STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Perry D. Gilmore, #344879, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No. 17-ALJ-04-0597-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Perry D. Gilmore (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals the Department's denial of his Step 2 Grievance. Specifically, Appellant challenges several issues relating to the calculation of his sentence and sentence related credits. After careful evaluation, the Court denies Appellant's appeal in part, affirms the Department's decision in part, and remands for further consideration.[1]

BACKGROUND

On August 23, 2017, Appellant received sentences for the following: (1) a three-year sentence for Assault and Battery in the second degree beginning February 28, 2017; (2) a three-year sentence for Indecent Exposure beginning February 21, 2017; and (3) a one-year sentence for Hit and Run beginning February 17, 2017. All sentences were to run concurrently. Appellant received credit for time served against each of the sentences imposed on August 23, 2017. Specifically, Appellant received 176 days jail credit against his Assault and Battery in the second-degree sentence, 183 days jail credit against his Indecent Exposure sentence, and 187 days jail credit against his Hit and Run sentence.

[1] On June 18, 2018, Appellant filed a document entitled "Demand for Judgment" complaining that the Court had not issued a decision even though "[o]ver two (2) months has passed since the final brief was filed." Appellant's demand is mooted by the decision herein.

On September 5, 2017, Appellant filed a Step 1 Grievance asserting claims that his sentence had been incorrectly calculated and that he was entitled to sentence related credits. The Warden denied Appellant's grievance on September 25, 2017. Appellant then filed a Step 2 Grievance on September 27, 2017, which the Department also denied. Appellant filed his Notice of Appeal with this Court on December 4, 2017. This matter was assigned on December 7, 2017. Appellant thereafter timely filed his brief on December 12, 2017. On January 2, 2018, Appellant filed a document titled "Notice Grounds/Issues 2, 5, & The Goodtime & Education Parts Of Ground/Issue 4 On Appeal Have Been Resolved & Are Therefore Moot". On January 4, 2018, Appellant filed a document entitled "Declaration of Appellant."[2] The Department filed the Record on Appeal on January 24, 2018, and subsequently filed a Motion to Supplement the Record on March 22, 2018 (collectively "Record") that this Court granted on March 27, 2018. The Department timely filed its brief on March 22, 2018. Appellant filed a Reply Brief on April 6, 2018.

JURISDICTION/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 non-collateral or administrative matters 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 369, 527 S.E.2d at 750. In *Slezak v. S.C. Department of Corrections,* 361 S.C. 327, 605 S.E.2d 506 (2004), the South Carolina Supreme Court clarified that the ALC has subject matter jurisdiction to hear appeals from final decisions of the Department

[2] This document is a statement from Appellant attesting that he "worked" while at the Lexington County Detention Center during his period(s) of pretrial/sentence confinement. As an exhibit, Appellant attached another document entitled "LCDC Inmate Rules." This document was not contained with the Record on Appeal. On July 10, 2018, Appellant filed a Motion for Leave to Supplement the Record on Appeal in an attempt to add this information to the Record. Because there is no indication that this information was ever presented to, or considered by, SCDC personnel during the internal grievance process, Appellant's motion is denied. As such, the Court will not consider the" LCDC Inmate Rules." *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2017) (explaining that the Court's review must be confined to the record). Moreover, as will be explained below, the statute providing for earned work credits, S.C. Code Ann. § 24-13-230, does not, in this instance, allow Appellant credits for any work performed while in jail pending trial and sentencing.

in non-collateral or administrative matters. This Court has subject matter jurisdiction over Appellant's appeal because he complains about sentence calculation and other matters affecting his potential release from confinement. *See State v. Bennett*, 375 S.C. 165, 169-70, 650 S.E.2d 490, 492-3 (Ct. App. 2007) (distinguishing between an attack on the validity of a conviction or sentence and the enforcement of a sentence and finding that the latter is a non-collateral matter entitled to review under *Al-Shabazz*). Therefore, the Court will address Appellant's claims regarding sentence related credits and his eligibility for furlough.[3]

When reviewing the Department's final decision in a non-collateral or administrative matter, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754. Accordingly, the Court's review is limited to the Record presented. S.C. Code Ann. § 1-23-380(4) (Supp. 2017). Section 1-23-380(5) of the South Carolina Code (Supp. 2017) provides the standard used by appellate bodies to review agency decisions. That section states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (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.

