credits (EWCs) adjusted to a paroleable offense & 51% sentence making my max-out to move back to its original with good-time credits 2/2006 & without EWCs 2/2009 & to be compensated for every day I have done over my original max-out & or etc., alone

Conclusion Continues — 13 of 13

with whatever else ~~the~~ relief the Court deems
competent for the above mentioned deprivations of clearly
established constitutional rights created by the state of or the
U.S. Constitution's Bill of Rights & its guarantees.

I declare under the penalty of perjury the foregoing is true &
correct to the best of the undersigned knowledge.

September 18th 2009
Kershaw, S.C.

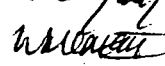
Respectfully Submitted,

 #256024

Mr. William C. McKinnady, #256024
Kershaw Com. Just. CR#14
4848 Oldstone Hwy
Kershaw, S.C. 29067-8069

WCMC/CC file

13 of 13

(I have no legal supplies after making 4 attempts
while on SMU (lockup) on 12/26/09 until I was
released on 02/05/10 nor have the business office
honored my requests for legal materials & its now 02/13/10)


pp. 62)

State of South Carolina
Administrative Law Court

Mr. William C. McKimedy, III
#256024
(Inmate)
Appellant,

South Carolina Department
of Corrections
(SCDOC) Respondents.

) Docket No.: 09-ALJ-04-00631-AP

) Grievance No.: KRCT-1523-08

) Certificate of Service

I certify, that I Mr. William C. McKimedy, III, #256024
have placed a copy of the Appellant's (Reply) Initial Brief & Memorandum
of Law in Support & is a Verified Complaint of the Appellant, that consists
of 13 of 13 pages & with Exhibits mentioned in the Brief in there entirety
in Kershaw Corr. Inst. mailroom system, with first-class postage prepaid
for the US Postal Service & addressed to the following:

The Honorable John D. McLeod
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, S.C. 29201 ;

Office of General Counsel
P.O. Box 21787/444/Pennsylvania Rd.
Columbia, S.C. 29221-1787

Mr. William C. McKimedy, III #256024

Mr. William C. McKimedy, III #256024

Kershaw Corr. Inst. CB#14

4848 Beldine Hwy

Kershaw, S.C. 29064-8069

uncollected

09/18/09
Kershaw, S.C.



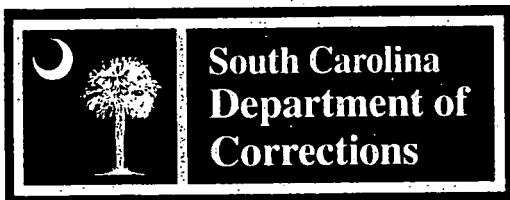
Office of General Counsel
P.O. Box 21787/4444 Broad River Road
Columbia, South Carolina 29221-1787

SEP 10 2009

KerCI
MAILROOM

0814
William McKennedy
256024
Kershaw C.I.

11/05/09 - 70)



MARK SANFORD, Governor
JON OZMINT, Director

September 8, 2009

The Honorable John D. McLeod
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

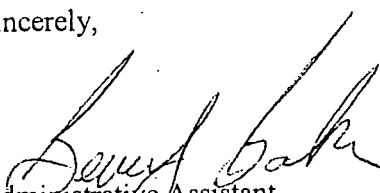
RE: William McKinney, #256024 v. SCDC
Docket No. 09-ALJ-04-00631-AP

Dear Judge:

Please find enclosed an original and one copy of *Respondent's Record* that consists of *Inmate Grievance # KER 1523-08*, in the above-referenced matter.

Also enclosed is an original and one copy of *Respondent's Brief and Motion to Dismiss* in the above-captioned case. Please file the original in your office and return a clocked-in copy to me for my file in the enclosed self-addressed envelope.

Sincerely,


Administrative Assistant
Office of General Counsel

Enclosures

cc: William McKinney, #256024

pp. (66)

6

The South Carolina Court of Appeals

William McKinney,

Appellant,

v.

South Carolina Department of
Corrections,

Respondent.

The Honorable John McLeod

Richland County

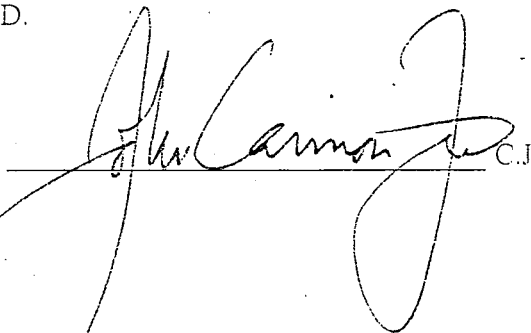
Trial Court Case No. 2009-AL-04-00631

ORDER

Appellant filed a motion requesting that our Court relax the copy requirements and allowing his initial brief to be accepted as his final brief. Respondent did not file a return.

After careful consideration, Appellant's motion is granted. The initial brief Appellant filed and served are hereby accepted as his final brief. The copy requirements are relaxed so that he only needs to file one copy and serve one copy of the Record on Appeal, and he need not file any additional copies of his brief.

AND IT IS SO ORDERED.

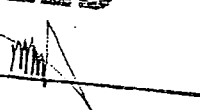
 C.J.

Columbia, South Carolina

March 4, 2010

cc: William McKinney #256024
Christopher D. Florian, Esquire

FILED

3/5/10 

The State of South Carolina
In The Court of Appeals

RECEIVED

JAN 15 2010

SC Court of Appeals

Appeal from Administrative Law Court
John D. McLeod, Adm. Law Judge

Docket No's.: 2009145826

Case No's.: 2009-ALJ-04-00631-AP

Conference No's.: KER-1523-08

Mr. William C. McKinney, III, #256024 ("Pro Se") Appellant,
Vs
South Carolina Department of Corrections ("SCDC") Respondents

Initial [Final] Brief of The Appellant

Is The Case In Which The Appellant [Original] Sentence Have
Been Erroneously Miscalculated By The Respondents ("SCDC") &
or The Court's [Excessive Sentence] & A Loss of Good Time
& /or Earned Work Credits (EWC's) Is An Issue

Mr. William C. McKinney, III
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Kershaw Co. Li. SMU #18
4848 Goldmine Hwy
Kershaw, S.C. 29067-8069
("Pro Se")
WCMC/III / cc:File

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Statement of the Issues on Appeal

- I.) Did the Administrative Law Judge (John A. McLeod) Abuse his Discretion When he heard & Dismissed the Appellant's John McKinnedy, III Appeal with Prejudice & / or etc... ?
- II.) Do an Inmate (Appellant) have a Right to Due Process & Equal Protection of the Laws ?
- III.) Was The Appellant John McKinnedy, III Placed in ~~Double~~ Jeopardy After The Court had already Sentenced John & South Carolina Department of Corrections (SCDC) Inmate Classification Records Re-Adjusted Appellant's Sentence After Imposed by the Court ?
- IV.) Was The Original Eighteen (18) year Sentence Imposed by the Court "Excessive" & When SCDC's Inmate's Classification Records Enhance it constitutes "Cruel & Unusual Punishment" ?
- V.) Do an Appellant have a Right to the Benefits of a New Rule Applied Retrospectively after the State / Federal Final Order(s) & to mention on Appeal for the first time on an Appeal the Insufficient Indictment ?

Statement of Case

This case is before this Honorable Court pursuant to the appeal of the Appellant Tim McKinney, III ("Prose") an inmate that is illegally incarcerated with the South Carolina Department of Corrections (SCDC), serving an eighteen (18) year excessive sentence that was erroneously imposed on the Appellant by the Court for Possession, Distribution, or Manufacturing of Crack Cocaine under S.C. Code Ann. § 0112 (a) Paroleable CDR-Code for Offense) § 44-53-375 (No Offense, nor subsection for the Court to know what offense or sentence to impose, but allegedly 2nd Offense) (See Original Indictments: 155 & 156 of Amended Indictments 185 & 186) § 44-53-110 et seq (for the quantity), that only carries a maximum sentence of ten (10) years or a 10,000 dollar fine or both (See, S.C. Code of Laws Title 44: § 44-53-375(A) (2) § 44-53-110 et seq, (1998)).

