

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Eugene Carpenter,

Plaintiff,

v.

South Carolina Department of Corrections
and the State of South Carolina,

Defendants.

(Our File No.: 5021.01216)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06916

**ORDER FOR JUDGMENT IN FAVOR
OF THE SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS**

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RICHLAND COUNTY

Plaintiff brought this declaratory judgment action and petition for writ of habeas corpus asserting he was being detained after the expiration of his sentence and should be immediately released from the custody of the South Carolina Department of Corrections (“SCDC”). A hearing was held in which the parties agreed the facts were undisputed and each party put forth their respective legal arguments as to the merits. After reviewing the documents submitted with the Court and hearing arguments of counsel, the Court now denies the relief sought by Plaintiff.

BACKGROUND

Plaintiff is currently confined in the Evans Correctional Institution of the South Carolina Department of Corrections. Plaintiff filed a Summons and Complaint for Declaratory Relief and Petition for Writ of Habeas Corpus on November 18, 2016. Plaintiff immediately thereafter filed a Motion captioned “Petition for Writ of Habeas Corpus (Expedited).” Service of the documents were accepted by SCDC on November 23, 2016. On December 23, 2016, the undersigned filed and timely served a pre-Answer Motion to Dismiss the action. On February 16, 2017, Defendant filed and served a Memorandum in Opposition to Plaintiff’s Petition.

Defendant’s motion to dismiss was initially heard by Judge Casey Manning on February 16, 2017. Judge Manning issued an Order providing that the State of South Carolina be made a

party to the action for the purposes of defending the claim concerning Plaintiff's original sentences.

Plaintiff subsequently served a copy of the Amended Summons, Petition/Complaint and Judge Manning's Order on the State of South Carolina ("State"). On or about March 31, 2017, the State filed and timely served a Return and Motion to Dismiss. On April 6, 2017, a hearing was held before Judge Jean Toal on the motions to dismiss filed by the Defendants. Judge Toal orally denied the motions. However, the written Order denying the motions was not filed until April 25, 2017, at which time a copy of the Order was e-mailed to counsel by the clerk's office. The Order first provided that Defendants would have fifteen (15) days to file Answers. However, the last sentence of the Order stated that Defendants would have fifteen (15) days from the date of the hearing (April 6, 2017) to file Answers and a merits hearing would be scheduled immediately thereafter.

Plaintiff requested a merits hearing with the Chief Administrative Judge on April 11, 2017, which was noticed on April 19, 2017, prior to the Answer deadlines set forth in the Order or pursuant to Rule 12(a), SCRCF.

On April 28, 2017, the State filed and served an Amended Return. On May 10, 2017, Defendant SCDC filed and served its Answer and Motion to Bifurcate one (1) issue to be tried at a later date. On May 12, 2017, Plaintiff e-mailed a copy of his Motion for Entry of Default against Defendants and Motion for Summary Judgment.

A bench trial was convened on June 7, 2017. Prior to the start of the trial, the Court took up the pending motions to bifurcate, entry of default, and summary judgment. Defendant SCDC withdrew the motion to bifurcate. The motion for entry of default was denied, with the consent of the parties, as the facts are not in dispute and the Plaintiff still has the burden of proof against

the State and state agency pursuant to Rule 55(e), SCRPC. As a bench trial was held, the motion for summary judgment is moot and, therefore, is denied.

FACTS

The Plaintiff was indicted in November 1989 by the State Grand Jury for conspiracy to traffic marijuana and conspiracy to traffic cocaine; Plaintiff pled guilty to the charges. Plaintiff was later sentenced to confinement for a period of twenty-five (25) years for conspiracy to traffic in marijuana and an additional twenty-five (25) years for conspiracy to traffic in cocaine. Plaintiff was offered a plea deal in which his cooperation with pending investigations would allow him to serve these sentences concurrently. However, Plaintiff ultimately failed to cooperate and the sentences were ordered to run consecutively. Since Plaintiff's sentencing, he has appealed his sentences and conviction through numerous courts and causes of action. Each court has upheld both his conviction and sentence.

Plaintiff's present arguments for the abrogation of his sentence is as follows:

- 1) That his due process rights were violated when SCDC administratively corrected a computer error that listed an incorrect "projected max-out date" for Plaintiff;
- 2) That his due process rights were violated when SCDC removed earned credits from Plaintiff's sentence; and
- 3) That Plaintiff should receive earned credits because a co-conspirator who was sentenced under the same statute as Plaintiff received credits and, therefore, Plaintiff contends he is receiving disparate treatment.

This Court now holds that (1) SCDC did not violate Plaintiff's due process rights when it corrected the "projected max-out date," (2) Plaintiff had no due process rights in work credits because his sentence did not allow for him to earn such credits, (3) even if SCDC had violated

Plaintiff's due process rights, the procedure and redress Plaintiff sought is improper and Plaintiff failed to appeal his SCDC's administrative decisions, (4) there was no disparate treatment as the Plaintiff is statutorily prohibited from receiving credits on his sentence, and (5) habeas corpus against SCDC is improper.

