STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bilal A. Al-Haqq, #126806, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 13-ALJ-04-0892-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal of Appellant Bilal A. Al-Haqq (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant disputes the Department's calculation of his sentence.

FACTS/PROCEDURAL BACKGROUND

Appellant was sentenced to a total of 60 years based on three sentences to run consecutively – five (5) years, thirty (30) years, and twenty-five (25) years, respectively. Appellant's sentence began on November 13, 1991. Appellant filed a Step 1 Grievance on May 8, 2013, arguing that his sentence was being incorrectly calculated because SCDC was not including his good-time and earned-work credits. In denying Appellant's Step 1 Grievance, the warden pointed out that Appellant's max-out date had changed due to his February 12, 2013 conviction of 903 – The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including Prescription Drugs, or Inhalants. The warden also pointed out that Appellant no longer earned earned-work credits because he had been placed in Disciplinary Detention (DD).

Appellant filed a Step 2 Grievance on May 17, 2013, again asserting that his sentence erroneously calculated because it failed to include good-time credit or earned-work credit, in violation of S.C. Code Ann. §§ 24-13-210, -230, and -260 (Supp. 2013). In denying Appellant's Step 2 Grievance, the Inmate Grievance Committee (IGC) averred that Appellant's projected release date included all the good time he could earn and all of the earned-work credits that he had previously earned (before being placed in DD). The IGC also pointed out that there is no

minimum-service percentage on Appellant's sentence, and that at that time, barring any changes, he will have served 64% of his sentence upon reaching his projected release date.

Appellant filed a Notice of Appeal on November 18, 2013[1] and his Appellant's Brief on January 31, 2013.[2] On February 18, 2014, the Department filed a Motion to Enlarge Time to File Brief, requesting thirty (30) additional days in which to file its brief, which the Court granted. On February 28, 2014, the Department filed its Respondent's Brief. In addition, Appellant filed a Reply Brief on April 2, 2014.[3]

STANDARD OF REVIEW

The Court'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). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id. at 382; 527 S.E.2d at 757.[4] Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or

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[1] In his Notice of Appeal, Appellant requested that his grievances be consolidated. Appellant had another appeal pending in the ALC under Docket No, 13-ALJ-04-0654-IJ. However, Appellant never filed a motion to consolidate the appeals. In addition, the Court dismissed Appellant's case under Docket No. 13-ALJ-04-0654-J.. Therefore, the Court hereby denies Appellant's request to consolidate his grievances.

[2] Appellant filed two Appellant's Briefs, one on December 11, 2013 and one on January 31, 2014. Because they appear to be largely the same, and both were filed prior to SCDC filing its brief, the Court will consider the later of the two Appellant's briefs (January 31, 2014).

[3] This Reply Brief was timely filed pursuant to the Court Order granting Respondent's Motion to Enlarge Time filed February 25, 2014.

[4] In *Sullivan*, the Supreme Court also found that other conditions of confinement could potentially implicate a state-created liberty interest. However, those interests are "generally limited to freedom from restraint which. . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).*See also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." Section 1-23-380(5). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. § 1-23-380(5); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

ISSUE ON APPEAL

Whether SCDC has miscalculated Appellant's sentence by failing to include Appellant's good-time and earned-work credits in violation of S.C. Code Ann. §§ 24-13-210, -230, and -260 (Supp. 2013).

DISCUSSION

Appellant argues that he is only required to serve 64% of his original sentence of 60 years, i.e. 39 years **excluding** good time and earned work credits.[5] Because Appellant began his sentence in 1991, and the SCDC's max-out date for Appellant is February 1, 2030, he contends that SCDC has failed to include his good-time and earned-work credits to his sentence, which he says has accrued to 2,805 days and 1,371 days, respectively.[6] I disagree.

The Department attached to its brief a manual calculation of Appellant's sentence. This manual calculation shows that Appellant first served a five-year, day-for-day term for possession of a knife during a violent crime, a term which he completed on November 13, 1996. *See* S.C. Code Ann. § 16-23-490 (1991) (requiring the imposition of a five-year sentence in addition to punishment for the violent crime, and "[s]uch five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits; however, the person may earn credits during this period."). Appellant then began serving his thirty-year sentence for kidnapping, which he is currently projected to complete on February 19, 2015.[7] Following service of the thirty-year sentence, Appellant must serve his twenty–five–year sentence for armed robbery. He is projected to complete service of his entire sentence on February 19, 2030, assuming that he earns and retains all possible good-time credits until that date. Therefore, the Department appears to have correctly calculated Appellant's sentence.

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[5] In his brief, Appellant states 64%, but he had originally stated, in his Step 1 and Step 2 Grievances, 65%. Applying 65% to 60 years is how Appellant arrived at the number 39, which he has consistently argued is the number of years he is supposed to serve on his sentence. However, this reflects Appellant's misapprehension of how his sentence is calculated. As the Department informed him in denying his Step 2 Grievance, "there is no minimum service percentage," and the release date is merely a projection that can fluctuate, depending on future changes to his "disciplinary or [earned-work credit] history." Therefore, his projected release date in 2030 is based on an assumption that Appellant will earn the maximum number of good-time credits; hence, the date is called a max-out date – it is presently the earliest he can be released based on a presumption that he obtains the maximum number of good-time credits and has no disciplinary issues.

[6] In his brief, Appellant further alleges that 1,275 days of good-time credit were taken away from him "without ever computing this time into Appellant's sentence." However, such an assertion was never raised in his Step 1 and Step 2 Grievances, and is therefore not preserved for review on appeal. Therefore, the Court will not consider this argument. *See State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 489 (2007) (providing that an argument not raised before a factfinder below is not preserved for appellate review).

[7] Appellant is not currently assigned a job, and as a result, he is not currently earning work credits. *See* S.C. Code Ann. § 24-23-230 (1991) (conditioning the award of earned work credits on participation in a productive duty assignment).

Moreover, Appellant bears the burden of proving convincingly that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion in light of the substantial evidence on the record as a whole. *See Porter v. Public Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998). However, Appellant has failed to demonstrate how his sentence has been incorrectly calculated. Indeed, it appears that Appellant misapprehends his sentence calculation. He seems to believe that his projected release date **excludes** good-time credits and earned-work credits, requiring those credits to be added in to give him an earlier release date. To the contrary, his projected release date, in fact, **already includes** all the credits that Appellant can possibly earn. Should Appellant fail to earn any of those credits, or have a disciplinary issue, his projected release date would be extended accordingly.[8] *See* footnote 4, *supra*.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED. AND IT IS SO ORDERED.**

Ralph King Anderson, III
Chief Administrative Law Judge

April 17, 2014
Columbia, South Carolina

[8] For example, as the warden pointed out in response to Appellant's Step 1 Grievance, Appellant's max-out date changed due to Appellant's February 12, 2013 conviction for drug trafficking, which would be a disciplinary issue.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

April 17, 2014
Columbia, South Carolina