

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Marvin F K Hrell

---

Case No 2008-AJ-04-00805-AP (S C Ct App Filed Mar 1, 2011)

---

Todd Sowell,

Petitioner,

v

South Carolina Department  
of Corrections,

Respondent

---

APPENDIX 2

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TODD M SOWELL, # 238581  
Lieber Correctional Institution  
P O Box 205  
Ridgeville, SC 29472

CHRISTOPHER D FLORIAN  
S C Dept of Corrections  
P O Box 21787  
Columbia, SC 29221  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Marvin F Kittrell

---

Case No 2008-AW 04-00805-AP (S C Ct App Filed Mar 1, 2011)

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Todd Sowell,

Petitioner,

v

South Carolina Department  
of Corrections,

Respondent

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APPENDIX 1

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APPENDIX 2

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**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**

Todd Sowell, Appellant,

v

South Carolina Department  
of Corrections, Respondent

---

Appeal from the Administrative Law Court  
Marvin F Kittrell, Administrative Law Judge

---

Unpublished Opinion No 2010-UP-495  
Submitted November 1 2010 – Filed November 8, 2010

---

**AFFIRMED**

---

Todd Sowell, pro se, of Bishopville, for Appellant

Christopher D Florian, of Columbia, for Respondent

**PER CURIAM** Todd Sowell appeals an Administrative Law Court (ALC) order affirming the South Carolina Department of Corrections'

decision to deny his grievance concerning the calculation of his sentence Sowell argues the ALC erred in failing to give him additional credit for time served prior to sentencing We affirm<sup>1</sup> pursuant to Rule 220(b)(1), SCACR, and the following authorities S C Code Ann § 1-23-610(B) (Supp 2009) ("The review of the administrative law judge's order must be confined to the record The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact "), S C Code Ann § 24-13-40 (2007) (providing prisoners should not be given credit for time served prior to trial when "the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense")

**AFFIRMED**

**HUFF, KONDUROS, and LOCKEMY, JJ , concur**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR

# The South Carolina Court of Appeals

Todd Sowell,

Appellant,

v

South Carolina Department of  
Corrections,

Respondent

The Honorable Marvin F. Kittrell  
Richland County  
Trial Court Case No. 2008-AL-04-00805

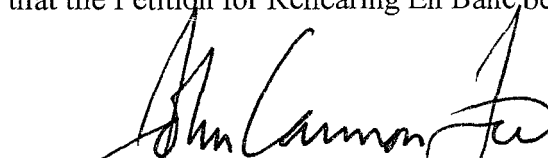
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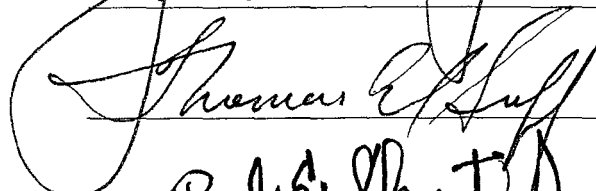
## ORDER DENYING PETITION FOR REHEARING EN BANC

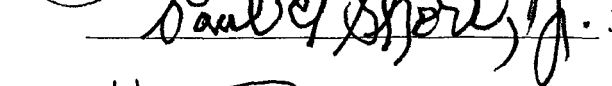
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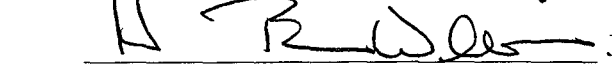
PER CURIAM After a careful consideration of the Petition for Rehearing En Banc, the Court has determined that en banc consideration is not necessary to secure or maintain the uniformity of its decisions, nor is the proceeding one involving a question of exceptional importance. Further, the Court finds no other ground appearing to warrant a rehearing en banc.

It is, therefore, ordered that the Petition for Rehearing En Banc be denied.

  
\_\_\_\_\_  
C. J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Paul M. Thomas

Daniel G. Pieper J

U. K. J

James Cook  
James W. Custer A. J.

Columbia, South Carolina

**FILED**  
**MAR 01 2011**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Marvin F Kittrell

---

Case No 2008-ALJ-04-00805-AP

---

Todd Sowell, #238581

Appellant,

v

South Carolina Department of Corrections

Respondent

---

**SUPPLEMENTAL RECORD ON APPEAL**

---

July 27, 2010

Todd Sowell, # 238581  
990 Wisacky Highway  
Bishopville, SC 29010  
*Pro Se* for Appellant

Christopher D Florian  
Staff Attorney  
S C Dept of Corrections  
P O Box 21787  
Columbia, SC 29221  
(803) 896-8508  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Marvin F Kittrell

---

Case No 2008-ALJ-04-00805-AP

---

Todd Sowell, #238581

Appellant,

v

South Carolina Department of Corrections

Respondent

---

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**RECEIVED**

FEB 11 2009

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**GENERAL COUNSEL**

Todd Sowell, #238581, )  
)  
Appellant, )  
)  
v )  
)  
South Carolina Department of Corrections, )  
)  
Respondent )  
)

Docket No 08-ALJ-04-00805-AP  
Grievance No MCCI 0523-07

**ORDER**

**STATEMENT OF THE CASE**

In the above-captioned matter, Appellant Todd Sowell ("Sowell") appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning the Department's calculation of his sentence. Based upon the Record on Appeal, the parties' briefs, and applicable law, the Department's decision to deny Sowell's grievance must be affirmed.

**BACKGROUND**

On June 30, 2007, Sowell submitted a Step One Grievance Form to the Department contending that it had "erroneously calculated [his] sentence." In its response, the Department informed Sowell that he had been given thirty-two (32) days of jail-time credit, as ordered by the sentencing judge. On December 18, 2007, Sowell submitted his Step Two Grievance Form to the Department, again contending that the Department had miscalculated his applicable jail-time credit. On September 9, 2008, the Department issued a final decision in the matter by denying Sowell's grievance as Department records reflected that he had been awarded the appropriate amount of jail-time credits. Based on the Department's decision, Sowell filed a notice of appeal with the Administrative Law Court ("ALC" or "Court") on September 30, 2008 in which he contends that the Department has erroneously calculated his sentence.

**DISCUSSION**

This appeal is before the Court pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124.

**FILED**

FEB 09 2009

SC ADMINISTRATIVE LAW COURT

(2003), Slezak v South Carolina Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004), and Furtick v South Carolina Department of Corrections, 649 S E 2d 35 (S C 2007) In his notice of appeal, Sowell essentially contends that his rights were violated because the Department has not accurately credited his sentence with jail-time credits he earned in 2007 In support of this proposition, Sowell cites S C Code Ann § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing

”) However, Sowell fails to acknowledge the next sentence of § 24-13-40

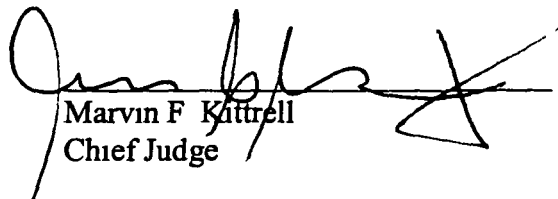
**Provided, however, that credit for time served prior to trial and sentencing shall not be given** (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution, or (2) **when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense** in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense

Id (emphasis added) Here, Sowell committed a burglary offense on December 1, 2004 However, he was not served the arrest warrant on the burglary charge until 2007 – while he was already in jail serving time on an unrelated offense Pursuant to § 24-13-40, Sowell cannot be given credit for time served on a second offense while currently serving time for another, unrelated offense The Department properly credited Sowell with 32 days of jail-time credit, which represents his time served from February 12, 2007 to March 16, 2007 for the burglary offense Accordingly, Sowell’s argument that the Department has refused to credit his sentence with the appropriate amount of jail-time credit is without merit, and the Department’s decision in this matter must be affirmed

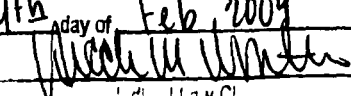
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M