A. DUE PROCESS RIGHTS

1) Plaintiff's sentence was not recalculated from SCDC's initial determination and, therefore, there is no right to notice or judicial review.

“Under both our state and federal due process clauses, no person shall be deprived of life, liberty, or property without due process of law.” *Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014) citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Id.* The *Tant* court determined that “the length of an inmate’s incarceration implicates a constitutional liberty interest” which requires compliance with due process requirements. *Id.* As result, the *Tant* court held that “. . . whenever the [SCDC] alters an inmate’s sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing.” *Id.* 408 S.C. at 342, 759 S.E.2d 401.

As an initial matter, unlike the facts set forth in *Tant*, the sentencing sheets in the present action are unambiguous. The record clearly reflects that in case 90-GS-47-05002, Plaintiff was sentenced on June 4, 1990, to twenty-five (25) years incarceration to run concurrently with a federal sentence that Plaintiff was serving at that time. [Petition, Exhibit D]. Concerning case 90-GS-47-05001, Plaintiff was sentenced on August 9, 1990, to twenty-five (25) years incarceration to run consecutively to the sentence on 90-GS-47-05002. [Petition, Exhibit F].

Accordingly, the facts giving rise to the *Tant* holding, namely, that SCDC interpreted ambiguous sentencing sheets which resulted in an increased sentence without providing the inmate notice and the right to judicial review, are not present in this action. *See Tant*, 408 S.C. 342, 759 S.E.2d 402 (stating “. . .[SCDC] is generally confined to the face of the sentencing sheets in determining the length of a sentence . . .”)¹

It is true that if the SCDC alters an inmate’s sentence in its records, it must give the inmate formal notice of the change and advise him of his right to file a grievance and obtain a hearing. *Tant*, 408 S.C. at 337, 759 S.E.2d at 399. However, in Plaintiff’s case, SCDC did not alter Plaintiff’s sentence. SCDC made a clerical adjustment to the “projected max-out date” to accurately reflect the unambiguous sentencing sheet and to match the sentence already listed in his records. [Petition, Exhibits I-Q (all providing the following information: total sentence 50 years, current sentence 50 years, current sentence start date 4/7/90)]. Plaintiff has failed to meet his burden in demonstrating he was entitled to notice of the change in the projected max-out dates and judicial review as there was no change in the sentences, as evidenced by the above records, and there was no testimony regarding what effect, if any, the “projected max-out date” has. *See Tant*, 408 S.C. at 346, 759 S.E.2d at 405 (stating “[SCDC] must provide an inmate with timely, formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain a hearing”).

Plaintiff’s sentence was not unilaterally altered by SCDC at any point in time and the sentence correctly reflects that which was imposed on the two (2) unambiguous sentencing sheets and as such, Plaintiff has suffered no due process violations.

¹ Moreover, Plaintiff’s own application for habeas corpus filed in federal court in 2002 states, “[l]ength of sentence 25 years & 25 years (50 total)[.]”

2. Plaintiff is not entitled to receive sentence credits.

Plaintiff alleges that he was deprived of his liberty when SCDC removed good time and work related credits from his sentence. [Plaintiff's Memorandum in Support Section II]. The evidence before the Court shows Plaintiff was sentenced pursuant to S.C. Code §§ 44-53-370(e)(1)(d) and 44-53-370(e)(2)(e). [Complaint, Exhibit U]. At the time of Plaintiff's sentencing, both statutes provided for "mandatory minimum" terms of imprisonment of not less than twenty-five (25) years, "no part of which may be suspended nor probation granted" *Id.*

As there was no credible evidence presented at trial to counter the facts presented in Exhibit U, Plaintiff has failed to prove it was in error for SCDC to remove all credits from his sentence.

To the extent Plaintiff alleges it was a violation of his due process rights to remove the credits, the argument fails as set forth in section 3 of this Order.

3. Plaintiff's due process rights were not violated.

Assuming *arguendo* that the ministerial change in Plaintiff's "projected max-out date" could be construed as a change in Plaintiff's sentence calculation, Plaintiff was provided notice, the opportunity to file an institutional grievance, and the right to judicial review.² Additionally, with regard to any allegation that Plaintiff's due process rights were violated with regard to the removal of his sentence credits, Plaintiff has failed to show substantial prejudice.

The proper procedure for appealing sentence calculations, including sentence credits, is through SCDC's internal grievance procedure. *Al-Shabazz v. State*, 338 S.C. 354, 376, 527 S.E.2d 742, 749 (2000). Once SCDC makes its final decision, the inmate has the right, in certain

² See Tant, "[t]he inmate who is allegedly aggrieved by an ambiguous sentence can, if he chooses, seek judicial review *through the grievance process* and thus, "the interpretation of the unclear sentence" would be "made by a judicial officer." 408 S.C. at 342 n.3, 759 S.E.2d at 401 (emphasis added).

cases, to appeal the final decision to the State Administrative Law Court (“ALC”) and thereafter to the South Carolina Court of Appeals and Supreme Court. *Id.* at 754. The ALC has jurisdiction over all inmate grievance appeals that have been properly filed. *Slezak v. SCDC*, 361 S.C. 327, 605 S.E.2d 506, 507 (2004).

