

IV. STATEMENT OF CLAIM - continued.

RECEIVED

MAY 18 2017

S.C. SUPREME COURT

The State of South Carolina

In The Supreme Court

Appeal From Richland County

Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

Opinion # 2016 - 000431 (S.C. Ct App. Filed April 21<sup>st</sup>, 2017)

Bernard McFadden, 199135,

Petitioner,

VS.

South Carolina Dept. of Corrections,

Respondent.

Appendix

Bernard McFadden, 199135

Kershaw CI / 0A37

4848 Goldmine Hwy

Kershaw, S.C. 29067

Other Counsel of Record:

Christina C. Bigelow,

Asst. Gen. Counsel, SCDC

4444 Broad River Rd.,

Columbia, S.C. 29221

## Index

|                                                             |       |
|-------------------------------------------------------------|-------|
| 1) SCOC Request To Staff Member                             | 1     |
| 2) SCOC Step 2 Grievance # KRCI-1176-14                     | 2     |
| 3) McFadden's Original Brief In Administrative Law Court    | 3-16  |
| 4) Respondent's Responsive Brief In ALC                     | 17-27 |
| 5) McFadden's Reply Brief...                                | 28-46 |
| 6) Administrative Law Court Order of Dismissal              | 47-52 |
| 7) McFadden's Final Brief In Appellate Court                | 53-63 |
| 8) Respondent's Final Brief In Appellate Court              | 64-74 |
| 9) S.C. Court of Appeals' Order Affirming Appeal            | 75    |
| 10) McFadden's Petition For Rehearing                       | 76-78 |
| 11) S.C. Court of Appeals' Order Denying Rehearing Petition | 79    |

SCDC  
Request To Staff Member "Recorded" ①

|                              |                         |                      |              |
|------------------------------|-------------------------|----------------------|--------------|
| To: Name:<br>Mr. Eury -      | Title<br>Classification | Date:<br>2/9/2012    | KREI-1176-14 |
| Im Name:<br>Bernard McFadden |                         | SCDC #:<br>199135    |              |
| Inst.<br>Kershaw CI          |                         | Living Area:<br>MB2A |              |

RE: (10) Year Sentence For Burglary 2d (Violent),  
95-GS-14-187

**RECEIVED**

FEB 10 2012

Request For Audit

CLASSIFICATION

Dear Mr. Eury:

The December 25<sup>th</sup>, 2000, max-out date is incorrect for the above referenced matter. Records show a sentence start date on 6/1/95. (See Attachment A.) However, the arrestwarrant shows I was served with the arrestwarrant April 15<sup>th</sup>, 1995. (See Attachment B.) The Court of General Sessions disposition sheet shows 4/15/95. (See Attachment C.) And the Clarendon County Clerk of Court's September 21<sup>st</sup>, 2011, letter confirms no security bond for this arrestwarrant. (See Attachment D.)

Therefore, my max-out date should not have exceeded 11/1/2000.

\* Content and deposit witnessed 2/9/2012 by:

cc: Diane Hingle  
Mrs. York

H/Person copy signed and init.  
P/Person #

Dispositions:

This is something you need to take up w/  
The Sentencing Judge & Clerk of Court. They  
didn't add any Jail Time Credit.

Your projected maxout date is 12-25-2000

Date:  
2-23-12

Signature:

*[Signature]* (Attachment F)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 2  
DEC 29 2014

INMATE NAME: Bernard McGinnis  
SCDC NUMBER: 199135  
INSTITUTION: Kershaw JAN 09 2015  
HOUSING UNIT: M464 INMATE GRIEVANCE DEC 30 2014  
WORK ASSIGNMENT: Dorm / Shower KERSHAW CI  
GRIEVANCE

Office Use Only  
Grievance No. 1174-1176-14  
Code: General  
Policy  
Disc. Hear.  
Class. ☒  
Date Received 12/30/14  
IGC Initials [Signature]

