

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, *Administrative Law Judge*

Lower Case No. 2014-ALJ-04-0771-AP

Appellate Case No. 2015-000183

RECEIVED

JUL 15 2015

SC Court of Appeals

George Cleveland, III, # 357770,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

July 13, 2015

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

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STATEMENT OF THE ISSUE ON APPEAL

**DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS THE APPEAL
BELOW PURSUANT TO *SLEZAK V. S.C. DEP'T OF CORR.*?**

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of George Cleveland, III, (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). This is an appeal from a final decision of the Administrative Law Court (ALC), which dismissed Appellant's appeal on January 15, 2015.

Appellant filed a Step 1 grievance on March 6, 2014 claiming that the Department was not awarding him the proper amount of Good Time Credit pursuant to statute. (*R.* at ____). This grievance was denied when it was determined that Appellant was simply incorrect and could not provide any information to substantiate his claim that the Department was not factoring in the 20 days of Good Time Credit in calculating his projected release date (*Id.*) The warden's response to Appellant's Step 1 was quite specific. (*Id.*)

Appellant then filed a Step 2 grievance on April 1, 2014, raising the same issue and essentially telling the Department that his calculations were correct and that, therefore, it was incumbent upon the Department to provide him with positive proof of the law supporting its calculation methods. (*R.* at ____). Once again in an attempt to explain to Appellant *why* his then-projected release date was correct, the Department responded substantively in its reply to the Step 2 on August 22, 2014. (*Id.*) Appellant subsequently appealed the Step 2 decision to the ALC pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). (*R.* at ____). From the ALC's final order of dismissal, Appellant took an appeal to this Court.

STANDARD OF REVIEW

S.C. Code § 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.

S.C. Code § 1-23-610(B); *see also* S.C. Code § 1-23-380(5).

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. S.C. Code § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL BELOW PURSUANT TO *SLEZAK V. S.C. DEP'T OF CORR.*

This Court should affirm the ALC's January 15, 2015 order of dismissal because the ALC properly dismissed the appeal pursuant to *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

The Department interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. This Court has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006). The ALC properly dismissed this case under *Slezak* and *Skipper*.

Here, Appellant challenged what he perceives to be his inability to earn good-time credits. However, all of the sentences for which Appellant is serving time are those to which the 20-days-per-month good-time credit rule applies. Nothing that Appellant produced at the ALC indicated that the Department was improperly applying the applicable law in calculating sentences similar to Appellant's. The Department gave detailed responses in both the Step 1 and Step 2 responses, and there is simply no documentation that Appellant provides that shows that the Department is incorrectly calculating his sentence. Instead, as the ALC correctly noted below, while "it appears that Appellant is arguing that his sentence has been calculated incorrectly . . . Appellant is actually presenting [an] argument that the

Department's method of calculation as a whole is incorrect, and that [the Department's] staff is improperly trained and ignorant of the law." (R. at ____).

Appellant, in essence, argues that the Department is not crediting him with the 20 days of Good Time Credit to which he is entitled due to his serving "parolable" 55-65% sentences.

Several real-time screen shot images from the Department's internal Offender Management System shows why Appellant must be incorrect. The first image displays all of Appellant's active sentences; the sentence with the asterisk beside it is the measuring sentence because it is the longest in duration.

