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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson

Appellate Case No.: 2015-001519

James A. Sellers, 243348 — Appellant

v.

South Carolina Department of Corrections — Respondent

RECORD ON APPEAL

James A. Sellers, #243348
Wateree River CI
P.O. Box 189
Rembert, SC 29128

Pro se Appellant

Christina Catoe Bigelow
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221
803-896-1738

Counsel for Respondent

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any parties and not any other material.

Date: 10/15/15

(s) [signature]
James A. Sellers, 243348
Wateree River CI
P.O. Box 189
Rembert, SC 29128

FILED
JUN 12 2015
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James A. Sellers, 243348, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No.: 15-ALJ-04-0078-AP Grievance No.: KRCI 70-14 **ORDER**

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Notice of Appeal filed February 12, 2015, by James A. Sellers ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant appeals the Department's decision denying him eligibility to earn sentence reduction credits on his twenty-five year sentence for Accessory Before the Fact to a Felony (Murder). In this appeal, Appellant argues he was improperly sentenced under the appropriate statute and, therefore, any statutory restrictions on eligibility for sentence reduction credits do not apply to him. Additionally, Appellant filed a Motion to Compel the Department to Include Additional Information in the Record. Appellant specifically moves this Court to compel the Department to submit information concerning alleged ex parte communications with The Honorable Sidney T. Floyd, now deceased.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep't of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when, as in this case, an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan, 355 S.C. at 441, 586 S.E.2d at 126.

First, I address Appellant's motion. In his motion, Appellant argues, as part of his investigation of this grievance, he received a response to an Automated Request to Staff Member indicating the Department had been in direct contact with Judge Floyd concerning the calculation

of Appellant's trafficking sentence. The communication resulted in the modification of the service requirement for that sentence. Appellant contends he requested a copy of the communication; however, the Department refused to supply him with one. Accordingly, Appellant moves this Court to compel the Department to produce a copy of the communication and include it in the Record.

In its Response to Appellant's motion, the Department supplied the communication. The communication consists of a request from the Solicitor's Office for clarification on Appellant's trafficking sentence and the Horry County Clerk of Court's response, signed by Judge Floyd, clarifying Appellant's trafficking sentence was classified as CDR Code 50450: Trafficking in Crank. Because the communication, which is not an improper ex parte communication, has been filed with the Court and served on Appellant, Appellant's motion is now moot. Moreover, Appellant's current grievance concerns his conviction for Accessory Before the Fact to a Felony (Murder), not his trafficking conviction. Accordingly, this communication is irrelevant to this matter.

Next, on the merits, Appellant complains that the Department has not properly calculated Appellant's twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder). Appellant claims that under the applicable statutes, a conviction for Accessory Before the Fact to a Felony (Murder) is sentenced as if he was convicted of the principle crime, murder. In other words, Appellant must be sentenced under the murder statute. Appellant claims the murder statute, as it was written when he was convicted, provided three (3) sentencing options: death, imprisonment for life, or a "mandatory minimum term of imprisonment for thirty years." S.C. Code Ann. § 16-3-20 (Supp. 1997). He further claims that he was not sentenced properly under this statute because Judge Floyd sentenced him to twenty-five (25) years' imprisonment instead of the statutorily required thirty (30) years' imprisonment. See id. Appellant further argues that because his sentence is not in compliance with the thirty (30) year requirement pursuant to section 16-3-20, his sentence is not governed by the phrase "mandatory minimum," which modifies the thirty (30) years required under the statute. As a result, Appellant asserts his twenty-five (25) year sentence is not a mandatory minimum and the Department should apply sentence reduction credits to reduce his time.

In contrast, the Department contends that although Judge Floyd did not sentence Appellant to the statutorily required mandatory minimum of thirty (30) years under section 16-3-20,

Appellant was sentenced pursuant to that section and the phrase "mandatory minimum" is applicable to Appellant's sentence. The Department suggests the discrepancy between the thirty (30) year requirement and Appellant's actual sentence arose because the clause requiring a mandatory minimum term of imprisonment for thirty (30) years was a recent amendment at the time of Appellant's sentencing. The Department further comments that Appellant received a boon of five (5) years' less imprisonment as a result of Judge Floyd's actions, and the Supreme Court of South Carolina affirmed Appellant's convictions *and sentences* on direct appeal in State v. Sellers, Op. NO. 99-MO-79 (S.C. Sup. Ct. filed Nov. 15, 1999).

