STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski
ALC Case No. 16-ALJ-04-0550-AP

APPELLANT CASE NO. 2017-000232

Jimmy D. Meggs Jr., 277400,
Appellant,

vs.

South Carolina Department of Corrections,
Respondent.

RECORD ON APPEAL

Jimmy D. Meggs Jr., 277400
TCI SA-227
1578 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

South Carolina Dept. of Correction
Office of General Counsel
Mrs. Christina C. Bigelow, Esq.
Post Office Box 21787
Columbia, SC 29221
(COUNSEL FOR RESPONDENT)

INDEX

CERTIFICATE OF APPELLANT

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 14 2017.

S/ _____

Jimmy D. Meggs Jr.
TCI SA-227
1578 Clarence Coker Hwy.
Turbeville, SC 29162

OMS Offender Management System

Inmate Request

Today's Date: 5/12/16 14:48

Name:	MEGGS, JR., JIMMY D.
Booking #:	277400
Permanent #:	277400
Reference #:	16-071019
Date Requested:	03/24/16 20:13
Request Type:	Classification
Requested By:	Kiosk
Request Details:	Dear Mrs. Brunson, I am writing concerning my previous request for credit for monitored house arrest. Ma,am, I am trying to appeal the department of corrections decision to deny my house arrest credit. I filed a step 1 grievance on the issue and the grievance was returned to me unprocessed because I did not have a Kiosk answer to cite on my step 1 grievance. When I wrote and you told me in the answer on the Kiosk to come see me. I need you to please to respond that I have been denied my request for house arrest credit. Ma'am, I want to thank you for all of your help and if you would please state that I have been denied my request for house arrest credits I will be able to appeal. Again thank you in advance for your help. With Kind Regards...I Am. Sincerely, Yours, Jimmy D. Meggs Jr., 277400
Disposition:	Complete
Officer:	
Disposition Date:	05/05/16 12:44

Request Responses

Date	Author	Note
05/05/16 12:45	c018013	Ms. Coker may stop by Classification and receive a copy or review the paperwork in your record.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

State of South Carolina,
Plaintiff,
vs.
Jimmy Donald Meggs,
Defendant.

IN THE COURT OF GENERAL SESSIONS
OF THE TWELFTH JUDICIAL CIRCUIT
ARREST WARRANTS NO: 355086, 355087
355088, 355089, 355090, 355091,
355129, 355130, 355212, 355213,
355222, AND 355223

ORDER

CERTIFIED: A TRUE COPY
Florence B. Parker
CLERK OF COURT, C. P & G. S
FLORENCE COUNTY, S. C.

FILED
2000 APR -3 P 2:50
FLORENCE B. PARKER
CLERK OF COURT
FLORENCE, S.C.

(2)

This matter was previously before me on motion of the Defendant for a bond hearing on March 1, 2000. This Court, prior to setting a bond at that time, issued its Order dated March 13, 2000, ordering a psychological assessment to be performed by Pee Dee Mental Health. That evaluation has been completed and presented to this Court for the purposes of determining a bond in the above-captioned arrest warrants.

The Defendant is present and represented by James T. McBratney, Jr., Esquire, and Kernard Redmond, Esquire. The State is represented by Assistant Solicitor, Patricia S. Parr, Esquire. Also present are representatives of the victims families. The Court is advised that all of the victims had been notified of the hearing, ~~but only two of the families are represented at this hearing. The remaining families had advised the Solicitor's Office that they would be unable to attend.~~ pkt In addition to hearing further arguments from the Defendant and the State, the Court also entertained statements from members of the victims families present in Court.

It appears to the Court from the reports submitted from Pee Dee Mental Health that the Defendant is not mentally ill and does

1 pkt

CERTIFIED: A TRUE COPY
Florence B. Parker
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

not require or request further psychological treatment. It is therefore,

ORDERED, ADJUDGED AND DECREED that the Defendant be released on a One Hundred Thousand ($100.000.00) Dollar secured bond. In addition, the Defendant shall be restricted to the residence of his parents, Mr. and Mrs. Jimmy Meggs, Sr., with the exception of required court appearances. The Defendant will also be subjected to electronic monitoring. The arrangements for electric monitoring shall be made by the Defendant. It is further,

ORDERED, ADJUDGED AND DECREED that the Defendant shall be restrained from telephoning, contacting in any manner, harming harassing, molesting or threatening the victims or the parents of the victims. It is further,

ORDERED, ADJUDGED AND DECREED that the office of the Solicitor of the Twelfth Judicial Circuit shall be notified immediately when the Defendant is released on bond. Further, he shall not be released on bond until proof is obtained and submitted that electronic monitoring has been secured.

AND IT IS SO ORDERED.

Paula H. Thomas, Presiding Judge
of the Twelfth Judicial Circuit

Georgetown, South Carolina

April 3, 2000

FILED
2000 APR -3 P 2:50
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

SA233

5/30/16 (4)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

MAY 13 2016

INMATE NAME: Jimmy D. Meggs Jr.

SCDC NUMBER: 277400

INSTITUTION: Turbeville C.I.

HOUSING UNIT: SA-233

WORK ASSIGNMENT: Recreation

OFFICE USE ONLY
Grievance No. TCI 0274-16
Code: General
Policy
Disc. Hear.
Class. CL
PREA
Date Received 5.16.16
IGC Initials EC

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I filed a previous grievance which was returned due to not having a Kiosk response. I now have a Kiosk (16-071019) I submitted a Court Order from The Honorable Paula Thomas indicating that I was on Monitored House Arrest from April 3 2000 until August 12 2001, at which I was convicted and sentenced to prison.

Jimmy Meggs 5-11-16
Grievant Signature Date

ACTION REQUESTED: I want to be awarded the time while I served on Monitored House Arrest from ~~April~~ April 3 2000 until August 12 2001.

ACTION TAKEN BY IGC: ☑ PROCESSED ☐ UNPROCESSED ☐ OTHER

IGC conferred with Classification. See reverse side for Warden's response.

Coker 5/24/16
IGC Signature Date

SCDC 10-5 (Rev. October 2013)

(CONTINUE ON REVERSE SIDE)

6

WARDEN'S DECISION AND REASON:

Inmate Meggs, TCI-0274-16 / # 277400

All pertinent information has been reviewed and Ms. Pugh, Classification Case Manager and Ms. Brunson, Classification Case Worker were contacted.
After review of the Request for Jail Time, form SCDC 18-11, it indicates the reason for disapproval was "House Arrest must be ordered by the judge." The order you submitted to Classification was sent with the Request for Jail Time credit to Central Classification and was disapproved.

It is your responsibility to provide additional information if you want to proceed with this request. I suggest you contact the court to obtain a document specifically stating the time served on House Arrest is to be applied to your incarcerated time.

Therefore I consider your grievance to be **denied.** If you do not agree with this decision, please see Step 5.

A. Wayne C. Pugh 5/25/2016
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.

J. O. Meggs 5/25/16
Grievant Signature **Date**

L. Coker 5/25/16
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 or Kiosk reference number 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 it in the Grievance Box at your institution within eight (8) working 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) working 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

Due. 6/30/16

RECEIVED
MAY 26 2016

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED
JUN 29 2016
DIVISION OF CLASSIFICATION
INMATE RECORDS

RECEIVED
JUN 01 2016
INMATE GRIEVANCE

Office Use Only
Grievance No. ICI-0274-16
Code: General
Policy
Disc. Hear.
Class. CL
Date Received 5.26.16
IGC Initials LC

INMATE NAME: Messa, Jr., Jimmy
SCDC NUMBER: 277400
INSTITUTION: Turbeville CI
HOUSING UNIT: SA-233 (Seloc)
WORK ASSIGNMENT: Recreation

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am appealing the Department's determination that I am not entitled to the time I spent while under Monitored House Arrest. I submitted a Court Order indicating that I was placed on Monitor House Arrest. However, the Department has indicated in the Step 1 that I need to get a Court Order telling SCDC to give me that credit. It is the Grievants position that because the 84 days that have been given is pursuant to § 24-13-40 he should be given his time spent under Monitored House Arrest due to the amendment in SC Law. Just like the case in the 2010 Omnibus Crime Reduction Act in the 2010 bill Offenders are not required to go back to get a Court Order and Futher the Department is going back to Offenders whose convictions pre-date the Bill. the second issue is tnat this time is mandatory and not discretionary.

(6)

Jimmy Messa 5/25/16
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you are entitled to time spent while under monitored house arrest. The Warden responded to your concern on SCDC Inmate Grievance Form Step 1 dated May 25, 2016. Your concern was thoroughly reviewed by Classification Case Manager and Classification Case Worker. It is clear that SCDC is without authority to grant you credit for time that you were under monitored house arrest. You were not within the jurisdiction of SCDC at the time that you were so restricted. As directed in the Warden's decision, you may wish to confer with the sentencing judge to have your desire considered and possibly granted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Signature 6/30/16
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)

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
16C0550	277400	JIMMY	MEGGS	TCI 274-16	DOC	7/15/2016	7/21/2016	LENSKI

Assigned 7/21/16
(90d) Brief Due 10/19/16
(110) Respondent 11/8/16
Reply 11/18/16

* Issue Dealing with Granting House arrest Credit.