Terminal Window: S1 - BCBPROD - BlueZone Mainframe Display

File Edit Session Options Transfer View Script Help

CMTI100D SCDC OFFENDER MANAGEMENT SYSTEM 07/13/15
 OMCOMITA COMMITMENT APPLICATION C055212
 CONVICTION SUMMARY

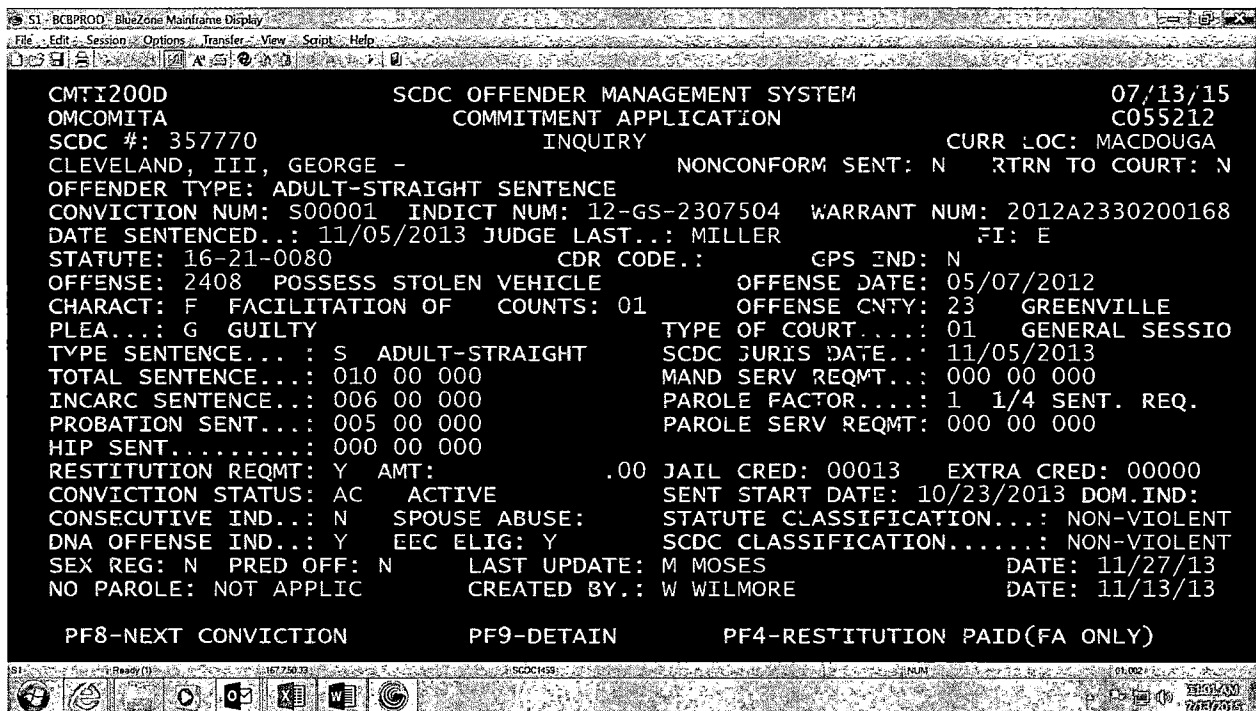
SCDC# > 57770 CURR LOC: MACDOUGA
 CLEVELAND, III, GEORGE - SCDC CLASSIFICATION..: NON-VIOL
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

	NUM	CONVICTION	OFFENSE	INCARC	SENT	SENT	SENT	PROJ	COMP	STAT	IND	CONV	VIO
				YRS	MO	DYS	DATE	START					
—	S00008	RECEIVE	STOLEN VEHIC	000	00	000	10/13/14	10/12/14	04/26/2017	ACT	N	N	
—	S00007	POSSESS	STOLEN VEHIC	000	00	000	10/13/14	10/12/14	04/26/2017	ACT	N	N	
—	S00006	POSSESS	STOLEN VEHIC	000	00	000	10/13/14	10/12/14	04/26/2017	ACT	N	N	
—	S00005	NONMOVING	TRAFFIC VI	000	00	000	11/05/13	10/23/13	/ /			PRO	N
—	S00004	NONMOVING	TRAFFIC VI	005	00	000	11/05/13	10/23/13	10/23/2016	ACT	N	N	
—	S00003	OBTAIN	SIG/FRAUD \$1K	005	00	000	11/05/13	10/23/13	10/23/2016	ACT	N	N	
—	S00002	POSSESS	STOLEN VEHIC	005	00	000	11/05/13	10/23/13	10/23/2016	ACT	N	N	
—	* S00001	POSSESS	STOLEN VEHIC	006	00	000	11/05/13	10/23/13	04/26/2017	ACT	N	N	

MAKE A SELECTION AND PRESS <ENTER>... PAGE: 0001
 PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

What follows in the next image is the page of details related to the measuring sentence of Possession of a Stolen Vehicle (indictment 12-GS-2307504). Appellant received only 13 days of Jail Time Credit, meaning that his sentence start date is actually October 23, 2013.

Without a job, an inmate serving a “parolable” sentence will serve approximately 65% of the actual incarcerative sentence *provided that the inmate also remains disciplinary free during the entire period of incarceration.* Here, Appellant’s longest parolable offense is for the Possession of a Stolen Vehicle conviction listed below, as Appellant was given a total of 6 years of incarcerative time to serve.