In Kerr v. State, the South Carolina Supreme Court held the phrase "'mandatory term' of imprisonment is not equivalent to a 'mandatory minimum term' of imprisonment." 345 S.C. 183, 188, 547 S.E.2d 494, 497 (2001). In Nelson v. Ozmint, the supreme court further found that the Department was not required to apply good time credits to a "mandatory minimum" sentence of one year for a conviction of CDV third. Specifically, the supreme court held "we find the absence of a provision restricting [the Department] from applying good time and earned work credits to reduce an inmate's sentence below the mandatory minimum does not indicate [the Department] must apply these credits in such a way." Nelson v. Ozmint, 390 S.C. 432, 437, 702 S.E.2d 369, 371 (2010).

Here, Judge Floyd sentenced Appellant to less than the statutory "mandatory minimum" sentence of thirty (30) years pursuant to section 16-3-20 and his sentence was affirmed on appeal by the supreme court. Therefore, I find the "mandatory minimum" language of 16-3-20 applies. I further find, as in Nelson v. Ozmint, "the absence of a provision restricting [the Department] from applying good time and earned work credits to reduce an inmate's sentence below the mandatory minimum does not indicate SCDC must apply these credits in such a way. Id. Accordingly, I affirm the Department's determination that Appellant's twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder) is not eligible for sentence reduction credits.

Based upon the foregoing, the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

June 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

[illegible]

12 day of June 2015

[illegible]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

RECEIVED JAN 17 2014

INMATE NAME: James A. Sellers

SCDC NUMBER: 243348

INSTITUTION: Kershaw Correctional Institution

HOUSING UNIT: SMU-A HC 216

WORK ASSIGNMENT: N/A

Grievance No. KCI 0020-14

Code: General ___ Policy ___ Disc. Hear. / ___ Class. ✓ ___ PREA ___

Date Received 1/17/14

IGC Initials [illegible]

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

This grievance is being brought to initiate a challenge to SCDC's calculation of the grievant's sentence for Accessory Before the Fact of a Felony; To wit: Murder.

The grievant was convicted in connection with a crime that occurred in May of 1996. His accessory charge was technically punishable under the 1996 version of §16-3-20, and that statute clearly set forth only three possible sentences: death, life without parole, or "... a mandatory minimum term of imprisonment for 30 years.

For whatever reason, the trial judge chose to sentence the grievant to a sentence, of 25 years, that was clearly not pursuant to §16-3-20, and was in direct contradiction to any sentencing requirement set forth in §16-1-40 The state did not object to this at any point

The grievant believes that SCDC's time calculation error is the result of a mistaken reliance, by SCDC or court personnel, on CDR codes for time calculation criteria. SC law, via court decisions, holds that CDR codes are only a guide, and not a substitute for the actual statutes themselves.

Since §16-1-40 required that the grievant be sentenced in accordance with §16-3-20, and the trial judge chose, without objection, to sentence the grievant in direct contradiction to both statutes the grievant will argue that his 25 year sentence is pursuant to neither statute and not bound by any of the criteria, or restrictions, attached to, or included in, either statute.

The grievant's sentence, of 25 years, should be calculated as an undefined sentence for a violent offense, and eligible to earn any, and all, credits available to violent offenders sentenced in August of 1997.

ACTION REQUESTED: The grievant request his sentence calculation be reviewed, and his max-out date be modified to reflect the appropriate credits.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: Sent a "RTSM" to Mrs. Allen on 10/11/13, she responded on 10/16/13, and directed the grievant to contact Inmate Records as the "appropriate staff/supervisor. The grievant sent a "RTSM" to Inmate Records on 10/17/13, and received a response dated 1/6/14 on 1/8/14. The grievant had the delivery date verified by Officer Bynum, Dellarossa, Sgt. Romanello, & Lt Hunter; but none would witness the "RTSM". The grievant was told to make a note on his grievance.