The Appellant appeal arises out of being convicted for an 854 charge of SCDC's OP-22.14 Disciplinary Policy / Procedures & I was taken out of the Park Jump Suit ("PJS") after (90) days on 12/08/08 after getting out of lock up ("MU") for a frivolous 898 Possession of a Cell phone or device, that was dropped after my cellmate pled guilty to the charges, because it was found inside his locked locker. So, on or by 12/13/08 The Appellant Tim McKinney, III filed a Step 1 grievance complaining that "SCDC" Inmate Classification was erroneously miscalculated my sentence for Work Credits Earned (EWCS), that was imposed by the Court (Joseph T. Watson) on 02/03/99, which the Step 1 grievance was denied by Warden Cecilia K. Reynolds on or by 12/30/08 & I filed a Step 2 grievance on or by 01/06/09 & it was denied by D. Patterson on or by 06/25/09, which I appealed to the Administrative Law Court ("ALC") by way of Notice of Appeal on or by 07/16/09, which I filed a timely brief on or by 09/18/09 & it was dismissed by Adm. Law Court Judge John D. McLeod on or by 10/29/09, that "Abused his Discretion" when he dismissed my appeal with prejudice after he had been disqualified to Act (hear), any of my past, present, or future appeals for the "ALC" to hear, so, on or by 12/04/09 I filed a Notice for Appeal of a

Statement Continues— 3 of 24

Motion to File under In Forma Pauperis Status & etc., it was granted on or by 12/30/09 & filed on 12/31/09 & this Initial-Final Brief follows with a Motion to Serve & File a Late Brief dated 01/05/2010.

Standard of Review

There is no question about jurisdiction, because when reviewing the department's decisions in inmate grievance matters, the Court sits in an appellate capacity. (See, Al-Shabazz, 527 S.E.2d at 454; see also, Sullivan vs SCDC, 586 S.E.2d 124 (2003)). Consequently, the review in inmate grievance case(s) is limited to the record presented. (See, S.C. Code Ann. § 1-23-380(4) (Supp. 2008)) ("The review must be conducted by the Court & must be confined to the record...") also see, S.C. Code Ann. § 1-23-600(E) (Supp. 2008) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). An Admin. Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence or question of fact." (See, S.C. Code Ann. § 1-23-380(5) (Supp. 2008)). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant Trib. McKinnedy, III have been prejudiced. Because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law or to show an abuse of discretion. (See, Porter vs Public Service Comm'n, 507 S.E.2d 328 (1998); S.C. Code Ann. § 1-23-380(5); also see, Manietta Garage, Inc. vs. S.C. Dept of Pub Safety, 522 S.E.2d 605 (Ct. App. 1999); & S.C. Dept of Labor Licensing & Regulation vs. Birgis, 503 S.E.2d 490 (Ct. App. 1998)).

Therefore, under the authority of this Honorable Court of Appeals for South Carolina, Affirm the Appellant's claims mentioned in the statement of the issues on appeal.

I. The Administrative Law Judge (John D. McLeod) Did In Fact Abuse His Discretion By Ruling & Dismissing The Instant Case With Prejudice. When he have been disqualified to act (hear) any of the Appellants Mr. McKinnedy, III's past, present, or future cases when he was assigned for Grievance No's: KER-1482-07 or Docket No's: 08-ALJ-04-00186-AP on 03/19/08 & Judge Anderson, III ("ALC") was re-assigned (See, Exhibit(s): ii & iii) & on 01/07/09 to docket No's: 08-ALJ-04-01108-AP & was disqualified to act by the Appellants Motion to Chief Adm. Law Judge (Kittrell) & he once again reassigned on 01/21/09 by Ralph K. Anderson, III (See, Exhibit(s): (A), 1, 2, 3, & 4) for the appeal pending in this Court of Appeals for South Carolina Case No's: 2009-121486 for the Administrative Law Judge Anderson dismissal under case No's: 2009-ALJ-04-00009, order of dismissal dated 03/25/09 (See, Exhibit(s): (F) & (F)(1)) & on or by 07/11/09 I filed a notice of appeal to the "ALC" & on 07/16/09 it was filed & on 07/22/09 & Administrative Law Judge John D. McLeod was assigned (See, Exhibit(s): (2)) knowing he had been disqualified to act (hear) any of the Appellants Mr. McKinnedy, III's cases within the "ALC" past, present, or future & he (McLeod) took it upon himself to prejudice the Appellant Mr. McKinnedy, III when the law is clear, Disqualified to Act. The Appellant Mr. McKinnedy, III believes a judges impartiality might reasonably be questioned when his factual findings are not supported by the record. See, Appellate Court Rule 501, Code of Judge Conduct, Canon 3, Subd. E(1)(a) etc., or "et. seq", also see, Roche vs. Young Bros., Inc. & Florence, 504 S.E.2d 311, 322 S.C. 75; also Rule 25, Disqualifying of Judges 1) A personal interest in the outcome of the case; 2) A relationship to a party; 3) A pecuniary interest; or 4) A bias. The Appellant Mr. McKinnedy, III should have a Constitutional Right (Due Process & Equal Protection of the Laws) not to be tried before a judge who is: 1) biased in fact or; 2) subject to influences that are likely to render an ordinary person in that position biased. Which I have a pending Civil Action against "ALC" Judge John D. McLeod (See, Exhibit: 09/10/08 Certificate of Services with his name & his Chief Adm. Law Judge: Marvin E. Kittrell)

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Because he has been bias in the past cases rulings & have been influenced by "SCSC" to make decisions in their favor (See Exhibit 3, 10/22/09) in a letter to SCSC's General Counsel's Office, telling them he would rule in their favor before he had a chance to read Respondents (used to be) reply (See Exhibit 6); 10/20/09, pp. 5 of 5 & Exhibit (1) with its references incorporated; also see Exhibit 3, 09/21/09 (Order to file reply) which he gave them ("SCSC") (90 days) to respond to the Appellant's Brief because it shows factual genuine issues & he did not rule on the merits which his findings was not factual by the record for the Respondents. Because they had "No Support" by the record presented, but the Appellant Mr. McKinnedy, III factual claims presented on the record was substituted for that of the agency ("SCSC"), as to the weight of the evidence presented by the Appellant, that prejudiced the Appellant Mr. McKinnedy, III because the Adm. Law Judge (McLeod's) decisions is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law as mentioned above that shows & proves an abuse of discretion (See. Above mentioned exhibits & references incorporated; & also see. Standard of Review, p. 3 of 24 for this instant brief) which the Appellant Mr. McKinnedy, III is entitled by law to have a fair & impartial hearing (trial) before an "ALC" Judge. (See. Dave vs. Goldkist, Inc., 442 SE2d 598 (1994) (issue of judicial subject matter jurisdiction). Furthermore, the "ALC" had appellate jurisdiction over the Appellant's state created liberty interests, but Judge John McLeod did not have the authority, nor right to hear the matters that was properly before the "ALC" due to him being "disqualified to Act" (hear) any of my cases as mentioned above. Where the procedural prerequisites for perfecting such an appeal have not been met by the "ALC" giving the Appellant Mr. McKinnedy, III the opportunities to be heard or to perfect my appeal by filing a timely brief as under Rule 60 (See. Great Graines, Inc. vs. South Carolina Dept of Soc. Rev., 529 SE2d 619 (2000) (appellate jurisdiction exists where procedural requirements are met) The "ALC" is an agency of the judicial branch of government (See S. Code Ann. § 1-23-500 (a) (Supp. 1998)), & must follow the law as written until its constitutionality is judicially determined; "ALC" have no authority to pass upon the constitutionality of a statute or regulation (See eg. Beaumont County Bd of Edu. vs. Lighthouse Charter School (Case, 516 SE2d 655 (1999)) &

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South Carolina Tax Commissioner v. South Carolina Tax Board of Review, 299 S.E.2d 489 (1983) (also see, Hedges vs. Rainey, 533 S.E.2d 528, 581 (2000)). The "Cardinal Rule" of statutory construction for the State of South Carolina is to ascertain & effectuate the intent of the legislature. All rules of statutory construction are subservient to that end: the legislative intent "must" prevail, if it can be reasonably discovered in the language used & that language "must" be construed in light of the intended purpose of the statute(s). (See, Boardman vs. City of Myrtle Beach Election Comm'n, 537 S.E.2d 543, 546 (2000)). Under the "plain meaning rule" it is not the Court's (McLeod, now Chief Adm. Judge Kittrell's) place to change the meaning of a clear & unambiguous statute(s). (See, Jones vs. State Farm Mut. Auto Ins. Co., 612 S.E.2d 719, 724 (Ct. App. 2005); & Vaughn vs. Bernhardt, 547 S.E.2d 869, 870 (2001)). Where the statute's language is plain & unambiguous & conveys a clear & definite meaning, the rules of statutory interpretations are not needed & the Court ("ALC") has no right to impose another meaning. When the basic requirements for the "Due Process Clause" is the right to notice & an opportunity to be heard at a meaningful time & in a meaningful manner "by fair & impartial judges" (which Judge McLeod violated the Appellate Court Rules under Canon 6 of the Appellate's Mr. McKinnedy / Att. 6) Due Process & Equal Protection or the right to have a fair & impartial trial, etc., et. seq. (See, Logan vs. Zimmerman Brush Co., 102 S.Ct. 1148 (1982) (citation omitted); also see, Cass vs. Lopez, 95 S.Ct. 729 (1975) & (cases cited)).