The following image proves that Appellant has, indeed, earned Good Time Credit since the beginning of his sentence start date, as it shows he has earned 300 days of such credit. In addition, he has earned 11 days of Earned Education Credit since his incarceration.

```

S1 - BCBPROD - BlueZone Mainframe Display
File Edit Session Options Transfer View Script Help
CMTI330D          SCDC OFFENDER MANAGEMENT SYSTEM          07/13/15
OMCOMITA          RELEASE DATE SCREEN                      C055212
SCDC# > 357770          LOC: MACDOUGALL C
CLEVELAND, III, GEORGE - SCDC CLASSIFICATION..: NON-VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL REGISTRY...: N
                                          SEXUAL PREDATOR...: NOT APP
                                          DNA STATUS.....: COMPLETED
                                          GPS REQUIREMENT...: N
                                          PREA DECISION....:
CURRENT SENTENCE: 006-00-000          CONSECUTIVE SENTENCE ..: N
                   006-00-000          CURRENT SENT START DATE: 10/23/2013
PROJECTED COMPLETION DATES
MAXOUT DATE .....: 04/26/2017          CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / /                CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 02/25/2017        NEXT PAROLE HEARING DATE: 02/25/2017

TOTAL GT DAYS EARNED .....: 000300          LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000011        LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000        ASSAULTIVE DISC W/IN 24 MONTHS
TOTAL EXTRA EARNED CREDITS ..: 000          SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 000628        ISS.....:

PFKEYS:          5:HISTORY OF DATE CHANGES

```

Furthermore, the image below shows that, as of November 13, 2013 (when Appellant entered the Department’s custody via Kirkland R&E), Appellant’s projected release date on the 6-year “parolable” sentence was calculated as June 14, 2017. Therefore, with a sentence *start date* (which factors in Jail Time Credit) of October 23, 2013, that projected release date was set at approximately 3 years, 8 months after the start date of the sentence (again, October 23, 2013). Three years and eight months is slightly over half of 6 years—which is the 6 years of incarcerative time to which Appellant was sentenced for the offense that constitutes the measuring sentence for release date purposes.

As of today, July 13, 2015, Appellant’s projected release date is April 26, 2017—a date actually earlier than the initial projected release date, due to Appellant having secured a job in May of 2015 and thereby qualifying for Earned Work Credits. Accordingly, with

simple mathematical calculations, it cannot be true that the Department is failing to credit Appellant with the 20 days of Good Time Credit per month to which he is entitled. Appellant may not completely understand that the initial projected release date he was given upon entry into the Department of June 14, 2017 *already factored in an estimated 20 days of Good Time Credit from the beginning of his sentence and assuming a disciplinary-free incarcerative period*. Instead, it appears Appellant thinks that the June 14, 2017 initial projected release date was calculated day-for-day and that he is entitled to 20-days a month Good Time Credit beyond that. Of course, that is not the case, nor could it be in light of the explanation given above.

```

S1 - BCBPROD - BlueZone Mainframe Display
File Edit Session Options Transfer View Script Help
CMTI310D          SCDC OFFENDER MANAGEMENT SYSTEM          07/13/15
                  COMMITMENT APPLICATION
SCDC #: 357770    PROJ RELEASE/ELIG AUDIT TRAIL          C055212
CLEVELAND, III. GEORGE -
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
                  OFFENDER CATEGORY:
                  CURR SENT SERVING CAT: NON-VIOLEN
MAXOUT           PAROLE           RECALC           RECALC           CHANGE
DATE            DATE            DATE            CODE            REASON
08/13/2017      04/22/2016      12/02/14        MOD HIST DISC
08/13/2017      04/22/2016      10/27/14        MOD STAT
08/13/2017      04/22/2016      10/23/14        MOD STAT
08/13/2017      04/22/2016      10/21/14        MOD STAT
08/13/2017      04/22/2016      10/16/14        MOD STAT
08/13/2017      04/22/2016      10/09/14        MOD STAT
08/13/2017      04/22/2016      09/29/14        AUDIT REC ADJ
07/23/2017      04/22/2016      09/15/14        MOD STAT
07/23/2017      04/22/2016      02/27/14        MOD HIST DISC
06/14/2017      04/22/2016      01/07/14        MOD STAT
06/14/2017      04/22/2016      11/27/13        MOD CONV
06/14/2017      04/22/2016      11/13/13        NEW CONV
                  PAGE.> 0002
PF11-QUIT  PF10-MAIN MENU  CLEAR-PREVIOUS SCREEN  PF8-FORWARD
                  PF7-BACKWARD
Ready (1) 1617/2013 SCDC1459 NUM 31 063

