

Designation of Matter to be Included in the Record of Appeal

The State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Milton G. Kimpson, Judge ALC

Case No. 2017-002628

James Wesley Patterson # 296129

VS

SCDC, Respondent

RECEIVED

MAR 08 2018

SC Court of Appeals

Appellant proposes the following to be included
in the Record of Appeal

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD OF DUE PROCESS HEARING
3rd Offense Drug Offenders

TO INMATE: James Attkisson SCDC #: 296129
INSTITUTION: Rirkland CI

SCDC General Counsel's recent interpretation of S.C. Code § 44-53-0370 and § 44-53-375, in conjunction with Bolin v. South Carolina Department of Corrections, is that inmates convicted of 3rd offense drug offenses are to be treated as 85% offenders unless all of the offender's prior drug offense are for simple possession under the same subsection (either § 44-53-0370 and § 44-53-375). If an offender has prior drug convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, he or she must be treated as an 85% offender on the 3rd or subsequent offense.

The Inmate Records Office has been informed that because of your prior conviction (s) for Manufacturing, Distribution, Possession with Intent to distribute, or Conspiracy, your current sentence of a 3rd or Subsequent Drug Offense should be calculate at 85%.

Your new projected dates are:

Projected Maxout Date: 5/23/2024 Projected Parole Date: N/A

If you provide additional information to counter this interpretation, that information will be forwarded to the SCDC General Counsel's office for review and necessary action (if warranted).

You have the right to appeal this decision by filing an inmate grievance pursuant to SCDC Policy GA-01.12, "Inmate Grievance System".

Classification Case Manager/Designee (Print Name): Rochelle Fogle

Signature: [Signature]

Inmate Signature: James Patenz Date: 1-2-17 Time: 11:47am

Original: Central Record
cc: Institutional Record
Inmate

Revised 1/30/17

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

B2.
5*

STEP 1

INMATE NAME: <u>James Wesley Peterson</u>	OFFICE USE ONLY
SCDC NUMBER: <u>296129</u>	Grievance No. <u>KC10300-17</u>
INSTITUTION: <u>LCI</u>	Code: General _____
HOUSING UNIT: <u>B2-15</u>	Policy _____
WORK ASSIGNMENT: <u>CIU</u>	Disc. Hear. _____
	Class. <u>CL CL</u>
	PREA _____
	Date Received <u>3/19/17</u>
	IGC Initials <u>JP</u>

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 was notified/informed face to face on February 2, 2017 by classification case manager Keisha Fogle that my time has gone back to 85% and is no longer 65%, which with work credits and good time would be 51%. She said my max out date was no longer October, 2019 but is now May, 2024. She also said I no longer have a parole date. She said this is because of SCDC General Counsel's recent interpretation of S.C. Code 44-53-370 and S.C. Code 44-55-37. She gave me the South Carolina Department of Corrections Record of Due Process Heavy 3rd offense Drug offenders form, which I have attached to this grievance and said I could use this to file my grievance.

I disagree with SCDC General Counsel's interpretation of the law. The law states I am eligible for parole, work credits, good time, work release and should be doing 65%, which would be 51% with work credits and good time. Please correct this?

James W. Peterson 3-7-17
Grievant Signature Date

ACTION REQUESTED: I want my time converted back to 65% which would be 51% with work credits and good time. I also want my parole date back and to be eligible for work release. The way the law says. My max out date should be October, 2019 and that is what it needs to be

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Please see Warden's Response

H. G. [Signature] 3/31/17
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

RECEIVED
 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 INMATE GRIEVANCE FORM

Due 4/15/17

STEP 2

INMATE NAME: James Wesley
 SCDC NUMBER: 296129
 INSTITUTION: KCT ✓
 HOUSING UNIT: B2-15
 WORK ASSIGNMENT: CIU

DIVISION OF CLASSIFICATION
& INMATE RECORDS

Office Use Only
 Grievance No. KCI 300-17
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class. CLCL
 Date Received 4/12/17
 IGC Initials JW

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

I was notified/informed face to face on February 2, 2017 by classification case manager Kisha Fogle that my time has gone back to 85% and is no longer 65%, which with work credits and good time would be 51%. She said my max out date was no longer October, 2019 but is now May, 2024. She also said I no longer have a parole date. She said this is because of SCDC General Counsel's recent interpretation of SC Code 44-53-370 and SC Code 44-53-375. She gave me the South Carolina Department of Corrections Record of Due Process hearing 3rd offense drug offenders form, which I have attached to this grievance and said I could use this to file grievance.

