

misapplied by Defendant SCDC. Defendants deny Plaintiff's allegations, and have moved to dismiss this matter.

DISCUSSION

As an initial matter, this court finds that Defendants General Counsel Kensey Collins and Ms. Moore, both employees of SCDC, are improper parties to this matter and must be dismissed pursuant to the provisions of the South Carolina Tort Claims Act ("the Act"), specifically S.C. Code Ann. § 15-78-70 (c). The Act states that when a person brings an action against a governmental entity, the person "shall name as a party defendant only the agency . . . for which the employee was acting." S.C. Code Ann. § 15-78-70 (c). Because the Plaintiff in this case named individual employees and the agency, the individually named Defendants must be dismissed. Therefore, this Court holds that Defendants' motion to dismiss the individually named defendants is hereby **GRANTED**.

Plaintiff has Failed to Exhaust his Administrative Remedies

#2
PMB
In their Motion to Dismiss, Defendants argue that Plaintiff's claims must be dismissed because he has failed to exhaust his administrative remedies as required under the Administrative Procedures Act. ("APA"). See S.C. Code Ann. § 1-23-10 *et seq.* See also, *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Specifically, Defendants assert that Plaintiff must first grieve his allegations relating to the calculation of his sentence through SCDC's Inmate Grievance system, and follow the appellate procedures set forth therein. Then, if Plaintiff is not satisfied with SCDC's Final Agency decision on the issue, he must appeal that decision to the Administrative Law Court ("ALC"). Furthermore, if Plaintiff is dissatisfied with the decision of the ALC, he must then appeal that decision to the South Carolina Court of Appeals, as outlined in the APA. As a result Plaintiff's claims would never properly appear in this Court, and

therefore, Defendants argue, this Court lacks subject matter jurisdiction over the Plaintiff's claims, and this matter must be dismissed pursuant to Rule 12 (b)(1), SCRCF.

In *Al-Shabazz v. State*, the Supreme Court of South Carolina explicitly set forth the proper review process for inmates seeking review of SCDC's final decision in an administrative matter. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The *Al-Shabazz* Court held that an inmate must seek such a review under the APA. *Id.* at 369, 527 S.E.2d 742, 750 (2000). The *Al-Shabazz* Court reasoned that "[p]lacing review of these cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing, and judicial review. It also will provide an orderly and consistent framework for resolving such matters." *Id.*

The *Al-Shabazz* Court explicitly stated that "[t]hese administrative matters typically arise . . . when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* In the instant case, Plaintiff has filed suit claiming that SCDC has miscalculated and/or misapplied his Jail Time credits, and therefore the holding in *Al-Shabazz* requires Plaintiff to bring those claims through SCDC's Inmate Grievance system, and then appeal SCDC's final agency decision on any such grievance in accordance with the APA.

The Defendants assert that Plaintiff has filed grievances under SCDC's Inmate Grievance system regarding these matters, and SCDC has issued its final decision regarding the calculation of Plaintiff's sentence. Under the APA the next proper step would be for the Plaintiff to appeal said decision to the ALC, and if dissatisfied with the decision of the ALC, Plaintiff may then appeal that decision pursuant to the appellate review procedures set forth in the APA. *See* S.C. Code Ann. § 1-23-380.

#3
P.B.

Therefore, this Court lacks subject matter jurisdiction over the Plaintiff's allegations. As a result Defendants' motion to dismiss is hereby **GRANTED**, and this matter is dismissed.

In the alternative to the argument that Plaintiff must file an appeal under the APA, Defendants also argued that in the event that Plaintiff alleges that his sentence has already expired, the proper procedure would be under the South Carolina Uniform Post-Conviction Procedure Act (PCR Act). S.C. Code Ann. § 17-27-10 *et seq.* The PCR Act is normally a proper avenue of relief "only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence." *Al-Shabazz* at 367, 527 S.E.2d 742, 749 (2000). However, a person who challenges that their sentence has expired is mounting a non-collateral attack, and therefore is specifically listed as a person who may seek relief under the PCR Act. S.C. Code Ann. § 12-27-20; *see also Delahoussaye v. State*, 369 S.C. 522, 633 S.E.2d 158 (2006) (case was appropriately filed pursuant to the PCR statute where inmate's case encompassed a claim that if his Jail Time credits had been properly calculated and applied then his sentence would be expired.) Further, not only is such a person allowed to seek relief under the PCR Act, but their exclusive remedy is under the PCR Act. *See*, S.C. Code Ann. 17-27-20(B).

