

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

FEB 19 2016

Administrative Law Judge Deborah Brooks Durden

SC Court of Appeals

ALC Case No. 15-ALJ-04-0179-AP
Appellate Case No. 2015-002344

BILLY LEE LISENBY, JR., # 200273,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT OF CORRECTIONS' FINAL AGENCY DECISION WHERE THE ADMINISTRATIVE LAW COURT'S RULING WAS NOT ERRONEOUS AND WAS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Billy Lee Lisenby, Jr., an inmate in the custody of the South Carolina Department of Corrections. On June 15, 2014, Appellant submitted a Step 1 Grievance complaining that the Department of Corrections was not properly calculating his sentence in that the Department failed to return to him two-hundred days of good-time credit to which he was entitled. The Warden denied the grievance on August 7, 2014. Appellant then submitted a Step 2 Grievance on August 17, 2014. The Step 2 was denied on March 30, 2015, on the ground that Appellant's current max-out date was correct. Appellant submitted a notice of appeal to the Administrative Law Court on April 12, 2015. On November 5, 2015, Administrative Law Judge Deborah Brooks Durden filed an order dismissing Appellant's appeal. The order concluded that Appellant failed to provide evidence that the Department miscalculated his sentence and that the Department had, in fact, correctly calculated Appellant's sentence. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT OF CORRECTIONS' FINAL AGENCY DECISION WHERE THE ADMINISTRATIVE LAW COURT'S RULING WAS NOT ERRONEOUS AND WAS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

In Appellant's case, the Administrative Law Court's order should be affirmed because its findings are not erroneous and are supported by substantial evidence in the record. The Administrative Law Court relied on the sentence calculations of Michael Stobbe, SCDC Branch Chief for Records Management and Release. Mr. Stobbe confirmed that Appellant's sentence was being calculated correctly and that Appellant's projected max-out date was accurate. Appellant has failed to show that Mr. Stobbe's calculations were erroneous in any way. Accordingly, the order of the Administrative Law Court should be affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

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February 19, 2016

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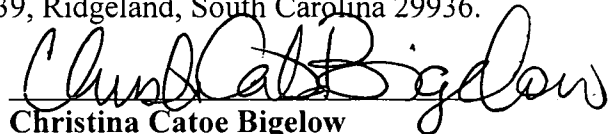
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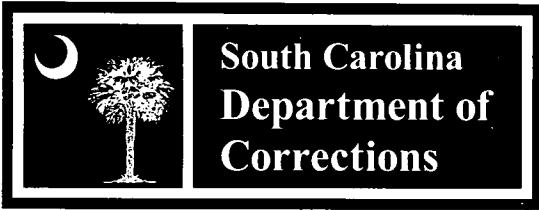
CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Billy Lee Lisenby, Jr., # 200273, Ridgeland Correctional Institution, Post Office Box 2039, Ridgeland, South Carolina 29936.



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South Carolina
Department of
Corrections

OFFICE OF GENERAL COUNSEL

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

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SC Court of Appeals

February 19, 2016

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Billy Lee Lisenby, Jr., # 200273, v. South Carolina Department of Corrections
Appellate Case No. 2015-002344

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** along with Respondent's **Designation of Matter** and **Proof of Service** for the same.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Billy Lee Lisenby, Jr., # 200273
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936

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Administrative Law Judge Deborah Brooks Durden

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

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**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent submits that the following should be included in the Record on Appeal:

- (1) Step 1 and Step 2 Grievance Forms;
- (2) ALC filings and attachments;
- (3) Administrative Law Judge Durden's Order dated Nov. 5, 2015.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.


CHRISTINA CATOE BIGELOW

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