Plaintiff was already afforded the opportunity to challenge the claims of lack of due process concerning the “projected max-out date” and sentence credits. Plaintiff properly filed his Step 1 grievance and Step 2 appeal through SCDC’s internal grievance system as evidenced by the grievances submitted by Defendant SCDC as exhibits at trial. Both were answered in full by SCDC and included explanations of the statutes under which he was sentenced and why he was not entitled to work and goodtime credits.³ The Step 1 response dated December 9, 2013 stated the warden found “no error in the calculation of [the inmate’s] Max-out date” as he was serving mandatory twenty-five (25) year sentences consecutively. The Step 2 response stated that no part of the sentence could be reduced with credits. Plaintiff was informed of his right to appeal these decisions to the ALC; he failed to do so within the permitted thirty (30) day period (or at anytime based upon the lack of such a filing in the record). As such, Plaintiff failed to timely appeal the issue and it is now time barred.

To the extent that Plaintiff may be owed due process concerning his sentence calculation, Plaintiff was afforded notice, the right to file a grievance and an opportunity for judicial review of SCDC’s decision; he chose not to seek such judicial review. Plaintiff cannot allege a due process claim for his own failure to avail himself of the right to judicial review of the agency’s decision by failing to timely appeal that decision to the ALC.

4. Plaintiff did not suffer disparate treatment.

³ Plaintiff is not entitled to goodtime or work credits under the statutes he was sentenced.

Plaintiff contends he suffered disparate treatment with regard to the removal of his sentence credits because other inmates received said credits.

“The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination. *King v. Rubenstein*, 825 F.3d 206, 220 (4th Cir. 2016) (internal citation omitted). “To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination.” *Id.*

In the present case, the record reflects that in 2010, SCDC discovered by happenstance that its computer system was not programmed to capture inmates who were being processed with twenty-five (25) year day-for-day sentence for trafficking cocaine. [Plaintiff's Trial Exhibit D]. When it was determined that some inmates' sentences were not correctly reflecting the mandatory minimum, an audit was performed of inmates serving time for these offenses; Plaintiff was one of those inmates. [*Id.*]. While Plaintiff's sentence was corrected in 2011 to account for the day-for-day requirement by removing credits, his co-conspirator's sentence was not corrected. The record reflects that the co-conspirator was released from SCDC prior to the program update. Moreover, the co-conspirator's sentence was never entered as day-for-day, and he received credits as a result. [*Id.*].

Based upon the record, there is no evidence that Plaintiff's treatment with regard to the removal of his credits was a result of intentional or purposeful discrimination. Rather, it was a result of an oversight that was subsequently corrected after the co-conspirator's release from SCDC. Accordingly, Plaintiff has failed to prove a violation of the equal protection clause.

Based upon the information set forth above, Plaintiff's request for declaratory judgment is denied and judgment is rendered in favor of SCDC.

B. HABEAS RELIEF

SCDC is not the proper party to a habeas petition and this Court is not the proper venue for such relief. The South Carolina Supreme Court has held, "that a matter which is cognizable under the [Uniform Post-Conviction Procedure] Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts." *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). In order for a writ of habeas corpus to be issued, there must be a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990). The South Carolina Constitution allows suspension of the writ of habeas corpus only in cases of insurrection, rebellion or invasion, or as the public safety may require it. S.C. Const. Art. I, § 18. However, "our action today does not suspend the writ, but merely curtails its use to those situations where the Act would not be applicable." *Simpson*, 329 S.C. at 46-47.

Additionally, habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors for which a criminal defendant had an opportunity to avail himself. *Id.* Habeas corpus is available only when other remedies, such as PCR, are inadequate or unavailable. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). A person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application. *Keeler v. Mauney*, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5.

As these claims could be raised under a PCR application, they are procedurally barred and as such, the only avenue through which Plaintiff can file a petition for a writ of habeas corpus is in the original jurisdiction of the Supreme Court.

On the merits, Plaintiff is not entitled to relief for the grounds set forth in the Court's ruling on the claims for declaratory relief.

CONCLUSION

IT IS ORDERED THAT the Plaintiff's Petition and Complaint are DENIED and this action is forever ended with prejudice.

IT IS SO ORDERED.

Re Hood

ROBERT E. HOOD
Circuit Court Judge, Fifth Judicial Circuit

~~July~~ ^{Sep} 12, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-06916

Charles Eugene Carpenter

South Carolina Department of Corrections ~~and
the State of South Carolina~~

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

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SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Kel Hood
Circuit Court Judge

2164
Judge Code

9/14/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Dara Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

Damon Wlodarczyk, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT
Jeanette W. McBride

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