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

FILED
JUL 21 2016
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM SCDC

Grievance No. TCI 274-16

The Honorable Phillip Lenski
Case No. 16CO550

Jimmy D. Meggs Jr. # 277400,

APPELLANT,

VS.

South Carolina Dept. of Corrections,

RESPONDENT.

BRIEF OF APPELLANT.

Jimmy D. Meggs Jr. # 277400
TCI SA-233
P.O. Box 252
Turbeville, SC 29162
APPELLANT PRO-SE)

South Carolina Dept. of Correction
Mr. David Tartasky, Esq.
P.O. Box 21787
Columbia, SC 29221-1787
(COUNSEL FOR RESPONDENT)

ISSUES ON APPEAL

(9)

1. DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF OF A PERSON UNDER DISABILITY ?

2. WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL, IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. CODE ANN. § 24-13-40 ?

3. Where S.C. Code Ann. § 24-13-40 "Relates to the computation of time served by a prisoner, It is encumbant upon SCDC to comply and is this Statute speaking to them because they are the entity who both computes and calculates a prisoners sentence

4. Should SCDC give Petitioner his Good Time Credit from his time served under Monitored House Arrest as done in the Arthur Field case .

(10)

STATEMENT OF THE CASE

Petitioner was arrested Jauuary 10 2000 in Florence County. At the bond hearing due to the numerous charges, the Magistrate Court denied bond. The Petitioner attempted to petition the Circuit Court concerning Bond consideration, but this was these "Hearings" were inhibited due to The Detectives claims that he had new warrants. which totaled 12 in all.

Petitioner ultimately gained bond with the stipulation that he secure Monitored House Arrest. along with a $100,000.00 Surity Bond. The Petitioner met all the stipulations and complied with all of the stipulations during the time before trial.

The Petitioner went to his Preliminary hearing and the State (Attorney General) on his own motion dismissed the bulk of the charges due to a lack of probable cause. The State proceeded and secured an indictment for for two offense and directly presented two charges. The Petitioner proceeded to trial on August 6-9 2001 and was on the aforesaid mention House during this entire time (April 3, 2000 until August 9 2001, or 17 months As mentioned before as it relates to the continuation of serving warrants that would later be dismissed prior to "trial" for lack of probable cause it was discovered that they were secure and signed by the nmagistrate judge on the same day and served to the OPetrtioner piece meal for the sole purpose of causing the the hardship of not being able to have a bond determination and also, caused the hardship of the states trying to prevent the petitioner the ability of having a bond determination.

After the Trial jury found Petitioner guilty and before the Court's senttence, the Court engaged in a conversation about the allowance of time spent under Monitored House Arrest. (T.Tr. p. 674 lns.6-25 ; T.Tr. p. 675 lns 1-7).

After Trial, Direct Appeal, and PRC Hearing, in June ,7 2013, South Carolina's Law was clarified to read that [And may be given any time spent under House Arrest.]

(11)

DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF A PERSON UNDER DISABILITY ?

A.

A disability would create " the inability of one person to alter a given relation with another person. As an impairment generality two offenders come before the bench with equal footing, both convicted of crimes, both convicted in competent jurisdiction but only one is asking for time he spent while in the county jail and the is asking for time he spent under monitored house arrest both have equal footing in their process only one will receive his credit prior to 2013 because the state had not specified that house arrest could be calculated. The one with the house arrest is under disability because of the impairment that the statute did not specify the allowance of this credit as in the case of the Petitioner, even so, the Court when faced with this question in the Petitioner's case. Counsel Redmond asked the Court to consider the time that I spent while on monitored house arrest. The Court (Judge James E. Brogdon) asked counsel if there was anything in Judge Thomas' Order about whether she thought it was appropriate and both my counsel and the Attorney General said it was not specified. (See Tr.T. p. 674 lines6-25 ; T.Tr.p. 675 lines 1-6) .

As this issue has been improperly addressed in the past. The South Carolina Legislature in their wisdom amended § 24-13-40 to add this language as to clarify to the Courts their ability to grant this **"time served"** prior to trial and sentencing and 2) The Petitioner would humbly point out that South Carolina Code does not say that the only way that a criminal defendant is to receive credit is when he was in jail.

South Carolina Law says: [In Every Case in **computing** the time served by a prisoner, **Full** credit against the sentence **Must** be given for time served prior to trial and sentencing **"and"** may be given any thime spent under monitored house arrest. § 24-13-40 (In Part)

(12)

The Statute refers to "Computing the time served by a prisoner. It is incumbent upon SCDC because who else computes or Calculates an Offenders time but SCDC. Secondly, what Statute authorizes SCDC to Calculate and allow credit, non but S.C. Code Ann. § 24-13-40, because the 2013 amendment clarified what would constitute time served as to include Monitored House Arrest and term time served was in the language prior to the 2013 Bill, SCDC should only verify those (may) persons who served monitored House Arrest and compute it toward their sentence as it relates to finality, even though finality may attach to a criminal conviction and the consequences of that conviction as in the case of Varner 423 S.E.2d. ____. The sentence has not become final, and finality has not attached and also because 24-13-40 is remedial in nature, the Petitioner should receive the benefits of the time served prior to trial and sentencing specifically the 17 months I spent under Monitored House Arrest (April 3 2000 until August 9 2001).

B.

Black's Law defines a Remedial Law as "a Statute that corrects or modifies an existing Law (In Part). As the Court knows Title 24 is not criminal. When comparing Wiesart v. Stewart Supra. The issue boils down to whether or not:
1) the May is either a) synonymous with shall or must which would create a right for review by the court, or, b) That the may would make it discretionary. However, it would be the Courts discretion and not the Government. COnsidering the Wiesart v. Stewart decision, becuase the Petitioner was under disability, "The Petitioner should be given Judicial review. In any case, either the credit would be mandatory or at the very least, The Court and not the State entity has the discretion to decide whether or not this credit should be applied. When reviewing the terms Disability and impairment, the Petitioner would contend in this argument that he would have been under disability and

not simply an impairment

The Courts of South Carolina has the discretion to make at the very least a determination as to whether or not credit should be granted.

The second part of this argument is that it is mandatory for the granting of this credit as 24-13-40 ~~palintly~~ plainly says along with numerous of cases that a Defendant can not be denied his credit for time served prior to trial and sentencing. Considering that the time discussed was prior to trial and sentencing he should be granted it by the Court or allowed an opportunity to heard on the discretion as it relates to the allowance of credit.

WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. Code Ann. § 24-13-40.

(14)

It is the Petitioners contention that the Legislature's intention by amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner was revised and brought to the forefront to keep the Statute economically viable for modern day changing times for applicability. The Amendment added," and may be given for any time spent under monitored house arrest." 2013 Act No. 34 § 1 (June 7 2013). The amendment is not a new remedy or a change in the statute, it does however allow the Statute the be enlarged (Extended in scope) to show that it has always been a part of § 24-13-40, just dorment in the background until remedy needs it's application. This determination is brought about by the Statutory Construction and the intent of lawmakers as a remedy (Equitable Relief) and is merely a correction of wording to bring about modern day viability of changing times.

Code of Laws of South Carolina 1976 § 24-13-40. " The Computation of time served by prisoners under sentence imposed by the Courts of this State must be calculated from the date of commencement of the service of the sentence. In Every case, in computing the time served by a prisoner, Full Credit against the sentence must be given for any time spent under monitored House Arrest."

The term "May" used in the amendment is not left without interpretation to be deemed discretionary by judicial review. May, in context used is " in an effort to effectuate Legislative Intent to be held synonymous with "Shall" or "Must" Black's Law Dictionary 9th ed. (2009).

"Full Credit for time served must be given to any defendant detained before trial, unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence for a separate offense while awaiting trial." S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb. 8 2011) " Because the language of § 24-13-40 is mandatory, a judge cannot deny a defendant credit for **time served** prior

to trial unless one of the two exceptions apply State v. McCord 349 S.C. 477, 487 , 562 S.E.2d. 689, 694 (Ct. App. 2002) State v. Boggs 388 S.C. 314, 316, 696 S.E.2d. 597-98 (S.C. App. 2010); Captain Waddell Coe (SLED) 2011 WL 782315 (2011) Gallishaw v. SCDC 2014 WL 2575416 (Nov. 2014).