**ORDER**

**IT IS HEREBY ORDERED** that the Department’s decision in this matter is **AFFIRMED**  
**AND IT IS SO ORDERED**

  
Marvin F Kittrell  
Chief Judge

February 9, 2009 M  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This to certify that the undersigned has this date served this order in the above entitled action upon all parties in 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 9th day of Feb, 2009  
By 

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2**

DUC 12 22-01  
JAN 07 2008  
**805**  
MCCI 0523-1

INMATE NAME  Todd Michael Sowell  
 SCDC NUMBER  SCDC# 238581  
 INSTITUTION  Mc Cormick  
 HOUSING UNIT  F 3 - A 165  
 WORK ASSIGNMENT  Prison Industries, and Tutor

**RECEIVED**

Office Use Only  
 Grievance No. \_\_\_\_\_  
 General Policy \_\_\_\_\_  
 Disc Hear. \_\_\_\_\_  
 Class  \_\_\_\_\_  
 Date Received 11-25-08  
 REC Initials MS  
009-5-08

JAN 31 2008

INMATE GRIEVANCE

**INMATE'S REASON FOR APPEAL (state specific dissatisfaction)**

My reason for appeal is simply that if my jail time credit is accurate based on my offense and sentencing dates, then it will show that my offense occurred 12-1-04, \*I was arrested 1-3-05, I was delivered a copy of the arrest warrant 1-7-05, I was True Bill indicted 6-16-05, and was sentenced on 8-16-07, why would I only be given (32) days credit for time served?

[Signature] 12-18-07  
 Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON**

Your concern has been reviewed. In your complaint, you stated that your jail time credits are being miscalculated. You stated that you want the issue looked into and corrected. Documentation reveals that you were awarded 32 days of jail time credits. If you feel you should receive additional credits, I suggest that you contact your attorney for assistance.

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.

[Signature] 1/9/08  
 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)

## **INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM**

- 1 Complete form in its entirety, writing only in the space provided for inmate use**
- 2 State your specific reason for further appeal Do not submit any new issues for review**
- 3 Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision Do not write in the space provided for the responsible official**
- 4 The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1

JUL 02 2007

INMATE NAME Todd Michael Sowell  
SCDC NUMBER SCDC# 238581  
INSTITUTION Mc Cormick  
HOUSING UNIT F 3 - B 141  
WORK ASSIGNMENT Prison Industries

Office Use Only  
Grievance No MCC-0523-07  
Code General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc Hear \_\_\_\_\_  
Class \_\_\_\_\_  
Date Received 07-05-07  
IGC Initials MS

STATE GRIEVANCE (include documentation and date of incident; if SCDC Policy, indicate which policy)

On June 30, 2007 I, Todd Michael Sowell, am filing a step 1 grievance form contending that prison officials have erroneously calculated my sentence

ACTION REQUESTED

That I, the Defendant in Case No 2005-BS-40-00393, be given credit time served for the time I was incarcerated awaiting my trial because I had no control over when my case was to be heard

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT

On June 29, 2007 I spoke with my caseworker K Ukadike explaining my case, and he informed me that I will not win this argument, and that my max-out date is final and will not change

Todd M Sowell June 30, 2007  
Grievant Signature Date

ACTION TAKEN BY IGC

SPOKE WITH MR K UKADIKE, UNIT CASEWORKER  
SEE WARDEN'S DECISION AND REASON

[Signature] 12-17-07  
IGC Signature Date

[Signature]  
Grievant Signature Date

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

**WARDEN'S DECISION AND REASON**

YOUR GRIEVANCE HAS BEEN REVIEWED PER MR K UKADIKE, YOUR MAX-OUT DATE IS FEBRUARY 8, 2024 HE STATED THERE IS NO MISCALCULATION OF YOUR TIME YOU HAVE RECEIVED THIRTY-TWO (32) DAYS OF JAIL TIME CREDIT WHICH HE STATES IS ACCURATE BASED ON YOUR OFFENSE AND SENTENCING DATES MR UKADIKE ALSO STATED HE HAS INFORMED YOU IF YOU FEEL YOU ARE DUE ADDITIONAL JAIL TIME CREDIT YOU NEED TO ADDRESS YOUR CONCERNS TO THE COURTS I CONSIDER THIS MATTER CLOSED

- I accept the Warden's decision and consider the matter closed
- I do not accept the Warden's decision and wish to appeal

T. Smith      12-17-07  
 Grievant Signature      Date

[Signature]      12-12-07  
 Warden Signature      Date

[Signature]      12-17-07  
 IGC Signature      Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

- 1 An informal resolution shall be attempted prior to the filing of Step 1
- 2 Complete each section in its entirety, writing only in the space provided for inmate use
- 3 Only one (1) issue is to be addressed on each form
- 4 Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident, policy grievances at any time Do not write in the space provided for the Warden's response
- 5 If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

September 30, 2008

RECEIVED

SEP 30 2008

GENERAL COUNSEL

Department of Corrections  
David Tatarsky  
Office of the General Counsel  
4444 Broad River Rd, Box 21787  
Columbia, South Carolina #29221-1787

RE: Todd Michael Sowell, Appellant, v South Carolina  
Department of Corrections, Respondent, Docket No 00-AW-04-

Dear Mr Tatarsky

Enclosed please find a copy of the Notice of Appeal of Appellant in the above referenced case for filing in your Office, with Proof of Service. Someone from the Administrative Law Court should be contacting you soon in reference to this matter.

If you have any questions in regard to this letter, please contact me at the address below

Sincerely,

Todd M Sowell

Todd M Sowell, # 238581  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

cc file/TMS  
McCormick, SC

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE DIVISION

Michael Sowell, )  
↓ )  
Appellant, 238581 )

NOTICE OF APPEAL

vs )  
South Carolina Department of Corrections, )  
& )  
Respondent )

Docket No 00-ALJ-04-\_\_\_\_\_-AP

Mc 528-07  
CI

Notice is hereby given that Todd Michael Sowell does hereby  
appeal the final decision of the South Carolina Department of Corrections dated 9-9-08  
received on 9-18-08, a copy of which is attached. A general statement of the  
grounds for appeal is (See S C Code Ann § 1-23-380(A)(6)) \_\_\_\_\_

Inmate is seeking judicial review of the Department of  
Corrections' final decision in an administrative matter denying  
prison officials have erroneously calculated sentence. Appellant  
has exhausted all administrative remedies available within the  
agency and is aggrieved by the final decision. Appellant  
contends his substantial rights have been prejudiced because  
the administrative decision is in violation of the statutory  
provisions of S.C. Code Ann § 24-13-40

Todd Michael Sowell, #238581  
Appellant's Name

T. M. Sowell  
Signed

Mc Cormick Correctional Institution  
Mailing Address

9-30-08  
Dated

386 Redemption Way

Mc Cormick, SC #29899  
City, State, Zip Code

(864) 443-2114  
Telephone Number

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

JAN 07 2008

INMATE NAME Todd Michael Sowell  
 SCDC NUMBER SCDC# 238581  
 INSTITUTION McCormick  
 HOUSING UNIT F 3 - A 165  
 WORK ASSIGNMENT Prison Industries, and Tutor

RECEIVED

JAN 31 2008

INMATE GRIEVANCE

Office Use Only  
 Grievance No MCCT 05236  
 Code General  
 Policy \_\_\_\_\_  
 Disc Hear. \_\_\_\_\_  
 Class ✓  
 Date Received 11-25-08  
 REC Initials [Signature]  
9909-5-08

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[Signature] 12-18-07  
 Grievant Signature Date

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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.

