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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From The Adminstrative Law Court
Shirley C. Robinson, Administrative Law Judge
Unpublished Opinion No. 2016-UP-281

James A. Sellers — PETITIONER,

v.

South Carolina Department of Corrections, — RESPONDENT,

APPENDIX

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

PRO SE PETITIONER

SCDC Office of General Counsel
Christina Catoe Bigelow
4444 Broad River Rd.
Columbia, SC 29210

ATTORNEY FOR RESPONDENT

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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

SCDC Office of General Counsel
Daniel John Crooks, III, Esquire
4444 Broad River Rd.
P.O. Box 21787
Columbia, SC 29210

INDEX

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: _____

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

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,

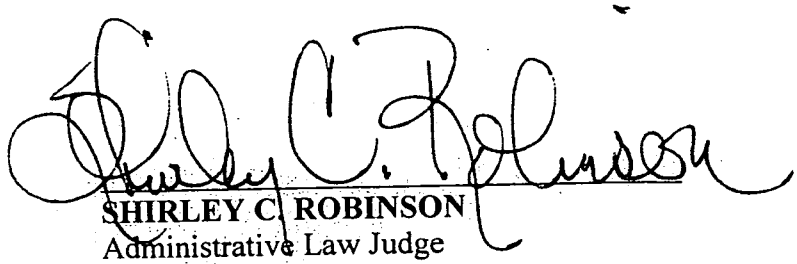
Appellant was sentenced pursuant to that section and the phrase "mandatory minimum" is applicable to Appellant's sentence. The Department suggests the discrepancy between the thirty (30) year requirement and Appellant's actual sentence arose because the clause requiring a mandatory minimum term of imprisonment 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

This is to certify that the undersigned has this date served the above-referenced matter 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, or the party's attorney of record.

This 12 day of June 2015

By: _____
Judicial Law Clerk

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 214

WORK ASSIGNMENT: N/A

JAN 17 2014 GRIEVANCE

Grievance No. KCI 0070-14

Code: General

Policy

Disc. Hear.

Class. ✓

PREA

Date Received 1/17/14

IGC Initials

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 10/15/13, 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 1/16/14. The grievant had the delivery date verified by Officer Bigham, 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

Inmate Sellers;

WARDEN'S DECISION AND REASON:

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.

Cecilia Kyles 2-20-14

Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.

☑ I do not accept the Warden's decision and wish to appeal.

Jamie A. Sellers 2/27/14

Grievant Signature Date

D. Hough 2/27/14

IGC Signature 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.

DUE 3/4/14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED FEB 28 2014

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

INMATE NAME: James A. Sellers
SCDC NUMBER: 243348
INSTITUTION: Kershaw CI MAR 05 2014 FEB 28 2014
HOUSING UNIT: HC216 INMATE GRIEVANCE
WORK ASSIGNMENT: Dorm

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 reviewal of his eligibility to earn sentence reduction credits on his 25 year sentence for Accessory BIF 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 CDR 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 ıpporting the PCR judge's decision, we REVERSE the PCR judge's decision to grant a new trial." In reference to SCDC calculating ıntences, 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 ırries 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. Caston 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 commited to State Department of Corrections for a term of twenty-five (25) 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

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 Bacote

COURT REPORTER Dixie Elibank

CERTIFIED A TRUE AND CORRECT COPY:

Jeanne Rogers

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 6—
CONWAY, SC 29526

COUNTY OF HORRY

DATE OF OFFENSE 5-15-5-18, 1996
DATE OF ARREST 5-13-96
ARRESTING AGENCY MBPD
TICKET/WARRANT(S) CAW196707005
ORIGINAL WARRANT CHARGE
CI-Trafficking in Crank
PLEA/CONVICTED
CI-Trafficking in Crank

CASE NO. 97 GS-26 1585

SENTENCE

The defendant James Sellers is commited 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

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

Jeanne Rollins
CLERK OF COURT

HORRY COUNTY CLERK OF COURT

BY Greta Daniel

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 29526

11

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF HORRY)
) (97-GS-26-1585)

STATE)
)
VERSUS) TRANSCRIPT OF RECORD
)
SAMUEL RONALD SELLERS) August 5, 6, 1997
and) Conway, S. C.
JAMES A. SELLERS)

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

matter. As far as Mr. Sellers saying something, he may just --

THE COURT: Yeah, I'll be glad to hear from you, Mr. Sellers, anything you'd like to say.

MR. SELLERS: I really don't know what I can say to change anything. All I can say is I'm not guilty of what I was charged with.

MR. ARCHER: Your Honor, I'd also like to put on the record that I would advise Mr. Sellers that he has the right to appeal this.

THE COURT: All right.

MS. BACOT: The Court's indulgence for a moment, Your Honor.

Excuse me. I just wanted to be sure that there was nothing, Your Honor. It doesn't involve you at this point.

THE COURT: All right, sir, Mr. Sellers, Mr. James Sellers, on the trafficking in crank, the sentence of the Court is that you are hereby committed to the South Carolina Board of Corrections for a period of twenty-five years and pay a fine in the amount of Fifty Thousand Dollars.

On the accessory before the fact of a felony, the sentence of the Court is that you are hereby committed to the South Carolina Board of Corrections for a period of twenty-five years. They are to run concurrent.