[3] In his December 4, 2017, Notice of Appeal, Appellant lists seven grounds for appeal. By document captioned "Notice Grounds/Issues 2, 5, & The Goodtime & Education Parts of Ground/Issue 4 on Appeal Have Been Resolved & Are therefore Moot," filed January 2, 2018, Appellant notified the Court that he is no longer pursuing the issues listed in the caption. As such, this Court will not address the following: Appellant's issue 2 – credit for jail time prior to "[b]onding out on Hit & Run and Indecent Exposure"; issue 5 – credit for days spent in jail after arrest but prior to being served with warrants; and issue 4 to the extent it complains about good time and education credits he allegedly "earned" while in jail prior to sentencing. Furthermore, Appellant's Notice of Appeal asserts that he should have received credit for time out on bond (issue 1), that his sentence years should be counted based on a 360-day year instead of a 365-day year (issue 3), and that a disciplinary conviction for indecent exposure should not preclude him from earning "level 2 work and education credits" (issue 7). Appellant offers no legal argument(s) on these issues in his initial or reply brief. Consequently, the Court hereby deems the same to be abandoned. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.") (citations omitted).

Id.

The Court's review is governed by the substantial evidence standard. *See generally Hamm v. S.C. Pub. Serv. Commission,* 309 S.C. 295, 422 S.E.2d 118 (1992) (explaining that under the APA, the Court must sustain an agency decision if there is substantial evidence to support it). The South Carolina Supreme Court has observed that "[s]ubstantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." *Friends of the Earth v. Pub. Serv. Commission of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) (citation omitted). Thus, 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). "The burden is on [an] appellant[] to prove convincingly that the agency's decision is unsupported by the evidence." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008) (quoting *Waters v. S.C. Land Res. Conservation Commission*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

Additionally, legal questions validly raised are reviewed *de novo*. *See Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (citation omitted) ("Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below."). However, normally great weight is given to the agency's interpretations of the statutes it administers. *See Dunton v. S.C. Board of Examiners in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.").

DISCUSSION

I. The Court declines to dismiss Appellant's appeal based upon application of the SCALC Rules but denies Appellant's request for damages and oral argument.

As an initial matter, the Department asserts that Appellant's case should be dismissed because Appellant failed to follow SCALC Rule 60 regarding the format and content of his initial brief. While the Court declines to dismiss Appellant's case for this reason based upon SCALC Rule 62,[4] it should be noted that Appellant's initial brief was inadequate to the extent that it sought

[4] SCALC Rule 62 gives the presiding ALC Judge discretion to "[d]ismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, . . ."

to incorporate by reference statements made in his Notice of Appeal without offering any real legal argument or supporting authority for his assertions.[5] In his Reply Brief, however, Appellant does a credible job of setting forth cogent legal arguments supported by authority.

However, Appellant requests for damages and oral argument within his initial brief are denied. In his initial brief, Appellant seeks the following relief:

> De novo review, oral argument, all contrary cases overruled. 3-Judge Panel. Declaratory and Injunctive relief declaring what I've alleged violated(s) due process rights & ordering respondent to do [the] opposite, conform policy & award back & forward credits, $1 nominal damages for constitutional (const.) violations, $10,000 compensatory damages for const. violations. $10,000 punitive damages for const. violations. $10,000 for actual damages for gross negligence. $10,000 punitive damages for gross negligence. $10,000 exemplary damages for gross negligence.

This Court is without the statutory authority to award Appellant monetary damages of any kind for any reason. *See* S.C. Code Ann. §§ 1-23-300 *et seq.*; *see Sabb v. S.C. St. U.*, 350 S.C. 416, 567 S.E.2d 231 (2002) (explaining the trial courts have subject matter jurisdiction over tort claims). Additionally, the Court denies Appellant's request for oral argument pursuant to SCALC Rule 64.[6]