[Signature] 1/9/08  
 Signature Date

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[Signature] 1/18/08  
 Grievant Signature Date

[Signature] [Signature]  
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

JUL 0 2 2007

STEP 1

INMATE NAME Todd Michael Sowell  
SCDC NUMBER SCDC# 238581  
INSTITUTION Mc Cormick  
HOUSING UNIT F 3 - B 141  
WORK ASSIGNMENT Prison Industries

Office Use Only  
Grievance No TMC7-0523-0  
Code General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc Hear \_\_\_\_\_  
Class \_\_\_\_\_  
Date Received 07-05-07  
IGC Initials JS

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Todd Michael Sowell June 30, 2007  
Grievant Signature Date

ACTION TAKEN BY IGC

SPOKE WITH MR K UKADIKE, UNIT CASEWORKER

SEE WARDEN'S DECISION AND REASON

[Signature] 12-17-07  
IGC Signature Date

[Signature]  
Grievant Signature Date

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


**WARDEN'S DECISION AND REASON**

YOUR GRIEVANCE HAS BEEN REVIEWED PER MR K UKADIKE, YOUR MAX-OUT DATE IS FEBRUARY 8, 2024 HE STATED THERE IS NO MISCALCULATION OF YOUR TIME YOU HAVE RECEIVED THIRTY-TWO (32) DAYS OF JAIL TIME CREDIT WHICH HE STATES IS ACCURATE BASED ON YOUR OFFENSE AND SENTENCING DATES MR. UKADIKE ALSO STATED HE HAS INFORMED YOU IF YOU FEEL YOU ARE DUE ADDITIONAL JAIL TIME CREDIT YOU NEED TO ADDRESS YOUR CONCERNS TO THE COURTS I CONSIDER THIS MATTER CLOSED

  
Warden Signature                      12-12-07  
Date

- I accept the Warden's decision and consider the matter closed
- I do not accept the Warden's decision and wish to appeal

  
Grievant Signature                      12-17-07  
Date

  
IGC Signature                      12-17-07  
Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

- 1 An informal resolution shall be attempted prior to the filing of Step 1
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- 5 If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

STATE OF SOUTH CAROLINA  
In The Administrative Law Court

---

APPEAL FROM DEPARTMENT OF CORRECTIONS  
Inmate Grievance Branch  
Jon Ozmint, Director

---

Docket No 00-ALJ-04 \_\_\_-AP

---

Todd Michael Sowell,

Appellant

Department of Corrections,

Respondent

---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal of Appellant in the above referenced case by depositing (1) copy of it in the United States Mail, postage prepaid, on September 30, 2008, addressed to the Respondent's Office of the General Counsel upon David Tabarsky at 4444 Broad River Rd, Box 21797, Columbia, SC 29221

September 30, 2008

151 Todd M Sowell  
Todd M Sowell, # 239581  
McCormick Correctional Inst  
386 Redemption Way  
McCormick, SC #29899  
(864) 443-2114  
Pro Se Appellant

October 17, 2008

David Tatarsky  
Office of the General Counsel  
4444 Broad River Rd  
Box 21787  
Columbia, SC 29221

**RECEIVED**  
OCT 20 2008  
GENERAL COUNSEL

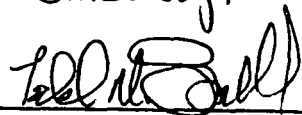
RE Todd Sowell, Appellant, v DCC, Respondent,  
Docket No 08-ALJ-04-00805-AP

Dear Mr Tatarsky

Enclosed please find a copy of the Blakeney brief of appellant, and record on appeal in the above referenced case for filing in your Office. Someone from the AHC should be contacting you soon in reference to this matter.

If you have any questions in regard to this letter, please contact me at the address below

Sincerely,

TSI 

Todd M Sowell, # 238521  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

cc file/TMS  
13 McCormick, SC

October 17, 2008

The Honorable Judge Kittrell  
Administrative Law Court  
Edgar A Brown Building  
1205 PENDLETON STREET, Suite 224  
Columbia, South Carolina 29201


RE: Todd Sawell v Appellant, v DOC, Respondent,  
Docket No 08-ALS-04-00805-AP

Dear Judge Kittrell :

Enclosed please find one original and one copy of the Blakeney brief of appellant, and record on appeal. Proof of Service is within the brief.

I would respectfully ask Your Honor that if I have misfiled, or ineffectively presented this brief, then I would move for representation pursuant to Rule 608 SCACR, but if it is acceptable by you then your discretion is mandating, and I will trust to move forward

Attestamente,

  
Todd M. Sawell, # 258581  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

cc : David Tatarsky  
Office of the General Counsel  
4444 Broad River Rd.  
Box 24787  
Columbia, SC 29221

Sig / TMS  
McCormick, SC

STATE OF SOUTH CAROLINA  
In The Administrative Law Court

---

APPEAL FROM DEPARTMENT OF CORRECTIONS  
Inmate Grievance Branch

Jon Ozmint, Director

---

Docket No 08-ALJ-04-00805-AP

---

Todd Michael Sowell, Appellant,

v

Department of Corrections, Respondent.

---

BLAKENLY BRIEF OF APPELLANT

---

Todd M Sowell, # 238581  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29599  
(864) 443-2114  
Pro Se Appellant

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STATEMENT OF ISSUE ON APPEAL

- 1 DID PRISON OFFICIALS ERR IN FAILING TO FIND COMPUTATION OF TIME SERVED CREDIT OF APPELLANT HAS BEEN ERRONEOUSLY CALCULATED.

## STATEMENT OF THE CASE

Appellant filed a Step 1 Grievance on June 30, 2007 contending prison officials erroneously calculated his sentence. Warden Cartledge gave response, spoke with K Ukadike, Caseworker, who stated there is no miscalculation, and the matter was closed. Appellant filed a Step 2 Grievance on December 18, 2007 appealing the Warden's decision, and Responsible Official reviewed and denied grievance on September 9, 2008. Appellant drafted a notice of appeal within 30 days of receipt of the official's response.

This petition follows.

## ARGUMENT

- I BECAUSE RESPONDENT FAILED TO GIVE FULL CREDIT AGAINST THE SENTENCE FOR TIME SERVED PRIOR TO TRIAL AND SENTENCING, THE SENTENCE HAS NOT BEEN RECKONED PURSUANT TO S C CODE ANN § 24-13-40

## DISCUSSION

The appellant contends that his credit for time served prior to trial and sentencing is not accurate based on offense and sentencing dates, thus invoking a due process violation pursuant to S C Code Ann § 24-13-40

Details of time served are as follows Todd Michael Sowell was arrested in Richland County on 1-03-05 and charged with unlawful use of telephone, harassment, malicious injury to property, and simple assault that stemmed from a domestic dispute with fiancée that occurred on 12-1-04 Defendant pleaded guilty to all charges in Magistrate Court on 1-5-05 and was sentenced to 10 days in jail or \$1087.50, but the charge of simple assault was pulled at the request of the Victim Advocate because they wished to upgrade the charge to CDV

On 1-6-05 Defendant was charged with burglary first degree that occurred on 12-1-04 from the same domestic dispute, and malicious injury to personal that occurred on 12-12-04

On 1-12-05 Defendant pled guilty to COV from the 12-1-04 incident and was sentenced to 30 days in jail

After this probation agents then served Defendant a warrant for probation violation while still at detention center, and on 2-17-05 Defendant pled guilty to charge and was sentenced to 5 years with 32 days credit time served by the Honorable Reginald I Lloyd.

Defendant was then transported to SCDC on the probation violation with a detainer pending for the burglary charge.

On March 15 + 16, 2007 trial was held for defendant on the burglary first degree charge from the 12-1-04 incident and a jury returned a guilty verdict and Defendant was sentenced to 20 years with credit for time served, consecutive not specified, by the Honorable L Casey Manning

Inmate has been in official detention since

arrest and has never left custody up to present date

This completes the details of the time served in question.