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I appeal the Warden's decision because the sentencing sheets attached for indictments 95-GS-14-306 and 95-GS-14-187 clearly have an indication from Circuit Judge David McGinnis that I should be given credit for jail time served. (See Attachments A and B, Indictments 95-GS-14-306 and 95-GS-14-187 clearly showed McGinnis' handwriting indicating credit for time serve.) Indeed, caseworker Ms Cynthia York has this information, but refuses to process a jail-time request form to prevent a new trial on Issue #3 in PCR case # 2011-CP-43-1952 - a conspiracy.  
Grievant Signature [Signature] Date 12/25/14

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Kershaw CI is in compliance with SCDC Policy OP-21.04, Inmate Classification Plan. It is noted that the two (2) indictments referenced in your grievance, 95-GS-14-306 and 95-GS-14-187 (both dated August 16, 1995), pertain to your previous incarceration and you were released 8/31/07 at the expiration of your sentence/time served. Currently, you are serving time on a different sentencing order. SCDC records denote that you have been credited with 496 days jail time credits and your projected MAXOUT date is July 21, 2017 which includes your jail time credits. Your actual date is determined based on different factors including an analysis of your behavior. If you maintain your status quo, then your projected date will remain your actual 'maxout date'. However, should you receive a disciplinary charge(s), terminate employment, etc. then your 'maxout date' could be extended.

Therefore, your grievance is denied.

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

[Signature] 5-21-15  
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.

\* Inmate Refused to sign  
Grievant Signature Date IGC Signature [Signature] Date 6/16/15

(SEE REVERSE SIDE FOR INSTRUCTIONS)

State of South Carolina  
County of Richland

In The Administrative Law Court  
Case # 15C0289, Judge Robinson

Bernard McFadden, 199135,

Appellant,

vs.

McFadden's Original Brief  
Pursuant To Rule 60 And  
Declaration

South Carolina Dept. of Corrections,  
Respondent.

### Statement of Issue On Appeal:

Appellant does have a liberty interest to procedural due process under the U.S. Constitution's 14<sup>th</sup> Amendment and a statutory right under S.C. Title 24-13-40 to the correct sentence start date of jailtime credit to render prior 1995 conviction too remote, preventing impeachment of a new trial in light of Paine vs. Baker, 595 F.2d 197, 202 (CA NC 4<sup>th</sup> Cir. 1994) and State vs. Boggs, 696 S.2d 597, 598 (S.C. App. 2010).

### Statement of The Case :

Appellant conviction was vacated in 2002. (See Attachment A, S.C. Supreme Court's July 11<sup>th</sup>, 2002, Order) Appellant requested and was denied an audit to correct an incorrect 12/25/2000 max-out date for arrest warrant # E-017123 (Indictment # 95-GS-14-187) to the correct max-out / sentence start date of April 15<sup>th</sup>, 1995. Appellant filed a Step One Grievance on 10/13/2015. After finding that Appellant was advised by a Mr. Eury that the sentencing judge and the clerk

4

failed to add any jailtime credit, Warden Dunkle determined Appellant's alleged incorrect max-out date could not be adjusted by SCDC. Appellant then filed a Step TWO Grievance; this grievance too was denied on 5/21/2015 by Mrs. J. C. Gaston and received on 6/16/2015.

On 6/19/2015, Appellant deposited his Notice of Appeal in the U.S. Mail which was docketed in this Court on 6/24/2015.

### Argument:

Appellant contends that the results of his prior 1995 burglary conviction (Indictment # 95-GS-14-187) still persist within the meaning of Jackson vs. State, 489 S.E2d 915, 916 (S.C. 1997), because the 2010 trial court in his current conviction has miscalculated the (10) year time period within the meaning of State vs. Johnson, 609 S.E2d 520, 522 (S.C. 2005) (...holding trial court erred in calculating ten-year time period under Rule 609, SCRE...). And that the information in his file is false within the meaning of Dalme vs. Baker.

Appellant submits that Dunkle's determination that the sentencing judge and the Clerk of Court failed to add any jailtime is in error. (See Attachment B, Dunkle's erroneous decision in Step One Grievance.) (See also Attachment C, arrestwarrant # E-017123, refuting Dunkle showing the arrestwarrant was served by Clarendon County Sheriff Deputy George McComer on April 15<sup>th</sup>, 1995, arguably giving Indictment # 95-GS-14-187 a 4/15/1995 sentence start date.) (And Attachment D, pages 1 and 2 of 3, showing Clarendon County Circuit Court Judge David McGrath's clearly writing "credit for time served" on page 1 to run concurrently as written on page 2 (Indictment # 95-GS-14-187)). Appellant further submits that the Clarendon County Clerk Beulah G.