II. Do An Inmate (Appellant) Have A Right To Due Process & Equal Protections of the Law Before Life, Liberty, or Property Is Taken?

An Inmate (Appellant) Do Have A Right To Due Process & Equal Protections of the Laws Before Life, Liberty, or Property Is Taken. There is no war curtain separating an Inmate (Appellant) from the U.S. Constitution. The deprivation by Respondent's ("SCDC") for not giving the Appellant Mr. McKinnedy / Att. 6 "a Fair Notice, a Hearing, & or Judicial Review", once the Appellant's Mr. McKinnedy / Att. 6 CDR Codes was changed on or by 6/23/00 from "0112" a paroleable offense CDR-Code to "0113" an 85% No-Parole Offense under Ann. § 24-13-100 (1995) (eff. January 1, 1996) which is for sentences that carries twenty (20) years or more, But, the Appellant was induced by the

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Grand Jury that found the Appellant [Mr. McKinnedy/III] in violation of § 44-53-110 et seq. for less than a gram (.15 milligrams of a gram) (See, Exhibit 3: A, B, C, & D; dated 3/17/98 Analysis) is the "Quarrel", that the indictment was true Billed on § 1112, a paroleable offense, that is less than (20) years, that only carries ten (10) years or a \$10,000 dollar fine or both. Which the CDR- Code "0112" is a 5% maximum of paroleable offense that was created by the State (Ill.) a liberty & property interest that can not be arbitrarily abrogated, which my good time or earned work credits (EWCS) was adjusted (taken away) by CDC's Inmate Classification Records (See Exhibit 3: 153), that I had been getting credits from 01/01/98 to 06/23/00, that is 26 months my sentence had "Crystallized", that alone triggered the "Due Process Clause's" protection of the particular situation that demands it. Because I was given Exhibit 153 after the fact of the adjustment, but no hearing, a right to defend, to marshal, to call with witnesses, nor judicial review until now. When Due Process of law requires, that no one even inmates shall be condemned in his person or property without a fair notice, & an opportunity to be heard in his defense. (See State v. Moore, 395 S.E.2d 434, 437 (1990), disc. review denied to additional issues, 402 S.E.2d 825, rev'd on other grounds, 404 S.E.2d 845 (1991)). The requirement of "Procedural Due Process" applies to the deprivation of interests encompassed within the 14th Amnt. of the U.S. Const. to the States each, 417 S.E.2d 277, 281 (1992) (quoting Board of Regents of State Colleges vs. Roth, 42 S.Ct. 2701 (1972)). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time & in a meaningful manner". (See State v. Thompson, 508 S.E.2d 277, 286 (1998) (quoting Armstrong vs. Manzo, 85 S.Ct. 1871 (1965)). "It is basic to due process that that an Appellant [Mr. McKinnedy/III] in a criminal action be allowed to offer testimony." "It's elementary & fundamental that every person is entitled to his day in court to assert his own rights or defend against their infringement. (See, Goodwin vs. Walls, 455 S.E.2d 473, 477, review allowed, 461 S.E.2d 757 (1995) (quoting Queen City Coach Co. vs. Burrell, 85 S.E.2d 688, 692 (1955); & also see, State vs. Pike, 159 S.E.2d 334, 338 (1968)). The Inmate Classification of Records for a § 1112 or the CDRs must give the Appellant [Mr. McKinnedy/III] an opportunity to offer some evidence & present my version. The late notice, without a hearing after the fact, nor judicial review, that took away my good time or EWCS with

II. Continues - 808 24

the Appellant's existing parole eligibility for every year to a two (2) year supervised supervision that was not part of my plea agreement on 02/03/89 (See: McKennedy v. State, Tr. Trans. pp. 30-10-18; also see Exhibit: Major sentencing sheet (original or amended), changed (See: Huett (citing Flaming v. Nestor, 80 S.Ct. 1307 (1980); also see, Warden v. Manpro, 94 S.Ct. 2532, 2535-36, 2537-38 (1974) (Parole eligibility provisions are part of the sentence); Lindsey v. Washington, 57 S.Ct. 727 (1937) (increasing punishment violates the Constitution); State v. Matthews, 373 S.E2d 587 (1988) (to sentence a defendant (Appellant of this instant case) under statute enacted after commission of crime, providing increase parole eligibility time would result in an "Ex Post Facto" violation). The sentencing Court (Judge J. Watson) did not explain the sentencing provisions for the CDC Codes to be changed from paroleable "0112" to no parole to "0113" and being part of my sentence, nor part of my conditional release, that alone makes my plea of guilty not knowing & involuntarily made without "fair notice" of the consequences of the alleged charge violates "Due Process & Equal Protection" & if any sentence is imposed it is "VOID" (See: SCRCP or etc... that concurs with Fed. R. Crim. Proc. Rule 11, Advice to Defendant/Appellant Mr. McKennedy et al of this instant case, Timmerick, 99 S.Ct. 2085 & its cases cited; also see, Boykin v. Alabama, 395 U.S. 238, 243 (1969)), now see, McKennedy v. SCDC, Brief filed with the "ALL" dated 9/18/09, pp. 1-13 & 13 & its references incorporated, that is already in the record; this Honorable Court of Appeals for South Carolina have the understanding that a finding of 'judicial misconduct' in connection with the Appellant's Mr. McKennedy et al is a plea proceeding constitutes 'plain error' & entitles the Appellant to withdraw my guilty plea, even if the error is identified for the first time on this instant appeal, Id. at 554; U.S. v. Sanchez-Lopez, 879 F.2d 541, 551 (9th Cir. 1989). The changed CDC Codes from "0112" to "0113" made my original sentence by the Court (Judge Joseph J. Watson) from doing 51% without EWCS maximum to 2009 of February (See: Exhibit 1: ATT Request to SCDC (RTS) dated 2/15/89) to doing 85% of the eighteen (18) years & maximum moved to 2013 with EWCS. (See: Exhibit 2: 153 or MLC). The "Due Process Clause" are designed to protect the individual against arbitrary governmental actions, (See: Chambers v. Col. Dep't of Cor., 205 F.3d 1237, 1242 (10th Cir. 2000) (due process protections apply when a prisoner is deprived of life, liberty or property). Analysis of procedural due process questions involves two (2) part inquiry: 1) whether the State ("SCDC") has interfered with an inmates

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protected liberty or property interest, (2) whether procedural safeguards are constitutionally sufficient to protect against unjustified deprivations (See, Kentucky Dep't of Corr. v. Thompson, 490 US 454, 460 (1989); e.g. Cruz v. Gomez, 202 F3d 593, 597 (2d Cir. 2000) (to state claims of denial of due process, prisoner must allege both possession of protected liberty interest & lack of requisite process before being deprived of that interest); See, Lee v. Washington, 390 US 333, 333-34 (1968) (per curiam); also see, Sandlin v. Conner, 115 S.Ct. 2293; see, Shazak v. SCDC, 605 F.2d 506-507) The above mentioned was done to the Appellant, John McKinney, III without a hearing to defend my rights & that is what prejudiced the Appellant from being afforded my "Due Process of Equal Protections" of the 14th Am't. of the U.S. Const. (S.C. Const. Art 1 § 3). Where the State, i.e. "SCDC" allowed the Appellant to Motion while my case was pending on appeal (See, Exhibit: 163, Court of Appeals dated 03/2000); i.e. did they ("SCDC") give me the opportunity after the notice (See, Exhibit: 153 or 11C) to present any evidence in support of my right to be heard. "Due Process is flexible & calls for such procedural protections as the instant particular situation demands" (quoting Mumsey v. Brewer, supra at 481, 92 S.Ct. at 2600); Friendly, "Some Kind of Hearing", 123 U.Pa. L. Rev. 1267, 1278 (1975) ("required degree of procedural safeguards varies"; Walt, 418 US at 563-567, 94 S.Ct. at 2978-2980 (requiring in addition to notice some kind of hearing & written reasons for decision - permission to call witnesses & to present documentary evidence when doing so "will not be unduly hazardous to institutional safety or correctional goals"; "id.", at 567, 94 S.Ct. at 2979-2980); also see, Baxter v. Palmigiano, 96 S.Ct. 1551, supra Footnote 7; accord S.C. Const. Art 1 § 22 (Providing for notice, an opportunity to be heard, an impartial adjudicator & judicial review when an administrative agency ("SCDC" Inmate Classification Records) makes a judicial or quasi-judicial decision affecting private rights such as the Appellant's John McKinney, III); See, S.C. Code Ann. § 1-23-320; also see, Sabella v. South Carolina Alcoholic Beverage Control Comm'n (S.C. App. 1986), 340 S.E2d 530, § 1-23-310(3) (Supp. 1999) ("In contested cases means a proceeding... in which the legal rights, duties, or privileges of a party John McKinney, III the Appellant is required by law to be determined by an agency such as "SCDC" after an opportunity for a hearing was not given by "SCDC" (See, Exhibit: 153 or 11C) for I was deprived of my due process right to a hearing) (See, S.C. Code Ann. § 1-23-310(3))