On 4-17-07 a security risk review was held by classification at Kershaw C I I was informed my custody level was MI3 and my max-out date was 2/8/24 I added up and noticed that from 1-03-05 the date of my arrest to 2-8-24 my new max-out, that equals 20 years and <sup>36</sup> days, more than 100% I figured this will obviously change once I get to my new institution because I'm level 3 now and once I start working they'll figure out all my credits and this will drop down I was transferred to McCormick C I and at the job board on 5-8-07 I was given my job assignment and told my max-out was 4-14-25 I told them I don't think that is correct and they told me to check back with my caseworker and that it should change once my work credits are factored in

I went to see my caseworker Mr Ukadike on 6-29-07 and he told me my max-out date was 2-8-24 I told him that they cannot have my time served credit factored in if that's what the computer is

showing He told me they gave me 32 days credit I said that was the time I was in the county jail until they shipped me on my probation violation, but I was at Kershaw this whole time waiting to go to trial on the burglary He told me that I will not receive that time because they will not give me the same credit for two different crimes I said then why am I even getting the 32 days credit that's showing up now that I'm here with the new burglary sentence when that's the same 32 days my caseworker Ms Allen has been telling me that's in the computer the whole time I was at Kershaw on my probation violation. He said I wasnt really even supposed to be receiving the 32 days actually I said the Judge sentenced me to 20 years credit for time served he didnt say that was supposed to be consecutive to anything. He told me that SCDC calculates credit for time served, this is my max-out, it's not going to change, I can carry it to court if I like, I will not win this argument, and that it is final That is when I filed the Step 1 Grievance.

While this grievance was being processed, Appellant attempted to resolve this dilemma by contacting my

Judge (ROA, 7), Solicitor (ROA, 13), and lawyer (ROA, 14), and State Classification for SCDC (ROA, 9). My request to State Classification was forwarded back to Mr Ukadibe who in his disposition stated that I can only receive credit for an offence that directly relates to me being locked up in county jail. Here he is referring to SCDC Policy/Procedure Number OP-21 09 TITLE Inmate Records Plan, Section 12 2 2

An inmate will not be eligible to receive in-state or out-of-state jail time credit if the offense for which s/he is convicted is different from the offense for which s/he was jailed

SCDC Policy OP-21 09, 12 2 2

In the opinion of the appellant, this policy has been made upon unlawful procedure because nothing in its wording mirrors S C Code Ann § 24-13-40. However, this policy is similar to 18 U S C § 3585 Bureau of Prisons responsibility for computing credit, but being that it is federal and not a state level code, it seems SCDC Policy OP-21 09, 12 2 2 is in excess of the statutory authority of the agency but this is not an argument of the appellant because I still meet

the criterion of the opposing policy, SCDC Policy OP-21 09,12 1 1 and my case separates from the 12 2 2 model

An inmate will be eligible to receive credit for time served prior to trial and sentencing if the offense for which s/he is convicted is the same as the offense for which s/he was jailed

SCDC Policy OP-21 09,12 1 1

My time spent in official detention, prior to the date the sentence commenced, is a result of the offense for which the sentence was imposed and to hold that I am not entitled to credit for time served is clearly erroneous. As explained in the details of time served I was arrested first and foremost for charges stemming from a domestic dispute on 12-1-04, my current burglary conviction one of them, and the probation violation just happened to be what they decided to take care of first. If the prosecution's sole purpose to elect taking me to court on probation violation first was in order to be able to ship me to state custody after sentencing, with the burglary as a 'hold' in the computer, then this was tactical with the intention of enlarging punishment once I was sentenced on the burglary.

if I am not given credit in the presentence stage, and SCDC is contributing to converting my credit into dead time.

As in the case of Allen v State 339 SC 393, 529 SE 2d 541

the Supreme Court held that petitioner was entitled to credit for time served because Section 23-13-40 mandates a prisoner be given credit for all time served prior to trial unless one of two exceptions exist (1) either the prisoner was an escapee or (2) the prisoner was already serving a sentence on one offense. Here, neither exception applies as Allen was neither an escapee nor was he serving any sentence at the time of his arrest.

Likewise neither exception applies in my case either because I was not a escapee nor was I serving any sentence at the time of my arrest.

The next aspect I wish to review of my case is the traceable roots of a lawful state detainer that has been existent from the time I left Richland County Detention Center until the day of my trial. When would I be considered to be in presentence incarceration, is it when I was delivered a copy of the arrest warrant in the county jail? Is it upon arrival at R+E and they check my records and see the 'hold'? Or is it when I was True Bill indicted? Take your pick and my current sentence start date does not come close to any of these questions posed. The

Applied to this standard, at the time sheriff's department issued warrant for my arrest, I was confined through the 'hold' and charged with burglary I am entitled to credit for time served from date on which sheriff's department issued warrant for my arrest, and moreover because the Blakeney case shares different jurisdictions and in my case all charges stem from the same jurisdiction without this rationale defendants awaiting to be brought to trial will be victims of dead time due to circumstances not under the control of defendant I have no control when they are ready to take my case to trial and I shouldn't have to

Defendant convicted of armed robbery filed motion for post conviction relief The Circuit Court, Beaufort County, Howard P King, J, determined that Department of Corrections (DOC) did not properly credit defendant for time served while awaiting trial and granted defendants relief State petitioned for writ of certiorari After granting writ, the Supreme Court, Burnell, J, held that defendant, who was jailed in another county on unrelated charges and had 'hold' placed on him for current robbery charge, was entitled to credit for time served from date on which sheriff's department issued warrant for his arrest for robbery

Case of Blakeney v State provides a rationale In Blakeney v State 339 S.C. 529 S.E.2d 9

Suffer loss of liberty because the court docket is backed up or the delay of the prosecution's practice

If we further look at my request to State Classification we will see that Mr Ukudike stated in his disposition (ROAp 9) that I am serving a 20 year sentence - violent - 85% 85% of 20 years is 17 years. There is no problem there until he states that my sentence start date is 2-12-07. Here it seems that the mix up is less about my credit and more like when my sentence start date should be. If we tally this date and subtract the 32 day credit then we see March 16, 2007. This is the sentencing date of my trial. Why would they contribute the 32 day credit for my probation violation to the sentence of my burglary conviction to back track me to a date that puts me in a point of detention where I'm still in the custody of SCDC?

This is because my sentence start date has not been properly analyzed under statute 24-13-40 and has been erroneously applied by Classification for SCDC under their theories of computation in a light most favorable to the State but still is a misapprehension of the statute. Properly interpreting the statute, yes the computation of the time served (the actual time I was in County Jail - 32 days) has been reckoned from the date of the imposition

It also evades me as to why Mr Uradlik stated in his disposition (ROAP 9) that I was already serving time on an unrelated crime when the warrant for this 20 yrs sentence was served on me, where is the documentation

Where I lack full credit for time served prior to trial and sentencing is inbetween the two ratio measurements "imposition + commencement" My computation has been reckoned from the imposition factor of the statute but not from the commencement factor of the statute, and this is the loop of time left out of the equation. A commencement loop so to speak

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing  
 S C Code Ann 24-13-40

of the sentence (the burglary sentence) but a whole loop of time was left out of the equation (time I was at Kershaw C I with a detainer and suffering liberty loss through said detainer otherwise I could have qualified for work release) because the next line has not been taken into account in its plain and ordinary meaning and limiting the scope of the statute

of this fact by which this was determined? In the Responsible Officials decision he states documentation reveals that I was awarded 32 days credits. My question is where is the documentation that serves as the basis to explain why no more than 32 days credit is not applicable. It seems all their conclusions are solely based on presumptions and every official that has signed off on any paperwork thus far has not actually checked my case and the whole process has amounted to inference-stacking. If prison officials have indeed investigated my claim, then there shall be record of their investigation by their own policy. SCOC Policy / Procedure Number 'OP-21 09, TITLE Inmate Records Plan, Section 12 3 1 - 12 3 3 states

12 3 1 If authorized jail time credit has not been awarded to an inmate, the Institutional Classification Caseworker will complete the top portion of SCOC Form 18-11, "Request for Jail Time," make a copy of the form for the institutional record, and forward the white, pink, and goldenrod copy to the Inmate Records Office, Document Processing Section, ATTN Jail Credits. If the inmate claims s/he was incarcerated in more than one (1) facility prior to sentencing, a separate "Request for Jail Time form" must be submitted for each facility by

12 3 2 Upon receipt of the SCOC Form 18-11, "Request for Jail Time," the Records Analyst responsible for jail time credits will review the form to determine if the request should be forwarded to the appropriate county/city facility by

12 3 3 If it is determined that the inmate

will not be given jail time credit, the white copy of the original request will be returned to the designated Case-worker, indicating that the inmate is not eligible for jail time credit requested, and an explanation will be provided to explain why jail time credit is not applicable

SCDC Policy 01 09, 12 3 1-3

Therefore if policy has been followed there will have been a 12-11 form filed with the Records Analyst. If there is no record of this documentation then a ~~true~~ determination about my credit has yet to have a meaningful review.