5

Robert's office also refutes Dinkap with her May 30<sup>th</sup>, 2014, letter confirming no bond was posted for this offense. (See Attachment E, Mrs. Roberts' May 30<sup>th</sup>, 2014, letter.) Thus, Appellant was in jail.

Appellant next submits that even if the judge did deny him jailtime credit (though the judge did give credit) such denial would be in violation of his statutory right to jailtime credit under S.C. Title 34-13-40, (See State vs. Boggs, 696 S.E.2d 597, 598 (S.C. App. 2010) (holding that plea judge denial of jailtime credit for time defendant served in pretrial detention based on state's decision to drop charges against defendant from armed robbery to strong armed robbery was an error at law).

Appellant finally submits that because Warden Dinkap's determination that the judge didn't give any jailtime credit is essentially false information in his file in light of **Attachments A, B and C**, and because the correct information is needed to obtain relief in (PCR) case # 2011-CP-43-1952, McFadden vs. State, his conditional liberty interest is at stake and the due process clause is called into play. (See, for example, Paine vs. Baker, 595 F.2d 197, 202 (CA.NC 4<sup>th</sup> Cir 1994) (If erroneous information is contained in a state prison inmate's prison file is relied on to deny parole or statutory good time credits, or to revoke probation or parole, inmate's constitutional liberty interest is at stake and the due process clause is called into play.)

### Conclusion:

SCDC/Classification maintains false information (an incorrect 12/25/2000 max-out date) involving Appellant's past criminal record

for which the 2010 trial court erroneously used for impeachment purposes - causing involuntary waiver of right to testify, requiring new trial in light of Horton vs. State, 411 S.E.2d 223, 224 (S.C. 1991); and Credell vs. Bodison, 2011 WL 573425 (D. S.C. 2011) - this Court should find that Appellant has a liberty interest in obtaining a new trial for use in McFadden vs. State, (PCR) case # 2011-CP-43-1952, ordering SCDC to give the correct 4/15/1995 start date.

Declaration of Bernard McFadden:

I, Bernard McFadden, 199135, declare under penalty of perjury this 31<sup>st</sup> day of July 2015, that the Attachments and statement made in this Original Brief are true and correct.

Bernard McFadden, 199135  
Kershaw CI / 0426  
4848 Coldwine Hwy  
Kershaw, S.C. 29067

Sworn And Subscribed Before Me

This 31 day of July 2015

Catherine A. Orman

Notary Public For South Carolina

My commission expires: My Commission Expires December 12, 2016

keep

1  
PCR Issue # 3

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

Bernard McFadden,                      Petitioner,

v.

State of South Carolina,              Respondent.

ON WRIT OF CERTIORARI

---

Appeal From Clarendon County  
David F. McInnis, Plea Judge  
Thomas W. Cooper, Jr., Post-Conviction Relief Judge

---

Memorandum Opinion No. 2002-MO-053  
Submitted June 27, 2002 – Filed July 11, 2002

---

VACATED

---

Assistant Appellate Defender Tara S. Taggart, of S.C. Office of  
Appellate Defense, of Columbia, for Petitioner.

Attorney General Charles M. Condon, Chief Deputy Attorney  
General John W. McIntosh, Chief, Capital & Collateral Litigation  
Donald J. Zelenka, Assistant Deputy Attorney General B. Allan  
Bullard, Jr., and Assistant Attorney General Elizabeth R.  
McMahon, all of Columbia, for Respondent.

---

**PER CURIAM:** Petitioner seeks a writ of certiorari from the denial of his  
application for post-conviction relief (PCR). We grant the petition, dispense  
with further briefing, and vacate petitioner's second degree burglary  
conviction on Indictment Number 95-GS-14-306.

(Attachment A, p. 1 of 2)

Petitioner pled guilty to two counts of second degree burglary, grand larceny, and possession of crack cocaine. He now contends that one of his burglary pleas was invalid because the indictment failed to allege second degree burglary and, therefore, the circuit court did not have subject matter jurisdiction to accept petitioner's plea to second degree burglary under that indictment. We agree.