James A. Sellers 1/16/14

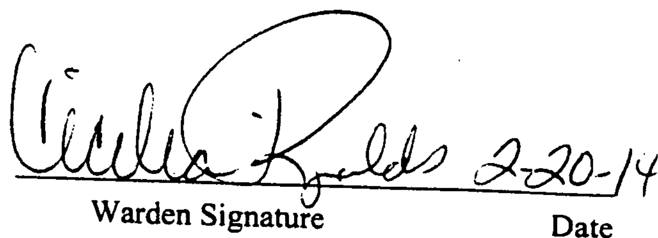
Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Sellers:

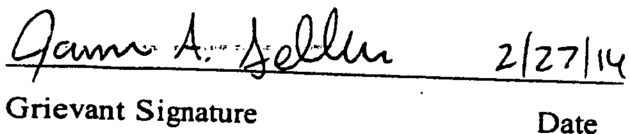
This is in response to KRCI-0070-14. All pertinent information and documentation has been reviewed. Your concerns were addressed by the Inmate Records Office. You were advised appropriately that your conviction was entered per the order issued by the Judge. I see no error in your order which states a mandatory minimum of 25 year sentence. The Inmate Records Office advised you to contact your attorney if you feel that your order needs to be amended.

Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

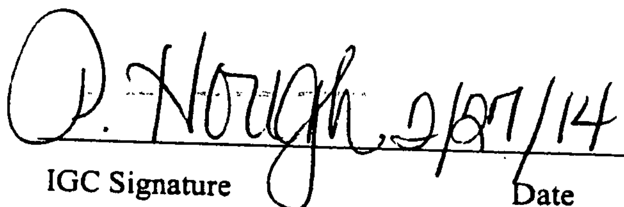


Warden Signature 2-20-14 Date

- ☐ 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 2/27/14 Date



IGC Signature 2/27/14 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing in the Grievance Box within five (5) days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) days of the hearing/review. 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 placement in the Grievance Box.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: James A. Sellers
SCDC NUMBER: 243348
INSTITUTION: Kershaw CI
HOUSING UNIT: HC216
WORK ASSIGNMENT: Dorm

RECEIVED FEB 28 2014
MAR 04 2014 FEB 27 2014
INMATE GRIEVANCE

Office Use Only
Grievance No. KCI-0070-14
Code: General
Policy
Disc. Hear
Class. ✓
Date Received 2/28/14
IGC Initials

DJE 3/4/14

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

With this Step 2 grievance, the grievant contests the decision, made by Warden Reynolds, to deny him a revieal of his eligibility to earn sentence reduction credits on his 25 year sentence for Accessory BF to a Felony.

Contrary to the Warden's response, the grievant holds that neither of his sentencing orders, copies of which are attached, specifically state a mandatory minimum service requirement of 25 years. The grievant will again point out that SCDC cannot, as they appear to be attempting, rely solely on a CIR Code for sentence calculation criteria. §16-1-40 does create a link to §16-3-20 for sentencing , and calculation, purposes, but the grievant was not sentenced "pursuant to" §16-3-20 and therefore the restrictions enumerated therein cannot be applied to his 25 year sentence. The record does support this argument.

James A. Sellers 2/27/14
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

er documentation from the State of South Carolina Solicitor's office, Fifteenth Judicial Circuit, you were "convicted and sentenced to twenty-ve years for Trafficking in Crank and twenty-five years as an Accessory to a felony (Murder)..." Documentation from the State of South arolina Office of the Attorney General, Post-Conviction Relief Section, On Writ of Certiorari, states, "Because there is no probative evidence ipporting the PCR judge's decision, we REVERSE the PCR judge's decision to grant a new trial." In reference to SCDC calculating :ntences, per Bennett v. State, we calculate based on statute and that is how your sentence is calculated. Per statute 16-01-0040, 0050, ccessory before the fact to a felony (violent if violent), the offense is punished as the principal felon. Therefore, since the offense of murder irries a mandatory minimum of 30 years to life, your 25 years had to follow the mandatory minimum guidelines based on statute.