I disagree with SCDC General Counsel's Interpretation of the law. The law states I am eligible for parole, work credits, good time, work release, ~~and~~ and should be doing 65%, which work be 51% with work credits and good time. Please correct this?

James W. Peterson 4-11-17
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that on February 2, 2017, you were informed by SCDC Staff from Central Classification that your time had gone back to 85% and is no longer 65% which with work credits and good time would be 51%. You further stated that you were informed that your maxout date was changed from October 2019 to May 2024. You finally stated that such changes were as a result of SCDC General Counsel's recent interpretation of SC Code 44-53-3710 and SC Code 44-53-375. The Warden responded to your concern on SCDC 10-5, Step 1 Inmate Grievance Form dated March 31, 2017. Your request that your time be restored cannot be accommodated. SCDC Staff are guided by laws and regulations that it may not revise. The interpretation provided by SCDC General Counsel is based upon relevant laws, judicial decisions and regulations.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Jethro D. [Signature] 5/9/17
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

James W. Peterson 6-14-17
 Grievant Signature Date

[Signature] 6-14-17
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD
STATE JAMES VS. WESLEY PATTERSON
AKA:
Race: W Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip
DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 02 -GS- 24 - 294
AW#: ON INFO
Date of Offense: 12-23-0
S.C. Code §: 44-53-375
CDR Code #: 1 1 1
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment, comes now the Defendant who was CONVICTED OF or PLEADS TO: Possid Methamphetamine 1st off. (0-15 yrs.)
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 011112
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor Jane W. Patterson Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center for a determinate term of 01 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 02 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
 set by SCDPPPS

SPECIAL CONDITIONS:

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient: Nancy L King Abbeville
*Fine:
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Asspsment) \$40/ea \$
3% to County (if paid in installments) \$ 6.75
TOTAL \$ 331.75

Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

Court Reporter: Nancy Young OC
PRESIDING JUDGE W. Jambor
Judge Code: 01 11 15
Sentence Date: 08 Sept 2003

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
James Patterson)
 AKA: _____)
 Race: W Sex: M Age: 32)
 DOB: _____ SS#: _____)
 Address: _____)
69)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2004GS2306531
 A/W#: H578785
 Date of Offense: 06-05-2004
 S.C. Code § : 44-53-0375(B)(1)
 CDR Code #: 0112

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE 1st OFFENSE

in violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
James Monte Solicitor
James W. Patterson Defendant
[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ GR. paid to Public Defender Fund
 Other: DETENTION CENTER - RECORDS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100 \$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ <u>100</u>
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea	\$
3% to County (if paid in installments)	\$
TOTAL	\$

CERTIFIED COPY
[Signature]
 Appointed PD or appointed other counsel. §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Paul B. Wickens
 Clerk of Court/ Deputy Clerk
 Court Reporter: T. Johnson

PRESIDING JUDGE [Signature]
 Judge Code: 21 13 15
 Sentence Date: 3-15-07

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
James Wesley Patterson
AKA:
Race: WHITE Sex: M Age: 38
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2011GS2309776
A/W#: J993003
Date of Offense: 8/16/2011
S.C. Code §: 44-53-0375
CDR Code #: 3200

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: manufacture methamphetamine 3rd offense

CONVICTED OF or PLEADS

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3200
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Joyce K. Monts, SC Bar# 65331
Defendant
Attorney for Defendant (6535) SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 160 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: Attu

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensamer
Court Reporter: A. Heron
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2137
Sentence Date: 6-12-13

2962

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. James Wesley Patterson

INDICTMENT/CASE#: 2011GS2309775

A/W#: J993004

Date of Offense: 8/16/2011

S.C. Code § : 44-53-0375 (A)

CDR Code #: 3016

AKA:
Race: Sex: Age:
DOB: SS#
Address:
City, State, Zip:
DL#: SID#

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: possession of methamphetamine 3rd offense

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3016
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST: Joyce Monts, 65331 SC Bar# Defendant; Attorney for Defendant; SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2011-GS 23-9776
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Handwritten signature of Presiding Judge

Presiding Judge

Judge Code: 2137

Sentence Date: 6-12-13

Clerk of Court/ Deputy Clerk Paul A. Wickens

Court Reporter: A. Herra

SCCA/217 (03/2011)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James Wesley Patterson, #296129,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of)
 Corrections,)
)
 Respondent.)