Legislative intent is a design or plan that the legislature had at the time of enacting a Statute." Blacks Law Dictionary 9th Ed. (2009); C.J.S. § 315" It is elementary that the cardinal rule for the construction of Statute is to ascertain and give effect to the intention of the lawmaking body. All technical rules of construction are subservient (useful as a means or a tool; promoting an end) to the paramount consideration." Bruno Yacht Sales Inc. 353 S.C. 31, 39, 577 S.E.2d. 202, 207 (2003). " In determining Legislative intent, th Court will if necessary, reject the literal import of words used in a Statute. It has been said that, words ought to be subservient to the intent, and not the intent to the words, Greenville Baseball Inc. v. Beardon 200 S.C. 363, 20 S.E.2d. 813, 816 (1932), and it is proper to consider the purpose sought to be accomplished." Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d. 665 (1951); State v. Baucon 340 S.C. 339, 342, 531 S.E.2d. 922-23 (2000) "What a Legislature says in the text of a Statute is considered the best evidence of Legislative intent or will." Wade v. State Op. No. 25409, 348 S.C. 255, 559 S.E.2d. 843 (2002), and "is clearly apparent from the Statutory Language, A Court may not enbark upon a search for it outside the Statute." State v. Leopard 349 S.C. 467, 472-73, 563 S.E.2d. 342, 345 (S.C. App. 2002).

"The true aim and intention of legislature controls the literal meaning of a Statute. The historical background and circumstances at the time a Statute or amendment was passed can be used to assist in interpretation. An entire Statute or amendment therein, must be practical, applicable, fair and consistant with the purpose, plan, and reasoning behind its making "Greenville Baseball Inc. v. Bearden, 200 S.C. 363

20 S.E.2d.813, 816 (1942). "The dorment factor concerning Statutory Construction is the intent of Legislature, not the language used" Spartanburg Sanitary Sewer Dist. v. City of Spartanburg 283 S.C. 67, 321 S.E.2 258." The Honorable Charles T. Barton, 2014 WL 5439609 (* 4) (Oct 16 2014)

Petitioner states that the amendment (A formal revision made to a Statute to bring about correction) which was added to § 24-13-40 is made by insertion (" An amendment that places new wording within a Statutes current wording. Some authorities disatinguish amendments by adding, which places new wording after the current wording of the amendment by asserting. "Black's Law Dictionary 9th Ed. (2009)

This action creates a consolidated Statute which is a "Law that Corrects or Clarifies the Legislative provision on a particular subject and embodies them in a single Statute, often with minor amendments by drafting improvements." Courts generally presume that a consolidating Statute leaves prior case law intact (Blacks). The result of such consolidation satisfies the "One Subject" prong prescribed by S.C. Const. Art III § 17 Which states:

Every act or resolution having the force of Law shall relate to but one subject, and that shall be expressed in the title." 2005 Act No. 27 § 1 States The General Assembly finds that the section presented in an act constitute one subject as required by Article III, Sect. 17 of the S.C. Constitution, in particular finding that each change and each topic relates directly, to or in conjunction with other sections to the subject that is clearly enumerated in the title." The General Assembly futher finds that a common purpose or Relationship exists amoung the sections, representing a potential plurality but not disunity of topics or remedies, notwithstanding the reasonable minds might differ in identifing more than one topic or remedy contained in the act."Hercules Inc. v. State Tax Comm'n 274 S.C. 137, 143, 262 S.E.2d. 45, 48 (KN3) (1980)

Petitioner avers that § 24-13-40 is a remedial statute in nature and is not to be treated as a criminal statute. § 24-13-40 and any amendment added is and should always be viewed as procedural. This being said, it is the Petitioner's stance that the credit of time served and monitored house arrest should be applied retroactively, not prospectively.

A criminal statute "is a law that defines, classifies, and sets forth punishment for one or more specific crimes" in comparison to a remedial statute that is "a law that affords a remedy." (Black's), i.e. remediation which means, The correction, repair, restoration, or any other action taken in order to bring any condition or circumstance into compliance with a statute, standard, or regulation." 2014 South Carolina Law Acts 156 (HB 4574) (Apr. 14 2014). Remedial is providing a remedy by means of redress to correct a fault or defest and to enforce existing substansive rights." A remedial Statute is one that " is curative and corrects an error in a Statute's original enactment that interfers with interpretating or applying the Statute." Black's

Remedial laws must be construed broadly and liberally to effectuate their purpose, which rule of liberal construction will be taken as a guide" Buggs v. U.S. Rubber Co. Winnsboro Mills 201 S.C. 281, 22 S.E.2d. 881 (S.C. 1942) "Legislation that is remedial should be construed liberally to accomplish the end for which it was intended Strawhorn v. J.A. Chapman Const. Co.

In the case of State v. Varner 310 S.C. 264, 266, 423 S.E.2d. 135 133-34 (S.C. 1992) "Varner" Applicant requested his sentence, to be applied retroactively to a new amendment added to a criminal statute, this amendment replaced the old punishment. Title (16) in S.C. Code of Laws in a criminal title that provides punishment not a form of remedy. Varner was sentenced before amendment Section § 16-3-910 became effective and their is no

language in the act which would require the retroactive application to him. See Hercules, Inc. v. S.C. Tax Comm'n 274 S.C. 137, 262 S.E.2d. 45 (1980) (Prospective application is presumed absent specific provision or clear legislative intent to the contrary). Therefore, because former Section § 16-3-910 was in effect when Varner was sentenced, the proper punishment is the one required by that section.

"Generally, Statutory enactments are to be considered prospective rather than retroactive in their operations unless there is a specific provision in the enactment or clear legislative intent to the contrary. South Carolina Dept. of Rev. v. Rosemary Coin Machine Inc., 339 S.C. 25, 28, 528 S.E.2d. 416, 418 (2000), Statutes that are remedial or procedural in nature, however, operate retroactively. Id.; Carolina Power & Lights Co. v. Bennettsville, 314 S.C. 137, 139, 442 S.E.2d. 177, 179 (1994); The Honorable Steven Goldfinch Jr. 2014 WL 4953186 (*3) (Sept 18 2014) The Honorable Raymond E. Clearly III, 2014 WL 4953185 (*5) (Sept. 23 2014). Procedural Law is a specific method or course of action which proscribes the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves." Black's

A Statute is remedial and applies retroactively when it creates new remedies for existing rights or enlargens rights of a person under disability (the inability to perform some function; an objectively measurable condition of impairment) 4 S.C. Jurisprudence Action § 15 (2007) Howard v Allen 368 F. Supp 310 (D.S.C. 1973) Smith V. Eagle Const Co. 282 S.C. 140, 143, 318 S.E.2d. 89 (1984); State v. Bolin 673 S.E.2d. 885-887 (Ct. App. 2009) Carolina Cloride Inc v. S.C. Dept. of Trans. 706 S.E.2d.501 (S.C. 2011) ; State v. Hilton 752 S.E.2d. 549 (S.C. 2013) D & L Enterprises Inc. 757 S.E.2d. 695 (S.C. 2014) Mr. William E. Gunn, Chief of Staff, Office of Comptroller General 2014 WL 4253409 (*2) (Aug. 2014)

It is the Petitioner's contention that the legislature's intent in amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner) was revised to bring about wording to the forefront to keep the statute economically viable for modern day application to keep current with changing times. The amendment added, " and may be give for any time spent under monitored house arrest." 2013 Act. No. 34 § 1 (June, 7 2013). The amendment is not a new remedy or a change in the statute, it does however, allow the statute to be enlarged (Extended in scope) to show that has always been a part of § 24-13-40 just dorment in the background until remedy needs it's appliuapplication. This determination is brought about by the statutory construction and the intent of the lawmakers as a remdey (equitable relief) and is merely a correction in wording to stay current in the language of law.

Code of Laws of South Carolina (1976) § 24-13-40." The computation of time served by a prisoner under sentence imposed by the Courts of this State must be calculated from the date of commencement of the service of sentence. In every case in computing the time served by a prisoner, Full credit against the sentence **must** be given for any time spent under monitored house arrest

The term **may** in this context of the amendment is not without interpretation to be left discretionary by judicial review. May, " in an effort to effectuate legislative intent to be held synonymous with shall or must. Black's Law 9th "Full credit for time served must be given to any defendant detained before trial unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence from a separate offense while awaiting trial " S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb 8, 2011) Because the Language of § 24-13-40 is mandatory, a judge can not deny a defendant credit for time served prior to trial unless

one of the two exceptions apply." State v. McCord 562 S.E.2d. 689 (Ct. App. 2002) State v. Boggs SUPRA.

Lastly, as it would relate to the mind of the drafters of this Amendment to § 24-13-40. State Senator Todd Rutherford took the case of one Arthur Field on or about 2011. WHile he was representing his private client. He was "Sponsoring" a bill that would allow the Court to give such credit towards a criminal defendant's sentence. While the Senator was "Sponsoring" this bill he had a high profile client, who was on bond and "on monitored House Arrest" . As the Court knows, on June, 7 2013 the Legislature passed and the Governor signed the 2013 bill to enact it into law. Some time afterwards, Senator/ Lawyer Todd Rutherforn took his client up for "sentencing" before the court and asked for his time he had spent under monitored house arrest. He went up for sentencing in October of 2013. Interestly, The State made the argument that he should not receive the benefits of this amendment due to his being on this Monitored House before the pasing of the Law. The Court rejected the States argument and granted Mr. Field his time he served on Monitored House Arrest. (Case No. 2012-CP-040-1055 Filed 11-29-12)

CONCLUSION

Based on the foregoing, The Petiitioner **Prays** that this Court either rule that 1) SCDC is required to apply Petitioners Monitored House Arrest time towards his sentence, and/or 2) Give Petitioner his Good time and Work Credits while serving time on Monitored House Arrest as was done in the Arthur Field case in Anderson County, and/or 3) Allow Petittioner to have a hearing as to whether to allow such credits, and/or 4)Rule that the 2013 Bill is to have Retroactive effect, and/or 5) Rule that the May is either discretionary as it relates to the Court or is mandatory as it should be conscrued in conjunction with the entire Statutory effect and meaning. Or any other relief that this Court deems just and proper. The Petitioner Humbly and Respectfully Submits the following to the Court for their

Consideration.