#4
PAB

In order to commence an action under the PCR Act, the applicant must submit his claim on a standard PCR application. *See*, S.C. Code Ann. § 17-27-40, -50. The Plaintiff in this case did not file this claim according to the framework set forth under the PCR Act. Instead of submitting his claim on the proper PCR application, he filed this civil suit. The PCR Act is clear that for an inmate to challenge that his sentence has expired, the proper and exclusive remedy is for him to file a standard PCR application and commence an action under the procedures of the PCR Act.

Furthermore, at the direction of this Court Defendants have submitted documentation showing that Plaintiff's sentence has been properly calculated, and that Plaintiff's current, projected Release date is April 29, 2017. Regardless, even if Plaintiff was correct regarding his contention associated with his Jail Time credits, his avenue of redress would be through the PCR Act, which Plaintiff has failed to avail himself of to date. Therefore, this Court holds, as an alternative sustaining ground, that to the extent Plaintiff alleges that his sentence has expired, Plaintiff has failed to properly commence this action in compliance with the PCR Act, and his claims must be dismissed. As such, Defendants' motion to dismiss is appropriate, and is hereby **GRANTED**.

CONCLUSION

Therefore, for the reasons set forth herein, the Court finds that Plaintiff's action against Defendants must be, and hereby is, **DISMISSED**.

#5 Plaintiff cannot successfully maintain in this court any cause of action based on any of his allegations in this case, and therefore the Court finds that the Defendants' motion must be, and hereby is, **GRANTED**, and this matter is hereby **DISMISSED**.

AND IT IS SO ORDERED.



The Honorable Perry M. Buckner, III
Presiding Judge for the Fourteenth Judicial Circuit

February 27, 2017

Walterboro, South Carolina

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Plyler
Joel S. Hughes
David A. DeMasters
Steven R. Spreuwers
Brandon M. Briggs
Jasmine D. Wyman

*Also Admitted In North Carolina
†Certified Mediator

Of Counsel
Kenneth P. Woodington

March 7, 2017

Writer's E-Mail: bbriggs@dml-law.com

The Honorable R. Lawton McIntosh
Chief Administrative Judge for the 14th Circuit
P.O. Box 8002
Anderson, SC 29622

RE: James L. Padgett, Jr. v. South Carolina Department of Corrections Central Classification and General Counsel (Unknown Individuals), and Allendale C.I. Classification and Records, Mrs. Moore

Civil Action Number: 2016-CP-03-267
Claim Number: A5548
Date of Incident: December 21, 2015
Our File Number: 103.10099

RECEIVED

MAR 15 2017

SC Court of Appeals

Dear Judge McIntosh:

This letter is sent regarding the Renewed Motion to Dismiss filed by the Defendants in the above referenced matter, which has been scheduled to be heard on March 13, 2017 in Allendale County in front of Judge Mullen. The Defendants had previously filed a motion to dismiss on January 10, 2017 which was heard by Judge Buckner on February 6, 2017. Judge Buckner took the matter under consideration and ultimately granted the Defendants' motion and dismissed this case by order dated February 27, 2017 and filed March 2, 2017.

Because this case has already been dismissed, a hearing on the Defendants' Renewed Motion to Dismiss is unnecessary, and I would request that it be removed from the March 13, 2017 Motion Roster.

DWB

Thank you in advance for your time and consideration.

Very Truly Yours,

Davidson & Lindemann, P.A.

A handwritten signature in black ink, appearing to read 'B. M. Briggs', written in a cursive style.

Brandon M. Briggs

Enclosures

cc: (w/ Enclosures)

James Padgett, #229630
Allendale Correctional Institution, F-4-A-1
Post Office Box 1151
Fairfax, South Carolina 29827