To shed light on this dilemma, I will use the interview I had with my attorneys the day before my trial. Before my trial began, the public defender assigned to my case spoke to me about the feasibility of taking a plea to Burglary 1<sup>st</sup> and the judge will interpret the 15 year minimum in the statute as being suspendable and 10 years will be the cap. I refused to bargain with my innocence. Then Chief Public Defender Douglas S. Strickler who has worked with the public defender's office for Richland County for 20 years came to make sure my decision to go to trial was intelligent and willful and he reemphasized the pros of this plea offer and one of his incentives was that if I were to take this plea it would be 85% of 10 years, that would be 8½ years and that I


already have 2 years under my belt, I will get time served and my max-out will be 6 years to date, that he knows it's a hard pill to swallow but it's in my best legal interest to take this deal. Now my question is how would it have been possible for me to get time served then and not now? Is this punishment for taking my case to trial?

CONCLUSION

For the reasons stated, petitioner asks this Court to grant time served pursuant to S C Code Ann §24-13-40

October 17, 2008

Respectfully Submitted

  
\_\_\_\_\_

Todd M. Sowell, # 238581  
McCormick Correctional Inst  
386 Redemption Way  
McCormick, SC #29899  
Appellant, Pro Se

STATE OF SOUTH CAROLINA  
In The Administrative Law Court

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APPEAL FROM DEPARTMENT OF CORRECTIONS  
Inmate Grievance Branch

Jon Ozmint , Director

---

Docket No 08-AJ-04-00805-AP

---

Todd Michael Sowell, Appellant,

✓

Department of Corrections, Respondent


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CERTIFICATE OF SERVICE

---

I certify that I have served the Blakeney Brief of Appellant and Record on Appeal in the above referenced case by depositing (1) copy of it in the United States Mail, postage prepaid, on October 17, 2008, addressed to the Respondent's Office of the General Counsel upon Dav & Tatansky at 4444 Broad River Rd, Box 21787, Columbia, SC 29221

October 17, 2008

51   
Todd M. Sowell, 238581  
McCormick Correctional Inst  
386 Redemption Way  
McCormick, SC # 29899  
(804) 443-2114  
Pro Se Appellant

STATE OF SOUTH CAROLINA  
In The Administrative Law Court

---

APPEAL FROM DEPARTMENT OF CORRECTIONS  
Inmate Grievance Branch

Jon Ozmint, Director

---

Docket No 08-AW-04-00805-AP

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Todd Michael Sowell, Appellant,

v

Department of Corrections, Respondent

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DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

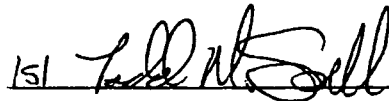
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Appellant proposes the following be included in the Record on Appeal

- (1) Sentence Sheet
- (2) Step 1 Grievance
- (3) Step 2 Grievance
- (4) Request to Inmate Records
- (5) Request to State Classification
- (6) Letter to Clerk of Court
- (7) Letter to Sentencing Judge
- (8) Letter from Sentencing Judge
- (9) Request to State Classification
- (10) Request to Caseworker
- (11) Letter to Solicitor
- (12) Letter to Public Defender

I certify that this designation contains no matter which is irrelevant to this appeal

October 17, 2008



Todd M. Sowell, # 238581  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899  
(864) 443-2114  
Pro Se Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE \_\_\_\_\_ VS \_\_\_\_\_

2005 INDICTMENT/CASE# 393  
- GS - 40 -

Todd Sewell

AW# H858449

AKA \_\_\_\_\_

Date of Offense 12-1-04

Race White Sex Male Age \_\_\_\_\_

S C Code § 16-11-311

DOB \_\_\_\_\_ SS# \_\_\_\_\_

CDR Code # 0 / 0 / 7 / 9

Address \_\_\_\_\_

CASE RESTORED

City State Zip \_\_\_\_\_

SENTENCE SHEET

DL# \_\_\_\_\_ SID# \_\_\_\_\_

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO Burglary 1st

in violation of § 16-11-311 of the S C Code of Laws, bearing CDR Code # 0 / 0 / 7 / 9

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC)  §17-25-45 w/minor 1<sup>st</sup> or Lewd Act)

The charge is  As Indicted  Lesser Included Offense  Defendant Waives Presentment to Grand Jury \_\_\_\_\_ (Defendant initial)

The plea is  Without Negotiations or Recommendation  Negotiated Sentence  Recommendation by the State.

ATTEST  
Heather S. Weiss Solicitor  
\_\_\_\_\_  
Defendant  
[Signature] Attorney for Defendant

WHEREFORE the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\* the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of probation which are incorporated by reference

CONCURRENT or  CONSECUTIVE to sentence on \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S C Code §24-13-40 to be calculated and applied by the State Department of Corrections  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

SPECIAL CONDITIONS

RESTITUTION  Heard  Waived,  Ordered  
Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_  
Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab or Job Corp \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd in equal consecutive weekly/monthly pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other \_\_\_\_\_

Recipient		
*Fine		\$
\$14-1-206 (Assessments 107 5%)		\$
\$14 1-211(A)(1) (Conv Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35 13 (Public Def/Prob)	\$500	\$
\$73 3 1B TP (Law Enforce Funding)	\$25	\$
\$33 7 1B TP (Drug Court Surcharge)	\$100	\$
\$50 21-114(BUI Breath Test Fee)	\$50	\$
\$56-5 2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Appointed PD or appointed other counsel, §35 13 TP  
Requires \$500 be paid to Clerk during probation

Barbara A. Scott  
Clerk of Court/ Deputy Clerk  
Court Reporter [Signature]

PRESIDING JUDGE [Signature]  
Judge Code \_\_\_\_\_  
Sentence Date 3-16-07

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1

JUL 02 2007

P

INMATE NAME Todd Michael Sowell  
SCDC NUMBER SCDC# 238581  
INSTITUTION Mc Cormick  
HOUSING UNIT F3-B 141  
WORK ASSIGNMENT Prison Industries

Office Use Only  
Grievance No 1007-0523-01  
Code General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc Hear \_\_\_\_\_  
Class \_\_\_\_\_  
Date Received 07-05-07  
IGC Initials [Signature]

STATE GRIEVANCE (include documentation and date of incident if SCDC Policy, indicate which policy)

On June 30, 2007 I, Todd Michael Sowell, am filing a step 1 grievance form contending that prison officials have erroneously calculated my sentence

ACTION REQUESTED

That I, the Defendant in Case No 2005-BS-40-00393, be given credit time served for the time I was incarcerated awaiting my trial because I had no control over when my case was to be heard

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT

On June 29, 2007 I spoke with my caseworker K Ukadike explaining my case, and he informed me that I will not win this argument, and that my max-out date is final and will not change

Todd Michael Sowell June 30, 2007  
Grievant Signature Date

ACTION TAKEN BY IGC

SPOKE WITH MR. K UKADIKE, UNIT CASEWORKER

SEE WARDEN'S DECISION AND REASON

[Signature] 12-17-07  
IGC Signature Date

[Signature]  
Grievant Signature Date

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

DUE 12 22-01  
JAN 07 2013

STEP 2

INMATE NAME  Todd Michael Sowell  
SCDC NUMBER  SCDC# 238581  
INSTITUTION  Mc Cormick  
HOUSING UNIT  F3 - A 165  
WORK ASSIGNMENT  Prison Industries, and Tutor

RECEIVED

JAN 31 2008

Office Use Only  
Grievance No MC I 0523  
Code General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc Hear. \_\_\_\_\_  
Class   
Date Received 11-25-08  
SEC Initials [Signature]  
009-5-08

INMATE'S REASON FOR APPEAL (state specific dissatisfaction)

My reason for appeal is simply that if my jail time credit is accurate based on my offense and sentencing dates, then it will show that my offense occurred 12-1-04, \*I was arrested 1-3-05, I was delivered a copy of the arrest warrant 1-7-05, I was True Bill indicted 6-16-05, and was sentenced on 3-16-07, why would I only be given (32) days credit for time served?