herefore, your grievance is denied.

ou may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out .e attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

J Gaston 1-22-2015
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)

SCDC 10-5A (November 1997)

COUNTY OF HORRY

DATE OF ARREST 5-15-96
ARRESTING AGENCY MBPD
TICKET WARRANT(S) CAW199707006
ORIGINAL WARRANT CHARGE C11 Accessory Before the Fact of A Felony
PLED/CONVICTED C11 Accessory Before the Fact of A Felony

CASE NO. 97 GS-26- 1585

SENTENCE

The defendant James Sellers is committed to State Department of Corrections for a term of thirty-five (35) days/months/years and/or pay a fine of $____ suspended to ____ days/months/years and/or pay a fine of $____ plus pay court costs and assessments as applicable, with probation for ____ months/years. Restitution to be paid to HCCOC. Victim's information: NAME ____
STREET ADDRESS ____ CITY ____ STATE ____
SPECIAL CONDITIONS: ____ Probation Terminated upon full payment ____ Attend Voc. Rehab
____ Random Drug/Alcohol Testing ____ Public Service Employment ____ days/hours ____ Obtain GED
____ Substance Abuse Counseling OTHER CONDITIONS ____

SENTENCE: CONCURRENT/CONSECUTIVE
Credit for jail time served on this offense ____ days/months.

DATED 8/6, 1997

[signature]
PRESIDING JUDGE

COSTS AND ASSESSMENTS

(1) FINE	$	RESTITUTION	$
(4) ASSESSMENT(100%)	$	SERVICE CHARGE(3%)	$
(6) SERVICE CHARGE(3%)	$		
(13) DUI ASSESSMENT(12.00)	$	TOTALS	$
(14) SURCHARGE	$ 100.00		
TOTALS	$ 100.00		

INFORMATION ON DEFENDANT
DATE OF BIRTH 3/20/77 M ✓ F
SS# [redacted] RACE W
ATTORNEY Paul Archer
SOLICITOR Lucia Barote
COURT REPORTER Dixie Eubank

CERTIFIED A TRUE AND CORRECT COPY
[signature]
HORRY COUNTY CLERK OF COURT
BY Aneta Daniels

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CERTIFIED CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

CLERK OF COURT
P.O. BOX 677
CONWAY, SC 29528

COUNTY OF HORRY

DATE OF OFFENSE 5/15-5/18, 1996
DATE OF ARREST 5-13-96
ARRESTING AGENCY MBPD
TICKET/WARRANT(S) CAW194707005
ORIGINAL WARRANT CHARGE C1-Trafficking in Crank
PLED/CONVICTED C1-Trafficking in Crank

CASE NO. 97 GS-26- 1585

SENTENCE

The defendant James Sellers is committed to State Department of Corrections for a term of twenty-five (25) days/months/years and/or pay a fine of $ 50,000 suspended to ______ days/months/years and/or pay a fine of $______ plus pay court costs and assessments as applicable, with probation for ______ months/years. Restitution to be paid to HCCOC. Victim's information: NAME ______
STREET ADDRESS ______ CITY ______ STATE ______
SPECIAL CONDITIONS: ___Probation Terminated upon full payment ___Attend Voc. Rehab ___Random Drug/Alcohol Testing ___Public Service Employment ___days/hours ___Obtain GED ___Substance Abuse Counseling OTHER CONDITIONS ______

SENTENCE: CONCURRENT/CONSECUTIVE
Credit for jail time served on this offense ______ days/months.