A circuit court has subject matter jurisdiction if: (1) there is an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the offense is a lesser included offense of the crime charged in the indictment. State v. Lynch, 344 S.C. 635, 545 S.E.2d 511 (2001). In addition to the entry into a building without consent with the intent to commit a crime therein, second degree burglary of a building requires an aggravating circumstance. S.C. Code Ann. § 16-11-312 (B) (Supp. 2001).

Indictment Number 95-GS-14-306 alleges that petitioner did "willfully and unlawfully enter the building . . . of Simpson's Hardware Store without consent and with the intent to commit a crime therein." Because the burglary indictment did not allege an aggravating circumstance, it was insufficient to charge petitioner with second degree burglary, and the circuit court did not have subject matter jurisdiction to accept petitioner's guilty plea to this count of second degree burglary. Accordingly, we vacate petitioner's conviction for second degree burglary under Indictment Number 95-GS-14-306.

VACATED.

|                              |      |
|------------------------------|------|
| <u>s/Jean H. Toal</u>        | C.J. |
| <u>s/James E. Moore</u>      | J.   |
| <u>s/John H. Waller, Jr.</u> | J.   |
| <u>s/E.C. Burnett, III</u>   | J.   |
| <u>s/Costa M. Pleicones</u>  | J.   |

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

COURT OF GENERAL SESSIONS

The State -vs- Bernard W. Fadden, DefendantIndictment Number: 9 S-GS-14-306

Court Reporter: Lee Ann Thigpen

Attorney: \_\_\_\_\_

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his/her arraignment, pleads guilty as charged to Burglary Second Degree (Violent)

S.C. STATUTE 16-11-312(13)CLASSIFICATION Fel-DOFFENSE CODE 86

Attest:

Douglas H. McFaddin, Clerk of Court

Signature of Defendant

AUG 16 1995

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of 15 months years and/or to pay a fine of \$ \_\_\_\_\_; Provided upon the service of \_\_\_\_\_

months/years and/or payment of \$ \_\_\_\_\_ (plus non-waivable 62%

assessment fee) the balance is suspended, with probation for \_\_\_\_\_

\_\_\_\_\_ months/years.

RESTITUTION: Yes/No

FOR PHYSICAL INJURY \$ \_\_\_\_\_

PAYABLE TO CLERK FOR:

PROPERTY DAMAGE \$ \_\_\_\_\_

(VICTIM) \_\_\_\_\_

(Pay to Victim's Comp. Fund, if subrogated)

Other Conditions Credit for time served AUG 25 1995

72 DAYS JAIL TIME  
S.S.D. 10-95

(150) Days Jail time  
Credit from 4/15/95

ER &amp; EC

199135

Date: AUG 16 1995

Negotiated Plea  
W. Fadden

DAVID F. MCINNIS  
PRESIDING JUDGE, THIRD JUDICIAL

CIRCUIT

FINE:

62% FEE:

ADSAP:

RESTITUTION:

P. D. FUND:

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 8-16-95

Douglas H. McFaddin  
DOUGLAS H. MCFADDIN, C.C.P., 303  
CLARENDON COUNTY, SC

COURT ORDERED  
RECOMMENDATION

Douglas H. McFaddin  
DOUGLAS H. MCFADDIN

(Attachment A)

03-18-15:09:28AM:0

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

The State -vs-

Bernard McFadden

Defendant

Indictment Number: 95-GS-14-187

Court Reporter: Lee Ann Thigpen

Attorney: \_\_\_\_\_

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his/her arraignment pleads guilty as charged to Burglary Second Degree (Violent)

S.C. STATUTE 16-11-312(B)

CLASSIFICATION Fel-D

OFFENSE CODE 86

Attest:

Doug H. McFadden  
Douglas H. McFadden, Clerk of Court  
AUG 16 1995

Bernard McFadden  
Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of TEN (10) ~~months~~ years and/or to pay a fine of \$ \_\_\_\_\_; Provided upon the service of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ (plus non-waivable 62% assessment fee) the balance is suspended, with probation for \_\_\_\_\_

\_\_\_\_\_ months/years.