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

Judge Durden issued an Order of Dismissal based on the Appellant's failure to enclose a "... copy of a final decision ..." by SCDC. On 11/14/14 the Appellant filed, via a letter, a Request for Leave based on SCDC's failure to provide a final decision. Judge Durden issued an Order to Reinstate on 12/02/14, and ordered SCDC to file a return to the Petition for Writ of Mandamus within 15 days. SCDC defaulted on that Order on 12/19/14. The Appellant wrote to Judge Durden on 01/05/15 pointing out SCDC's default, and asking Judge Durden to go ahead with the Writ of Precedendo mentioned in the previous Order. On 01/29/14 the Appellant was served with a copy of correspondence between SCDC and the ALC. That correspondence contained a copy of SCDC's final decision in KRCI-0070-14. The Appellant was called to Kershaw Correctional's Grievance Office and served with a copy by KerCI's Inmate Grievance Coordinator on 01/31/15. SCDC's response held that their calculations were per statute. On 02/02/15, due to the slightly confused nature of the process, the Appellant filed an Initial Brief of Appellant in connection with Docket No. 14-ALJ-04-0955-IJ to insure that any, and all, filing deadlines were met. On 02/09/15 Judge Durden issued an Order dismissing Docket No. 14-ALJ-04-0955-IJ. On 02/10/15, upon receiving a copy of the Order, the Appellant filed a new Notice of Appeal, with a copy of SCDC's final decision, in connection with KRCI-0070-14. On 02/13/15 the Appellant was served with a copy of the Respondent's Record in connection with Docket No. 14-ALJ-04-0955-IJ.

Argument

The Appellant was convicted of Trafficking in Crank (100 - 200 grams), and Accessory Before the Fact to a Felony, S.C. Code Ann. §16-1-40, 50. He was sentenced, under the law in effect in 1996, to two, concurrent, terms of twenty-five (25) years in prison.

The question at hand concerns how the Accessory sentence is required to be calculated, where S.C. Code Ann. §16-1-40, 50, are exempt from classification and should be controlling.

Under S.C. law, Accessory Before the Fact to a Felony is "... punished in the manner prescribed for the principal felon ..." In the present case, that should have created a link to the 1996 version of the Punishment for Murder statute, S.C. Code Ann. §16-3-20. That version provided for only three sentencing options: by death, by imprisonment for life, or "... by a mandatory minimum term of imprisonment for thirty years." SCDC's response to KRCI-0070-14 misstated the version applicable to the Appellant. The punishment relates to the length of the sentence only, not classification.

A review of the Appellant's sentencing orders, and trial transcript, shows that did not happen. For whatever reason, Judge Sidney T. Floyd chose to ignore the requirements set forth in the Accessory statute and he sentenced the Appellant to a sentence that is clearly not **pursuant to** the 1996 version of S.C. Code Ann. §16-3-20. He did all of this without objection from the State. The Appellant's conviction, and sentences, were affirmed by the S.C. Supreme Court on 11/05/99 (State v. Sellers, Op. No. 99-MO-79).

Currently SCDC is calculating the Appellant's Accessory sentence as if it were a "Mandatory Minimum" sentence of twenty-five (25) years. It's the Appellant's contention that such a calculation is not a proper application of statute §16-3-20, and that classification is controlled by S.C. Code Ann. §16-1-40, 50.

The 1996 version of §16-3-20, and later versions, set out a long list of restrictions attached to a conviction for Murder, but all of those restrictions were predicated on a sentence of "... a mandatory minimum term of imprisonment for thirty years required by this section."

The Appellant's sentence, of 25 years, does not fall under the

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

BY: _____

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Columbia, South Carolina
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, #243348

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

CERTIFICATE OF COUNSEL

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

Date: _____

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

Pro se Appellant

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

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served copies of this Record on Appeal, in the above entitled action upon, all parties to the cause by depositing one or more copies thereof, in the United States mail, postage prepaid, or in the Interagency Mail Service addressed to the party(ies) or their attorneys.

Fifteen (15) copies of this Record on Appeal has been served on the Clerk of the S.C. Court of Appeals, at 1220 Senate Street, Columbia, SC 29201, and another copy has been served on SCDC's Office of General Counsel at P.O. Box 21787 Columbia, SC 29211-1787.

Date: _____

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

Pro se Appellant

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

FINAL BRIEF OF APPELLANT

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

Pro se Appellant

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STATEMENT OF ISSUE ON APPEAL

I. DID THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERR IN THEIR DECISION TO AFFIRM THE SOUTH CAROLINA DEPARTMENT OF CORRECTION'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?

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 Before the Fact to a Felony (Murder). That Grievance was denied on 02/27/14. SCDC's response claims that the Appellant's sentencing Order stated a "mandatory minimum" twenty-five (25) sentence. (R.pp.6-7)

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 Administrative Law Court asking for permission to advance KRCI-0070-14 into 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 Judge Durden issued an Order of Dismissal based on the Appellant's failure to enclose a "... copy of the final decision ..." by SCDC.

On 11/14/14 the Appellant filed, via a letter, a Request for Leave based on SCDC's failure to provide a final decision. Judge Durden issued an Order to Reinstate on 12/02/14, and ordered SCDC to file a return to the Petition for Writ of Mandamus within 15 days. SCDC defaulted on that Order on 12/19/14. The Appellant wrote to Judge Durden on 01/05/15 pointing out SCDC's default, and asking Judge Durden to go ahead with the Writ of Precedendo mentioned in the previous Order.