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An Inmate (Appellant) brings a contested case for purposes of judicial review when s/he challenges a disciplinary outcome, calculation of sentence - or related credits, custody status, or other condition of confinement. (See, Exhibit 153 & MIC) (also see, Wolff 94 S.Ct. 2974; 2079) have concluded that to hold... that any substantial deprivations imposed by prison authorities triggers the procedural protections of the Due Process Clause & would be subject to judicial review, wide spectrum of discretionary actions, that, traditionally have been the business of prison administrators rather than the Courts. (See, Pleachum vs. Fano, Supra, 915 Ct. 2538) the deprivations imposed in the daily course, course of operations of an institution are likely to be minor when it comes compared to the release from custody at issue as for the Appellant Mr. McKinnedy, III also for parole eligibility decisions & good time or Earned Work Credits (EWCs). It has been held by the Supreme Court of the U.S., that if, a State (S.C. or SCDC) does not provide a meaningful post-deprivation remedy for the loss occasioned by intentionally official conduct or misconduct, the State (S.C. or SCDC) will have deprived the Appellant Mr. McKinnedy, III of Liberty, Life, & Property & in violation of the 14th Am. of the U.S. Constitution (See, Front Royal v. Union Carbide Indus. Park Corp. vs. Town of Front Royal, 135 F.3d 275, 287-88 (4th Cir. 1988) (government actions affords substantive due process only when resulting in deprivation of Life, liberty, & property is so unjust that no amount of fair procedure can rectify it) (Also see III, IV, & V.))

III. Was The Appellant Mr. McKinnedy, III Placed In Double Jeopardy After The Court Had Already Sentence Me & "SCDC" Inmate Classification Records Came After Sentence Imposed by the Court & Adjusted (Enhanced) The Sentence Imposed by the Court?

The Appellant Mr. McKinnedy, III was placed in double jeopardy because I had already been convicted & sentenced by the Court & SCDC's Inmate Classification Records adjusted or enhanced my original sentence without due process of law to one greater than what the court had sentence me to would constitute "Double Jeopardy".

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"The 14th Am^t's Due Process Clause" extends the "Double Jeopardy Clause" protections to State prosecutions. (See, Benton vs. Md., 395 US 784, 794 (1969); e.g., Crist vs. Bretz, 437 US 28, 37-38 (1978); also see, Ex parte Lange, 85 US (18 Wall.) 163, 468-69 (1873) (double jeopardy protections applies to every indictment or information charging party with crime or misdemeanor) or an increase to sentence without a hearing for resentencing after final date on 02/03/99 (See, McKennedy vs State, Tr. Trans. p. or Warrant No's: 98-65-23-3643, pp. 1-; 38:10:18; ATI; also see, Exhibits: MIC or 153; A7B (Sentence Calculation Sheets dated 11/2000 & 10/2000) /C(1); & Amended Indictments or Exhibits: 185 & 186, that was not done at final see McKennedy vs State, Tr. Trans. p. 13:1-9) when the only "Amendment" was done for the misspelling of my middle name & not for the CDR Code "0112" (Paroleable offense) to be changed to "0113" (No Paroleable offense) by the Respondents ("SCIX") & not by the Court (Judge Joseph J. Watson) on 02/03/99. The Appellant John McKennedy III have been deprived of Constitutional Rights that is guaranteed by the Bill of Rights to me by the 14th Am^t. of the U.S. Constitution for Due Process & Equal Protections "by the State (Sci. or SCDC) Art. 153 & c. Const. as mentioned above. I was not given a fair & impartial trial (hearing) (See, II of this instant Brief; Exhibits: 153 or MIC & there references incorporated), the right to call witness(es), to Marshall, nor to defend myself from a "Second Conviction", that enhanced or increased my original sentence of 18 years (See, McKennedy vs State, Tr. Trans. p. 1, 38:10-18; & Exhibits: 155 & 156 or MIC/A7B) I was placed in "Double Jeopardy" when I had already been sentenced by the court on 02/03/99 to do 5 1/2% & I was parole eligible (See, McKennedy vs State, Tr. Trans. p. 14:1-9; ATI; RTS dated 2/1/99 to Kinkaid Com. Inst. Classification & response on 02/22/99 by C.L. Brown; also see, Exhibits: 153 or MIC) on or by 06/23/00 SCIX's "Future's Classification" place the Appellant John McKennedy III in "Double Jeopardy" when my CDR-Code "0112" is paroleable & was changed to "0113" a no paroleable offense & to serve 85% of the 18 years sentence imposed by the Court (J.J. Watson) on 02/03/99 was enhanced by Respondents ("SCIX") The prohibition against re-prosecution after a conviction protect individuals from the continued embarrassment, anxiety, & expense of representation while decreasing the risk of an erroneous conviction or an impermissibly enhanced sentence (See, Ohio vs. Johnson, 407 US 493, 498-499 (1984) or "Double Jeopardy" (See

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Garrett vs US, 471 US 773, 793 (1985) (double jeopardy prevents courts from imposing greater sentences than legs before's intended) which an insufficient indictment can be raised for the first time on an appeal as in US v. Kaurza, 107 F3d 257, 260 (4th Cir. 1997); US v. Santos-Rivera, 183 F3d 367, 369 (5th Cir. 1999); also see, Rule 208(b), (1)(B), SCACR ordinarily no point will be considered which is not set forth in the statement of the issues on appeal. It was Respondents who "Amended" the indictment & sentencing sheet & not the Court (J. J. Watson) & that placed me in "Double Jeopardy" after I had already been sentenced. See US v. Wicks, 187 F3d 426, 427 (4th Cir. 1999) (defum) (to meet constitutional guarantee an indictment must enable a defendant to plead an acquittal or conviction in bar of future prosecutions for the same offense. See US v. Santos-Rivera, 183 F3d 367, 369 (5th Cir. 1999) (1 of the elements required of an indictment is that it provide defendant with a double jeopardy defense against future prosecutions).

Furthermore, the Appellant Mr. McKinnedy III (rightfully claims that my ENCs or Exh time were removed or adjusted by the Respondents ("SCDC") on or by 06/23/00, that placed me in "Double Jeopardy" (See Exhibit 153 or MIC, & its references incorporated already in the Record for Appellant's Brief filed with the "ALC", dated 09/18/09, pp. 11-13 of 13) The Respondents never afforded the Appellant "Due Process of Law", a fair notice, an opportunity to defend or to be heard, nor judicial review. (See II, of this Plaintiff's Brief, pp. 6-10 of 24) Which the Appellant Mr. McKinnedy III have rightfully argued those circumstances before, but as a "Subject Matter Jurisdiction" issue that have merit, & was not considered on PCR No. 02-CP-23-6964 (McKinnedy vs State) & heard on 12/02/03 by the Honorable J. Michael Baxley (See McKinnedy vs State, PCR No.'s: 02/CP-23-6964, pp. 41-50, States Return, pp. 51-55 Transc. of Record, pp. 56-117; Order of Denial, pp. 118-125; Appellant's Motions, 59e) 60b) pursuant to Baugh vs State, 423 SE2d 127, 128, because it was not a final order on the merits of the "Subject Matter Jurisdiction" & etc., issues mentioned, pp. 126-141, 148, & 142 of its Order dated 04/05/04 or p. 161 (Exhibit 161) therefore, the State's Supreme Court did not have jurisdiction originally under SCRCR Rule 229(a) So my what was denied by S.C. Supreme Court (See Garner vs State, or No. 233, the Supreme Court of South Carolina have issued as of 10/18/06, "An Order in a PCR matter which does not include specific findings & conclusion of law.