DATED 8/6, 1997

[signature]
PRESIDING JUDGE

COSTS AND ASSESSMENTS

(1) FINE	$ 50,000		RESTITUTION	$
(4) ASSESSMENT(100%)	$ 50,000		SERVICE CHARGE(3%)	$
(6) SERVICE CHARGE(3%)	$ 1500			
(13) DUI ASSESSMENT(12.00)	$		TOTALS	$
(14) SURCHARGE	$ 100.00			
TOTALS	$ 101,600.00			

INFORMATION ON DEFENDANT
DATE OF BIRTH 3/20/77 M ✓ F
SS# [redacted] RACE W
ATTORNEY Paul Archer
SOLICITOR Lucia Bacote
COURT REPORTER Dixie Eubank

CERTIFIED A TRUE AND CORRECT COPY
[signature]
HORRY COUNTY CLERK OF COURT
BY Anita Daniel

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER'S CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

CLERK OF COURT
P O BOX 677
CONWAY, SC 29528

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF HORRY	)	(97-GS-26-1585)
STATE	)	
VERSUS	)	TRANSCRIPT OF RECORD
SAMUEL RONALD SELLERS and JAMES A. SELLERS	)	August 5, 6, 1997 Conway, S. C.

ORIGINAL

B E F O R E:

HONORABLE SIDNEY T. FLOYD, Judge; AND A JURY.

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

LUCIA BACOT, ESQ.
ASSISTANT SOLICITOR FOR HORRY COUNTY
ATTORNEY FOR STATE

WILLIAM MONCKTON, ESQ.
ATTORNEY FOR SAMUEL RONALD SELLERS

PAUL ARCHER, ESQ.
ATTORNEY FOR JAMES A. SELLERS

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 matter. As far as Mr. Sellers saying something, he may just
2 --
3 THE COURT: Yeah, I'll be glad to hear from you, Mr.
4 Sellers, anything you'd like to say.
5 MR. SELLERS: I really don't know what I can say to
6 change anything. All I can say is I'm not guilty of what I
7 was charged with.
8 MR. ARCHER: Your Honor, I'd also like to put on the
9 record that I would advise Mr. Sellers that he has the right
10 to appeal this.
11 THE COURT: All right.
12 MS. BACOT: The Court's indulgence for a moment, Your
13 Honor.
14 Excuse me. I just wanted to be sure that there was
15 nothing, Your Honor. It doesn't involve you at this point.
16 THE COURT: All right, sir, Mr. Sellers, Mr. James
17 Sellers, on the trafficking in crank, the sentence of the
18 Court is that you are hereby committed to the South Carolina
19 Board of Corrections for a period of twenty-five years and pay
20 a fine in the amount of Fifty Thousand Dollars.
21 On the accessory before the fact of a felony, the
22 sentence of the Court is that you are hereby committed to the
23 South Carolina Board of Corrections for a period of twenty-
24 five years. They are to run concurrent.
25 Good luck to you.

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

James A. Sellers, #243348	)	**Docket No. 15C0078**
Appellant	)	
	)	
vs.	)	**INITIAL BRIEF OF APPELLANT**
	)	
South Carolina Dept. of Corrections	)	
Respondent.	)	
______________________________	)	

Statement of Issues On Appeal

(1) Is SCDC properly calculating the appellant's twenty-five (25) year sentence for Accessory Before the Fact to a Felony?

Statement of the Case

On 01/06/14 the Appellant filed a Step 1 Grievance (KRCI-0070-14) initiating a challenge to SCDC's calculation of his 25 year sentence for Accessory BTF to a Felony. That grievance was denied on 02/27/14. SCDC's response claimed that the Appellant's sentencing orders stated a "mandatory minimum" 25 year sentence. The Appellant then filed a Step 2 Grievance in relation to the same issue on 02/28/14. On 10/01/14 the Appellant sent a letter to the SC Administrative Law Court asking for permission to advance KRCI-0070-14 in to the ALC, under Al Shabazz, based on SCDC's failure to respond. The Appellant received a Memorandum from the Clerk's Office and, following their instructions, he filed a Notice of Appeal in connection with KRCI-0070-14. The appeal was assigned to Judge Durden on 11/06/14. On 11/10/14

restriction enumerated in §16-3-20; where he wasn't sentenced to "a mandatory minimum term of imprisonment for thirty years ...", and the Judge did not state any specific service requirement for the twenty-five year sentence.

S.C. Courts have long held that statutes are to be given ".. their plain and ordinary meaning." First Baptist Church of Maudlin v. City of Maudlin, 308 S.C. 226, 417 S.E.2d 592 (1992). The Punishment for Murder statute, S.C. Code Ann. §16-3-20, is a fair example of a statute with plain and unambigiuous language. S.C. Courts have also long held that "Uncertainies and ambiguities in sentences will normally be resolved in favor of prisoners." Polk v. Manning, 224 S.C. 467, 79 S.E.2d 875.