On 01/29/15 the Appellant was served with a copy of correspondence between SCDC and the ALC. That correspondence contained a copy of SCDC's final decision in KRCI-0070-14. The Appellant was called to KRCI's Grievance Office on 01/31/15, and served with a copy by KRCI's Grievance Coordinator. SCDC"S Response held that their calculation was per statute. (R.pp.8-12)

On 02/02/15, due to the slightly confused nature of the process, the Appellant filed an Initial Brief of Appellant in connection with Docket No.: 14-ALJ-04-0955-IJ to insure that any, and all, filing deadlines were met.

On 02/09/15 Judge Durden issued an Order dismissing Docket No.: 14-ALJ-04-0955-IJ.

On 02/10/15, upon receiving that Order, the Appellant filed a new Notice of Appeal, with a copy of SCDC's final decision, in connection with KRCI-0070-14.

On 02/13/15 the Appellant was served with a copy of the Respondent's Record in connection with Docket No.: 15-ALJ-04-0078-IJ.

On 02/20/15 the Appellant was notified that Judge Shirley C. Robinson had been assigned, and that the case had been designated as Docket No.: 15-ALJ-0078-AP.

On March 6, 2015 the Appellant filed an Initial Brief of Appellant in connection with the new docket number. (R.pp.13-16)

On April 3, 2015 the Appellant received the State's Record on Appeal in connection with the current appeal.

On May 13, 2015 the Appellant filed a Motion to compel SCDC to include additional information in the Record on Appeal.

On May 20, 2015 the Appellant received a copy of the State's Response (R.pp.17-23), and filed his Reply Brief on May 26, 2015. (R.pp.24-27)

On May 28, 2015 the Appellant received the State's response to his Motion to include additional information in the Record on Appeal. Their response supplied the requested information, rendering the Motion moot.

On June 15, 2015 the Appellant received a copy of the Order filed by Judge Shirley C. Robinson in connection with Docket No.: 15-ALJ-04-0078-AP. The Order affirmed the Department's decision to deny the Appellant sentence reduction credits towards his twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder). (R.pp.2-5)

The Appellant filed his Notice of Appeal on July 13, 2015.

ARGUMENT

The Appellate was convicted of Trafficking in Crank, and Accessory Before the Fact to a Felony (Murder). He was sentenced, under the law in effect in May of 1996, to two, concurrent, terms of twenty-five (25) years in prison and a fine of fifty thousand dollars. (R.pp.9-12)

The sentences imposed, and the statutes that control them, have been in effect and on the record for almost two decades now. The current argument, and appeal, concern how the Accessory sentence is required to be calculated, and whether the Administrative Law Court Judge erred when she ruled that SCDC officials had done so. (R.pp.2-5)

It is agreed that S.C. Code Ann. Section 16-1-40 (1993) required that Accessory Before the Fact to a Felony be "punished in the manner prescribed for the principal offense", and that the Punishment for Murder statute, S.C. Code Ann. Section 16-3-20 (1996), offered only three sentencing options: "by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years".

Obviously, as a review of the record shows, Judge Floyd chose to ignore the controlling statutes and impose his own sentences. There are cases that call his action a "question of the judge's authority." but none that adequately clarify the effect on the sentence imposed. State v. Johnson, 327 S.C. 435, 489 S.E.2d 228, (S.C. App 1997), State v. Bynes, 304 S.C. 62, 65, 403 S.E.2d 126, 127 (Ct.App 1991)

The Appellant admits that the 1996 version of §16-3-20 had only been in effect for 20 months at the time he was sentenced, but to suggest the Appellant's twenty-five year sentence is a result of any confusion surrounding the recent amendment is a bit of a stretch. It is more likely, and believable, that Judge Floyd chose to match the Accessory sentence to the Trafficking sentence he also imposed. The Department admitted as much in their Response to the Administrative Law Court filing. (R.p.21, line 20-21) It should also be noted, even though there was no requirement for a parallel between the sentences, that Judge Floyd sentenced the principal, William T. Perry, to twenty-five (25) on his plea to Voluntary Manslaughter. Judge Floyd was neither a neophyte, nor ignoramus, where the law was concerned. The twenty-five (25) year sentence, for Accessory Before the Fact to a Felony, is the sentence that he chose to impose, and he did so without objection from the State. (R.p.12) Therefore, it is State v. Lee, 350 S.C. 125, 564 S.E.2d 372, 376 (Ct. App. 2002), that best describes the situation "... the underlying

sentence was the law of the case."

The 1996 version of S.C. Code Ann. 16-3-20 was, and is, a very unambiguous statute. It sets out clear, and distinct, sentencing options. The first two options, death and life, have garnered the most case law since its implementation. The third option, the "mandatory minimum term of imprisonment for thirty years" has garnered very little case law at all.

The statute's language is very clear "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 programs, 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." It does not, however, explain what happens to sentences that fall outside of the three, very specific, sentencing options.

In State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007), the S.C. Supreme Court held that Accessory Before the Fact to a Felony (Murder) could not be punished by death, even though it is an option under §16-3-20 because the legislature didn't specifically state that it could be. The logic being the same as in State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004), "... if Legislators had intended a certain result in a statute it would have said so." In the present case, if the intent had of been for all sentences to be a "mandatory minimum sentences" it would have said just that. In a dissenting opinion, under State v. Shafer, 340 S.C. 291, 531 S.E.2d 524 (S.C. 2000) there is even a question of parole eligibility if an individual is sentenced in excess of the "mandatory minimum term of imprisonment for thirty years" required by statute. Both cases showing that situations do arise that aren't neatly covered by statutes.