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relating to each issue presented... does not constitute a final order or judgment by the Writ of Certiorari. Also the Supreme Court of South Carolina admonished Counsel for the State who prepared the proposed conditional orders of telling them they should be meticulous, opposing counsel should call any omissions to the PCR Judge's attention prior to issuance of the order, & PCR Judge should carefully review the order prior to signing. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the application. (See, e.g., Arce vs. State, 409 S.E.2d 392, 395 (1991)). Furthermore, it must be noted that the language employed by the legislature in section 17-27-80, contains the word "SHALL" or "MUST", indicates the legislature's intent to enact a mandatory provision or requirement. (See, e.g., South Carolina Police Officers Rel. Sys. vs. City of Spartanburg, 391 S.E.2d 234, 241 (1990) (noting that language such as "shall" or "must" couched in statutory prescriptions are mandatory in application & effect); Starnes vs. South Carolina Pub. Safety, 535 S.E.2d 655, 657 (S.C. App. 2000) (holding same)). South Carolina Courts have consistently held orders in PCR actions must adhere to § 17-27-80. (See, e.g., McGray vs. State, 408 S.E.2d 241 (1991) (requiring PCR Courts to make specific findings of fact & state expressly its conclusion of law relating to each issue presented); Pruitt vs. State, 423 S.E.2d 127 (1992) (Expressing Court's concern with the increasing numbers of PCR orders that failed to address the merits of the issues raised by the Appellant Mr. McKinnedy III). As in Pruitt's case, the Appellant has been denied rulings on the above mentioned issues: Subject Matter Jurisdiction, etc., raised in the first PCR No. 1: 02-CP-23-(1992), hearing held on 12/02/03 before the Hon. J. Michael Beasley for Habeas Corpus for Ex Post Facto, Due Process & etc., because the claim was considered as a State Law issues & was not ruled on the merits in McKinnedy vs. Faulkenberry, 9A No. 1: 0202-CX-00411-HULL-WMC, dated 12/19/06; Entry No. 3: 27, pp. 4-7 & 10, also see, Entry No. 3: 33, pp. 7 & 13 (Ex Post Facto), which my procedural, substantive, & substantial "due process was violated by the errors made by the Court of Respondents ("SCDC") "Inmate Records of Classification (See Exhibit) 453 or MLC). Because, S.C. Code Ann. § 44-53-375(A)(2) (Offenses not listed on Inmate Records: 155 & 156, nor 155 & 156) (but allegedly 2nd offense) for Selling, Possession, Distribution or Manufacturing Crack Cocaine for less than a gram (.15 milligrams) which I am accused of selling one @

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beige rock for \$20.00 dollars allegedly is not listed under the No-Pardie Offense(s) as under S.C. Code section 16-1-10(d), section 44-53-375 (A)(2) is not there, please check for the record, ok!

Therefore, § 44-53-375(A)(2) § 44-53-110 is a pardieable offense listed under CDR-Codes "01124", that carries only a (10) year & a \$10,000 dollar fine or both. Which S.C. Code § 24-13-100 defines a "No-pardie Offense(s)" as a class A, B, C felony or an offense exempt from classification as enumerated in § 16-1-10(d), which is punishable by a maximum term of imprisonment for (20) years or more is "IRRELEVANT" to the Appellant's Mr. McKinnedy, it is conviction of distribution of crack cocaine second offense for less than a gram (.15 milligrams or a gram) under S.C. Code Ann. § 44-53-375 § 44-53-110 (Subsections or offense would reflect (A)(2)). Wherefore, shows & proves the errors by the Respondents, ("SCDC"), PCR Court Nos.: 02-CP-23-6964, as well as the U.S. District Court Judges Cote & Herlong Tri. of the 1996 Crime Bill is "IRRELEVANT" to the Appellant's Mr. McKinnedy, it is pardieable offense as indicated by the Grand Jury of Greenville County on or by 06/09/98 for "01124" CDR-Codes (Pardieable) § 44-53-375(A)(2) (which Respondents admits this is allegedly the Appellant's second offense) for less than a gram under Title 44 of S.C. Code of Laws. Which is not listed under § 16-1-10(d) is South Carolina legislature's intent & for the Courts or "SCDC's" "Inmate Classification for Inmate Records" to change the meaning of the above mentioned clear & unambiguous statutes to a No Pardie Offense & for the Appellant (Mr. McKinnedy, it is) to serve 85% under § 24-13-150, & § 24-13-230 (B) or by SCDC's own hands is totally contrary to legislature's intent & etc... (See: The Appellant's Brief to the "ALC" dated 09/18/09, pp. 1-130 & 13) even when the District Court Judges ruled, that it has no merit in favor of Respondents clearly "Erroneous", or "Arbitrary &/or Capricious, with an Abuse of Discretion" that the "ALC" refuse or failed to correct by honoring the specific findings of facts & stating expressly its conclusion of law, that was done by all of the past Courts when under the "Cardinal Rule" of statutory construction for the State of South Carolina is to ascertain & effectuate the intent of the legislature's. (See: Hodges vs. Rainey, 533 S.E.2d 578, 581 (2000)) All rules of statutory construction are subservient to the one that the legislative intent

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"Must" prevail, if it can be reasonably discovered in the language used of that language "MUST" be construed in light of the intended purpose of the statute (See, Indictment or Exhibit(s): 155 & 156 or § 44-53-375 (A)(2) § 44-53-110, that is not listed under § 16-1-10 (6) for carrying over 20 years); also see Boardman vs. City of Myrtle Beach Election Comm., 537 S.E.2d 543, 546 (2000). Under the plain meaning rule, it is not the Courts' nor SCDC's "et al." place to change the meaning of a clear & unambiguous statute. (See, Jones vs. State Farm Mut. Auto Ins. Co., 612 S.E.2d 719, 724 (Ct. App. 2005); Vaughn vs. Bernhardt, 547 S.E.2d 869, 870 (2001) (where the statute's language is plain, unambiguous, & conveys a clear & definite meaning, the rules of statutory interpretation are not needed by the Courts' nor SCDC's (respondents) Inmate Classification Records or "et al." has no right to impose another meaning") (See, IV & V).

IV. Was The Original Eighteen (18) years Imposed by the Court On 02/03/99 "Excessive" & Constitutes "Cruel & Unusual Punishment"?

The Original Sentence of Eighteen (18) Years Imposed By The Court Is "Excessive" & Constitutes "Cruel & Unusual Punishment" When The Statute of South Carolina Code of Laws under title 44 Section 44-53-375 (No Offense Mentioned On Indictment), But Allegedly 2nd Offense for less than a Gram (.15 milligrams of a gram; see Exhibits: A, B, C, & D Drug Analysis Report dated 3/17/98) § 44-53-110, that carries only (10) years or a \$10,000 dollar fine or both for the "Quantity" (See, In Trans. p. 29: 5-7 & not 15 grams as the Solicitor informed the Court (J. J. Wilson) (See, Indictments or Exhibits): 155 & 156 is for "Distribution/Manufacturing & not for trafficking" that is for seven (7) grams or more. S.C. Code Ann. § 44-53-370 (e) shows / proves, that the Solicitor (Sydney P. Mitchell) willfully intended to deceive the fact finder (Judge: Joseph J. Wilson) (See, In Trans. pp. 13: 20-25; #21: 5-10) that I was facing 25 years & no minimum when the Court assumed I was facing 30 years it was correct by the Solicitor (S.P. Mitchell) telling it 25 years when in all factuality I was only facing (10) years or \$10,000 dollar fine or both. The trial for the Appellant John W. Kenedy, Jr. (shows unfairness as to make the resulting conviction a due process & equal protections or Cruel & Unusual Punishment (See, Lyons vs. Lee, 203 F.Supp.2d 512, 552 (MD N.C. 2002) (internal quotation marks omitted) when I was sentence to more time than the above mentioned statute allows & constitutes "Fraud upon the Court" by the Solicitor / Prosecutor (Sydney P. Mitchell) (See, U.S. vs. Compton, 53 F.3d 87, cert. denied, 116 S.Ct. 714; U.S. vs. Molina, 172 F.3d 1048 & "Obstruction