RESTITUTION: Yes/No

PAYABLE TO CLERK FOR:

FOR PHYSICAL INJURY \$ \_\_\_\_\_

PROPERTY DAMAGE \$ \_\_\_\_\_

(VICTIM) \_\_\_\_\_

**RECEIVED**

(Pay to Victim's Comp. Fund or Subrogate)

Other Conditions

Committed to 95-306

AUG 15 1995  
LR & EQ  
199135

Date:

AUG 16 1995

Negotiated Plea  
CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THE OFFICE  
DATE 8-16-95

David F. McInnis  
DAVID F. MCINNIS  
PRESIDING JUDGE, THIRD JUDICIAL

CIRCUIT

FINE:

62% FEE:

ADSAP:

RESTITUTION:

P. D. FUND:

Doug H. McFadden, C.C.P., 103  
CLARENDON COUNTY EC

Doug H. McFadden  
DOUGLAS H. MCFADDEN

(Attachment B)

## ARREST WARRANT

E-017123

STATE OF SOUTH CAROLINA  
☐ County/ ☒ Municipality of  
 Summerton

THE DATE  
 against

Bernard McFadden

Address: Manning, S.C.

Phone: 485-4971 SSN: 5-8

Sex: Race: Height: Weight:

DL State:

DOB: Agency ORI#:

Prosecuting Agency: Summerton Police

Prosecuting Officer: Chief Brown

Offense: Burglary; second

Offense Code: 16-11-312  
Code/Ordinance Sec:

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

\_\_\_\_\_  
 Signature of Judge (L.S.)

Date:

## RETURN

A copy of this arrest warrant was delivered to  
 defendant Bernard McFadden  
 on 15 days of April 95

Sgt. [Signature]  
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
 Judge E.A. failmezger

## STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of  
 Summerton

Personally appeared before me the affiant Chief Brown  
 being duly sworn deposes and says that defendant Bernard McFadden  
 did within this county and state on 4-13-95 violate the criminal laws

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

in the following particulars:

## DESCRIPTION OF OFFENSE:

16-11-312 Burglary; Second

I further state that there is probable cause to believe that the defendant named above did  
 the crime set forth and that probable cause is based on the following facts:

That on or about 4-13-95 in the Town of Summerton in the County  
 and State aforesaid at the Lawson B.P. station on South Church St. one  
 Bernard McFadden did commit the offense of Burglary second degree,  
 in that he did willfully, unlawfully and feloniously break and enter  
 the business of Lawson B.P. during the night time with the intention  
 to commit a felony therein.

Probable cause was based on investigation of S.P.D.

Sworn to and subscribed before me

on 4-14-95

[Signature] (L.S.)

Signature of Issuing Judge

Signature of Affiant

Affiant's Address 10 Main st Summerton Police Dept  
Summerton, S.C.

Affiant's Telephone 485-4385

## STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
 Summerton

## ARREST WARRANT

## TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
 on 4-13-95 defendant Bernard McFadden  
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of ) as set forth below:

## DESCRIPTION OF OFFENSE:

Burglary second 16-11-312

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
 defendant at the time of its execution, or as soon thereafter as is practicable.

[Signature] (L.S.)  
 Judge's Address 102 Main St Summerton, S.C.

Signature of Issuing Judge

Judge Code: 681

Judge's Telephone

485-2855

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Form Approved by  
 S.C. Attorney General  
 July 26, 1990  
 SCCA 518

(Attachment C)

APR 21 10 07 AM '95  
 CLERK OF COURT  
 CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

COURT OF GENERAL SESSIONS

The State -vs- Bernard M<sup>c</sup>Fadden, Defendant

Indictment Number: 9 5-GS-14-306

Court Reporter: Lee Ann Thigpen

Attorney: \_\_\_\_\_

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his/her arraignment, pleads guilty as charged to Burglary second Degree (Violent)

S.C. STATUTE 16-11-312(B)

CLASSIFICATION Fel-D

OFFENSE CODE 86

Attest:

Doug H. McFaddin | Bernard M<sup>c</sup>Fadden  
Douglas H. McFaddin, Clerk of Court

Signature of Defendant

**AUG 16 1995**

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of 15 ~~months~~ years and/or to pay a fine of \$ \_\_\_\_\_; Provided upon the service of \_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_ (plus non-waivable 62% assessment fee) the balance is suspended, with probation for \_\_\_\_\_

\_\_\_\_\_ months/years.