The Appellant's twenty-five year sentence, simply put, isn't a "mandatory minimum term of imprisonment for thirty years". To treat it as such is to expand the language of §16-3-20 to cover a sentence completely outside of the statute's guidelines. "In construing a statute words must be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. State v. Taub, 336 S.C. 310, 519 S.E.2d 797, (S.C. App 1999), Bryant v. Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). "Words of a statute must be given their plain and ordinary meaning

without resort to subtle or forced construction" State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002). "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). State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (S.C. App 1999). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will, therefore, the courts are bound to give effect to the expressed intent of the legislature." State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (S.C. 2011). "... courts must nevertheless interpret a penal statute that is clear and unambiguous according to its literal meanings." State v. Mills, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004).

As to SCDC's argument about the South Carolina Supreme Court affirming the 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)., it doesn't hold weight. Neither the Defense, nor the State, raised any objection at trial concerning the sentence imposed. Therefore it wasn't preserved for appeal, and could not have been raised. State v. Bynes, 304 S.C. 62, 65, 403 S.E.2d 126, 127 (Ct. App 1991). The S.C. Supreme Court issued a Memorandum Opinion, so we can't know what they did, or didn't, review in their decision making process, but we do know there were no issues related to sentencing presented to the court.

For their Administrative Law Court Response, SCDC relied heavily on the decision handed down in Nelson v. Ozmint, 390 S.C. 432, 437; 702 S.E.2d 369, 371 (2010), but the situations are separate and distinct. Nelson received a sentence that was clearly within the limits prescribed by the applicable CDV 3rd statute, and therefore could not be reduced through credits eligibility to less than the mandatory 1 year minimum. The Appellant, as SCDC pointed out, started his sentence at five years less than the statutorily mandated amount of thirty years. As mentioned above, the restrictions contained in §16-3-20 are predicated on a sentence of thirty years. The logic in Nelson can't be applied because there are actually statutes enabling the Appellant to earn sentence reduction credits, and nothing barring him except SCDC's reliance on the language in §16-3-20.

The Appellant has never contended that there was an "absence of a provision restricting" his ability to earn sentence reduction credits. He stated that SCDC is, erroneously, relying on the language from the Punishment

He stated that SCDC is, erroneously, relying on the language from the Punishment for Murder statute, §16-3-20, to bar him from earning credits. The Appellant has contended that that language can't be applied to his twenty-five (25) year sentence because it is specific to a "mandatory minimum term of imprisonment for thirty years".

The Appellant will argue that his twenty-five (25) year sentence on the Accessory charge is eligible to earn sentence reduction credits because he meets the requirements enumerated in S.C. Code Ann. §24-13-210(b), and S.C. Code Ann. §24-13-230(b). His offense is a "no parole offense" as defined by S.C. Code Ann. §24-13-100, and he isn't serving a "life sentence or a mandatory minimum term of imprisonment for thirty years pursuant to §16-3-20".

The Appellant asks that the Court only look to the records in this case. The trial transcript, and the sentencing order, show that his Accessory sentence - on its own - raises issues of how it is suppose to be calculated under the law. (R.pp.9-12) It does not meet the requirements from §16-1-40, nor does it meet the requirements set forth in §16-3-20. There has long been a doctrine that "Ambiguities or doubts in a sentences should be resolved in favor of the accused." State v. Deangelis, 257 S.C. 44, 183 S.E.2d 906, 909 (1971). Uncertainties and anbiguities in sentence will normally be resolved in favor of prisoners." Polk v. Manning, 224 S.C. 467, 79 S.E.2d 875 (S.C. 1954)

CONCLUSION

For the reasons submitted, this Court should reverse the judgement of the Administrative Law Court.

Respectfully Submitted,

Date ____/____/____

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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

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Date: _____

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Pro se Appellant

THE STATE OF SOUTH CAROLINA
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This is to certify that the undersigned has this date served copies of this Final Brief of Appellant, in the above entitled action upon, all parties to the cause by depositing one or more copies thereof, in the United States mail, postage prepaid, or in the Interagency Mail Service addressed to the party(ies) or their attorneys.

Fifteen (15) copies of this Final Brief of Appellant has been served on the Clerk of the S.C. Court of Appeals, at 1220 Senate Street, Columbia, SC 29201, and another copy has been served on SCDC's Office of General Counsel at P.O. Box 21787 Columbia, SC 29211-1787.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, *Administrative Law Judge*

Lower Case No. 15-ALJ-04-0078-AP

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James A. Sellers, # 243348,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

November 3, 2015

SOUTH CAROLINA DEPARTMENT
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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRM THE DEPARTMENT'S FINAL AGENCY DECISION, WHERE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONEOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION?

STATEMENT OF THE CASE

This matter is before the Court pursuant to the appeal of James A. Sellers, SCDC #243348 (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). This is an appeal from a June 12, 2015 final decision of the Administrative Law Court (ALC), which affirmed the Department's January 22, 2015 final decision denying Appellant's Step 2 grievance.