Respectfully Submitted,

Jimmy D. Meggs Jr.

CERTIFICATE OF SERVICE

I Jimmy D. Meggs Jr. do ceritify that I have served my Brief of Appellant and my Record on Appeal on the Respondents Counsel of Record. South Carolina Depepartment of Corrections, Mr. David Tartasky, General Counsel, Post Office Box 21787, Columbia, SC 29221-1787 by depositing the same in the United States Mail, Postage Prepaid on this 31st Day of August, 2016.

Jimmy D. Meggs Jr., 277400
TCI TB-185
1578 Clarence Coker Hwy.
Turbeville, SC 29162

This 31st Day of August, 2016.

22

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jimmy D. Meggs, #277400, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No.: 16-ALJ-04-0550-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (court) pursuant to the Notice of Appeal filed by Jimmy Meggs ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). The Appellant appeals the decision of the Department denying his grievance in which he contends the Department has incorrectly calculated his sentence-related credits, and appeals the Department's determination that he is not entitled to jail time credit for time he spent under Monitored House Arrest from April 3, 2000, to on or about August 9, 2001. The Department investigated and denied the Appellant's Step One Grievance on May 25, 2016. The Appellant timely filed a Step Two Grievance, which the Department also denied on June 30, 2016. The Appellant timely filed an appeal with this court on July 15, 2016.

As background, the Appellant was arrested and placed in pretrial confinement on January 10, 2000, in Florence County, South Carolina. Eighty-four days later, on April 3, 2000, the Appellant was released on a $100,000 surety bond and, as part of the conditions of his release, he was placed on monitored house arrest. Approximately sixteen(16) months later, a jury found the Appellant guilty of Engaging a Child for Sexual Performance, among other things, and the court sentenced him to twenty (20) years in prison with eighty-four (84) days of jail time credit for time he served prior to his release on bond. At the time the Appellant was sentenced, the trial court did not credit the Appellant for any time spent on monitored house arrest.

ISSUE ON APPEAL

Whether the Department erred in calculating the Appellant's sentence under the relevant statutes.

(23)

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such as a liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

South Carolina Code Annotated Section 24-13-40 "mandates prisoners receive full credit for the time they served prior to trial," unless one of the two exceptions exist, either (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense. *State v. Boggs,* 388 S.C. 314, 696 S.E. 2d 597, 598 (Ct. App. 2010). At his sentencing on August 9, 2001, the Appellant received eighty-four (84) days credit for time served in pretrial confinement. The Appellant is now seeking credit for an additional sixteen (16) month period he spent on monitored

house arrest at his parent's home after he was released on bond, and is arguing that a 2013 amendment now allows him to receive that credit.

At the time of the Appellant's sentencing, Section 24-13-40 was silent concerning sentence credit for house arrest. The sentencing court properly credited the Appellant with eighty-four (84) days of jail time credit for his time served in confinement from his arrest date until his release on bond, on April 3, 2000, however, the court did not credit the Appellant with his time spent on house arrest as part of his conditions of release from confinement. In *State v. Higgins*, 357 S.C. 382, 593 S.E. 2d 180 (Ct. App. 2004), the Court of Appeals specifically held that when house arrest was a condition of release on bond, it "would be illogical to credit [an inmate] for the time he served while he was 'released' on bond." *Id.* at 386. The Court construed "time served" as time served in a penal institution, and not on home detention.

Over a decade after the Appellant was sentenced, in June 2013, Section 24-13-40 was amended to allow the sentencing court discretion as to whether to grant credit for time spent on house arrest. The statute now reads: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." S.C. Code Ann. § 24-13-40 (Supp. 2013). [1] The Appellant believes this amendment should be applied retroactively, and that he should be awarded with credit for his house arrest.

The cardinal rule of statutory construction is to ascertain and effectuate legislative intent whenever possible. *State v. Baucom,* 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). The court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat,* 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *S.C. Nat'l Bank v. S.C. Tax Comm'n,* 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989). With regard to whether a statute is retroactive, the statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent. *Pulliam v. Doe,* 246 S.C. 106, 110, 142 S.E.2d 861, 863 (1965). The only exception to this rule is a statutory enactment that effects a change in remedy or procedure. *Jenkins v. Meares,* 302 S.C. 142, 146, 394

[1] The Appellant argues that another inmate received the benefit of this amendment, however, this court also notes that it is possible that a criminal defendant could receive the benefit of this legislative amendment if the amendment became effective prior to his sentencing. *See State v. Anthony*, 2014-UP-388, 2014 WL 5777394.

S.E.2d 317, 319 (1990) ("A savings clause is a restriction in a repealing act, intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted appeal. *Pierce v. State,* 338 S.C. 139, 146 n. 3, 526 S.E.2d 222, 225 n. 3 (2000) (quoting Black's Law Dictionary 1343 (1990)).

Here, it is clear that the amendment to Section 24-13-40 did not expressly make retroactive the changes regarding credit for time spent on house arrest. Likewise, this court also finds that there is no evidence of legislative intent that would allow a retroactive application of this statute. "[p]rospective application is presumed absent a specific provision or clear legislative intent to the contrary." *See State v. Varner*, 310 S.C. 264, 265, 423 S.E. 2d 133, 133-134 (1992). Additionally, since the amendment merely grants the trial judge discretion to grant sentence credit for house arrest, it is evident that this change would be difficult, if not impossible, to apply retroactively.[2] Even if this court were to find that Section 24-13-40 should be applied retroactively, despite all evidence to the contrary, this court is without authority to assume the role of the Appellant's sentencing court and determine whether to allow him credit for his time served on house arrest. In sentence calculation cases, this court's review is limited to the record, and it may not substitute its judgement for the judgment of the agency, much less the judgment of the sentencing court. S.C. Code Ann. § 1-23-380(4) (Supp. 2016).

THEREFORE, IT IS HEREBY ORDERED the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26th day of JAN 2017

Judicial Law Clerk

S. Phillip Lenski, Judge
S.C. Administrative Law Court

January 26, 2017
Columbia, South Carolina

FILED
JAN 26 2017
S.C. ADMIN. LAW COURT

[2] The Appellant paradoxically argues that the term "may" found in the 2013 amendment "is not left without interpretation to be deemed discretionary by judicial review" and is "to be held synonymous with 'Shall' or 'Must'...." The court rejects this argument.

(26)

The South Carolina Court of Appeals

Jimmy D. Meggs #277400, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-000232

ORDER

After careful consideration, the motion to proceed *in forma pauperis* is granted.

Paul E. Short, Jr.
FOR THE COURT

Columbia, South Carolina

cc:
Jimmy D. Meggs #277400
Christina Catoe Bigelow, Esquire

FILED
May 5, 2017

(D)

(27)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
MAR 15 2017
SC Court of Appeals

APPEAL FROM AMD. LAW COURT

16-ALJ-04-0550-AP

The Honorable S. Phillip Lenski

CASE NO. 2017-000232

Jimmy D. Meggs Jr., 277400,

APPELLANT,

V.

South Carolina Dept. of Corrections,

RESPONDENT.

~~RECORD OF APPEAL~~
Brief

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My Brief to Court of Appeal

28

ISSUES ON APPEAL

1. DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF OF A PERSON UNDER DISABILITY ?

2. WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL, IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. CODE ANN. § 24-13-40 ?

3. Where S.C. Code Ann. § 24-13-40 "Relates to the computation of time served by a prisoner, It is encumbant upon SCDC to comply and is this Statute speaking to them because they are the entity who both computes and calculates a prisoners sentence

4. Should SCDC give Petitioner his Good Time Credit from his time served under Monitored House Arrest as done in the Arthur Field case .

STATEMENT OF THE CASE

Petitioner was arrested Jauuary 10 2000 in Florence County. At the bond hearing due to the numerous charges, the Magistrate Court denied bond. The Petitioner attempted to petition the Circuit Court concerning Bond consideration, but this was these "Hearings" were inhibited due to The Detectives claims that he had new warrants. which totaled 12 in all.

Petitioner ultimately gained bond with the stipulation that he secure Monitored House Arrest. along with a $100,000.00 Surity Bond. The Petitioner met all the stipulations and complied with all of the stipulations during the time before trial.