II. Appellant is not entitled to earned work credits for work performed prior to trial and/or sentencing.

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[5] In his initial brief, Appellant states that it "[w]ould be repetitive and superfluous" to set forth legal arguments he believes had already been made in the Notice of Appeal. Within his Reply Brief, Appellant cites Rule 10(c), SCRCP, for the proposition that incorporating the content of outside documents by reference is acceptable for pleading. To Appellant's credit, he did cite statutes and legal authority in his Notice of Appeal to support the grounds for appeal enumerated therein. However, Rule 10(c), SCRCP, is applicable in the trial courts of this state as well as in administrative contested case hearings but not in the appellate courts. *See* SCALC Rule 68 ("The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.") The Court is not aware of a comparable rule under either the South Carolina Administrative Law Court Rules of Procedure (SCALC) or the South Carolina Appellate Court Rules that allows for legal argument to be set forth in an appellate brief via incorporation by reference to the Notice of Appeal. Instead, a valid brief should properly follow the dictates of SCALC Rule 60, which includes, among other requirements, that a party's brief must contain argument supported by legal authority.

[6] SCALC Rule 64 gives the presiding ALC judge the discretion to order oral argument in inmate appeals; however, oral argument will not normally be ordered unless the "[p]roceeding involves a novel issue or a question of exceptional importance." While Appellant has unquestionably raised important issues, the Court does not believe that oral argument would be beneficial to its consideration of this matter.

Appellant argues that he is being unlawfully denied earned work credits (EWC) for work he performed while housed in jail awaiting trial/sentencing.[7] Appellant contends that since he must be awarded credit for time served in jail prior to sentencing, he should also be awarded EWC for "productive duty" engaged in during this same period. This argument must be rejected.

Section 24-13-230 of the South Carolina Code (Supp. 2017) provides for the EWC Appellant references and states, in part:

> (A) The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department, except an inmate convicted of a "no parole offense" as defined in Section 24-13-100, who is assigned to a productive duty assignment, including an inmate who is serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30 or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. A maximum annual credit for both work credit and education credit is limited to one hundred eighty days.

S.C. Code Ann. § 24-13-230(A) (emphasis added).

Section 24-13-230(A) does not contain language making the award of EWC mandatory. Instead, the General Assembly's use of the term "may" means that discretion is left to SCDC officials in determining whether work credit, if any, is given to a participating inmate. *See T.W. Morton Builders, Inc. v. von Buedingen,* 316 S.C. 388, 402, 450 S.E.2d 87, 95 (Ct. App. 1994) ("Ordinarily, the use of the word "may" in a statute signifies permission and generally means the action spoken of is optional or discretionary."). The Record is devoid of any evidence suggesting that SCDC had allowed Appellant this benefit during the time he was jailed prior to trial/sentencing.[8] Moreover, the Department argues that to the extent Appellant performed any

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[7] Pursuant to S.C. Code Ann. § 24-13-40 (Supp. 2017), Appellant received credit on his sentences for his three convictions for time served in jail prior to sentencing for the crimes themselves. Specifically, this section details, in part "[I]n 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, . . ." (emphasis added). *See Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10–11 (2000) ("'[T]ime served' in [section] 24–13–40 means the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction).") According to the Record, Appellant received 176 days credit against his Assault and Battery in the second degree sentence, 183 days credit against his Indecent Exposure sentence, and 187 days credit against his Hit and Run sentence.

[8] As the Department points out, the Record does, however, reveal that Appellant is currently earning EWC by participating in such a work program as a wardkeeper.

work while in jail awaiting trial and sentencing for each of his convictions, he was not qualified for EWC within the meaning of § 24-13-230. In furtherance of this argument, the Department points out that an inmate must be (1) sentenced to the custody of the SCDC and (2) assigned a "productive duty assignment" – a job at SCDC – to earn EWC and that Appellant failed to meet either of these conditions.