RESTITUTION: Yes/No  
PAYABLE TO CLERK FOR:

FOR PHYSICAL INJURY \$ \_\_\_\_\_  
PROPERTY DAMAGE \$ \_\_\_\_\_

(VICTIM) \_\_\_\_\_

(Pay to Victim's Comp. Fund, if Subrogated)

Other Conditions credit for time served

Date: AUG 16 1995  
Negotiated Plea  
D74

David F. McInnis  
DAVID F. MCINNIS  
PRESIDING JUDGE, THIRD JUDICIAL

CIRCUIT  
FINE: \_\_\_\_\_  
62% FEE: \_\_\_\_\_  
ADSAP: \_\_\_\_\_  
RESTITUTION: \_\_\_\_\_  
P. D. FUND: \_\_\_\_\_

(Attachment D, p 1 of 3)  
Doug H. McFaddin  
DOUGLAS H. MCFADDIN

STATE OF SOUTH CAROLINA )

COURT OF GENERAL SESSIONS

COUNTY OF CLARENDON )

The State -vs- Bernard McFadden, Defendant

Indictment Number: 95-GS-14-187

Court Reporter: Lee Ann Thigpen

Attorney: \_\_\_\_\_

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his/her arraignment, pleads guilty as charged to Burglary Second Degree (Violent)

S.C. STATUTE 16-11-312(B)

CLASSIFICATION Fel-D

OFFENSE CODE 86

Attest:

Doug H. McFadden  
Douglas H. McFadden, Clerk of Court  
AUG 16 1995

Bernard McFadden  
Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of TEN (10) ~~months~~ years and/or to pay a fine of \$\_\_\_\_\_;

Provided upon the service of \_\_\_\_\_ months/years and/or payment of \$\_\_\_\_\_ (plus non-waivable 62% assessment fee) the balance is suspended, with probation for \_\_\_\_\_

\_\_\_\_\_ months/years.

RESTITUTION: Yes/No

PAYABLE TO CLERK FOR:

FOR PHYSICAL INJURY \$\_\_\_\_\_

PROPERTY DAMAGE \$\_\_\_\_\_

(VICTIM) \_\_\_\_\_

(Pay to Victim's Comp. Fund, if Subrogated)

Other Conditions

Concurrent to 95-306

Date: \_\_\_\_\_

AUG 16 1995

Negotiated Plea.

David F. McInnis  
DAVID F. MCINNIS

PRESIDING JUDGE, THIRD JUDICIAL

CIRCUIT

FINE: \_\_\_\_\_

62% FEE: \_\_\_\_\_

ADSAP: \_\_\_\_\_

RESTITUTION: \_\_\_\_\_

P. D. FUND: \_\_\_\_\_

(Attachment D, p. 2 of 3)

Doug H. McFadden  
DOUGLAS H. MCFADDIN

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

COURT OF GENERAL SESSIONS

14

The State -vs- Bernard M<sup>c</sup>Fadden, Defendant

Indictment Number: 9 5-GS-14-306

Court Reporter: Lee Ann Thigpen

Attorney: \_\_\_\_\_

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his/her arraignment, pleads guilty as charged to Grand Larceny

S.C. STATUTE 16-13-30(B)(1)

CLASSIFICATION Fel-F

OFFENSE CODE 478

Attest:

Doug 3/11/11 Jocklin  
Douglas H. McFaddin, Clerk of Court

**AUG 16 1995**

Bernard M<sup>c</sup>Fadden  
Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of Five years ~~months~~ years and/or to pay a fine of \$\_\_\_\_\_;

Provided upon the service of \_\_\_\_\_ months/years and/or payment of \$\_\_\_\_\_ (plus non-waivable 62%

assessment fee) the balance is suspended, with probation for \_\_\_\_\_ months/years.