IV. Continues - 16 of 24

of Justice" by committing "Prosecutorial Misconduct" (also see, In the Matter of Goodwin, 305 F.2d 578 (1983) (attorneys has an ethical duty not to perpetrate a fraud upon the Court by knowingly presenting perjured testimony. (Quoting Bryan vs. Bryan, supra, 468 F.2d 609 (1974)). Extrinsic Fraud is necessary in order to secure equitable relief vacating a prior or instant judgment before us today. (See, Hilton Head City of S.C. vs. Public Serv. Comm'n, 362 S.E.2d 176, 177 (1987), which held the Prosecutorial/Solicitors Misconduct (Sydney P. Mitchell) prevented the Appellant Mr. McKinnedy, III from having his day in Court (See, Kupperman vs. Cousol, Research / Mfg/Corp, 459 F.2d 1072 (2nd Cir. 1972) (Justification of action by an attorney who knew that there was complete defense to action might be fraud upon the Court); also see, Great Coastal Express, Inc. vs. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982) (fraudulent involvement of an attorney as an attorney, as an officer of the Court in a scheme to suborn perjury would certainly be considered fraud on the Court); H.K. Porter Co. vs. Goodyear Tire & Rubber, 536 F.2d 115, 119 (6th Cir. 1976) ("Since attorneys are officers of the Court their conduct, if dishonest would constitute fraud upon the Court"); Synanon Fund, Inc. vs. Bernstein, 503 A.2d 1254 (1986) (attorney subornation of perjury & false statements to trial court constitutes fraud upon the Court). Because, fraud upon the Court is an affront to administration of justice, an Appellant Mr. McKinnedy, III who has been defrauded need not establish prejudice. (also see, Hazel-Atlas Glass Co. vs. Hartford Empire Co., supra & Dixon v. Comm'n of Internal Revenue, (2003) WL 1216290 (2nd Cir. 2003) (the perpetrator of the fraud upon the Court should not be allowed to dispute the effectiveness of the fraud after the fact"). The Misconduct of the Prosecutorial and constitute Extrinsic Fraud alone with Chief & Unusual Punishment of the Appellant Mr. McKinnedy, III for recommending to the Court more time

⑥ Extrinsic Fraud - is found that induces a person not to present a case or deprive a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting & trying his case, there has never been a real contest before the Court on the subject matter of the action.

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than the legislature intended for the crime of Selling, Possession, Distribution, or Manufacturing Crack Cocaine under S.C. Code Ann. § 9-11-2 "§ 44-53-375 (A)(2) § 44-53-110 et seq. A sentencing "outrage" The statute's range is per se cruel & unusual punishment with due process & equal protection violations (See. Exhibit 2, 144, Tr. Trans. p. 13:15-25) when the common sentence was only 8 years for the same offense for S.C. Code Ann. § 9-11-2 "§ 44-53-375 (A)(2) § 44-53-110 et seq. (See. Exhibit 1) 163) which I was sentenced to 8 yrs more than the statute allows & 10 years more than any other defendant was sentenced to for the same alleged offenses & convictions in Greenville County Courthouse of General Sessions before the Hon. Joseph J. Watson during 1999 term of court which the enhancement of the Appellant's [Mr. McKinnedy] sentence of 18 years was done by the Court (J. J. Watson) with it reflecting a paroleable CDK Code of trial & without the "Jury's" determination of it to be enhanced sentence more than the 10 years the statute demands, which SCDC's (Respondents) Inmate Classification of Records also made a second enhancement by adjusting my Earned Work Credits (EWC's) or good time to an 85% non-parole offense from a 51% paroleable offense on or by 6/23/00 (See Exhibit 2: 153) without a hearing & the right to judicial review violated the Due Process Clause of Constitutional Cruel & Unusual Punishment, when Due Process is flexible that this particular situation demands (See. Wick, 94 Sct. at 2863 - **2887**) (See II, III, & IV of this instant brief)

V. Do An Appellant Have A Right To The Benefit Of A New Rule Applied Retroactively After The State's Final Order or Federal Court's Final Order To Mention For The First Time On An Appeal The Sufficiency Of The Indictment?

The Appellant Do Have A Right To The Benefit Of A New Rule Applied Retroactively under S.C. Code Ann. § 17-27-15(b) & For The First Time On Appeal The Sufficiency Of The Indictment Can Be Raised. Which an insufficient indictment can be raised for the first time on an appeal as in U.S. v. Loayza, 107 F.3d 257, 260 (4th Cir. 1997); U.S. v. Santos-Rivera, 183 F.3d 367, 369 (5th Cir. 1999); also see, Rule 208(b)(1) (B) SCACR ordinarily no point will be considered which is not set forth in the statement of the issues on Appeal); & U.S. v. Wick, 187 F.3d

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426, 427 (4th Cir. 1999) (dictum) (to meet constitutional guarantees an indictment must enable a defendant to plead an acquittal or conviction in bar of future prosecutions for the same offense) (See, III Double Jeopardy for this Instant Brief); U.S. vs. Scott, 993 F.2d 1520, 1521-22 (11th Cir. 1993) "Indictment Insufficient" because it failed to allege essential elements of offense that defendant/Appellant [Mr. McKennedy/III] has committed in violation of § 44-53-375 (No offense mentioned or subsection presented) § 44-53-110 et seq. & see also, U.S. vs. Caldwell, 176 F.3d 898, 903 (4th Cir. 1999) (Indictment must be sufficient to enable a defendant/Appellant [Mr. McKennedy/III] to plead double jeopardy in subsequent proceeding, if charged with same crime based on same facts); & U.S. vs. Frankel, 721 F.2d 917-19 (3rd Cir. 1983) (Indictment charging false statements is insufficient because the worthless "Amended" CDR-Codes of "0113" is false in which was not done on 02/03/99 trial day, but on or by 06/23/00 (See, Exhibit 153 or MLC; McKennedy vs State, Trial Trans, pp. 1, 13; 1-9, & 38; 10-18, also see, Original Indictment 01; 155 & 156 or MIA & MTB; Att RTS dated 2/15/99) Because CDR-Codes "0112" was done by the Grand Jury on or by 06/09/98 & was sufficient, but changed to "0113" for the same offense & enhanced the sentence to an 85% No-Parole Offense me in Double Jeopardy & that prejudiced the Appellant [Mr. McKennedy/III] (See, U.S. vs. Duncan, 850 F.2d 1104, 1108 n.4 (4th Cir. 1988); U.S. vs. Kimberlin, 781 F.2d 1247, 1249-50 (7th Cir. 1985) (duplicative indictment may produce trial records inadequate to protect defendant/Appellant [Mr. McKennedy/III] against further prosecution for same offense; Ala. vs. Smith, 490 US 784 (1989); & N.C. vs. Pearce, 395 US 711, 717); also see III of this Instant Brief for "Double Jeopardy".

The indictment #030413 was true billed (See, Exhibits 155 & 156) in which the grand jury convened on 06/09/98, that I was in violation of § 44-53-110 in the body of the indictment & the statutory language on its face read: § 44-53-375 (without No Offense or Subsection even mentioned, but it should have been (A)(2) for the alleged 2nd Offense & the "quantity" of the Sell of .15 milligrams of a gram for \$20.00 dollars a huge like rock (See, Exhibits 3 A, B, C, & D Drug Analysis dated 3/17/98) which my allege prior would be invalid that would make the alleged second offense invalid. Because, it has never been substantiated when the

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the Appellant [Mr. McKinnedy III] allegedly plead guilty to the 1st drug charge. I was at Broad River Court in 1991 & I did not plea to any drug charge(s) during that time, nor any other(s) in Greenville County Courthouse & the Court must have me mistaken as another William McKinnedy, Kennedy or whatever the age & address(es) would be different than mine at the time I allegedly plead guilty to the bogus charge is unfounded & the State (Ga.) bears the burden of proof & I demand strict proof thereof. Therefore, if the Court treated these terms as synonymous & if the Court were to resolve the resulting conflict between 10 yrs or 25 yrs & 1st or 2nd Offenses (A)(1), (A)(2) or (B)(2) per § 44-53-375 in the Appellant's favor as I argues rightfully, the State would always bear the burden of proof by the standard of beyond a reasonable doubt. (See Marsano vs. Laird, 412 F.2d 65, 70 (2nd Cir. 1969) (An interpretation which enhances or emasculates a provision of a statute is not to be preferred). Statutory exceptions are to be strictly construed so as to prevent exception from swallowing the rule. (See A.H. Phillips, Inc. vs. Walling, 324 US 490, 493, 65 S.Ct. 807, 808, 89 L.Ed. 1095 (1945)) Beyond this construction however, the Court must turn to extrinsic interpretational aids—that is, the Court must turn to information other than the text of the statute, definitions & rules of construction to assist the Court properly statute § 44-53-375 (all offense mentioned) (and allegedly 2nd Offense) § 44-53-110 et seq. When the Courts (Prosecutor & Judge) inquiry takes it beyond the text of the statute, the object of its extra-textual inquiry is to determine the intent of the state's legislature's time it was enacted the statute in question. The Court (Judge: J. J. Warden) should have turned first to the legislature's history of the statute(s) & then to the public policies in effect at the time of the statute's enactment in attempting to discern the intent of legislature instead of the Prosecutor's (Sydney P. Mitchell's) opinion (See. Tr. Trans. pp. 13:15-25, 14:1-9, 21:31-11). The State must still prove beyond a reasonable doubt that I the Appellant [Mr. McKinnedy III] was in fact convicted on a 1st Offense. The entry into evidence of the judgment of sentencing the Appellant to 18 years from the proceeding leading to the prior conviction will not suffice. An element of the crime is the offense the State must prove beyond a reasonable doubt that the Appellant [Mr. McKinnedy III] was in fact previously convicted of a felony drug charge (See. U.S. vs. Runney, 867 F.2d 114,