The Court agrees that the "work" Appellant performed in jail prior to sentencing for each of his convictions does not qualify for EWC under § 24-13-230. Here, Appellant had not yet been sentenced to the custody of SCDC when he performed any work while in jail awaiting trial and/or sentencing. Section 24-13-230(A) plainly states that EWC may become available to "[a]n inmate sentenced to the custody of the department . . ." (emphasis added). This Court is bound to apply the plain language of a statute unless said language results in an absurdity. *See S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 8, 809 S.E.2d 223, 226 (2018) ("This [c]ourt looks beyond a statute's plain language only when applying the words literally would lead to a result so patently absurd that the General Assembly could not have intended it."). Application of the plain language of § 24-13-230(A) does not produce any absurdity. Accordingly, based on the foregoing, the Department's determination that Appellant is not entitled to EWC is a correct legal conclusion which is supported by substantial evidence. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 ("[s]ubstantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency.").[9]

III. Appellant's claim of eligibility for the supervised furlough program under S.C. Code Ann. § 24-13-710 (Supp. 2017) must be remanded for further consideration; Appellant's claim for furlough under S.C. Code Ann. § 24-13-720 (Supp. 2017) is denied.

Appellant next argues that he is eligible for supervised furlough, citing *Plyler v. Evatt*, 313 S.C. 405, 438 S.E.2d 244 (1993). In that case, the court construed the meaning of the then applicable version of S.C. Code Ann. § 24-13-720 (1989) prior to its 1993 amendment. *Id.* at 406, 438 S.E.2d 254. After also analyzing the then applicable version of S.C. Code Ann. § 24-13-710 (1989), the court held that § 24-13-720 (1989) required the mandatory furlough of all inmates,

[9] Accordingly, the Court need not determine if Appellant was given a "productive duty assignment" within the meaning of § 24-13-240. Appellant's submission of the "Declaration of Appellant" and the attached "LCDC Inmate Rules", even if they were properly before the Court for its consideration, do not impact the denial of Appellant's request for EWC.

except those serving life sentences, within six months of the end of their term of incarceration as long as the inmate had not committed a disciplinary infraction for six months prior to his eligibility. *Id.* at 406-08, 438 S.E.2d at 245-46. The court also agreed with the circuit court that §§ 24-13-720 (1989) and 24-13-710 (1989) "[r]efer to two different classes of inmates and that the conditions for participation created by § 710 are not implied in § 720." *Id.* at 408, 438 S.E.2d at 246. The *Plyler* court further examined the post 1993 amendment version of § 24-13-720 and observed that the amended statute no longer applied to such an expansive class of inmates. *See id.* Instead, in finding that the 1993 statutory amendment to § 24-13-720 (1989) was a change in the law, the Court noted the difference in language, both that was added and subtracted, following the amendment. *Id.* In addition to making the determination of furlough discretionary thereunder, the 1993 amendment of § 24-13-720 limited the class of inmates eligible for such benefit to those who: had not been sentenced to life imprisonment, not sentenced for a violent crime under §16-1-60, had no disciplinary record for at least six months prior to eligibility, and who met the requirements for furlough under § 24-13-710. *See id.* Appellant claims that he is eligible for furlough under either S.C. Code Ann. §§ 24-13-710 (Supp. 2017) or 24-13-720 (Supp. 2017).[10]

Despite Appellant's reliance on *Plyler* to support his position that he is eligible for supervised furlough under either §§ 24-13-710 or 24-13-720, his eligibility to be placed in such a program must be analyzed under the applicable versions of these statutes. In pertinent part, the

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[10] In his Notice of Appeal, Appellant states that "per Plyer v. Evatt, 305 S.C. 488, &/or S.C. Code of Regulations R.130-10, &/or S.C. Code of Laws §§ 24-13-60, -620, &/or -630, &/or 24-3-1160, I'm eligible for furlough &/or work release, but SCDC says I'm not." The Department's brief challenges Appellant's eligibility for "supervised reentry" pursuant to S.C. Code Ann. § 24-21-32 (Supp. 2017). In response, Appellant's Reply Brief reiterates that he seeks "Supervised Furlough" under "S.C. Code Ann. § 24-13-710 and/or -720 pursuant to 'Plyler II,' Plyler v Evatt, 438 S.E.2d 244 (1993), and/or other releases provided in S.C. Code of Regulations R.130-10, and/or S.C. Code Ann. §§ 24-3-1160 and /or 24-13-60, -620, and/or -630..." Although Appellant made general claims regarding eligibility for furlough during the SCDC internal grievance procedures, the only specificity at that level and in his briefs to this Court has been with regard to furlough under the authority of *Plyler v Evatt*, 313 S.C. 405, 438 S.E.2d 244 (1993). As such, the Court will analyze his arguments regarding furlough under §§ 24-13-710 and 24-13-720. Appellant's arguments regarding furlough under any other statutes or regulations are deemed abandoned. *See Prince v. Beaufort Memorial Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)); *see also S.C. Dep't of Transp. v. M & T Enterprises of Mount Pleasant, LLC*, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[I]ssues not argued in the brief are deemed abandoned and will not be considered on appeal.") (quoting *Fields v. Fields*, 342 S.C. 182, 191, 536 S.E.2d 684, 689 (Ct. App. 2000)).