[Signature]  
Grievant Signature  
12-18-07  
Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON

Your concern has been reviewed In your complaint, you stated that your jail time credits are being miscalculated You stated that you want the issue looked into and corrected Documentation reveals that you were awarded 32 days of jail time credits If you feel you should receive additional credits, I suggest that you contact your attorney for assistance

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

[Signature]  
Signature  
1/9/08  
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.

[Signature]  
Grievant Signature  
1/18/08  
Date

[Signature]  
IGC Signature  
1/18/08  
Date

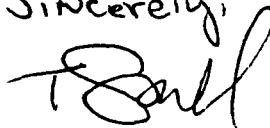
(SEE REVERSE SIDE FOR INSTRUCTIONS)

r.

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

<b>TO</b>	<b>NAME</b>	<b>TITLE</b>	<b>DATE</b>
	Lisa Miller	Inmate Records, Columbia	May 7, 2007
<b>INMATE'S NAME</b>			<b>SCDC #</b>
Todd Sowell			238581
<b>INSTITUTION</b>			<b>LIVING QUARTERS</b>
Kershaw			Palmetto West 601

On 4-17 07 I was informed by my case worker at a security risk review that my max-out date is 2 8-2024 My dilemma is that my time served could not have been factored in, being that I have been incarcerated since 1-3-05 and the 20 years I was sentenced to on 3-16-07 for burglary 1<sup>st</sup> degree was a pending charge in the computer this whole time I've been here on my probation violation I have been filing motions with the clerk of court the whole time I had that detainer trying to get them to take me to trial, and I had no control over the delay Could ya'll please double check my sentencing sheet cause it should show that I'm supposed to be given credit for time served, and it will also show the indictment/case # is from 2005, and like I say I've been incarcerated this whole time If you have any other questions please let me know

Sincerely,  


**DISPOSITION BY STAFF MEMBER.**

**DATE**

**SIGNATURE**

TO NAME	TITLE	DATE
Mrs Fernandez	Cola	JAN 02 2008
INMATE'S NAME	SCDC #	STATE CLASSIFICATION
Todd Michael Sowell	238581	
INSTITUTION	LIVING QUARTERS	
M <sup>c</sup> Cormick	F3-A165	

Estoy escribiendo esta peticion a Usted para pedir por favor cheque el calculo de mi MAX-OUT Solo recibí (32) días de credito y no es correcto Yo he estado en la cárcel desde el 3 de enero del 2005 Yo fui sentenciado el 16 de marzo del 2007 a (20) años por Burglary 1<sup>er</sup> grado y fue un detainer que estaba en la computadora el tiempo entero que yo estaba en SCDC mientras yo estaba aquí por violación de libertad condicional Yo no tenía control cuando ellos me iban a enviar a corte y es como estoy siendo castigado por ir a juicio porque si yo hubiera tomado un trato el primero año entonces mi tiempo habría empezado al punto Por favor no estoy pidiendo por algo que no completé Estoy a tu misericordia en este asunto

Atentamente  
T M Sowell

DISPOSITION BY STAFF MEMBER

Your request has been referred to Mr Ukaolike, Acting Case Manager for response.

DATE	SIGNATURE
01/08/08	Michael R. Mathews, Branch Chief

December 27, 2007

P'

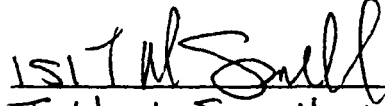
The Honorable Barbara A Scott  
Clerk of Court for Richland County  
Post Office Box 2766  
Columbia, South Carolina \* 29202-2766

RE Credit for Time Served

Dear Ms Scott

I am writing your office because I filed a Grievance form with SCDC about only receiving (32) days of jail time credit, and they told me to address my concerns to the courts. Maybe they need some other info because my sentence sheet has the time served box checked but it dose not specify anything more. Can you help?

Sincerely,

  
Todd M Sowell, # 238581  
McCI, F3-A165  
386 Redemption Way  
McCormick, SC # 29899

January 14, 2008

The Honorable Lee Casey Manning  
Judge of the Fifth Circuit  
- Seat 2 -  
Post Office Box 192  
Columbia, South Carolina # 29202

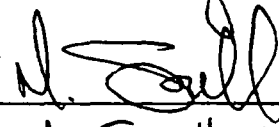
RE Credit for Time Served

Dear Sir:

I am writing this letter because I filed a Grievance form with SCDC about only receiving (32) days of jail time credit and they told me to address my concerns to the courts, I believe they need some other info because my sentence sheet has the time served box checked but it dose not specify anything more I was arrested on 1-3-05, and they are only starting my time on the day I was sentenced on 3-16-07

Could you please send a order that states when my time should start to Inmate Records for SCDC in Columbia  
Without your clarification I will not receive any credit  
Thank you very much

Sincerely,

  
\_\_\_\_\_  
Todd M Sowell, # 238581  
McCI, F3-A 165  
386 Redemption Way  
McCormick, SC # 29889



State of South Carolina  
The Circuit Court of the Fifth Judicial Circuit

L Casey Manning  
Judge

Post Office Box 192  
1701 Main Street Room 214  
Columbia SC 29202 0192  
Phone (803) 576 1773  
Fax (803) 576 1744  
cmanningj@sccourts.org

March 28, 2008

Mr Todd M Sowell  
Mc CIF 3-A165  
386 Redemption Way  
McCormick, SC 29899

Dear Mr Sowell,

We received your letter requesting that our office intervene in the matter concerning your sentence

Unfortunately we cannot offer legal advice, however, if you contact your attorney he or she should be able to answer any and all questions you have about this matter In the future, please direct your questions and correspondence to him or her

If there is something that our office can do to help you, please have your attorney get in touch with us

Sincerely,

Law Clerk

**REQUEST TO STAFF MEMBER**

TO	NAME	TITLE	DATE
	<del>M Mathews</del>	State Classification	December 26, 2007
INMATE'S NAME			SCDC #
Todd Michael Sowell			238581
INSTITUTION			LIVING QUARTERS
M <sup>c</sup> Cormick			F 3-A 165

I am writing this request to please ask you to check the calculation of my MAX-OUT I'm only being accounted for (32) days of jail time credit and this is not accurate I have been in jail since January 03, 2005 I was sentenced on March 16, 2007 to (20) years for Burglary 1<sup>st</sup> and it was a detainer that was in the computer the whole time I was in SCDC while I was on my probation violation I had no control when Richland Co was going to send for me, and it is like I am being punished for going to trial because if I would have took a plea a year earlier then my time would have started then Please I'm not asking for anything that I didn't complete I am at your mercy in this matter

Truthfully,  
T. Sowell

**DISPOSITION BY STAFF MEMBER.**

Your request was forwarded to me for response Your time has been properly calculated You are serving a 20 year Sentence - Us land - 85%. 85% of 20 yrs, is 17 yrs Your Sentence start date is 2-12-07 Your maxout date is 2-8-2024, tallying up to 17 yrs. Your 32 days of jail time credit on this offense has been properly applied. The 32 days were actual time you spent in jail on this offense Note that you were already serving time on an unrelated crime

DATE	SIGNATURE
1-23-08	K. Ubeche

when the warrant for this 20 yrs sentence was served on you You can only receive jail time credit for an offense directly relates to you being

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

TO NAME	TITLE	DATE
Mr Ukadike	Caseworker	January 28, 2007
INMATE'S NAME	SCDC #	
Todd Michael Sowell	238581	
INSTITUTION	LIVING QUARTERS	
McCormick	F 3-A 165	

Dear Mr Ukadike

I received your disposition dated 1-23-08 to the request I filed with State Classification on 12-26-07 concerning the calculation of my time. Thank-you for looking into the matter, and I respect your analysis as a law professor and your insight on the applicability of credit for time served for a person in my situation. With that being said I must reply and offer some information that is possibly not in the computer about my situation because as you have explained how one receives their credit then I should fall into that category.