The Petitioner went to his Preliminary hearing and the State (Attorney General) on his own motion dismissed the bulk of the charges due to a lack of probable cause. The State proceeded and secured an indictment for for two offense and directly presented two charges. The Petitioner proceeded to trial on August 6-9 2001 and was on the aforesaid mention House during this entire time (April 3, 2000 until August 9 2001, or 17 months As mentioned before as it relates to the continuation of serving warrants that would later be dismissed prior to "trial" for lack of probable cause it was discovered that they were secure and signed by the nmagistrate judge on the same day and served to the OPetrtioner piece meal for the sole purpose of causing the the hardship of not being able to have a bond determination and also, caused the hardship of the states trying to prevent the petitioner the ability of having a bond determination.

After the Trial jury found Petitioner guilty and before the Court's senttence, the Court engaged in a conversation about the allowance of time spent under Monitored House Arrest. (T.Tr. p. 674 lns.6-25 ; T.Tr. p. 675 lns 1-7).

After Trial, Direct Appeal, and PRC Hearing, in June ,7 2013, South Carolina's Law was clarified to read that [And may be given any time spent under House Arrest.]

DOES THE AMENDMENT CREATE A RIGHT OR ENLARGE A RIGHT OF A PERSON UNDER DISABILITY ?

A.

A disability would create " the inability of one person to alter a given relation with another person. As an impairment generality two offenders come before the bench with equal footing, both convicted of crimes, both convicted in competent jurisdiction but only one is asking for time he spent while in the county jail and the is asking for time he spent under monitored house arrest both have equal footing in their process only one will receive his credit prior to 2013 because the state had not specified that house arrest could be calculated. The one with the house arrest is under disability because of the impairment that the statute did not specify the allowance of this credit as in the case of the Petitioner, even so, the Court when faced with this question in the Petitioner's case. Counsel Redmond asked the Court to consider the time that I spent while on monitored house arrest. The Court (Judge James E. Brogdon) asked counsel if there was anything in Judge Thomas' Order about whether she thought it was appropriate and both my counsel and the Attorney General said it was not specified. (See Tr.T. p. 674 lines6-25 ; T.Tr.p. 675 lines 1-6) .

As this issue has been improperly addressed in the past. The South Carolina Legislature in their wisdom amended § 24-13-40 to add this language as to clarify to the Courts their ability to grant this **"time served"** prior to trial and sentencing and 2) The Petitioner would humbly point out that South Carolina Code does not say that the only way that a criminal defendant is to receive credit is when he was in jail.

South Carolina Law says: [<u>In Every Case in computing</u> the time served by a prisoner, <u>**Full**</u> credit against the sentence <u>**Must**</u> be given for time served prior to trial and sentencing <u>**"and"**</u> may be given any thime spent under monitored house arrest. § 24-13-40 (In Part)

The Statute refers to "Computing the time served by a prisoner. It is incumbent upon SCDC because who else computes or Calculates an Offenders time but SCDC. Secondly, what Statute authorizes SCDC to Calculate and allow credit, non but S.C. Code Ann. § 24-13-40, because the 2013 amendment clarified what would constitute time served as to include Monitored House Arrest and term time served was in the language prior to the 2013 Bill, SCDC should only verify those (may) persons who served monitored House Arrest and compute it toward their sentence as it relates to finality, even though finality may attach to a criminal conviction and the consequences of that conviction as in the case of Varner 423 S.E.2d. ____. The sentence has not become final, and finality has not attached and also because 24-13-40 is remedial in nature, the Petitioner should receive the benefits of the time served prior to trial and sentencing specifically the 17 months I spent under Monitored House Arrest (April 3 2000 until August 9 2001).

B.

Black's Law defines a Remedial Law as "a Statute that corrects or modifies an existing Law (In Part). As the Court knows Title 24 is not criminal. When comparing Wiesart v. Stewart Supra. The issue boils down to whether or not:
1) the May is either a) synonymous with shall or must which would create a right for review by the court, or, b) That the may would make it discretionary. However, it would be the Courts discretion and not the Government. COnsidering the Wiesart v. Stewart decision, becuase the Petitioner was under disability, "The Petitioner should be given Judicial review. In any case, either the credit would be mandatory or at the very least, The Court and not the State entity has the discretion to decide whether or not this credit should be applied. When reviewing the terms Disability and impairment, the Petitioner would contend in this argument that he would have been under disability and

not simply an impairment

The Courts of South Carolina has the discretion to make at the very least a determination as to whether or not credit should be granted.

The second part of this argument is that it is mandatory for the granting of this credit as 24-13-40 ~~patently~~ plainly says along with numerous of cases that a Defendant can not be denied his credit for time served prior to trial and sentencing. Considering that the time discussed was prior to trial and sentencing he should be granted it by the Court or allowed an opportunity to heard on the discretion as it relates to the allowance of credit.

WHEN THE AMENDMENT OF JUNE, 7 2013 (§ 24-13-40) IS NOT CRIMINAL IT SHOULD BE GIVEN RETROACTIVE EFFECT AND SCDC SHOULD APPLY TIME SERVED WHILE SPENT UNDER MONITORED HOUSE ARREST BY CREDITING THEIR MONITORED HOUSE ARREST CREDITS AS TO BE IN COMPLIANCE WITH S.C. Code Ann. § 24-13-40.

It is the Petitioners contention that the Legislature's intention by amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner was revised and brought to the forefront to keep the Statute economically viable for modern day changing times for applicability. The Amendment added," and may be given for any time spent under monitored house arrest." 2013 Act No. 34 § 1 (June 7 2013). The amendment is not a new remedy or a change in the statute, it does however allow the Statute the be enlarged (Extended in scope) to show that it has always been a part of § 24-13-40, just dorment in the background until remedy needs it's application. This determination is brought about by the Statutory Construction and the intent of lawmakers as a remedy (Equitable Relief) and is merely a correction of wording to bring about modern day viability of changing times.

Code of Laws of South Carolina 1976 § 24-13-40. " The Computation of time served by prisoners under sentence imposed by the Courts of this State must be calculated from the date of commencement of the service of the sentence. In Every case, in computing the time served by a prisoner, Full Credit against the sentence must be given for any time spent under monitored House Arrest."

The term "May" used in the amendment is not left without interpretation to be deemed discretionary by judicial review. May, in context used is " in an effort to effectuate Legislative Intent to be held synonymous with "Shall" or "Must" Black's Law Dictionary 9th ed. (2009).

"Full Credit for time served must be given to any defendant detained before trial, unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence for a separate offense while awaiting trial." S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb. 8 2011) " Because the language of § 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior

to trial unless one of the two exceptions apply State v. McCord 349 S.C. 477, 487 , 562 S.E.2d. 689, 694 (Ct. App. 2002) State v. Boggs 388 S.C. 314, 316, 696 S.E.2d. 597-98 (S.C. App. 2010); Captain Waddell Coe (SLED) 2011 WL 782315 (2011) Gallishaw v. SCDC 2014 WL 2575416 (Nov. 2014).

Legislative intent is a design or plan that the legislature had at the time of enacting a Statute." Blacks Law Dictionary 9th Ed. (2009); C.J.S. § 315" It is elementary that the cardinal rule for the construction of Statute is to ascertain and give effect to the intention of the lawmaking body. All technical rules of construction are subservient (useful as a means or a tool; promoting an end) to the paramount consideration." Bruno Yacht Sales Inc. 353 S.C. 31, 39, 577 S.E.2d. 202, 207 (2003). " In determining Legislative intent, th Court will if necessary, reject the literal import of words used in a Statute. It has been said that, words ought to be subservient to the intent, and not the intent to the words, Greenville Baseball Inc. v. Beardon 200 S.C. 363, 20 S.E.2d. 813, 816 (1932), and it is proper to consider the purpose sought to be accomplished." Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d. 665 (1951); State v. Baucon 340 S.C. 339, 342, 531 S.E.2d. 922-23 (2000) "What a Legislature says in the text of a Statute is considered the best evidence of Legislative intent or will." Wade v. State Op. No. 25409, 348 S.C. 255, 559 S.E.2d. 843 (2002), and "is clearly apparent from the Statutory Language, A Court may not enbark upon a search for it outside the Statute." State v. Leopard 349 S.C. 467, 472-73, 563 S.E.2d. 342, 345 (S.C. App. 2002).