current version of S.C. Code Ann. § 24-13-710 (Supp. 2017), and that applicable to Appellant's appeal, provides as follows:

> The Department of Corrections and the Department of Probation, Parole and Pardon Services shall jointly develop the policies, procedures, guidelines, and cooperative agreement for the implementation of a supervised furlough program which permits carefully screened and selected inmates who have served the mandatory minimum sentence as required by law or have not committed a violent crime as defined in Section 16-1-60, a "no parole offense" as defined in Section 24-13-100, the crime of criminal sexual conduct in the third degree as defined in Section 16-3-654, or the crime of criminal sexual conduct with a minor in the third degree as defined in Section 16-3-655(C) to be released on furlough prior to parole eligibility and under the supervision of state probation and parole agents with the privilege of residing in an approved residence and continuing treatment, training, or employment in the community until parole eligibility or expiration of sentence, whichever is earlier.
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> Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:
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> (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or
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> (2) any other law enforcement officer.
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> The cooperative agreement between the two departments shall specify the responsibilities and authority for implementing and operating the program. Inmates approved and placed on the program must be under the supervision of agents of the Department of Probation, Parole and Pardon Services who are responsible for ensuring the inmate's compliance with the rules, regulations, and conditions of the program as well as monitoring the inmate's employment and participation in any of the prescribed and authorized community-based correctional programs such as vocational rehabilitation, technical education, and alcohol/drug treatment. Eligibility criteria for the program include, but are not limited to, all of the following requirements:
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> (1) maintain a clear disciplinary record for at least six months prior to consideration for placement on the program;
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> (2) demonstrate to Department of Corrections' officials a general desire to become a law-abiding member of society;

(3) satisfy any other reasonable requirements imposed upon him by the Department of Corrections;

(4) have an identifiable need for and willingness to participate in authorized community-based programs and rehabilitative services;

(5) have been committed to the State Department of Corrections with a total sentence of five years or less as the first or second adult commitment for a criminal offense for which the inmate received a sentence of one year or more. The Department of Corrections shall notify victims pursuant to Article 15, Chapter 3, Title 16 as well as the sheriff's office of the place to be released before releasing inmates through any supervised furlough program. These requirements do not apply to the crimes referred to in this section.

Id. (emphasis added). The applicable version of § 24-13-720 (Supp. 2017) provides, in part:

> Unless sentenced to life imprisonment, an inmate under the jurisdiction or control of the Department of Corrections who has not been convicted of a violent crime under the provisions of Section 16-1-60 or a "no parole offense" as defined in Section 24-13-100 may, within six months of the expiration of his sentence, be placed with the program provided for in Section 24-13-710 and is subject to every rule, regulation, and condition of the program. Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, and any of the inmate's possessions by:
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> (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or
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> (2) any other law enforcement officer.
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> An inmate may not be released on supervised furlough by the department if he fails to comply with this provision. However, an inmate who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the inmate's person, any vehicle the inmate owns or is driving, or any of the inmate's possessions.
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> No inmate otherwise eligible under the provisions of this section for placement with the program may be so placed unless he has qualified under the selection criteria and process authorized by the provisions of Section 24-13-710. He also must have maintained a clear disciplinary record for at least six months prior to eligibility for placement with the program.

Id. (emphasis added).

The Record indicates that Appellant is currently serving the following three sentences, which run concurrently: (1) a three-year sentence for Assault and Battery in the second degree which is classified as non-violent; (2) a three-year sentence for Indecent Exposure, which is classified as non-violent; and (3) a one-year sentence for Hit and Run, also classified as non-violent. None of these three crimes is a no-parole offense. The start date for Appellant's sentence for Assault and Battery in the second degree is February 28, 2017. The start date for Appellant's Indecent Exposure sentence is February 21, 2017, and the start date for his remaining sentence for Hit and Run is February 17, 2017. According to the Record, the projected completion dates for Appellant's sentences are as follows: Assault and Battery in the second degree – October 28, 2018; Indecent Exposure – October 21, 2018; and Hit and Run – September 30, 2017.