Conclusion

The Appellant asks that the Court review SCDC's calculation of the Accessory sentence to determine if it is a proper application of statutes. If found to be in error, the Appellant asks that the Court determine what credits the Appellant is eligible for and how they would affect his release date.

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

James A. Sellers, # 243348, Appellant, *v.* S.C. Department of Corrections, Respondent.	)	Docket No. 15-ALJ-04-0078-AP [Grievance No. KRCI-0070-14] *Hon. Shirley C. Robinson* **RESPONDENT'S BRIEF**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC) pursuant to the appeal of James A. Sellers (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant is appealing the Department's Step 2 final decision of January 22, 2015, in which Mrs. Jannita Gaston, Regional Director and Division Director for Inmate Records and Classification, responded to Appellant's claim that the Department is miscalculating his sentence.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, our supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (*1*) cases in which an inmate contends prison

officials have erroneously calculated his sentence, sentence-related credits, or custody status; (*2*) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (*3*) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (*2*) and (*3*), *supra*, our supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008).

Additionally, "an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law." *Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, *available at* http://www.scalc.net/decisions.aspx?id=1203&q=4 (filed Dec. 21, 2004) (Anderson, J.); *see* S.C. Code Ann. § 1-23-

380(5)(e); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep't of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, our supreme court "underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a 'hands off' approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA." *Matthews v. S.C. Dep't of Corr., supra*, page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that "[c]ourts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters . . . .")); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE DEPARTMENT'S FINAL AGENCY ACTION, THE COURT SHOULD AFFIRM.

The Department relied on substantial evidence when it concluded in its Step 2 response that Appellant's sentence is not being miscalculated.

Appellant is incorrect that the Department is miscalculating his sentence for the Accessory Before the Fact to Murder. The statute that was in effect at the time of sentencing is currently located at S.C. Code § 16-1-40 and reads: "A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, *must be punished in the manner prescribed for the punishment of the principal felon.*"

The murder statute under which Appellant was convicted on August 6, 1997 had recently been amended, as explained in detail in an opinion of the South Carolina Attorney General:

> In 1995 Acts No. 83, §10, the statute was amended to provide the following:
>
> [a] person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, ***or by a mandatory minimum term of imprisonment for thirty years.*** If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life imprisonment" means until death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. ***No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section.***

> We note that this Act which amended § 16-3-20 specifically addressed its effective date. Section 62 states that the Act "takes effect January 1, 1996, *and applies prospectively to all crimes committed on or after that date* . . ." 1995 Acts No. 83, §62 [Emphasis in original].

Opinion of the Attorney General, to the Honorable Barry J. Barnette, 2011 WL 2214058 (May 24, 2011).

Since the Accessory statute refers the sentencing judge to the operative penalty statute for the crime for which a defendant was an accessory, Judge Floyd correctly looked to the version of S.C. Code § 16-3-20 that was on the books at the time of sentencing. While it is true that Judge Floyd sentenced Appellant to a mandatory minimum term of less than the 30 years required by statute, that fact does not at all alter the fact that the reduced 25-year sentence actually imposed on Appellant is to be served as a "mandatory minimum" sentence precisely the same way as would a 30-year sentence under the same statute. And Appellant offers no on-point source of law to the contrary. The Department has an affirmative obligation to enter a sentence imposed by a judge of competent jurisdiction in this State. In this case, Appellant received a *reduction* by five years in the total amount of time imposed for the Accessory Before the Fact for Murder, since the judge could have sentenced him to at least 30 years.

However, Judge Floyd lowered the mandatory minimum period of total incarcerative time to 25 years to match the other sentence imposed. If there was a problem with the sentence imposed (although it is doubtful that Appellant would have argued *against* a lower-than-statutorily-required sentence), then the time to raise that issue would have been within the 10-day motions window. In the alternative, Appellant had PCR as an available option (and, indeed, had a PCR case on other issues). Moreover, the state Supreme Court affirmed Appellant's convictions *and his sentences* on direct appeal. *State v. Sellers*, Op. No. 99-MO-79

(S.C. Sup. Ct. filed Nov. 15, 1999).