"The true aim and intention of legislature controls the literal meaning of a Statute. The historical background and circumstances at the time a Statute or amendment was passed can be used to assist in interpretation. An entire Statute or amendment therein, must be practical, applicable, fair and consistant with the purpose, plan, and reasoning behind its making "Greenville Baseball Inc. v. Bearden, 200 S.C. 363

20 S.E.2d.813, 816 (1942). "The dorment factor concerning Statutory Construction is the intent of Legislature, not the language used" Spartanburg Sanitary Sewer Dist. v. City of Spartanburg 283 S.C. 67, 321 S.E.2 258." The Honorable Charles T. Barton, 2014 WL 5439609 (* 4) (Oct 16 2014)

Petitioner states that the amendment (A formal revision made to a Statute to bring about correction) which was added to § 24-13-40 is made by insertion (" An amendment that places new wording within a Statutes current wording. Some authorities disatinguish amendments by adding, which places new wording after the current wording of the amendment by asserting. "Black's Law Dictionary 9th Ed. (2009)

This action creates a consolidated Statute which is a "Law that Corrects or Clarifies the Legislative provision on a particular subject and embodies them in a single Statute, often with minor amendments by drafting improvements." Courts generally presume that a consolidating Statute leaves prior case law intact (Blacks). The result of such consolidation satisfies the "One Subject" prong prescribed by S.C. Const. Art III § 17 Which states:

Every act or resolution having the force of Law shall relate to but one subject, and that shall be expressed in the title." 2005 Act No. 27 § 1 States The General Assembly finds that the section presented in an act constitute one subject as required by Article III, Sect. 17 of the S.C. Constitution, in particular finding that each change and each topic relates directly, to or in conjunction with other sections to the subject that is clearly enumerated in the title." The General Assembly futher finds that a common purpose or Relationship exists amoung the sections, representing a potential plurality but not disunity of topics or remedies, notwithstanding the reasonable minds might differ in identifing more than one topic or remedy contained in the act."Hercules Inc. v. State Tax Comm'n 274 S.C. 137, 143, 262 S.E.2d. 45, 48 (KN3) (1980)

Petitioner avers that § 24-13-40 is a remedial statute in nature and is not to be treated as a criminal statute. § 24-13-40 and any amendment added is and should always be viewed as procedural. This being said, it is the Petitioner's stance that the credit of time served and monitored house arrest should be applied retroactively, not prospectively.

A criminal statute "is a law that defines, classifies, and sets forth punishment for one or more specific crimes" in comparison to a remedial statute that is "a law that affords a remedy." (Black's), i.e. remediation which means, The correction, repair, restoration, or any other action taken in order to bring any condition or circumstance into compliance with a statute, standard, or regulation." 2014 South Carolina Law Acts 156 (HB 4574) (Apr. 14 2014). Remedial is providing a remedy by means of redress to correct a fault or defest and to enforce existing substansive rights." A remedial Statute is one that " is curative and corrects an error in a Statute's original enactment that interfers with interpretating or applying the Statute." Black's

Remedial laws must be construed broadly and liberally to effectuate their purpose, which rule of liberal construction will be taken as a guide" Buggs v. U.S. Rubber Co. Winnsboro Mills 201 S.C. 281, 22 S.E.2d. 881 (S.C. 1942) "Legislation that is remedial should be construed liberally to accomplish the end for which it was intended Strawhorn v. J.A. Chapman Const. Co.

In the case of State v. Varner 310 S.C. 264, 266, 423 S.E.2d. 135 133-34 (S.C. 1992) "Varner" Applicant requested his sentence, to be applied retroactively to a new amendment added to a criminal statute, this amendment replaced the old punishment. Title (16) in S.C. Code of Laws in a criminal title that provides punishment not a form of remedy. Varner was sentenced before amendment Section § 16-3-910 became effective and their is no

language in the act which would require the retroactive application to him. See Hercules, Inc. v. S.C. Tax Comm'n 274 S.C. 137, 262 S.E.2d. 45 (1980) (Prospective application is presumed absent specific provision or clear legislative intent to the contrary). Therefore, because former Section § 16-3-910 was in effect when Varner was sentenced, the proper punishment is the one required by that section.

"Generally, Statutory enactments are to be considered prospective rather than retroactive in their operations unless there is a specific provision in the enactment or clear legislative intent to the contrary. South Carolina Dept. of Rev. v. Rosemary Coin Machine Inc., 339 S.C. 25, 28, 528 S.E.2d. 416, 418 (2000), Statutes that are remedial or procedural in nature, however, operate retroactively. Id.; Carolina Power & Lights Co. v. Bennettsville, 314 S.C. 137, 139, 442 S.E.2d. 177, 179 (1994); The Honorable Steven Goldfinch Jr. 2014 WL 4953186 (*3) (Sept 18 2014) The Honorable Raymond E. Clearly III, 2014 WL 4953185 (*5) (Sept. 23 2014). Procedural Law is a specific method or course of action which proscribes the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves." Black's

A Statute is remedial and applies retroactively when it creates new remedies for existing rights or enlargens rights of a person under disability (the inability to perform some function; an objectively measurable condition of impairment) 4 S.C. Jurisprudence Action § 15 (2007) Howard v Allen 368 F. Supp 310 (D.S.C. 1973) Smith V. Eagle Const Co. 282 S.C. 140, 143, 318 S.E.2d. 89 (1984); State v. Bolin 673 S.E.2d. 885-887 (Ct. App. 2009) Carolina Cloride Inc v. S.C. Dept. of Trans. 706 S.E.2d.501 (S.C. 2011) ; State v. Hilton 752 S.E.2d. 549 (S.C. 2013) D & L Enterprises Inc. 757 S.E.2d. 695 (S.C. 2014) Mr. William E. Gunn, Chief of Staff, Office of Comptroller General 2014 WL 4253409 (*2) (Aug. 2014)

It is the Petitioner's contention that the legislature's intent in amending S.C. Code Ann. § 24-13-40 (Computation of time served by a prisoner) was revised to bring about wording to the forefront to keep the statute economically viable for modern day application to keep current with changing times. The amendment added, " and may be give for any time spent under monitored house arrest." 2013 Act. No. 34 § 1 (June, 7 2013). The amendment is not a new remedy or a change in the statute, it does however, allow the statute to be enlarged (Extended in scope) to show that has always been a part of § 24-13-40 just dorment in the background until remedy needs it's appliuapplication. This determination is brought about by the statutory construction and the intent of the lawmakers as a remdey (equitable relief) and is merely a correction in wording to stay current in the language of law.

Code of Laws of South Carolina (1976) § 24-13-40." The computation of time served by a prisoner under sentence imposed by the Courts of this State must be calculated from the date of commencement of the service of sentence. In every case in computing the time served by a prisoner, Full credit against the sentence **must** be given for any time spent under monitored house arrest

The term **may** in this context of the amendment is not without interpretation to be left discretionary by judicial review. May, " in an effort to effectuate legislative intent to be held synonymous with shall or must. Black's Law 9th "Full credit for time served must be given to any defendant detained before trial unless 1) The defendant was an escapee from another penal institution, or 2) The defendant is serving a sentence from a separate offense while awaiting trial " S.C. Code Ann. § 24-13-40 (Atty. Gen. Opinion); S.C. Op. Atty. Gen. (Feb 8, 2011) Because the Language of § 24-13-40 is mandatory, a judge can not deny a defendant credit for time served prior to trial unless

one of the two exceptions apply." State v. McCord 562 S.E.2d. 689 (Ct. App. 2002) State v. Boggs SUPRA.

Lastly, as it would relate to the mind of the drafters of this Amendment to § 24-13-40. State Senator Todd Rutherford took the case of one Arthur Field on or about 2011. WHile he was representing his private client. He was "Sponsoring" a bill that would allow the Court to give such credit towards a criminal defendant's sentence. While the Senator was "Sponsoring" this bill he had a high profile client, who was on bond and "on monitored House Arrest" . As the Court knows, on June, 7 2013 the Legislature passed and the Governor signed the 2013 bill to enact it into law. Some time afterwards, Senator/ Lawyer Todd Rutherforn took his client up for "sentencing" before the court and asked for his time he had spent under monitored house arrest. He went up for sentencing in October of 2013. Interestly, The State made the argument that he should not receive the benefits of this amendment due to his being on this Monitored House before the pasing of the Law. The Court rejected the States argument and granted Mr. Field his time he served on Monitored House Arrest. (Case No. 2012-CP-040-1055 Filed 11-29-12)

CONCLUSION

Based on the foregoing, The Petiitioner **Prays** that this Court either rule that 1) SCDC is required to apply Petitioners Monitored House Arrest time towards his sentence, and/or 2) Give Petitioner his Good time and Work Credits while serving time on Monitored House Arrest as was done in the Arthur Field case in Anderson County, and/or 3) Allow Petittioner to have a hearing as to whether to allow such credits, and/or 4)Rule that the 2013 Bill is to have Retroactive effect, and/or 5) Rule that the May is either discretionary as it relates to the Court or is mandatory as it should be conscrued in conjunction with the entire Statutory effect and meaning. Or any other relief that this Court deems just and proper. The Petitioner Humbly and Respectfully Submits the following to the Court for their

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South Carolina Department of Corrections

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

May 11, 2017

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

RE: Jimmy D. Meggs, Jr., # 277400, v. South Carolina Department of Corrections
Appellate Case No. 2017-000232

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

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

Sincerely,

Christina Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Jimmy D. Meggs, Jr., # 277400
Turbeville Correctional Institution
1578 Clarence Coker Highway
Turbeville, South Carolina 29162

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(41)

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

JIMMY D. MEGGS, JR., # 277400,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT APPELLANT WAS NOT ENTITLED TO CREDIT FOR TIME HE SPENT ON HOUSE ARREST IN 2000 AND 2001 WHERE THE AMENDMENT ALLOWING A SENTENCING JUDGE, IN HIS DISCRETION, TO AWARD CREDIT FOR MONITORED HOUSE ARREST WAS NOT ENACTED UNTIL JUNE OF 2013, AND WHERE THE DEPARTMENT HAS NO AUTHORITY TO UNILATERALLY AWARD HOUSE ARREST CREDIT SINCE THE POWER TO GRANT OR DENY HOUSE ARREST CREDIT IS VESTED SOLELY IN THE SENTENCING JUDGE.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Jimmy D. Meggs, Jr., an inmate in the custody of the South Carolina Department of Corrections. On May 11, 2016, Appellant submitted a Step 1 Grievance complaining that the Department of Corrections should give him credit for time he spent on house arrest in 2000 through 2001. The grievance was denied on May 25, 2016, and Appellant filed a Step 2 Grievance on that same day. The Step 2 was denied on June 30, 2016, and Appellant appealed to the Administrative Law Court. On January 26, 2017, Judge S. Phillip Lenski filed an order affirming the decision of the Department of Corrections. This appeal follows.