At the time of Appellant's grievances, he appears to have met one of the requirements for eligibility in the supervised furlough program under § 24-13-710.[11] Under both §§ 24-13-710 and 24-13-720, an inmate must have maintained a clear disciplinary record for at least six months prior to eligibility or consideration for placement with the program. The Record indicates that Appellant's last conviction of a disciplinary offense occurred on hearing date October 1, 2015, for violation of an offense listed as "throwing/exposure". This disciplinary conviction could not have occurred during Appellant's current incarceration for any of the three offenses for which he is now serving a sentence to confinement.[12] Following October 1, 2015, no other internal disciplinary offenses are definitively listed in the Record. Without more, therefore, at the time of his internal

[11] The Record, however, does not contain evidence of Appellant's: (1) general desire to become a law-abiding member of society; (2) identifiable need for and willingness to participate in authorized community-based programs and rehabilitative services; and (3) that he has satisfied any other reasonable requirements imposed upon him by the Department. On remand, these eligibility factors, which are fully identified in § 24-13-710, should be evaluated.

[12] The Record does reveal that Appellant has had numerous disciplinary convictions by the Department. However, these disciplinary convictions all occurred from 2011-2015, a period in which Appellant was serving sentences for past convictions unrelated to the sentences he is currently serving.

grievances to the Department, Appellant satisfied the requirement that he maintain a clear disciplinary record for at least six months prior to eligibility or consideration under both §§ 24-13-710 and 24-13-720.

In further pressing his case, Appellant attached to his Reply Brief an exhibit which purports to be a Post-Conviction Relief (PCR) application, dated April 2018, in which Appellant references a January 31, 2018, disciplinary conviction for "Exhibitionism."[13] This PCR application is not contained in the Record and is thus not properly before the Court for its consideration. *See* S.C. Code Ann. § 1-23-380(4). Nonetheless, although this Court believes Appellant could be eligible for the supervised furlough program under § 24-13-710 as of the time of his grievances, Appellant still must satisfy certain conditions to be both eligible for and released on supervised furlough under this statute. As such, the Court remands this case to the Department for further consideration of Appellant's eligibility for furlough under § 24-13-710, to include, *inter alia*, an evaluation of whether Appellant has satisfied the six-month free from disciplinary infraction requirement.

Conversely, at the time of either of Appellant's grievances, he was not eligible for the supervised furlough program under § 24-13-720. In contrast to § 24-13-710, § 24-13-720 adds, among other requirements, the requirement that the Department has the discretion to be place an inmate within a supervised furlough program only "[w]ithin six months of the expiration of his sentence." *Id.* Here, Appellant filed his Step 1 and Step 2 grievances with the Department on September 5, 2017, and September 27, 2017, respectively. At either of these points, Appellant clearly has more than six months remaining on his sentence as his projected completion for his sentence for Assault and Battery in the second degree is October 28, 2018. Accordingly, the Court denies Appellant's contention for supervised furlough under § 24-13-720.

ORDER

THERFORE, IT IS HEREBY ORDERED that the Department's decision is **AFFIRMED** regarding Appellant not being "entitled" EWC under § 24-13-230 for work performed while he was in jail prior to trial/sentencing;

IT IS FURTHER ORDERED that Appellant's appeal is **DENIED** regarding eligibility for supervised furlough under § 24-13-720;

[13] There is no indication that this PCR application has been filed with the Court of Common Pleas.

IT IS FURTHER ORDERED that this case is **REMANDED** to the Department for consideration of whether Appellant is eligible for the supervised furlough program under § 24-13-710, taking into account Appellant's subsequent disciplinary convictions, if any, and any other considerations and requirements of the criteria for eligibility for supervised furlough under this statute.

AND IT IS SO ORDERED.

July 23, 2018
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 23 day of July, 2018

By: _____
Judicial Law Clerk