Firstly I would like to state that we're all on the same page as far as the math goes, and that we all agree that 85% of 20 years is 17 years. There is no problem there.

Now there is a question of when to start this sentence. We do know it was the Court's intention to start my sentence with credit for time served because that box is checked on the sentencing sheet. But

**DISPOSITION BY STAFF MEMBER**

Obtain a "pass" and report to my office.  
Bring my response to you last time. Bring also any supporting document you may have in support of your assertion. Get the officer to call me first before coming.

DATE	SIGNATURE
3-24-08	K. Ukadike

when? And how much? SCDC computers show 32 days credit and a sentence start date of 2-12-07<sup>6</sup> That makes sense more or less mathematically because I was sentenced on 3-16-07, but what does it make sense is why 32 days is even being applied here In your disposition to my request Professor UKadike you said, "The 32 days were actual time you spent in jail on this offense " If that is what the computer reflects then that is a error I was never given 32 days credit on this offense, which is Burglary, but I was given 32 days credit for the offense of Probation Violation This was the offense I was serving when I went to trial for the Burglary, so it's possible that the mistake occurred this way This being so the wrong credit is being applied to the wrong offense

This will bring us to our next question of how to apply the sentence of one offense in relation to a sentence of a different offense once the Court gives credit to a individual that is already in the system which is predominant? Here Professor UKadike I do not know where this rule is found but you have found it and I trust and embrace what you have said in your disposition to my request upon the matter, "You can only receive jail time credit for an offense that directly relates to you being locked up in county jail " Really? That is excellent news for me because if that is indeed the policy, rule, or law, then I am guaranteed to receive my time Now in contrast to this although, as I see you have noted in your disposition to my request, "Note that you were already serving time on a unrelated crime when the warrant for this 20 yr sentence was served on you "

Again, if that is what the computer reflects then that is another error I was only took to court on my probation violation case before my burglary case and then shipped to SCDC with the charge pending I was in fact charged with the Burglary before I was charged with the Probation Violation and the dates on the warrants can prove this

Therefore based on the aforementioned reasons, I respectfully request that you may reconsider my case, If there are any questions, or if you need to see any of my paperwork please let me know And I would like to thank-you for your time, and also state that I am aware this is not your fault, and you can only go by what information they have given you, but <sup>46</sup> as it is becoming evident their are a lot of blanks that need to be

filled in Thank-you very much for your help Mr Ukadike

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Michael Sowell".

Todd Michael Sowell #238581

March 19, 2008

Heather S Weiss  
Solicitors Office  
PO Box 1987  
Columbia, SC 29202

Dear Ms Weiss

I am writing you this request in hopes that you could help me with a problem I am having with receiving credit for time served. SCDC has not calculated my time from the beginning of my incarceration in January '05' but has only given me credit from when I went to trial in March '07'. That's a difference of 25 months. As you know I did file motions to try to get to court quicker, and the time it took for this case to arrive to court was not under my control.

As I am at your mercy could you please forward a letter to SCDC, Inmate Records in Columbia, PO Box 21787, explaining that my credit for time served should start in January '05'? I would appreciate very greatly your help.

Sincerely,

T. M. Sowell

Todd M Sowell, #238581  
McCI, F3-A165  
386 Redemption Way  
McCormick, SC #29899

April 15, 2008

Dean O'Neil  
Public Defender's Office  
Post Office Box 192  
Cola, SC 29201

RE Credit for time served

Dear Mr O'Neil

I have this issue that I have been trying to resolve on my own, but cannot gain any redress Your office is the last one I wanted to contact cause I thought if I could get the other sources to help me it would be better but now they have told me I need to contact ya'll If I knew that I would have addressed this issue to you the last time I wrote

It has been very frustrating trying to resolve this because personally I feel that this is something that should have automatically been taken care of, and I don't see how it's so mixed up, but what's worse is how nobody is the least bit concerned about it I am currently missing 25 months credit time served

I have wrote these people with no help

5-7-07 Lisa Miller, Inmate records, no reply

6-30-07 After speaking to my caseworker Mr Ukadike, I filed a Step 1 Grievance when he told me that SCDC will not give me credit for the time I was waiting to go to trial while I was here on my probation violation and that I could carry it to court and I will not win this argument

12-17-07 I spoke to the Grievance Coordinator Ms Culbreth and they said that they spoke with Mr Ukadike and that he said my credit has been properly calculated, if I did not agree with that fill out a Step 2 and it will go to Columbia and be reviewed and then the Branch will send me the application for Administrative Law Court

12 18-07 Filed Step 2 Grievance, no reply (yet)

49 12 26 07 D Patterson, Inmate Records, no reply

12-26-07 Mrs Fernandez, State Classification, referred to Mr Ukadike

12-26-07 M Mathews, State Classification, referred to Mr Ukadike

12-26-07 Barbara Scott (see attachment)

1-14-08 The Honorable L Casey Manning, 5th Circuit, (see attachment)

1-28-08 Recived disposition from Mr Ukadike to my request sent to state Class and he stated

Your time has been properly calculated You are serving a 20 year sentence - violent - 85% 85% of 20 yrs is 17 yrs Your sentence start date is 2-12-07 Your Max-out is 2-8-2024, tallying up to 17 yrs Your 32 days of jail time credit on this offense has been properly applied The 32 days were actual time you spent in jail on this offence Note that you were already serving time on an unrelated crime when the warrant for this 20 yrs sentence was served on you You can only receive jail time credit for an offence directly relates to your being locked up in county jail

Mr Oneil I will tell you that my case worker is in fact a very smart man, come to find out he was a law professor in some school here in SC for 9 years. But the information in his computer is wrong It's not his fault

And all this got me trippin, cause why are all my records getting mixed up? First the CDV in my case is not on my arrest record, even Barbara Scott wrote me on May 10, 2007 about some of my records and she said the CDV is still pending But as we even seen at my trial even my ex said that was taken care of And now my caseworker has his computer showing errors what is going on?

1-28-08 Well I wrote my case worker back and said yes I got 32 days for my probation violation, but that shouldnt even be applied to my burglary They're applying the 32 days from the day I want to trial At any rate that I was not serving any time yet when I got the warrant for the Burglary If anything I got the warrant for Burglary before the Warrant for Probation

violation. I just went to court with the probation violation first and they shipped me up out the county with the detainer in the computer. The dates on the warrants can prove that Elizabeth Franklin from y'all office took care of the probation violation.

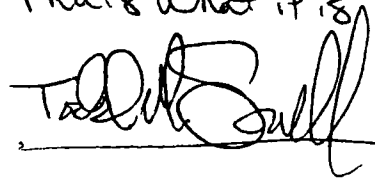
3-24-08 He wrote a disposition to my request and said to bring all supporting documents that I may have in support of my assertion. But I don't have a copy of that probation violation warrant and aside from this matter I was hoping that y'all could send me a copy of that if it's in y'all's records.

Man, Mr O'neil I swear I'm in a nightmare.

3-18-08 I even wrote Ms Weiss and asked if she could help me.

Mr O'neil I know you will help me if you can. I have really tried as you can see to take care of this but when I got that letter from Judge Mannings office on March 28, I see nobody don't believe me. It's real simple thought I was locked up on 1-3-05, and they served the warrant on me for burglary on 1-7-05. I haven't been out since then. Anything in between ain't matter. Since 1-7-05 I was in presentence stage, and pursuant to Allen v State 529 S E 2d 541 (S C 2000) they got to give me that. I swear I don't want to have to make another brief and go to court. I'm stressed out. So if you can do anything to tie up this loose-end to my case I would appreciate it. But any info you get, don't send it to me, like I said, they don't believe me, it has to be sent to SCOC from y'all office probably by fax.