Regarding the mandatory minimum service requirement for any penalty provision that includes the words "mandatory minimum," two cases that discuss the distinctions are *Nelson v. Ozmint*, 390 S.C. 432, 702 S.E.2d 369 (2010) and *Kerr v. State*, 345 S.C. 183, 547 S.E.2d 494 (2001). In *Nelson*, the inmate's counsel wrote to SCDC requesting it to reevaluate its interpretation of § 16-25-20(B)(3), which provides that for CDV 3rd, an individual "must be imprisoned *not less than a mandatory minimum* of one year but not more than five years." 390 S.C. at 436, 702 S.E.2d at 371 (emphasis mine). The inmate argued that "inmates convicted of CDV 3rd should be permitted to earn good time credits and earned work credits such that they could reduce their terms of actual imprisonment below the mandatory minimum of one year." *Id.* The argument was based in part on the fact that the CDV statute did not say SCDC could *not* apply credits. *Id.* Our Supreme Court disagreed, holding instead that "the absence of a provision restricting SCDC from applying good time and earned work credits to reduce an inmate's sentence below the mandatory minimum does not indicate SCDC must apply these credits in such a way." *Id.* at 437, 702 S.E.2d at 371.

In *Kerr*, the petitioner was convicted of trafficking in cocaine and sentenced under § 44-53-370(e)(2)(c), which at the time "provided that where the quantity of cocaine involved is 100 grams or more, but less than 200 grams, the defendant shall be sentenced to '*a mandatory term* of imprisonment of twenty-five years, no part of which may be suspended . . . .'" 345 S.C. 183, 187, 547 S.E.2d 494, 496 (2001) (emphasis in original). Kerr was paroled in 1993, but the Parole Board revoked his parole in 1995 after determining that he was parole ineligible. *Id.* The issue before the court was whether, in fact, Kerr was parole eligible under § 44-53-370(e)(2)(c). Our Supreme Court held that the Parole Board's interpretation of the statute was

incorrect and held that the phrases "mandatory term of imprisonment" and "mandatory minimum term of imprisonment" are distinguishable. *Id.* at 188, 547 S.E.2d at 497; *see also Harris v. S.C. Dep't of Corr.*, 2015 WL 500754 (S.C. Ct. App. Feb. 2, 2015) (unpublished).

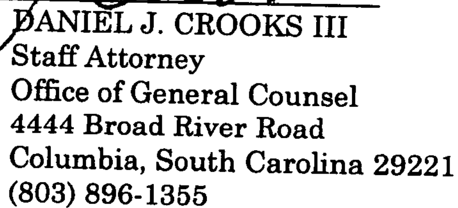
CONCLUSION

Appellant's contentions are without merit, and the applicable law clearly supports the Department's interpretation of his sentence.

For the foregoing reasons, Respondent respectfully requests that this Court affirm the Department's final agency action.

Respectfully Submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



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May 15, 2015

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

James A. Sellers, #243348	)	Docket No. 15-ALJ-04-0078-AP
Appellant	)	
	)	
vs.	)	REPLY BRIEF
	)	
SOUTH CAROLINA DEPT. OF CORRECTIONS	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

The Appellant filed a Step 1 Grievance (KRCI-0070-14) to initiate a challenge to SCDC's calculation of his 25 year sentence for Accessory BTF to a Felony. That grievance, and its subsequent Step 2 Grievance, were denied by SCDC.

STATEMENT OF ISSUE ON APPEAL

(1) Is SCDC properly calculating the Appellant's twenty-five (25) year sentence for Accessory Before the Fact to a Felony?

The Department's Response did properly state the applicable statutes, S.C. Code Ann. §16-1-40 and S.C. Code Ann. §16-3-20. It is the specific wording of those two statutes, and how they are to be interpreted, that bring rise to the issue at hand.