Appellant filed a Step 1 grievance on January 16, 2014 claiming that the Department is incorrectly calculating his sentence for Accessory Before the Fact to a Felony (Murder) (*R.* at 6). According to Appellant's view, the sentence should not be considered a "mandatory minimum," day-for-day offense. (*Id.*) The Department subsequently denied the Step 1 when it was determined that Appellant's sentence was, in fact, being calculated correctly. (*Id.*) Appellant then filed a Step 2 grievance on February 27, 2014, raising the same issue. (*R.* at 8). The Department denied Appellant's Step 2 grievance on January 22, 2015, stating in relevant part:

> In reference to SCDC calculating sentences, per *Bennett v. State*, we calculate based on the statute and that is how your sentence is calculated. Per statute 16-01-0040, 0050, Accessory before the fact to a felony (violent if violent), the offense is punished as the principal felon [*sic*]. Therefore, since the offense of murder carries a mandatory minimum of 30 years to life, your 25 years had to follow the mandatory minimum guidelines based on statute.

(*Id.*)

Appellant appealed the Step 2 decision to the ALC on February 11, 2015, and the ALC affirmed the Department's final decision on June 12, 2015. (*R.* at 4).

STANDARD OF REVIEW

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

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.* In determining whether the ALC's decision is supported by substantial evidence, this Court need only find, considering the record as a whole, evidence upon which

reasonable minds could rely in reaching the same decision that the ALC reached. *DuRant v. S.C. Dep't of Health & Environ. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT CORRECTLY AFFIRMED THE DEPARTMENT'S FINAL AGENCY DECISION BECAUSE THAT DECISION WAS BASED ON SUBSTANTIAL EVIDENCE AND WAS NOT CLEARLY ERRONOUS, ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION.

This Court should affirm the ALC's June 12, 2015 final order for the reasons contained in that order and for the reasons stated below.

Appellant is incorrect that the Department is miscalculating his sentence for the Accessory Before the Fact to a Felony (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.*" (emphasis added). 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 in the Code 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," flat-time 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 a Felony (Murder), since the judge could have sentenced him to at least the mandatory minimum period of 30 years.

However, Judge Floyd exercised his discretion and 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 South Carolina 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 Appellant's sentence, at least one case that discusses the effect of credit-limiting language in a statute is *Nelson v. Ozmint*, 390 S.C. 432, 702 S.E.2d 369 (2010). 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 added). 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 for a third offense did not say SCDC could *not* apply credits. *Id.* Our Supreme Court disagreed, holding instead that the absence of credit-bestowing language for a third offense—as contrasted with the inclusion of such language for a second offense—was evidence that "the legislature intended § 16-25-20(B)(3) to require inmates convicted of CDV 3rd to actually be imprisoned for the mandatory one-year minimum." *Id.* at 436–37, 702 S.E.2d at 371; *see id.* ("We find that, by omitting such language from the provision at issue, the legislature intended to make an inmate convicted of CDV 3rd ineligible to receive good time and earned work credits to reduce the time they are required to serve below the mandatory minimum of one year.").

Just recently, at the April Term, this Court acknowledged the mandatory minimum, day-for-day service requirement for a term-of-years sentence for murder. *See generally Dean v. State*, No. 2015-UP-176, 2015 WL 1481686 (S.C. Ct. App. Apr. 1, 2015) (unpublished); *id.* at *3 ("In this case, the plea court informed Dean that he was facing a sentence of thirty years' to life imprisonment with no recommendation from the solicitor, and Dean stated he still wished to plead guilty. Furthermore, the plea court informed Dean he would not be eligible for parole and twice stated his sentence would be 'day-for-day.'"). In fact, there is no criminal penalty provision related to sentencing in the entire Code more unambiguous and clear as the following qualifier:

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.

S.C. Code § 16-3-20.

The crux of Appellant's argument is this: Because Appellant was sentenced to less than the 30 years required by the murder statute, his 25-year sentence is exempt from the day-for-day service requirement—meaning, essentially, that Appellant's sentence should actually be calculated as a "no parole" offense subject to § 24-13-100 *et seq*. Appellant's argument fails for two reasons. First, Appellant's sentence cannot fall under the rules governing "no parole" offenses because "no parole" offenses include a mandatory release to community supervision, and § 16-3-20 unambiguously states that no one sentenced under the murder statute "is eligible for parole or any early release program." The murder statute, as amended in 1995, does not contemplate that an offender sentenced under the murder statute will serve anything less than the minimum sentence imposed by the court. Community supervision is a type of early release because an offender is not considered to have completed his total sentence until successful completion of the program.

Second, and most importantly, this Court is constrained to give effect to the clear legislative intent of the statute. *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature."); *Nelson*, 390 S.C. at 436, 702 S.E.2d at 371. The phrase "**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" can mean only one thing: The Department is precluded from applying any type of sentence-reducing credit whatsoever—Earned Work Credits, Earned Education Credits, and Good Time Credits—such that the inmate does less than the *actual* amount of the mandatory term of imprisonment of 30 years. However, even if this Court were to find that language ambiguous, the Court should nonetheless uphold the ALC's conclusion, for crafting a rule that adopts Appellant's argument "would lead to a result so plainly absurd that it could not have been intended by the Legislature," effectively thwarting "the plain legislative intention." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342–43, 713 S.E.2d 278, 283 (2011).