STANDARD OF REVIEW

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

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

S.C. Code Ann. § 1-23-380(5).

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

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT APPELLANT WAS NOT ENTITLED TO CREDIT FOR TIME HE SPENT ON HOUSE ARREST IN 2000 AND 2001 WHERE THE AMENDMENT ALLOWING A SENTENCING JUDGE, IN HIS DISCRETION, TO AWARD CREDIT FOR MONITORED HOUSE ARREST WAS NOT ENACTED UNTIL JUNE OF 2013, AND WHERE THE DEPARTMENT HAS NO AUTHORITY TO UNILATERALLY AWARD HOUSE ARREST CREDIT SINCE THE POWER TO GRANT OR DENY HOUSE ARREST CREDIT IS VESTED SOLELY IN THE SENTENCING JUDGE.

Appellant claims that he is entitled to jail time credit for time he spent on house arrest in 2000 and 2001. To the contrary, the Administrative Law Court properly concluded that Appellant was not entitled to such credit where the amendment allowing a judge the discretion to grant such credit was not enacted until June of 2013, and where the Department of Corrections has no authority to unilaterally award an inmate with such credit in any event.

S.C. Code § 24-13-40, "Computation of time served by prisoners," states as follows:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, **and may be given for any time spent under monitored house arrest**. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense (emphasis added).

The provision allowing a judge to grant credit for time spent under monitored house arrest

was added to the statute with an effective date of June 7, 2013.

At the time Appellant was sentenced, S.C. Code § 24-13-40 was silent on the issue of credit for time spent on monitored house arrest. The sentencing judge gave Appellant credit for eighty-four days of time spent in the county detention center, but did not give credit for any time spent on monitored house arrest. This was entirely proper, since in State v. Higgins, 357 S.C. 382, 385, 593 S.E.2d 180, 182 (Ct. App. 2004), this Court held that the "time served" referenced in S.C. Code § 24-13-40 meant time served in a penal institution, not time spent at home on house arrest. This Court specifically held that "[b]ecause Higgins was on house arrest as a condition of his release, we believe it would be illogical to credit him for the time he served while he was 'released' on bond." Higgins at 385, 593 S.E.2d at 182.

Furthermore, as the Administrative Law Court properly concluded, the 2013 amendment to S.C. Code § 24-13-40 allowing judges the discretion to award credit for time spent on monitored house arrest is not retroactive. See State v. Varner, 310 S.C. 264, 265, 423 S.E.2d 133, 133-34 (1992) ("[P]rospective application is presumed absent a specific provision or clear legislative intent to the contrary."). Even if it were somehow retroactive, the Department of Corrections is required to follow Appellant's clear and unambiguous sentence sheet, which awarded only eighty-four days of jail time credit. The Department of Corrections cannot unilaterally provide Appellant with credit for time spent on house arrest absent a valid sentencing order from an appropriate judge. See Tant v. South Carolina Dept. of Corrections, 408 S.C. 334, 346, 759 S.E.2d 398, 404 (2014) ("[T]he Department is confined to an unambiguous sentencing sheet in determining an inmate's sentence."); see also id. at 347, 759 S.E.2d at 405 ("The Department has no independent sentencing authority

and nothing in our opinion indicates otherwise."). Accordingly, the Administrative Law Court properly affirmed the Department's denial of Appellant's grievance.

CONCLUSION

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
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(803) 896-8508

May 11, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

(38)

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

JIMMY D. MEGGS, JR., # 277400,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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

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

(1) Appellant's Sentence Sheets;
(2) Step 1 and Step 2 Grievance Forms;
(3) ALC filings and attachments; and
(4) ALC Judge Lenski's Order dated January 26, 2017.

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

CHRISTINA CATOE BIGELOW
Deputy General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508
ATTORNEY FOR RESPONDENT

May 11, 2017

(31)

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

JIMMY D. MEGGS, JR., # 277400,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Jimmy D. Meggs, Jr., # 277400,** Turbeville Correctional Institution, 1578 Clarence Coker Highway, Turbeville, South Carolina, 29162.

Christina Catoe Bigelow
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May 11, 2017

(52)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 16-ALJ-04-0550-AP
Appellate Case No. 2017-000232

Jimmy D. Meggs Jr., 277400,

APPELLANT,

V.

South Carolina Department of Corrections,

RESPONDENT.

REPLY BRIEF OF APPELLANT

Jimmy D. Meggs Jr., 277400
TCI SA-227B
1578 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

STANDARD OF REVIEW

As outlined in the Respondent's Brief. S.C. Code Ann. § 1-23-610 (B) provides the applicable standard of review. Specifically, as is the case here, It would fall under (a) In violation of Constitutional or Statutory Provisions;

In light of the revelation of Shannon Bogan receiving his House Arrest credit, which he served all before the enactment of the 2013 Bill and now the Department of Corrections in this case raising an issue of that Appellant was not entitled to such credit would raise to a Equal Protection Violation under the Law. Specifically, "Bogan" (2012-GS-42-784), was arrested on June 27 2011. On August 3 2011 "Bogan was released on bond and placed on Monitored House Arrest (GPS Monitoring), with $55,000.00 Surety Bond and was on this status for 483 days until the day of his Guilty Plea (November 28 2012). "Bogan" plead guilty and the Court at that time did not award him this House Arrest Credit. Some time later, after filing a PCR, Counsel in 2016 obtained a Consent Order and the Court ultimately signed an order granting Appellant his 483 days he had spent on GPS Monitoring. However, even at the time that "Bogan" plead Guilty on November 28 2012, it was some 17 months after "Bogan had plead that the Law was signed into Law (June 7 2013) by S.C. Gov. Nikki Haley. Even though, "Bogan" still was able to go back and receive his credit essentially Retroactively.

Similarily, Appellant here served his House Arrest time, was convicted before the enactment of the Bill and Appellant here is being told by both the Respondent that he is not entitled to his credit due to Retroactivity argument. As S.C. Code Ann. § 24-13-40 states, and this Court has ruled and even the Attorney General's Opinion is that "Time served prior to trial is mandatory".

EQUAL PROTECTION UNDER THE LAW

Even assuming that Time Served prior to trial is not mandatory or that the allowance of this credit is discretionary would create an Equal Protection under the Law. Like "Bogan", Appellant was admitted to bail with this same stipulation of GPS Monitoring Like "Bogan" Appellant had to secure Bond. Like "Bogan", Appellant was restrained to his home, not allowed to leave for any reason. Like "Bogan", Appellant had to pay money to secure this GPS Monitoring ($350.00 Month).

As there is no Governmental Interest suitably futhered by this different treatment a Equal Protection violation will result Police Dep't v.Mosley 92 S.Ct. 2286 (1972). Futher as the issue here is a Procedural issue as it relates to the process of applying credit as outlined by South Carolina Law. "In other Words , The Equal Protection of the Laws is invariably treated as a substantive constitutional principle which demands that laws will only be legitimate if they be described as just and equal." [Polyvios G. Palyviou, The Equal Protection of the Laws 4 (1980)]. The 14th Amendment prohibits the treatment of persons differently. Appellant here has a Fundamental Right to the time that he served and Appellant futher has a Property interest in the money he paid while on Monitord House Arrest. As the State Statute (§ 24-13-40) speaks specifically to the entity who "Computes and Calculates" a Prisoners Sentence" is none other than South Carolina Department Corrections. To require the Appellant to go back to the Court after the Department already knows that the Appellant did served this time, it would be illogical to require the Appellant to go back to the Court to Obtain this credit. As there is no Governmental Interest in this distinction, it would rise to the level of a Constitutional Violation.

DUE PROCESS OF LAW

Under both South Carolina and Federal Law, The Applicant does have a Due Process Right to Life Liberty and Property so Fundamentally important as to require compliance with due-process standards of fairness and justice.

