

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, *Administrative Law Judge*

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Lower Case No. 2014-ALJ-04-0273-AP

Appellate Case No. 2014-001592

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Michael Richard Higgins, # 247499,.....Appellant,

v.

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

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**MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO SUMMARILY  
AFFIRM PURSUANT TO RULE 220(C), SCACR**

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COMES NOW, Respondent, South Carolina Department of Corrections (SCDC or Department) and, pursuant to Rule 240, SCACR, moves this Honorable Court for an order dismissing this appeal or, alternatively, summarily affirming the decision below pursuant to Rule 220(c).

This is an appeal from the Administrative Law Court's (ALC) dismissal of an inmate appeal of a disciplinary conviction where no sentence-related credits were taken away. Therefore, the sole issue before this Court is whether, as a matter of law, the ALC properly dismissed the appeal in light of S.C. Code § 1-23-600(D), which provides that "[a]n administrative law judge shall not hear an appeal from an inmate in the custody of

the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) . . . .” Since § 1-23-600(D)’s addition to the Code of Laws, the South Carolina Supreme Court has held that provision to be constitutional. *See Howard v. S.C. Dep’t of Corr.*, 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012) (holding that “an inmate’s loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest”).

In appeals such as this one, where Appellant is challenging only his loss of the opportunity to earn sentence-related credits—not a loss of accrued credits—the ALC does not err as a matter of law when it dismisses the appeal. To be sure, as the *Howard* court noted, there may be cases in which an inmate’s failure to earn credits is coupled with another allegation of the deprivation of a state-created liberty or property interest; in such cases, the ALC is precluded from simply summarily dismissing the appeal just because present within the case is the inmate’s failure to earn credits. But the appeal before this Court is not such a case.

Instead, this appeal is one of several currently pending before this Court in which an inmate seeks review of the ALC’s proper dismissal of the appeal below. If the purpose of, and legislative intent behind, § 1-23-600(D) means anything at all, surely that provision—coupled with our supreme court’s opinion in *Howard*—was added to lessen the administrative burden on the ALC and appellate courts of this State by attempting to clarify the scope of the liberty or property interest implicated in prison disciplinary matters. Therefore, Respondent submits that this Court may, consistent with due process and in the interest of judicial economy, dismiss appeals of this kind prior to full briefing.

In the alternative, and assuming the Court is not inclined at this time to dismiss the appeal at bar or similar appeals, Respondent submits that due process would not be sacrificed by the Court's decision to summarily affirm the ALC's dismissal of these appeals prior to full briefing. *Cf. Barton v. S.C. Dep't of Corr.*, No. 2012-UP-375, 2012 WL 10844375, at \*1 (S.C. Ct. App. June 20, 2012) (unpublished) (*per curiam*) ("As to whether the ALC erred in dismissing Barton's appeal: Rule 220(c), SCACR ('The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.');" ); *Ortiz v. S.C. Dep't of Corr.*, No. 2012-UP-032, 2012 WL 10826259 (S.C. Ct. App. Jan. 25, 2012) (unpublished) (*per curiam*) ("We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 220(c), SCACR . . . ."). Indeed, the Court would need only refer to the ALC's order that the Appellant is compelled to submit to this Court along with his notice of appeal; that order will contain a statement indicating that the particular inmate lost no sentence-related credit, but merely failed to earn credit for the month in which the disciplinary infraction occurred. Moreover, to the extent the Court would prefer to look beyond the ALC's order to, for example, the SCDC Step 2 grievance form that indicates whether any good-time credit was lost, the Department can easily forward that document to the Court upon the Department's receipt of notification that an appeal has been filed and docketed.

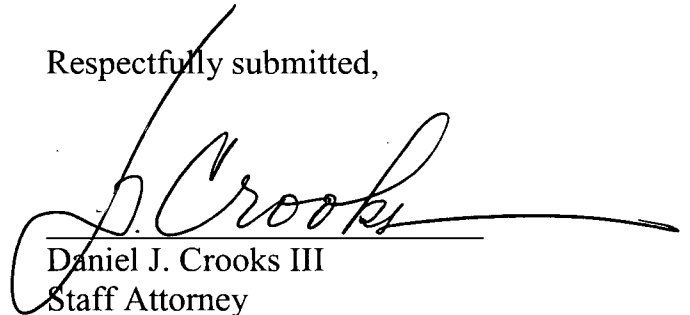
Finally, as to the issue of judicial economy, summary affirmations in this specific class of appeals would lessen the administrative burden on the Clerk of Court and all Court staff; they would expedite the speedy resolution of certain cases pending on the docket; and, perhaps most relevant, they would prevent the Court from expending

unnecessary time and resources disposing of cases where the sole issue—*i.e.*, an inmate’s disagreement with the ALC’s dismissal of the appeal pursuant to well-settled law—has been settled, initially by § 1-23-600(D), and finally by our supreme court in *Howard*.

To be sure, the text of *Howard* makes clear that the ALC’s dismissal of these types of appeals is an exception to the general rule of *Al-Shabazz* that grants to the ALC subject matter jurisdiction over all inmate appeals. Respondent therefore argues that *Howard* itself contains within it the necessary protections to ensure that inmates whose appeals involve general grievances (usually of policies) or disciplinary appeals (where credit is lost) are not without a forum to raise their concerns.

WHEREFORE the Department respectfully requests that the Court dismiss this appeal or, alternatively, dispense with further briefing and summarily affirm Judge Lenski’s June 20, 2014 order dismissing the appeal below.

Respectfully submitted,



Daniel J. Crooks III  
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*Counsel for Respondent*

Columbia, South Carolina

December 23, 2014

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM THE ADMINISTRATIVE LAW COURT

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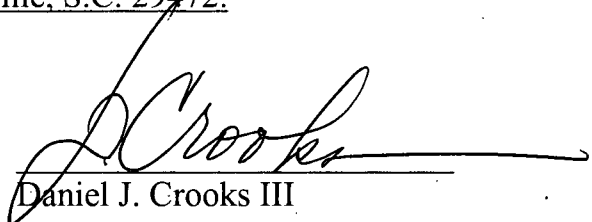
South Carolina Department of Corrections.....Respondent.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this day I have served a copy of the foregoing ***MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO SUMMARILY AFFIRM PURSUANT TO RULE 220(C), SCACR*** upon Appellant by depositing a copy of same in the United States Mail, addressed to: Michael Richard Higgins, #247499, Lieber Correctional Institution, P. O. Box 205, Ridgeville, S.C. 29472.



Daniel J. Crooks III  
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Dated: December 23, 2014



NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

December 23, 2014

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Reference: App. Case No.: 2014-001592  
*Michael R. Higgins # 247499 v. S.C. Department of Corrections*

Dear Ms. Kitchings:

Enclosed, please find one (1) original and one (1) copy of Respondent's *Motion to Dismiss Appeal or, Alternatively, to Summarily Affirm Pursuant to Rule 220(c), SCACR*. Kindly file the original and stamp and return the clocked-in copy to me.

Thank you for your assistance.

Very Truly Yours,

A handwritten signature in black ink, which appears to read "D. Crooks", is written over a horizontal line. Below the signature, the name "Daniel J. Crooks III" is printed in a black, sans-serif font.

Enclosures

cc: Michael R. Higgins # 247499  
Lieber Correctional Institution  
P. O. Box 205  
Ridgeville, S.C. 29472



South Carolina  
Department of  
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