

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Court Judge

---

Lower Court Case No. 17-ALJ-04-0020-AP  
Court of Appeals Case No. 2017-001346

---

**RECEIVED**

JUL 24 2017

**SC Court of Appeals**

Albarr-Ali Abdullah, # 191449.....Appellant,

v.

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

---

**INITIAL BRIEF OF RESPONDENT**

---

July 24, 2017

South Carolina Department of Corrections

Melissa J. Arnold  
Staff Attorney  
S.C. Dept. of Corrections  
P.O. Box 21787  
Columbia, South Carolina 29221  
(803) 896-1278

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF ISSUES ON APPEAL .....	1
STATEMENT OF THE CASE .....	2
STANDARD OF REVIEW .....	3
ARGUMENT AND CITATION OF AUTHORITY.....	4
<b>I.    RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED BY           SUBSTANTIAL EVIDENCE.....</b>	<b>4</b>
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6

**TABLE OF AUTHORITIES**

**I. STATUTES**

S.C. Code Ann. § 1-23-610.....3  
S.C. Code Ann. § 1-23-380.....3  
S.C. Code Ann § 24-13-210.....4, 5

**II. CASES**

DuRant v. S.C. Dep’t of Health & Environmental Control, 361 S.C. 416, 420, S.E.2d 704 (Ct. App. 2004).....3, 4  
Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).....4  
Heater of Seabrook, Inc. v. Public Serv. Comm’n, 332 S.C. 20, 503 S.E.2d 739 (1998).....4  
Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998).....3  
Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).....4  
Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997).....4  
Porter v. S.C. Public Serv. Comm’n, 333 S.C. 12, 507 S.E.2d 328 (1998).....5

**STATEMENT OF THE ISSUE ON APPEAL**

- I. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

## STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Albarr-Ali Abdullah (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Respondent). Appellant is currently committed to SCDC with a ten year sentence for Attempted Armed Robbery. (R.p. \_\_\_\_).

On November 11, 1992, the trial court sentenced Appellant to 25 years for Armed Robbery, 20 years for Assault and Battery with Intent to Kill, and 10 years for Attempted Armed Robbery, all to be served consecutively for a total of 55 years. (R.p. \_\_\_\_).

Appellant has been convicted of 12 disciplinary infractions since he arrived at SCDC in November 1992. (R.p. \_\_\_\_). As a result, Appellant has lost 198 days of good time credits and would have failed to earn good time credits for each month in which he was cited for disciplinary infractions. (R.p. \_\_\_\_).

Appellant filed a Step One Grievance on October 3, 2016, challenging his sentence calculation. This grievance was investigated and denied. (R.p. \_\_\_\_). Appellant filed a Step Two Grievance on November 15, 2016. (R.p. \_\_\_\_). This grievance was also investigated and denied. Appellant then filed a notice of appeal with the Administrative Law Court on August 30, 2013. (R.p. \_\_\_\_).

After the parties filed briefs, the ALC affirmed SCDC's final decision, finding that SCDC correctly calculated Appellant's sentence. (R.p. \_\_\_\_). Appellant now seeks review of the ALC's decision. For the reasons that follow, SCDC respectfully requests that the ALC's decision be affirmed.

## STANDARD OF REVIEW

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

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

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

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C.

Dep't of Health & Environmental 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 AND CITATION OF AUTHORITY**

### **I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). 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. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented during Appellant's appeal supports SCDC's decision. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. All of Appellant's sentences have been correctly recorded by Respondent. None of Appellant's convictions were for "no parole" offenses, therefore pursuant to S.C. Code § 24-13-210, Appellant is entitled to earn good

time credits at a rate of 20 days per month served so long as Appellant has “faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior.”

Appellant claims that he is only required, by law, to serve 51% of his total sentence. Respondent is unaware of any such law requiring inmates to serve only 51% of a criminal sentence. As stated above, S.C. Code § 24-13-210, permits Appellant to earn 20 days of good time credits for each month served during which he faithfully observes all rules and has not been subject to punishment for misbehavior. Thus far, Appellant has earned 5,782 days of good time credits. (R.p. \_\_\_\_\_).

Appellant has been convicted of 12 disciplinary infractions since he arrived at SCDC in November 1992. (R.p. \_\_\_\_\_). As a result, Appellant has lost 198 days of good time credits and would have failed to earn good time credits for each month in which he was cited for disciplinary infractions. (R.p. \_\_\_\_\_). Such losses of good time credits and failure to earn also affect Appellant’s ultimate max-out date.

Lastly, Appellant has received all the jail time credit to which he is entitled. This has been accomplished by back dating his sentence start date for Armed Robbery to September 19, 1991. (R.p. \_\_\_\_\_). SCDC has recorded Appellant’s sentence start date for his Assault with Intent to Kill and Attempted Armed Robbery convictions as November 11, 1992. (R.p. \_\_\_\_\_). This is correct because that date is listed as the date upon which Appellant was sentenced.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C.

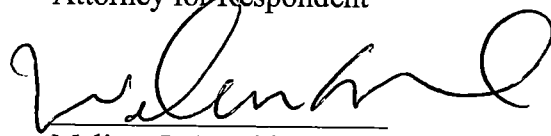
Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

**CONCLUSION**

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS  
Attorney for Respondent



Melissa J. Arnold  
Staff Attorney  
S.C. Dept. of Corrections  
P.O. Box 21787  
Columbia, SC 29221

July 24, 2017

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

---

Lower Court Case No. 17-ALJ-04-0020-AP  
Court of Appeals Case No. 2017-001346

---

**RECEIVED**

JUL 24 2017

**SC Court of Appeals**

Albarr-Ali Abdullah, # 191449.....Appellant,

v.

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

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief  
by depositing a copy of same in the United States Mail, postage prepaid, July 24, 2017,  
addressed to the Appellant as follows:

Albarr-Ali Abdullah  
Kershaw Correctional Institution  
4848 Goldmine Hwy  
Kershaw, SC 29067



Melissa J. Arnold  
Staff Attorney  
S.C. Dept. of Corrections  
P.O. Box 21787  
Columbia, SC 29221-1787  
Attorney for Respondent



South Carolina  
Department of  
Corrections

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

July 24, 2017

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

**RECEIVED**

JUL 24 2017

**SC Court of Appeals**

RE: Albarr-Ali Abdullah, #191449 v. South Carolina Department of Corrections  
Appellate Case No. 2017-001346

Dear Ms. Kitchings:

Enclosed please find the original Respondent's **Initial Brief and Designation of Matter to be Included in the Record** in the above captioned appeal, along with **Proof of Service** for the same.

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

Sincerely,

Melissa J. Arnold  
Staff Attorney  
South Carolina Department of Corrections

cc: Albarr-Ali Abdullah, #191449  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067