PROCEDURAL DUE PROCESS

When South Carolina Law was amended, Appellant was entitled to both "Notice" and a "Hearing" as guaranteed by the Due Process Clause of both South Carolina's and the United States Constitution. As the Appellant should have been released on January 1 2017 and has to this point suffered an additional five (5) months incarceration beyond the sentence of the Court and also beyond the Statutory maximum for § 16-3-810 i.e. 20 years. See In Re Gault 387 U.S. 1, 87 S.Ct. 1428 (1967)

SUBSTANTIVE DUE PROCESS

The issue here, would rely on the Natural Law. To not allow Appellant to receive the benefit of this amendment, when it is clear that the computation of both time and Time related credits is on a Month by Month basic. To allow one "Shannon Bogan" to, after being convicted and sentenced on November 28 2012, When the Law was amended on June 7 2013 (Some 7 months later to receive this benefit of this change) and then tell the Appeallant here, That I am not entitled to this credit and use the argument of Retroactivity is both Not fair and not reasonable in context and would not futher governmental objective Where, S.C. Code Ann. Clearly States Time served prior to trial and sentecning is Mandatory.

ALC COURT ORDER

The Administrative Law Court hereafter "ALC", committed was in error for at least two reasons:

1. The "ALC" erred in that they said that the "Trial Judge" was the only one who had the discretion to grant this Credit."
2. The "ALC" ruled that Appellant was not entitled to this credit

due to the Retroactivity argument.

Appellant will submit that the first reasoning by the "ALC" is manifestly wrong. Just like in the "Bogan" issue discussed herein, The Appellant would submit that the Circuit Court (ANy Judge) would be able to grant this credit, or, the Second argument incorportated, that 24-13-40 speaks directly to "SCDC" and no one else, and it would not require the Appellant to go back to Court, Where like in this case, the Respondent knows that Appellant served this 17 months, it would be incumbent upon "SCDC to "Award thisa credit. As it relates to the whole "May Argument" where "SCDC" previously argued "May being discretionary" because the language "May" did not create a right. This likewise is futile. Compare Fowler and Bolin, where this Court was faced with a situation that Fowler argued the application of the 2010 "Omnibus Crime Reduction Act", which the language there relied upon by this Court said "May", as it related to application of additional Goodtime, Workcredits ect as it related to S.C. Code Ann. § 44-53-370 (B), Where it clearly stated "May".

Contrary to the contention of the "ALC", where the Court there cited State v. Anthony 2014-UP-388, 2014 WL 5777394, The case there where Anthony fell into the time where he could have receive that credit. Contrary to Anthony, "Bogan" as discussed here, was arrested, Convicted and sentenced **ALL BEFORE** the enactement of the June 7 2013 Bill (Specifically November 28 2012) (Exhibit A). "Bogan" only came back some four years later and luckily was on PCR and his counsel obtained a consent order and he received his credit for this time he served **ALL BEFORE** THE ENACTMENT OF THE June 7 2013 Bill. This decision by the "ALC" is blantantly wrong.

RETROACTIVITY

Specifically, § 24-13-40 states in it's Title "Computation of time served by Prisoner". The Statute was , like SCDC Asserted, was amended to say and may be given for any time spent under Monitored House Arrest." However what the Respondent here does not want to talk about is this :

1. WHO DOES THE COMPUTATION OF TIME SERVED ; and
2. HOW IS THIS COMPUTATION TO BE DONE ?

It is crystal clear, that once the Court gives a criminal Defendant his Sentence. They Remand to Individual to the Department of Corrections, Where they (SCDC) imputes an Offenders Sentence into their system. Which the Appellant would contend that S.C. Code Ann. § 24-13-40 speaks specifically to that entity that "Computes" time served by a prisoner.

Secondly, The question begs, How is this "Computation" is to be computed. South Carolina Code dealing with the computation (§ 24-13-100 thru 210) i.e. application of both Goodtime, Work, and Eduational Credits specifies a "Month-by-Month" accumilation. Specifically, A "No Parole Offender" or "85%" is to receive 3 days for every month served of Goodtime, when an Offender is not subject to disciplinary for misbehavior. Productive Duty Assignment or Work Credits are to likewise be awarded on a "Month by-Month" basic for up to 6 days for every month so employed or enrolled. Therefore, This process or application is an ongoing process. Where it is undisputed that Appellant served 17 months on Monitored House Arrest (From April 3 2000 until August 9 2001), Finality has not attached and it is the Department Statutory obligation to comply with that State Statute.

CONCLUSION

Based on the forgoing, The Appellant **Prays** that this Court either /or 1) **REVERSE AND REMAND** THE Aministrative Law Court's decision that 1) That the Department of Corrections is to award Appellant his 17 months while spent on Monitored House Arrest because § 24-13-40 is instructive to SCDC and they should comply, when it has been ascertained that an Offender has **((MAY)** time to

credit while spent under Monitored House Arrest. and/or 2) **REVERSE AND REMAND** THE Administrative Law Courts decision and require SCDC to award Appellant's his Goodtime for time he spent while under Monitored House Arrest, as S.C. Code Ann. § 24-13-100 thru 210 directs the Department of Corrections in the application of these credits. or any other remedy that this Court deems just and proper.

Respectfully, Submitting,

Jimmy D. Meggs Jr.

PROOF OF SERVICE

I Ceritfy that I have served a copy of my Reply Brief of Appellant on Respondent's Counsel of Record: South Carolina Department of Corrections, Office of General Counsel, Christina Catoe Bigelow, Esquire, P.O. Box 21787, Columbia, SC 29221-1787 by depositing the same in the United States Mail, Postage Prepaid on this:

This 18th Day of June 2017.

Jimmy D. Meggs Jr.
TCI SA-227B
1578 Clarence Coker Hwy.
Turbeville SC 29162

SERVED:

REPLY BRIEF

CONSENT ORDER REGARDING CREDIT FOR TIME SERVED

(59)

Law Office of Leah B. Moody, LLC

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Lbmatty@comporium.net

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Telephone (803) 327-4192
Facsimile (803) 329-1344

October 10, 2016

The Honorable Thomas Russo
180 North Irby Street, MSC-O
Florence, SC 29501-3456

Re: Shannon C. Bogan, #340771, v. State of South Carolina
C.A. No.: 2014-CP-42-4025
Indict. No.: 2012-GS-42-784

Dear Judge Russo:

Please find enclosed a **Consent Order Regarding Credit for Time Served** in the above-referenced matter. In this matter, you sentenced Mr. Bogan and gave him credit for time served according to the transcript. Apparently, SC Departmental of Corrections needs to be directed to provide the credit. Enclosed, I am providing the proposed Consent Order, a copy of the transcript and sentencing sheeting.

If you are inclined to execute the Consent Order, please do so and return the Order back to my office in the enclosed self-address envelope. I will make copies and file it with the Spartanburg Clerk of Court.

By copy of this letter, I am providing Alicia Olive, Esquire, of the South Carolina Attorney General's Office.

Thank you for your assistance in this matter.

Sincerely,

Leah B. Moody

Enclosures
cc Shannon Bogan
Alicia Olive, Esquire, SC Attorney General's Office
M. Hope Blackley, Spartanburg Clerk of Court, Civil Division

STATE OF SOUTH CAROLINA **COUNTY OF SPARTANBURG**	**IN THE COURT OF GENERAL SESSIONS** **SEVENTH JUDICIAL CIRCUIT**
The State of South Carolina,	**INDICTMENT: 2012-GS-42-784**
vs.	
Shannon C. Bogan,	**CONSENT ORDER REGARDING CREDIT FOR TIME SERVED**
Defendant	

1. WHEREAS, Shannon Bogan was served with warrants M754593 for Trafficking Ice, Crank, or Crack on or about June 27, 2011. On August 3, 2011, Shannon Bogan was placed on GPS monitoring until trial and released on a $55,000 surety bond. During this time he served approximately 483 days in home detention through GPS monitoring.

2. WHEREAS, on February 3, 2012, Shannon Bogan was indicted for this incident under indictment number 2012-GS-42-0784 for Trafficking in Cocaine Base.

3. WHEREAS, on November 28, 2012, the Defendant entered a guilty plea to indictment 2012-GS-42-784. At the plea, this Court ordered credit for "all the time that you have served up to this point, and that would include whether it was actually in the detention center or if it was home detention. But if it was detention that was associated with this charge, then you're to be given, you're to be given credit for it." (Plea Tr. p. 17, ll. 16-21.)

4. WHEREAS, it is clear that the defendant was incarcerated on these charges

(61)

for 483 days originally (August 3, 2011, through November 28, 2012) prior to his guilty plea.

5. WHEREAS, the parties agree that the Defendant should be given credit towards his sentence for the 483 days he served in jail prior to his guilty plea.

IT IS HEREBY ORDERED, with the consent of both parties, that Shannon Bogan shall receive pre-trial incarceration credit towards his sentence on Indictment 2012-GS-42-784 in the amount of 483 days.

IT IS SO ORDERED

_____
Thomas A. Russo
Seventh Circuit Court of General Sessions

_____, South Carolina.
_____, 2016

I CONSENT:

Leah Moody
Attorney for Defendant (PCR Counsel)
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I CONSENT:

Eddie Hunter
Assistant Solicitor
Seventh Circuit Solicitor's Office