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721 (1st Cir.) cert. denied, 109 S.Ct. 3184, 105 L.Ed.2d 702 (1989). In determining whether an indictment meets sufficiency standards, the Court must look at the indictment with a practical eye in view of all the surrounding circumstances. The Defects with the Appellant's [Mr. McKinnedy, III's] indictment, that are of such fundamental character as to make the indictment wholly invalid when the CDR-Code was changed from 01124 a paroleable offense that the Grand Jury convened on 6/09/98 & when its CDR-Code was changed to "01134 & enhancer" shows the indictment is defective or insufficient & the Appellant was unable to motion the Court to Quash the indictments before a jury was sworn or before any sentence was imposed & was done prior to Entry & his case is irrelevant totally to the facts of this instant case at hand. The Appellant's [Mr. McKinnedy, III's] substantive Due Process & procedural are ^{not} subjected to waiver, when it comes to the indictment being defective or insufficient. Which the Court, nor the Grand Jury re-indicted me on the changed CDR-Code of "01134", but it was SED's Inmate Classification Records (See Exhibit: 153 or MIC) that notified the Appellant of the change & their adjustments & then I was mailed the "Amended" Indictments: 186 & 185 & Sheet of Sentencing "Amended" (Exhibit M or 151) by the Prosecutor's Office (Sydney P. Mitchell) & not the Courts. When it has been held that, any facts that increases the penalty of a crime beyond the prescribed statutory maximum MUST be submitted to a "JURY". Which the Appellant [Mr. McKinnedy, III] have been deprived of these rights guaranteed by the Bill of Rights of the U.S. Constitution of the Sixth & Fourteenth (6th & 14th Amend.) Amendments & ~~proven~~ proven beyond a reasonable doubt. See Blakely v. Washington, 124 S.Ct. 2531 (2004), the Court held that the sentence violated the sentence range supported by the jury's finding or to hold a separate sentencing hearing before a jury. In addressing Washington's state's (determined) sentencing scheme, the Blakely Court found that Jones v. U.S., 119 S.Ct. 1215; Apprendi v. New Jersey, 120 S.Ct. 2348 & Ring v. Arizona, 122 S.Ct. 2428, made clear, "that the statutory maximum for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the statute, or jury verdict &/or admitted by the defendant", at 124 S.Ct. at 2537 (See Buckner v. US, 125 S.Ct. 738, 752).

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"The Framers of the U.S. Constitution would not have thought it too much to demand that, before depriving a man like the Appellant Tim McKinnedy (of ten (10) years of my "Life, Liberty, & or Property" Rights created by the Bill of Rights, that is a "Substantive & Procedural Due Process Rights" of the State (S.C.) should have respect for its citizens rights of the modest inconvenience of submitting the accusations to the unanimous suffrage of twelve (12) of my equals & or neighbors, rather than alone Judge (Joseph J. Whitely) (See, In Trans., pp. 1, & 38:10-18) or an employee of S.C.'s Taxable Classification Records (See, Exhibit 8) 3153, also see, Blakely, 124 S.Ct., at 2543 (Citation Omitted); & Jones, 119 S.Ct., at 1215).

The Framers of the United States Constitution of America understood the threat of "Judicial despotism", that could have risen from "arbitrary punishments upon arbitrary convictions", without the benefit of a jury in the instant case of the Appellant Tim McKinnedy (See, The Federalist No. 83, p. 499 (C. Rossiter ed. 1961) (A. Hamilton)). The Due Process Clause are designed to protect individuals against arbitrary governmental actions. The Founders' presumably carried this concern from England, in which the right to a jury trial has been enshrined since the Magna Carta, as noted in Appendix 3. The historical foundation for our recognition of these principles extends down centuries into the common law. The guard against a spirit of oppression & tyranny of the rulers part of "as the great bulwark of our civil & political liberties", trial by jury has been understood to require that the truth of every accusation, whether preferred in the shape of "Indictment, Information or an Appeal". A "New Rule" has been applied Retrospectively to similar cases for a 100- to 1 ratio for Crack Cocaine & Powder Cocaine disparity, that was done in Federal Courts effective November 1st 2007 & its equal protections would apply to the State's Courts through the 14th Amendment of the U.S. Constitution for the Due Process Clause & or Equal Protections of Laws of South Carolina. At Constitution Art. 183. When a change in the law such as this occurs (See, Kimbrough, 128 S.Ct. 558-578) a court must first determine whether a "New Rule" has been announced such determination is necessary so a Court/State or Federal will know whether the rule is to be applied prospectively or Retrospectively. The initial question for this Court is does

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The "New Rule In Light of Kimbrough", 128 S Ct 558 constitutes a "New Rule". A new rule is one which "breaks new ground or imposes new obligation on the State or Federal Government, or which was not dictated by the precedent existing at the time the Appellant's [Mr. McKinnedy, ~~III~~] conviction became final (See, McKinnedy vs State, 559 S.E. 2d 850-859) ("A State Conviction is final after the time for direct appeal prehearing; that of Certiorari in State or Federal Courts as to the U.S. Supreme (See, Exhibits) 3 5C, (C)(5), (C)(6), & Grievance No's.: KER-1523-08; 08-AJS-04-00631-AP; & Docket No's.: 2009-145826 for this instant Brief, pp. 1-24 of 24 dated 01/11/2010). In Teague (109 S Ct, 1060, 1070, 1075 (1989)), the Court held that a "New Rule" of law maybe applied retroactively on collateral review if "it places certain kinds of primary private individual conduct beyond the power of criminal law making authority to proscribe," or if it requires the observance of "these procedures that . . . are 'implicit in the concept of ordered liberty'." Id. The "New Rule" must alter the understanding of those fundamental bedrock procedural elements essential to the fairness of the proceeding (See, Kimrough, 128 S Ct. 558-578), that applies to the 6th Amdt. & 14th Amdt. for due process & equal protections. It is clear that the Appellant [Mr. McKinnedy, ~~III~~] is seeking relief from the "Creation of the New Rule In Light of Kimrough", that applies to the State of South Carolina through 14th Amdt. & for S.C. Const. Art 1 § 3, with the South Carolina Code of Laws Annex section 17-27-45(b) reads as follows:

When a Court of the State or the Supreme Court of this State (S.C.) or the United States or both upon State criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the State Court trial & if the standard or right is intended to applied "Retroactively" an application under this chapter may be filed no later than one (1) year after the date on which the standard or right was determined to exist; & § 17-27-45(c):

If the Applicant contend that there is evidence of material facts not previously presented & heard that requires "Vacation of the Conviction or Sentence", the