```

Finally, as the last image below shows, Appellant was convicted of a major disciplinary offense on February 26, 2014, resulting *both* in his failure to earn 20 days of

Good Time Credit for the month in which he was convicted *and* a forfeiture of 60 days of already-accrued Good Time Credit as a sanction for his behavior. Accordingly, Appellant's projected release date was pushed back slightly in February of 2014 as a result of these losses. After all, an inmate's projected release date can (and often does) change monthly based on several factors, including the accrual of Earned Work Credit or Earned Education Credit, or the commission of disciplinary infractions and any attendant loss of Good Time Credit.

```

S1 - BCBPROD: BlueZone Mainframe Display
File Edit Session Options Transfer View Script Help
DISI100D          SCDC OFFENDER MANAGEMENT SYSTEM          07/13/15
                  DISCIPLINARY SYSTEM                    C055212
SCDC ID: B57770   DISPLAY INMATE OFFENSE HISTORY
CLEVELAND, III, GEORGE -          CURR LOC: MACDOUGALL
OFFENDER TYPE: ADULT-STRAIGHT     PURCHASED TV

  CASE#  OFFENSE              TYPE  OFFENSE  HEARING  NET GT  DHO  OFF
  -----  DESCRIPTION            ACTION DATE    DATE    LOST DECISION LVL
- 00003  DISORDERLY CONDUCT        OTHER AC 06/07/15 06/09/15 00000 CLOSED      3
- 00002  REFUSING OR FAILING O    ADMINIST 11/24/14 12/01/14 00000 CONVICTED   3
- 00001  STRIKE I/M W/WO WEAPO    MAJOR DI 02/08/14 02/26/14 00060 CONVICTED   2
***END OF LIST***

                                     PAGE 0001
SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY
PF4-MODIFY  PF6-DISMISSED/NOT GUILTY  PF11-QUIT  PF10-MAIN MENU
  
```

CONCLUSION

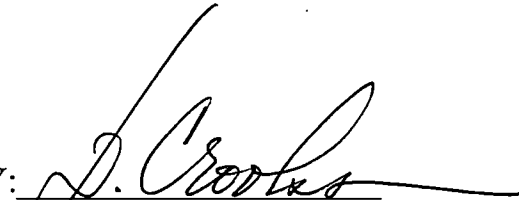
The ALC did not err in dismissing the appeal below. Accordingly, this Court should affirm.

[signature block on following page]

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



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July 13, 2015

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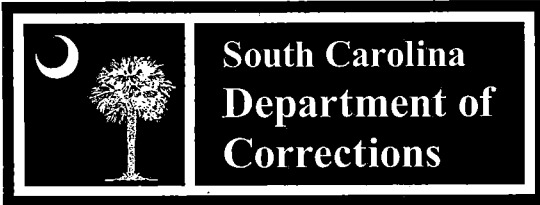
CERTIFICATE OF SERVICE

I certify that I served Appellant a copy of Respondent's *Initial Brief* by depositing a copy of same in the U.S. Mail on July 13, 2015, addressed to: George Cleveland, III, #357770, MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, S. C. 29472.

Dated: July 13, 2015



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South Carolina
Department of
Corrections

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

OFFICE OF GENERAL COUNSEL

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July 13, 2015

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SC Court of Appeals

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Reference: Appellate Case No. 2015-000183
George Cleveland v. S.C. Dep't of Corr.

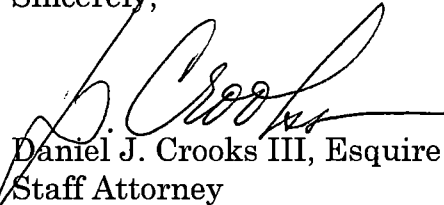
Dear Ms. Kitchings:

Enclosed herein, please find:

- One (1) original and one (1) copy of **RESPONDENT'S INITIAL BRIEF**
- One (1) original and one (1) copy of **RESPONDENT'S DESIGNATION OF MATTER**
- One (1) original and one (1) copy of **RESPONDENT'S MOTION TO FILE OUT OF TIME.**

Kindly file the originals for each document and date-stamp and return the copies to me in the enclosed inter-agency envelope.

Sincerely,



Daniel J. Crooks III, Esquire
Staff Attorney

cc: [Via U.S. Mail]
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SC Court of Appeals

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