The Accessory statute was suppose to create a link to the Punishment for Murder statute, but the record does show that Judge Floyd veered considerably from the wording in both statutes. If that link is automatic, as the Department suggests in their Response, the question is still whether Judge Floyd's Accessory sentence, of twenty-five years, is bound by the restrictions enumerated in §16-3-20 and predicated on a "... mandatory minimum term of imprisonment for thirty years ..." When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273; 403 S.E.2d 660, 662 (1991); State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980).

The Department's Response did point out the Appellant's lack of an "... on-point source of law ..." regarding how his sentence should be calculated, and the Appellant will concede to this because the issue has never apparently been raised before the courts. It should also be noted that their Response was lacking in an "... on-point source of law ..." as well. The two cases that they did supply, as defining the distinctions between a "mandatory" and "mandatory minimum" sentences, did not necessarily clarify the issue at hand. Nelson received a sentence that was within the statute's guidelines, and Kerr's sentence was exactly what the statute mandated. If Nelson had of received a sentence of 364 days, it would have been an interesting argument as to whether he qualified for credits. As to Kerr's, it was a twenty-five sentence that was exactly on par with what the statute stated.

The Department did agree that Judge Floyd made a specific effort to make the Accessory sentence "... match the other sentence imposed." Judge Floyd had the option to sentence the Appellant to the "... mandatory minimum term of imprisonment for thirty years ..." prescribed by §16-3-20, but obviously chose

not to do so. The fact that Judge Floyd did not impose a sentence of thirty years, when he had the option to do so, indicates that he did not intend for the twenty-five year sentence to be treated as a "mandatory minimum". "... criminal sentences must be interpreted in light of the sentencing judge's intent". Major v. South Carolina Department of Probation, Parole, and Pardon Services 384 S.C. 457, 682 S.E.2d 795, 802 (2009). In the same case Judge Pleicones offered a dissenting opinion that stated: "When interpreting sentences, the Department looks to the sentences imposed, not to the statutes. Moreover, only if there is an ambiguity in the sentences, must the Department or the court ascertain the intent of the judge, not, as the majority suggests, the intent of the parties."

The Department had the opportunity to confer with Judge Floyd, in 1999, concerning at least one of the Appellant's sentences. The extent of that ex parte communication has yet to be fully disclosed, but it has been indicated that Judge Floyd provided SCDC with instructions to treat the twenty-five year Trafficking sentence as less than a "day for day" sentence. If it was Judge Floyd's intent for the Accessory sentence to be "day for day", or a "mandatory minimum", those instructions would have been irrelevant and Judge Floyd would have been aware of that.

The Solicitor's Office had the same opportunities to raise complaint with the Appellant's sentence at the time it was imposed, and for a longer period directly after, but chose not to do so. The Appellant has never raised a complaint against the sentence imposed by Judge Floyd, and the current appeal concerns only SCDC's calculation of that sentence.

It is the specific wording of S.C. Code Ann. §16-3-20 that brings rise to the question before the court. It is a very unambiguous statute. It sets out

a very limited list of sentencing options, and places restrictions on the sentences allowed. The Appellant will argue that he was, according to the record, not sentenced **pursuant to** §16-3-20. Black's Law Dictionary defines that phrase as: (1) In compliance with; in accordance with. (2) As authorized by; under. It is that statute's wording that the Department is using to deny the Appellant the benefit of ANY sentence reduction credits, and that may not be a proper interpretation of the law. The statutes that enable inmates to earn credits are varied, and at times overlapping, but they are there --- barring another statute that prohibits the inmate from reaping the benefits. "When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Id Furthermore in construing a statute, words must be given their plan and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988).

CONCLUSION

The Appellant's issue does have merit, and warrants a review by the court. SCDC's interpretation is in conflict with S.C. Code Ann. §16-3-20, and does not account for the actual sentence issued by Judge Floyd.

Respectfully Submitted,

James A. Sellers 10/15/15

James A. Sellers, #243348

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 16 2015
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson

Appellate Case No.: 2015-001519

James A. Sellers, 243348 — Appellant

v.

South Carolina Department of Corrections — Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 211(b), SCACR.

Date: 10/15/15

(s) [signature]
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