Docket No. 17-ALJ-04-0362-AP

ORDER AFFIRMING DECISION

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by James Wesley Patterson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals the Department's decision regarding his Step 2 Grievance, which affirmed that his current sentence should be calculated at eighty-five (85) percent of his original term of imprisonment pursuant to S.C. Code Ann. §§ 44-53-370 (Supp. 2016) and 44-53-375 (Supp. 2016). On July 6, 2017, Appellant filed a Notice of Appeal with this Court challenging the Department's decision.

Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

BACKGROUND

On June 12, 2013, Appellant pled guilty in General Sessions Court to Manufacturing Methamphetamine, Third Offense, in violation of S.C. Code Ann. § 44-53-375(B); and to Possession of Methamphetamine/Cocaine Base, Third Offense, in violation of S.C. Code Ann. § 44-53-375(A).¹ He was sentenced for a term of 160 months imprisonment for the Manufacturing Offense (§ 44-53-375(B)(3)) and ten years imprisonment for the Possession Offense, to run concurrently. Appellant had been previously convicted of the following methamphetamine and/or cocaine base offenses: (1) September 8, 2003, Possession of Methamphetamine with Intent to Distribute pursuant to Section 44-53-375; (2) November 10, 2005, Possession of

¹ As will be explained below, Appellant's § 44-53-375(B) conviction is characterized as a "no parole offense."

9

FILED
D
7
2017

Methamphetamine/Crank, pursuant to Section 44-53-375(A); and, (3) March 15, 2007, Possession of Methamphetamine/Cocaine with Intent to Distribute under Section 44-53-375(B)(1).²

On February 2, 2017, Keisha Fogle, a classification case manager for the Department, convened a Due Process Hearing to inform Appellant of the following:

South Carolina Department of Corrections General Counsel's recent interpretation of SCDC Code 44-53-0370 and 0375, which I just gave you a copy of, in conjunction with *Bolin v. South Carolina Department of Corrections*, is that inmates convicted of 3rd offense drug offenses are to be treated as 85% offenders unless all the offender's prior drug offenses are for simple possession under the same subsection. If an offender has prior drug convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, he or she must be treated as [an] 85% offender on the 3rd or a subsequent offense. The Inmate Records Office has been informed that because of your prior conviction or convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, your current sentence of a 3rd or subsequent drug offense should be calculated at 85%. Your new projected date...Maxout date is May 23rd, 2024.

Thereafter, Appellant filed a Step 1 grievance form, contending that the Department misinterpreted Section 44-53-375(B) and incorrectly calculated his projected release date by requiring him to serve eighty-five (85) percent of the imposed sentence.³ The Warden denied his grievance. ~~Appellant then filed a Step 2 grievance form, which was also denied. This appeal ensued.~~

ISSUE ON APPEAL

Did the Department incorrectly calculate Appellant's release date by requiring him to serve eighty-five (85) percent of his sentence for his conviction of Manufacturing Methamphetamine, Third Offense, before becoming eligible for work credits, good-time, educational credits, or work release?

² These offenses are reported on the prior conviction summary from the SCDC Offender Management System contained in the Record on Appeal (Record), filed September 19, 2017. On November 8, 2017, the Court ordered the Department to supplement the Record with the sentencing sheets for Appellant's §44-53-370 and §44-53-375 offenses. The Department complied on November 16, 2017.

³ According to Appellant's brief, he determined that his previous max out date was set to occur in October 2019.

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). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382, 527 S.E.2d at 757. "The only way for the [ALC] to obtain subject matter jurisdiction over [an inmate's] claim is if it implicates a state-created liberty interest." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). Because Appellant contends that the Department incorrectly calculated his sentence, the ALC has jurisdiction pursuant to *Al-Shabazz* to decide this matter.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Al-Shabazz*, 338 at 377. 527 S.E.2d. at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). ~~Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless~~ substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary, or affected by an error of law. *See Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 136-37, 522 S.E.2d 605, 607 (Ct. App. 1999); *see also S.C. Dep't. of Lab., Licensing and Reg. v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant contends that the Department erred in calculating his sentence by requiring him to serve eighty-five (85) percent of the sentence imposed for his June 12, 2013, conviction for

Manufacturing Methamphetamine, Third Offense, in violation of S.C. Code Ann. § 44-53-375 (B), before he is eligible for work credits, good-time, educational credits, or work release.⁴ The Court disagrees. A review of the relevant statutes and Appellant's prior convictions supports the Department's determination that he is required to serve eighty-five (85) percent of his sentence before becoming eligible for the various sentence credits.