While it is true that Judge Floyd was technically required by the Code to sentence Appellant to at least 30 years on his accessory conviction, for whatever reason, Judge Floyd exercised discretion and gave Appellant a more lenient sentence. That somehow Appellant should be able to take unfair advantage of this already-generous situation by arguing that *on top of* this reduced sentence he should *also* do no more time than an offender serving a "no parole" offense (*i.e.*, no less than 85% of the incarcerative sentence) is as ludicrous a proposition as it wholly unsupportable as a matter of law, or public policy for that matter. Adoption of Appellant's argument would serve only to accentuate the disparity in calculation of sentences for those individuals who are convicted of a true mandatory minimum crime but,

for whatever reason, receive less than that minimum by the sentencing judge. And while such a practice of circumventing the clear legislative criminal penalty scheme can find no positive support in the controlling law of this State, the reality with which this Court is confronted includes one where there have been and will continue to be inmates in the Department's custody with sentences such as Appellant's that do not adhere to statutory penalty guidelines.

In all such cases, where this Court does not otherwise have jurisdiction to remedy such actions, this Court could at least "stop the leak" by adopting Respondent's argument and holding that a sentence that is less than the statutorily required mandatory minimum term of imprisonment is nonetheless calculated as though the offender received the mandatory minimum term. In this case, for example, such a holding would lead to the inevitable and correct conclusion that Appellant's 25-year sentence, while an exception to the statutory penalty scheme to be sure, should be subject to the credit-limiting language contained in § 16-3-20 and which applies to all mandatory minimum terms of 30 years or more.

The ALC's order is supported by substantial evidence, contains no erroneous legal analysis, and is not arbitrary, capricious, or an abuse of discretion. Accordingly, this Court should affirm the decision below.

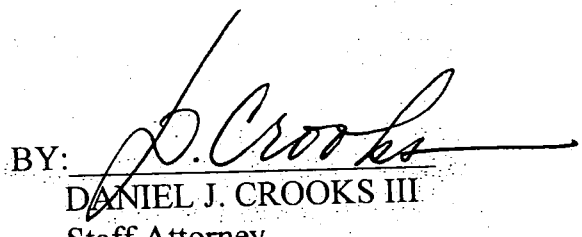
CONCLUSION

Because the ALC correctly found that the Department is properly calculating Appellant's sentence for Accessory Before the Fact to a Felony (Murder), this Court should

affirm the ALC's June 12, 2015 order.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: 

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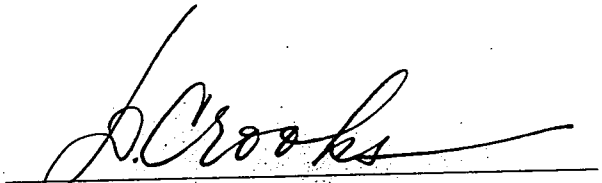
November 3, 2015

CERTIFICATE OF COUNSEL

I, the undersigned, certify that to the best of my ability, this *Final Brief of Respondent* complies with Rule 211(b), SCACR and the April 15, 2014 Order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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November 3, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, *Administrative Law Judge*

Lower Case No. 15-ALJ-04-0078-AP

Appellate Case No. 2015-001519

James A. Sellers, # 243348,.....Appellant,

v.

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

CERTIFICATE OF SERVICE

I certify that I served on Appellant this *Final Brief of Respondent* by depositing a copy of same in the United States Mail on November 3, 2015, addressed to: James A. Sellers, #243348, Wateree Correctional Institution, P.O. Box 189, Rembert, SC 29128.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson

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James A. Sellers, 243348 — Appellant

v.

South Carolina Department of Corrections — Respondent

FINAL REPLY BRIEF OF APPELLANT

James A. Sellers, 243348
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Rembert, SC 29128

Pro se Appellant

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ARGUMENT

In their Response SCDC admits that Judge Floyd purposely "exercised his discretion and lowered" the Accessory sentence "to 25 years to match the other sentence imposed", and "gave the Appellant a more lenient sentence". This admission warrants a discussion of the "other sentence imposed". The Appellant broached this subject in his Reply Brief to the Administrative Law Court filing. (R.p.25 line 23 - p.24 line 2)

In April of 1999, due to confusion in connection with the "other sentence imposed", SCDC contacted the Horry County Solicitor's Office in order to clarify the service requirement on the Appellate's Trafficking charge. According to SCDC, Judge Floyd, through the Solicitor's Office, provided an amended Sentencing Order directing SCDC to treat the Trafficking charge as a parolable, and therefore credit eligible, sentence. (R.p.10) That clarification resulted in the Appellant's completing the Trafficking sentence in February of 2011; at approximately 57%. The relevance of this is an insight into Judge Floyd's intentions. If he had of intended EITHER sentence to be served as a "mandatory minimum", or a "day fo day" sentence, the necessity of those curative instructions would have been moot.

SCDC has again tried to claim that the "Appellant offers no on-point source of law", while theirs is rather thin and shaky as well. Nelson v. Ozmint, 390 S.C. 432, 702 S.E.2d 369 (2010) does touch on the subject, but discusses credit eligibility for an individual sentenced according to the CDV 3rd statute's allowable range. The Appellant's sentence is clearly outside of the range prescribed by his own statute; thus bringing the argument to surface. As to Dean v. State, No. 2015-UP-176, 2015 WL 1481686 (S.C. Ct. App. April 1, 2015) (unpublished), with rather questionable precedential value, concerns yet another sentence that falls within the range prescribed by statute. The Appellant will admit that at later dates it became practice for sentencing Judges to state that a sentence, under the Punishment for Murder statute, S.C. Code Ann. §16-3-20, was in fact to be served "day for day". Sometimes even marking the sentencing orders to state just that. Back in August of 1997, Judge Floyd did no such thing. That record is quite clear on that. (R.pp.9-12)

The degree of Floyd's leniency, and his apparent intent to craft consistent sentences between the Principal and Accessory, would suggest he never intended the Accessory sentence to be "day for day" or "a mandatory minimum".