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application must be filed under this chapter within one (1) year, the date of actual discovery of the facts by the applicant or after the date when facts, could have been ascertained by the exercise of reasonable diligence. Also see, SCRCP, Rules, that concurs with the FRCP, Rule 60(b)(2) & what it provides: Newly discovered evidence that could not have been discovered in time for a new trial by due diligence under, Rule 59(b), FRCP or SCRCP, Rules that concurs. Because of the New Rule In Light of United States vs. Kimbrough, 128 S Ct 558 578, which the "Constitutional Right of Jury Trial" requirement under the 6th Am'tt would apply to the Appellant Mr. McKinnedy, III through the 14th Am'tt for Art. 13 of South Carolina Constitution would nonetheless affect every case state as well as federal. It would affect the content of plea negotiations. It would "alter the judge's role in sentencing". Thus, the Court must determine likely intent not by counting proceedings or successiveness by the Appellant Mr. McKinnedy, III, by evaluating the consequences of the Courts' Constitutional requirements. In light of the Acts' Language "its history & its basic purpose. See, Schebler v. Day, 73 Fed Clp, 611 ("A New Rule should apply retroactively if it requires the observance of those procedures that are implicit in the concept of ordered liberty") In U.S. vs. Savely, 827 F Supp. 668, 670-671, the Third Circuit has tackled the issue & provided the meaning in a Rule 35 setting after noting the gap in legal "retroactivity" govern by Rule 35 Motion, FRCP or SCRCP Crim. or what Rule of the Court concurs with. In Savely, the Court decided that it would follow the Rule 35 motion or the trend set by the Supreme Court & apply the general rules of "retroactivity" (See, Woods, 986 F2d at 669, 675 n. 10) & the Appellant Mr. McKinnedy, III should be afforded the same. Thus Honorable Court & Appeals for South Carolina have been shown the understanding by the Appellant Mr. McKinnedy, III that a finding of judicial misconduct in connection with a plea proceeding constitutes plain error & entitles the Appellant Mr. McKinnedy, III to withdraw my guilty plea even if the error is identified for the first time on appeal. Id. at 554 (See, U.S. vs. Sanchez-Lopez, 879 F2d 541, 551 (9th Cir. 1989) (See II, III, IV of this motion (Brief))

Conclusion

Wherefore, for all the reasons stated above, this Court should ~~affirm~~ the Appellant's claims mentioned above by Dismissing the active sentence of (18) years 85% & etc. with Prejudice or Vacate it to be Reversed & Remanded for Resentencing under the appropriate statutes of "In Light of the New Rule of Kennedy", 128 S.Ct. 558-578, that applies "Retroactively" of the Appellant's Mr. W.C. Kennedy, III request that this Honorable Court affirm any grounds appearing in the Record on Appeal in the Appellant's Mr. W.C. Kennedy, III behalf of any others that is competent. { Latin saying: "Let Justice Be Done Though Heaven Should Fall". }

Respectfully Submitted,

Mr. W.C. Kennedy, III

January 11th 2010
Kershaw, S.C.

Mr. William C. Kennedy, III #256024
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4848 Cobblestone Hwy
Kershaw, S.C. 29067-8069
W.C. Kennedy

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The State of South Carolina
In the Court of Appeals

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JAN 15 2010

Appeal From Administrative Law Court
John D. McLeod, Admin. Law Judge

SC Court of Appeals

Docket No's.: 2009145826

Case No's.: 2009-ALJ-04-00031-AP

Grievance No's.: KER-1523-08

Mr. William C. Kennedy, EIT #250024 (Appellant) Appellant,
Vs
South Carolina Department of Corrections (SCDC) Respondents

Certificate of Service

I certify that I have served the Respondents: Christopher D. Flordan, P.O. Box 21287, Columbia, SC 29221-1287 & South Carolina Court of Appeals, Clerk of Court, P.O. Box 11629, Columbia, SC 29201 copies (True) of the Appellant's Initial-Final Brief by placing its pp. 25 of 25 in the Kershaw Courtroom system, with first-class postage prepaid for the the U.S. Postal Services to the above mentioned address on or by 01/11/2010.

 EIT #250024

January 11th 2010
Kershaw, S.C.

Mr. William C. Kennedy, EIT #250024
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Wm Kennedy / CC File

Certificate Of Compliance

The undersigned hereby certifies that this Initial-Final Brief of the Appellant complies with Rule 211(b), SCACR of the Supreme Court's order of August 13th, 2007.

 250024

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JAN 15 2010

SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable John D. McLeod

Case No. 09-ALJ-04-00631-AP

William McKinnedy, # 256024,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

March 4, 2010

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS APPELLANT'S APPEAL?**
- II. IS RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE?**
- III. ARE THE REMAINING ISSUES RAISED BY APPELLANT PRESERVED FOR REVIEW?**

STATEMENT OF CASE

On February 3, 1999, Appellant pled guilty to distribution of crack cocaine, second offense. He was sentenced to eighteen years' imprisonment. (R.p.7). On December 13, 2008, Appellant filed a step-one grievance complaining the South Carolina Department of Corrections (SCDC) was inaccurately calculating his release date. (R.p.37). Specifically, he alleged that he was not being properly credited for good-time and Earned Work Credits (EWC). SCDC investigated and denied the grievance. (R.p.37). Appellant filed a step-two grievance on January 3, 2009. This grievance was also investigated and denied. In its final agency decision, SCDC informed appellant that his projected max-out date is being properly calculated. (R.p.38). Appellant then appealed his case to the Administrative Law Court (ALC).

In his Notice of Appeal, Appellant again alleged SCDC was miscalculating his sentence. However, on October 29, 2009, Administrative Law Judge John D. McLeod dismissed Appellant's case and upheld the Department of Corrections' decision in this matter. (R.pp.85-88). Appellant then initiated this appeal from the ALC's order. For the reasons contained herein, respondent respectfully requests this Court affirm the ALC's decision in this matter.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence.

See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC

reached. DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT'S CASE WAS CORRECTLY DISMISSED BY THE ADMINISTRATIVE LAW COURT.

Appellant complains his sentence is being miscalculated by SCDC. Specifically, appellant claims that some of his EWC he received from 1998 to 2000 were removed and his sentence was changed by the Department of Corrections' Inmate Records Branch from a parolable to a non-parolable offense without notice, an opportunity to be heard, and judicial review; all in contravention of his due process rights. However, the ALC correctly concluded the sentence was being properly calculated and dismissed the appeal.

As an initial matter, Appellant has litigated this issue previously and a ruling on the merits was made. In a habeas corpus petition filed March 23, 2006 in federal district court., appellant argued that some of his EWC were removed and his sentence changed to a no-parole sentence without notice, a hearing, and judicial review. McKinnedy v.

Faulkenberry, 2007 WL 486558 at * 4 (D.S.C. 2007); (R.p.29). United States District Court Judge Henry M. Herlong, Jr. ruled that this contention was without merit. Id.

S.C. Code Ann. § 24-13-100 defines a "no-parole offense" as a "class A, B, C felony or an offense exempt from classification as enumerated in section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more." McKinnedy was convicted of distribution of crack cocaine, second offense, which is a no-parole offense. State v. Mills, 602 S.E. 2d 750, 751 n.1 (S.C. 2004); S.C. Code Ann. § 44-53-375.

Id. Judge Herlong also found that the Appellant was notified by SCDC's Division of Classification and Inmate Records that he had received more EWC than permitted for a no-parole offense under the 1995 Crime Bill, effective January 1, 1996, prior to his conviction. (R.p.29).

On the merits, the Department of Corrections correctly calculated appellant's sentence. Pursuant to S.C. Code Ann. § 24-13-150(A), appellant must serve 85% of his sentence. Further, pursuant to S.C. Code Ann. § 24-13-230(B) appellant cannot earn more than six EWC per month or 72 EWC per year. These statutes were in place prior to appellant's conviction and sentence. Therefore, appellant was never entitled to earn earned work credits at a different rate, and he was sentenced to a no-parole offense. Thus, the Department of Corrections appropriately corrected appellant's work credits to comply with applicable statutory provisions which were in effect when appellant was sentenced.

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to justify its action. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an

administrative agency's findings from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

The record conclusively establishes that the "substantial evidence on the whole record" supports the SCDC's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. Public Svc. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (S.C. 1998). As shown above, Appellant has not met this burden. Accordingly, the Department of Corrections respectfully requests the ALC's decision be upheld.

III. THE REMAINING ISSUES RAISED BY APPELLANT ARE NOT PRESERVED FOR REVIEW.

The remaining issues appellant seeks to raise in his brief are not properly before this Court, and consequently this Court should not consider them. It is a well-settled principle of South Carolina law that, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. Brown v. S.C. Dep't of Health & Environmental Control, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled upon by the ALJ are not preserved for appellate consideration."). An issue may not be raised for the first time on appeal, but must have been properly preserved for appellate review. See State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005); State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005).

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case. Moreover, pursuant to Rule 220(b) SCACR, respondent requests that this Honorable Court affirm respondent's decision based on any ground(s) appearing in the Record on Appeal.¹

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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March 4, 2010

¹ Respondent reserves the right to request all available remedies pursuant to S.C. Code Ann. § 24-27-200 (2006), as well as Rule 240, SCACR, to be assessed against the Appellant for the filing of this frivolous appeal.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable John D. McLeod

Case No. 09-ALJ-04-00631-AP

William McKinnedy, # 256024,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on March 4, 2010, addressed to the Appellant as follows:

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