That's what it is,



Todd M Sowell, #238581  
Mc CI, F3-A 165  
386 Redemption Way  
Mc Cormick, SC# 29899

RECEIVED

DEC - 4 2008

GENERAL COUNSEL

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

FILED

DEC 01 2008

SC ADMIN LAW COURT

Todd Sowell, #238581,	)	Docket No 08-ALJ-04-000805-AP
Appellant,	)	
	)	
v	)	RESPONDENT'S BRIEF AND MOTION
	)	TO DISMISS
South Carolina Department of Corrections,	)	Honorable Marvin F Kittrell
	)	Chief Administrative Judge
Respondent	)	
_____	)	
	)	

STATEMENT OF FACTS

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Todd Sowell ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC") Appellant filed a Step One Grievance on 30 June 2007, complaining SCDC incorrectly calculated his sentence length This grievance was investigated and denied Appellant filed a Step Two Grievance on 18 December 2007 This grievance was investigated and denied Appellant received the final agency decision on 18 September 2008 In his Notice of Appeal, Appellant asks that he be credited for time served in while waiting for his trial date Loss of good-time is not an issue in the present case

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V SCDC, 361 S C 327, 605 S E 2D 506 (2004) AND SKIPPER V SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S C 267, 633 S E 2D 910 (S C COURT OF APPEALS 2006)

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 inmate appeals in Slezak v SCDC, 355 S C 437, 586 S E 2d 124 (2004) The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest SCDC reads Slezak as encouraging, for the sake of judicial economy, the ALC to dismiss summarily inmate cases that do not involve a state created liberty or property interest

Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state created liberty interest is not implicated in a prisoner appeal, the 'ALJ should' dismiss the appeal Skipper v SCDC, 370 S C 267, 633 S E 2d 910 (S C Court of Appeals 2006)

In the instant case, Appellant says he was denied credit for time served in a county detention center However, SCDC credited Appellant with 32 days jail credit, as ordered by Judge Casey Manning Appellant acknowledges he was given the 32 days but says he should also receive credit for time served while awaiting trial in Kershaw after a probation violation However, SCDC can give credit for time served on the offense for which Appellant is incarcerated In the present case, SCDC clearly has not taken Appellant's state-created liberty interest as punishment in a major disciplinary hearing Therefore the ALC should dismiss this appeal

#### CONCLUSION

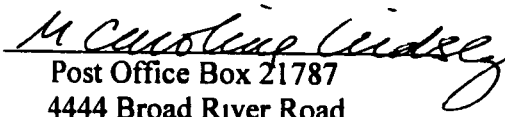
Based on the foregoing reasons and legal authorities, SCDC respectfully requests that this matter be dismissed pursuant to Rule 12(b)(1) and Slezak v South Carolina Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004)

Respectfully submitted,

DAVID M TATARSKY  
General Counsel

M CAROLINE LINDSEY  
Staff Attorney

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

BY   
Post Office Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-8508

28 November 2008  
Columbia, South Carolina

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 11/20/08  
 OMCOMITA COMMITMENT APPLICATION C044079  
 SCDC # 238581 INQUIRY  
 SOWELL, TODD - CURR LOC MCCORMIC  
 OFFENDER TYPE ADULT-STRAIGHT SENTENCE

RETURN TO COURT N  
 CONVICTION NUM S00015 INDICT NUM 05-GS-40-393 WARRANT NUM H858449  
 DATE SENTENCED 03/16/2007 JUDGE LAST MANNING FI L  
 STATUTE 16-11-311 CDR CODE 0079 GPS IND N  
 OFFENSE 2220 BURGLARY-1ST DEGREE OFFENSE DATE 12/01/2004  
 CHARACT F FACILITATION OF COUNTS 01 OFFENSE CNTY 40 RICHLAND  
 PLEA G GUILTY TYPE OF COURT 01 GENERAL SESSIO  
 TYPE SENTENCE S ADULT-STRAIGHT SCDC JURIS DATE 03/16/2007  
 TOTAL SENTENCE 020 00 000 MAND SERV REQMT 017 00 000  
 INCARC SENTENCE 020 00 000 PAROLE FACTOR 2 1/3 SENT REQ  
 PROBATION SENT 000 00 000 PAROLE SERV REQMT 999 99 999  
 RESTITUTION REQMT N AMT 00 JAIL CRED 00032 EXTRA CRED 00000  
 CONVICTION STATUS AC ACTIVE ~~SENT START DATE 02/12/2007~~ DOM IND  
 CONSECUTIVE IND N SPOUSE ABUSE STATUTE CLASSIFICATION VIOLENT  
 DNA OFFENSE IND Y EEC ELIG Y SCDC CLASSIFICATION VIOLENT  
 SEX REG N PRED OFF N LAST UPDATE P NEW DATE 03/30/07  
 NO PAROLE NO PAROLE CREATED BY P NEW DATE 03/30/07

PF8-NEXT CONVICTION PF9-DETAIN  
 4-© 1 Sess-1 167 7 50 33 SCDC1500 1/2

CMTI100D  
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM  
COMMITMENT APPLICATION  
CONVICTION SUMMARY

11/20/08  
C044079

SCDC# > 238581  
SOWELL, TODD -

CURR LOC MCCORMIC  
SCDC CLASSIFICATION VIOLENT

OFFENDER TYPE ADULT-STRAIGHT SENTENCE

	NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	PROJ	COMP	STAT	IND
			YRS	MO	DYS	DATE	START			
-	S00016	MALIC INJURY/PERS PR	000	00	000	03/22/07	03/22/07	/ /	PRO	N N
-	* S00015	BURGLARY-1ST DEGREE	020	00	000	03/16/07	02/12/07	02/08/2024	ACT	V V
-	S00014	BURGLARY-3RD DEGREE	003	06	000	02/04/05	01/03/05	10/31/2006	ACT	N N
-	S00013	GRAND LARCENY	005	00	000	02/04/05	01/03/05	08/24/2007	ACT	N N
-	S00012	BURGLARY-3RD DEGREE	005	00	000	02/04/05	01/03/05	08/24/2007	ACT	N N
-	S00011	GRAND LARCENY	005	00	000	02/04/05	01/03/05	08/24/2007	ACT	N N

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PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT  
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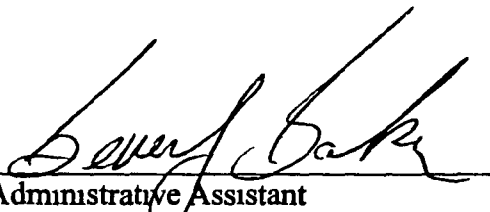
CERTIFICATE OF SERVICE

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 to his/her last known address as follows

Todd Sowell, #238581  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

**FILED**  
DEC 01 2008  
SC ADMIN LAW COURT

Columbia, South Carolina  
November 28, 2008

  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broad River Road  
P O Box 21787  
Columbia, SC 29221-1787  
(803) 896-8508

**CERTIFICATE OF COMPLIANCE**

I certify that this Supplemental Record on Appeal contains all material submitted to the Administrative Law Court, as directed by this Court's order dated July 12, 2010

Dated July 27, 2010

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

Attorney for Respondent



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Christopher Florian  
Staff Attorney  
S C Dept of Corrections  
P O Box 21787  
Columbia, SC 29221  
(803) 896-8508

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Marvin F Kittrell

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Case No 2008-ALJ-04-00805-AP

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Todd Sowell, #238581

Appellant,

v

South Carolina Department of Corrections

Respondent

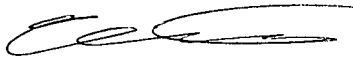
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served a copy of the foregoing Supplemental Record on Appeal to Appellant by depositing a copy of same in the United States Mail, postage prepaid, July 27, 2010, addressed to the Appellant as follows

Todd Sowell, # 238581  
990 WIsacky Highway  
Bishopville, SC 29010



---

Christopher Florian  
Staff Attorney  
S C Dept of Corrections  
P O Box 21787  
Columbia, SC 29221  
Attorney for Respondent