

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, Jr., #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0065-AP

Grievance No. RCI 0334-15

ORDER **RECEIVED**
AUG 08 2016
SC Court of Appeals

STATEMENT OF THE CASE¹

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Billy Lee Lisenby, Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant requests review of the Department's final decision concerning the application of good time credit to the calculation of Appellant's "max-out" date.

ISSUE ON APPEAL

Whether the Department's decision regarding the calculation of Appellant's max-out date is affected by error of law.

STANDARD OF REVIEW

The Court'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). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such a liberty interest is implicated in cases where an inmate loses earned sentence-related credits or alleges that those credits have been miscalculated by the Department, but not where an inmate is deprived of the opportunity to earn such credits in a disciplinary hearing. See Howard v. S.C. Dept. of Corrs., 399 S.C. 618, 630; 733 S.E.2d 211, 218 (2012); Al-Shabazz, 338

¹ As a preliminary matter, the Court notes that the Department has included several exhibits with its brief. Because these exhibits are not part of the Record on Appeal and because no motion has been made to supplement the Record with these documents, the Court does not consider them in its review. See S.C. Code Ann. § 1-23-380(4) (Supp. 2015).

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S.C. at 369, 527 S.E.2d at 750; see also S.C. Code Ann. § 1-23-600(D) (Supp. 2015).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Appellant argues that the Department has not applied his good time credit to his max-out date,² or that the Department is incorrectly calculating his max-out date according to the law. The Court disagrees. Inmates who qualify for credit for good behavior under Section 24-13-210 of the South Carolina Code receive credit at a rate of twenty days for each month served. To earn the credit an inmate must faithfully observe all the rules of the institution where he is confined. See S.C. Code Ann. § 24-13-210(A) (Supp. 2015). If an inmate is punished for bad behavior, he may not accrue good time credit for that month and he may be sanctioned with the loss of previously accrued good time credit. See SCDC Policy OP-22.14, "Inmate Disciplinary System" (Feb. 2, 2015) (laying out the scheme of punishment and resulting sanctions). The good time credit is not earned until the requisite time is served. See Busby v. Moore, 330 S.C. 201, 204–05, 498 S.E.2d 883, 885 (1998) (per curiam) (overruled on other grounds by Al-Shabazz, supra); SCDC Policy OP-21.11, "Loss of Statutory Good Time" at ¶ 1.1 (May 1, 2004). However, when an inmate enters Department custody, the Department performs a max-out date calculation to determine the earliest possible date by which the inmate could be released. This calculation assumes a best case scenario, i.e. that the inmate will not break any rules and will not be punished for any disciplinary


² Max-out date is the Department's term for a projected release date.

infractions. See S.C. Code Ann. § 24-13-210(A) (Supp. 2015). This calculation is an administrative tool and is recalculated only as necessary, such as after an inmate is sanctioned with the loss of earned good-time in a disciplinary hearing.

Appellant asserts that the Department has failed to apply his accrued good time. He cites as evidence the fact that his max-out date has not changed in a year despite his good time earned. Appellant misunderstands the Department's system for projecting release dates: the date changes when an inmate *loses* good time credit. Because the projection accounts for good time credit the inmate may earn without a disciplinary infraction, no adjustments must be made when an inmate abides by the rules, as Appellant apparently has in the last year. Appellant appears to argue that this administrative system is in violation of Busby v. Moore. Our Supreme Court held in that case that inmates are not entitled to the application of good time credit at the beginning of their sentences, but rather must earn the credit month by month. Busby v. Moore, 330 S.C. at 204, 498 S.E.2d at 884. The Court does not find the Department's policy of calculating a *projected* release date based on the assumption that such credit will be earned to be in violation of that holding, but rather a necessary administrative procedure beneficial to the smooth operation of the correctional system.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

July 14, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to 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 14th day of July 2016
By: R. E. [Signature]
Judicial Law Clerk