The Appellant nas offered cases that contain logic compatible to the situation at hand. State v. Lee, 350 S.C. 125, S.E.2d 372, 376 (Ct. App. 2002) discusses a sentence that deviates from the statute's guidelines, and that deviation's ultimate effect to the sentence. The Court held that unchallenged, by either side, "the underlying sentence becomes the law of the case." In the present case that holding would mean that the Appellant's 25 year sentence is separate, and distinct, from a "mandatory minimum term of imprisonment for thirty years". In State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007) the Supreme Court actually reviews the sentencing options available under the Punishment for Murder statute, S.C. Code Ann. §16-3-20, and determines that Death is not an option as a punishment for a conviction as an Accessory before the Fact to a Felony because the Legislature didn't specifically state that it was. If applied, that logic would mean that the Appellant's 25 year sentence could not be a "day for day" because it is not a "mandatory minimum term of imprisonment for thirty years", as the statute is extremely unambiguous about. In State v. Shafer, 340 S.C. 291, 531 S.E.2d 524 (S.C. 2000), we find a dissenting opinion from Chief Justice Finley that actually points out and discusses some ambiguities in §16-3-20. He discusses parole eligibility for individuals sentenced in excess of 30 years under the 1995 version of §16-3-20. Ultimately, he determines that they are barred from parole due to statutes discussing felonies exempt from classification. In his discussion, he states that because §16-3-20 "is silent as to the issue" and that "the general rule controls". That logic is very applicable to the present case. The Appellant's 25 year sentence is CLEARLY not covered by §16-3-20, as it is not one of three very specific options; therefore the general rule would be controlling.

SCDC did attempt to forestall this argument, in their Response, by arguing that the Appellant "cannot fall under the rules governing 'no parole' offenses because 'no parole offenses include a mandatory release to community supervision". Therefore being barred from "any early release program" based on the language in §16-3-20. Again, those restrictions are predicated on a sentence of "a mandatory minimum term of thirty years".

There appears to be a legal distinction between community supervision and early release programs, although the distinction isn't very clear. §16-3-20 bars Life from both, and then only bars "a mandatory minimum term of mprisonment for thirty years" only from early release. Obviously, they are

not the same thing.

When you read S.C. Code Ann. §24-13-100 the Appellant's 25 year does actually meet the requirements, as it is neither a Life sentence nor a "mandatory minimum term of imprisonment for thirty years". When you follow the Community Supervision statute, S.C. Code Ann. §24-13-210(b), the Appellant's 25 year sentence meets those requirements as well. If you go further, S.C. Code Ann. §24-13-100 and S.C. Code Ann. §16-1-10(d) appear to mandate that the Appellant complete a community supervision program. Accessory Before the Fact to a Felony, and Murder appearing on the list.

It should be noted that the 1995 version of §16-3-20, and the community supervision statute :24-13-210, took effect at approximately the same time. The initial interpretation of §24-13-210 did allow for the community supervision period to extend BEYOND the total incarcerative time. It was later court decisions that modified that interpretation. So whether, or not, the 1995 version of §16-3-20 contemplated an offender serving less than the "mandatory minimum term of imprisonment for thirty years" stated in the statute, the legislature did not specifically bar them from participating in a community supervision program. Actually, they appeared to have set a mandate for it.

The Appellant's sentence, as even SCDC admits, clearly falls outside of the language of ANY version of §16-3-20 since 1996. The sentence has stood for almost two decades. The Appellant has never challenged the sentence, the State has never challenged the sentence, so under State v. Lee it is now "the law of the case". The current appeal concerns credit eligibility, and has been properly brought before the Court. To hold it to the restrictions predicated on a "mandatory minimum sentence of thirty years" would be expansion of the language of the statute.

Conclusion

As to SCDC's plea for the Court to "stop the leak", through a favorable decision, the Appellant asks that he be allowed his "day in court" on this issue. It has merit, it is supported by the record in his case, has been brought through the proper steps, and he did give SCDC a chance to correct it first. They chose not to do so.

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

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

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Pro se Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson

Appellate Case No.: 2015-001519

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South Carolina Department of Corrections — Respondent

CERTIFICATE OF SERVICE

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Fifteen (15) copies of this Final Reply Brief of Appellate has been served on the Clerk of the S.C. Court of Appeals, at 1220 Senate Street, Columbia, SC 291021, and another copy has been served on SCDC's Office of General Counsel at P.O. Box 21787 Columbia, SC 29211-1787.

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Pro se Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James A. Sellers, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-001519

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Unpublished Opinion No. 2016-UP-281
Submitted March 1, 2016 – Filed June 8, 2016

AFFIRMED

James A. Sellers, pro se.

Christina Catoe Bigelow, of the South Carolina Department of Corrections, for Respondent.