As a preliminary matter, the eligibility of persons convicted of no-parole offenses for early release, discharge, or community supervision is addressed in S.C. Code Ann. § 24-13-150(A) (Supp. 2016), which states:

Notwithstanding any other provision of law...an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

(emphasis added).

S.C. Code Ann. § 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses."⁵ S.C. Code Ann. § 16-1-20 entitled "Penalties for classes of felonies" provides that a person convicted of a Class A felony must be imprisoned not more than 30 years. *See also Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 279, 781 S.E.2d 914, 915 (Ct. App. 2016), reh'g denied (Feb. 24, 2016) (finding "Whether a felony is a Class A, B, or C felony depends on the maximum sentence for the felony—a Class A felony is a felony punishable by not more than thirty years.") A person convicted of a "no-parole" offense is not eligible for early release, discharge, or community supervision until he serves at least eighty-five percent of the actual term of

⁴ This Court has previously addressed analogous arguments advanced by Appellant in the context of whether he was entitled to parole for his June 12, 2013, conviction for Manufacturing Methamphetamine, Third Offense, in violation of S.C. Code Ann. § 44-53-375. *See Patterson, #296129 v. S.C. Dep't. of Probation Parole and Pardon Serv.* ALC Docket No. 16-ALJ-15-0038-AP (Jan. 23, 2017). That case, decided adversely to Appellant, is currently on appeal with the South Carolina Court of Appeals (Appellate case number 2017-000486).

⁵ Offenses classified as Class A, B, and C felonies are listed in S.C. Code Ann. § 16-1-90.

imprisonment imposed. S.C. Code Ann. § 24-13-150(A). Furthermore, at least three additional consequences attach to a conviction of a “no-parole” offense: (1) no-parole offenders are given significantly less credits for good conduct, work, or education than other offenders; (2) no-parole offenders are required to participate in a community supervision program before their sentences are considered completed; and, (3) no-parole offenders are required to serve eighty percent of their sentences before they are eligible for work release. *Id.* at 281, 781 S.E.2d at 916.

In this case, Appellant’s June 12, 2013, conviction for Manufacturing Methamphetamine, Third Offense, in violation of Section 44-53-375(B)(3), is a Class A felony and is therefore characterized as a “no-parole offense” because this statute imposes a maximum sentence of thirty years. S.C. Code Ann. § 44-53-375(B)(3) (“for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.”)

However, on June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 became effective and modified the rules regarding “no parole offenses” for certain offenses involving controlled substances. *See Bolin*, 415 S.C. at 282, 781 S.E.2d at 917. S.C. Code Ann. § 44-53-375(B), the part of the sentencing statute under which Appellant was convicted, provides:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense ~~may have the sentence suspended and probation granted, and is eligible for~~ parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted. ⁶

The South Carolina Court of Appeals has construed this language added to Section 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010 to repeal Section

⁶ The relevant language was amended, effective June 2, 2010, by 2010 S.C. Act Number 273, Section 38. That amendment is construed in the recent *Bolin* case cited above. Because Appellant was sentenced on June 12, 2013, that amendment is relevant in this case. *See State v. Dawson*, 402 S.C. 160, 164, 740 S.E.2d 501, 503 (2013) (citation omitted). Section 44-53-375(B) was again amended by 2016 S.C. Act 154, Section 9. However, no changes were made to the language at issue here.

24-13-100 insofar as there is a conflict. *Bolin*, 415 S.C. at 282, 781 S.E.2d at 917 (“The legislature’s use of the phrase ‘Notwithstanding any other provision of law,’ in the amendments to sections 44-53-375 and 370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370.” (emphasis in original)). The holding in *Bolin* is very specific and does not repeal Section 24-13-100 in all applications of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which amended Section 44-53-375. The “notwithstanding any other provision of law” language repeals Section 24-13-100 as applied to a second offense under subsection (B). *See Bolin*, 415 at 286, 781 S.E.2d at 919 (holding that a second offense under section 44-53-375(B) is no longer a no-parole offense); *see also* S.C. Code Ann. § 44-53-375(B) (“Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have his sentence suspended and probation granted.”) However, the instant case is distinguishable from *Bolin* as Appellant’s conviction involves a third offense, not a second offense. Although similar “notwithstanding any other provision of law” language appears in the operative sentence of § 44-53-375(B) addressing third offenses, unlike for a first or second offense under this Section, its effect to repeal § 24-13-100 is limited. For a third or subsequent offense of § 44-53-375(B), § 24-13-100 is repealed to potentially allow sentence suspension, probation and eligibility “for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits,” only if all previous drug offenses have been for possession of a controlled substance under Section 44-53-375(A). Section 44-53-375(A) provides as follows:

A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

Section 24-13-100 still applies in all cases unless there is specifically expressed legislative intent to the contrary. *See Bolin*, 415 S.C. at 283, 781 S.E.2d at 917 (quoting *Strickland v. State*, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981)) (“Statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein.”) While the two sentences beginning with “Notwithstanding” in Section 44-53-375(B) express such an intent by the legislature, Appellant does not fall into the parameters set by either of those sentences —first or second offense, or third with only simple possession priors.

Conversely, the Record reveals that Appellant’s prior offenses are not limited to simple possession of a controlled substance under Section 44-53-375(A). To wit, Appellant’s conviction summary indicates that he has prior convictions for Possession of Methamphetamine with Intent to Distribute and Possession of Methamphetamine/Cocaine with Intent to Distribute. Accordingly, because all of Appellant’s prior offenses were not for possession of a controlled substance pursuant to Section 44-53-375(A), the no parole mandate of § 24-13-100 continues to apply such that § 44-53-375(B)(3) continues to be a no-parole offense. Thus, Appellant may not have his sentence affected by suspension, nor probation granted, and is not “eligible for parole, supervised furlough, ~~community supervision, work-release, work credits, education credits, and good conduct credits~~” until he serves at least eighty-five (85) percent of his original term of imprisonment.⁷ This result is required by the plain meaning of the statutory language and is consistent with *Bolin*. Therefore, the Department correctly determined that Appellant’s sentence should be calculated at eighty-five (85) percent. *See* S.C. Code Ann. § 24-13-150(A) (“an inmate convicted of a “no parole offense” as defined in Section 24-13-100...is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.”)

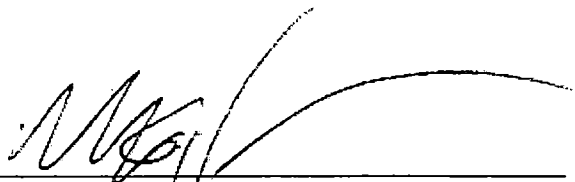
⁷ The General Assembly’s intent that the § 44-53-375(A) condition be met before a term of imprisonment for a third offense may be truncated in any manner is further clarified by the instruction contained in the last sentence of § 44-53-375(B) that “[i]n all other cases, the sentence must not be suspended nor probation granted.” The fact that “parole” is not specified in this final sentence is of no consequence given that where the § 44-53-375(A) condition is not met, § 24-13-100 continues to define an offense under § 44-53-375(B)(3) as a “no-parole” offense.

ORDER

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

AND IT IS SO ORDERED.


December 11, 2017
Columbia, South Carolina



Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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 11 day of December, 2017
By: 
Judicial Law Clerk

I certify that this designation contains no matter which is irrelevant to this appeal.

March 5, 2018

James Wesley Patterson
Anderson City Jail
401 South Main St
Anderson, S.C.

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SC Court of Appeals

Proof of Service

The State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Milton G. Kimpson, Judge ALC

Case No. 2017-002628

James Wesley Patterson # 296129, Appellant

vs

SCDC, Respondent

I certify that I have served a copy of the Record on Appeal on all parties by depositing a copy of it in the United States Mail Postage paid March 5, 2018 addressed to the S.C. Court of Appeals P.O. Box 11629, Columbia, S.C. 29211 and SCDC General Counsel P.O. Box 21787, Columbia, S.C. 29221

March 5, 2018

James Wesley Patterson

Anderson City Jail

401 South Main St.

Anderson, SC. 29624

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SC Court of Appeals

Christina Cathe Bigelow

I'm a state trustee at a designated facility, Anderson City Jail, I have no access to SC Rules of Court book or Law library I hope this designated mater is correct.

Sincerely

James Wesley Patterson

Anderson City Jail

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Anderson, S.C. 29624

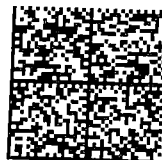
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