PER CURIAM: James Sellers appeals the order of the administrative law court (ALC) affirming the decision of the South Carolina Department of Corrections (the Department) denying him eligibility for sentence-reduction credits for his conviction for accessory before the fact to murder because the trial court did not

sentence him to the mandatory minimum of thirty years' imprisonment. We affirm.[1]

A jury convicted Sellers in August 1997 of accessory before the fact to murder and trafficking in crank. The trial court sentenced Sellers concurrently to twenty-five years' imprisonment on each conviction. A person convicted of accessory before the fact "must be punished in the manner prescribed for the punishment of the principal felon." S.C. Code Ann. § 16-1-40 (2015); *see also* S.C. Code Ann. § 16-3-20(A) (2015) (stating a person convicted of murder must be punished by "a mandatory minimum term of imprisonment for thirty years"). Although Sellers was sentenced to twenty-five years' imprisonment and, thus, not to "a mandatory minimum term of imprisonment for thirty years," the legislature clearly intended one who was sentenced pursuant to the murder statute to be barred from eligibility for sentence-reduction credits. *Id.* ("No person sentenced to a mandatory minimum term of imprisonment for thirty years . . . pursuant to [section 16-3-20(A)] is eligible for parole or any early release program . . . or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years . . . required by this section."); *see also Univ. of S. Cal. v. Moran*, 365 S.C. 270, 275, 617 S.E.2d 135, 138 (Ct. App. 2005) ("The cardinal rule of statutory interpretation is to determine the intent of the legislature.").

The statute's plain language indicates ineligibility for parole or sentence-reduction credits requires a person to be sentenced to "a mandatory minimum term of imprisonment for *thirty years* . . . ." § 16-3-20(A) (emphasis added); *Moran*, 365 S.C. at 276, 617 S.E.2d at 137 (stating "[t]he legislature's intent should be ascertained primarily from the plain language of the statute"). Nonetheless, permitting Sellers to manipulate the trial court's imposition of a sentence below the mandatory minimum term and receive sentence-reduction credits "would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Id.* at 278, 617 S.E.2d at 139; *id.* ("The real purpose and intent of the lawmakers will prevail over the literal import of the words."). Accordingly, we find the legislature intended to bar persons sentenced under section 16-3-20(A) from eligibility for sentence-reduction credits, and the ALC did not err in affirming the Department's denial of credits.

AFFIRMED.

HUFF, A.C.J., and SHORT and THOMAS, J.J., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

Punishment For Murder statute. Due to the actual sentence opposed, the Petitioner contends that SCDC is mistakenly calculating his sentence under the criteria listed in §16-3-20; denying him the benefit of sentence-reduction credits.

In the opinion, this Court concedes "The statute's plain language indicates ineligibility for parole or sentence-reduction credits requires a person to be sentenced to a mandatory minimum term of thirty years". This has

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 15-ALJ-04-0078-AP
Appellate Case No. 2015-001519
Opinion No. 2016-UP-281

JAMES A. SELLERS, #243348,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO APPELLANT'S PETITION FOR REHEARING

On June 8, 2016, this Court issued an unpublished opinion affirming the decision of the Administrative Law Court. On June 21, 2016, Appellant served a Petition for Rehearing. On June 27, 2016, this Court issued a letter requesting a Return to the Petition for Rehearing within ten days of the date of the letter. This Return follows.

Appellant's Petition for Rehearing should be denied. Appellant is incorrect that the Department is miscalculating his sentence for the accessory before the fact to murder. The statute in effect at the time of Appellant's 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.*" (emphasis added). Since the principal felony in this case is murder, the accessory, Appellant, was to be sentenced under S.C. Code § 16-3-20. Although Appellant's sentencing judge departed from the statutory language requiring at least a thirty-year sentence, and instead gave Appellant five years less than the statute required, this does not change the fact that Appellant is serving a sentence under S.C. Code § 16-3-20, and such a sentence, if not a death sentence, must be served day-for-day.[1] See S.C. Code § 16-3-20 (A) ("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 to life 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 to life required by this section."). As this Court properly found, it would be patently absurd to allow Appellant – who has already received a mercy from the sentencing judge in light of his nonconforming twenty-five-year sentence – to circumvent the legislature's clear intent that offenders sentenced for murder serve their sentences day-for-day.

[1] Obviously, the legislature did not contemplate that a trial judge would depart from the language in the statute and issue a nonconforming sentence. The fact that this was done in Appellant's case, however, does not alter the Department's duties in applying the plain language of the murder statute.

CONCLUSION

Because this Court properly affirmed the decision of the Administrative Law Court below, Respondent respectfully requests that this Court deny Appellant's Petition for Rehearing.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: 

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ATTORNEY FOR RESPONDENT

July 6, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 15-ALJ-04-0078-AP
Appellate Case No. 2015-001519

JAMES A. SELLERS, # 243348,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, she mailed a copy of the **Return to Appellant's Petition for Rehearing** to Appellant via U.S. Mail addressed as follows: **James A. Sellers, # 243348, Wateree River Correctional Institution, Post Office Box 189, Rembert, South Carolina 29128.**

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July 6, 2016

The South Carolina Court of Appeals

James A. Sellers, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-001519

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paul E. Short, Jr. J.

Paul M. Thomas J.

Columbia, South Carolina

FILED

September 23, 2016

cc:
James A. Sellers, 243348
Christina Catoe Bigelow, Esquire