RESTITUTION: Yes/No

FOR PHYSICAL INJURY \$\_\_\_\_\_

PAYABLE TO CLERK FOR:

PROPERTY DAMAGE \$\_\_\_\_\_

(VICTIM) \_\_\_\_\_

(Pay to Victim's Comp. Fund, if Subrogated)

Other Conditions Concurrent -

Date: **AUG 16 1995**

David F. McInnis

DAVID F. MCINNIS  
PRESIDING JUDGE, THIRD JUDICIAL

(Attachment D, p. 3 of 3)  
Doug 3/11/11 Jocklin

DOUGLAS H. MCFADDIN

CIRCUIT

FINE:

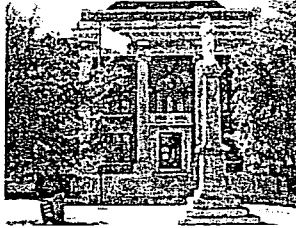
62% FEE:

ADSAP:

RESTITUTION:

P. D. FUND:

# Clarendon County Clerk of Court Office



BEULAH G. ROBERTS  
CLERK OF COURT  
POST OFFICE BOX 136  
MANNING, SC 29102  
PHONE: (803) 435-4443  
FAX: (803) 435-4844

MARILYN WILSON  
FAMILY COURT  
POST OFFICE BOX 490  
MANNING, SC 29102  
PHONE: (803) 435-4210  
FAX: (803) 433-8008

May 30, 2014

To: Bernard McFadden  
From: Office of Clerk of Court  
Re: Warrant #E017123

This office record does not show a security bond for this warrant. However, that does not mean bond was not set. This office only receives a bond once a person has been bonded out and then it is filed with our office by the magistrate.

As to credit given for jail time, this office has nothing to do with credit for jail time. How much is given or how it is calculated. You need to check with SCDC or Clarendon County Detention Center.

(Attachment E)

**Certificate of Service**  
Case # 15C0289, Judge Robinson.

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly addressed - stamped - envelope in the U.S. Mail this 31<sup>st</sup> day of July 2015; such matter being: **McFadden's Original Brief Pursuant to Rule 60 And Declaration With Attachments A through E**

1) The Hon. Judge Robinson  
S.C. Administrative Law Court  
1205 Pendleton Street, Suite  
224, Columbia, S.C. 29201; and

2) SCDC Office of General  
Counsel, P.O. Box 21787, 4444  
Broad River Road, Columbia  
South Carolina 29221

Sworn And Subscribed Before Me

This 31 day of July, 2015

Catherine A. Ormrod  
Notary Public For South Carolina

My commission expires: \_\_\_\_\_

Bernard McFadden  
Bernard McFadden, 199135  
Kershaw C.I., Appellant



17  
NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

October 16, 2015

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate Bernard McFadden, #199135, vs. SCDC  
Docket No. 15-ALJ-04-0289-AP

Dear Judge Robinson:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

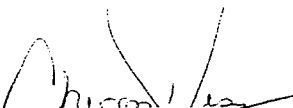
cc: Inmate Bernard McFadden, #199135  
File

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

|                                           |   |                               |
|-------------------------------------------|---|-------------------------------|
| Bernard McFadden, #199135,                | ) |                               |
|                                           | ) |                               |
| Appellant,                                | ) |                               |
|                                           | ) | <b>Certificate of Service</b> |
| vs.                                       | ) |                               |
|                                           | ) | Docket# 15-ALJ-04-0289-AP     |
| South Carolina Department of Corrections, | ) |                               |
|                                           | ) |                               |
| Respondent.                               | ) |                               |

I hereby certify that a copy of the foregoing brief was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Bernard McFadden  
Inmate Number: 199135  
Kershaw Correctional Institution  
Dorm-Room-Bunk: OA-0026-T

  
Cheron Hess  
Administrative Assistant  
Office of General Counsel  
South Carolina Department of Corrections  
4444 Broad River Road  
P.O. Box 21787  
Columbia, South Carolina 29221-1787  
(803) 896-3922

October 16, 2015

**STATE OF SOUTH CAROLINA**  
**IN THE ADMINISTRATIVE LAW COURT**

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| Bernard McFadden, # 199135,     | ) | Docket No. 15-ALJ-04-0289-AP    |
|                                 | ) | [Grievance No. KRCI-1176-14]    |
| Appellant,                      | ) |                                 |
|                                 | ) | <i>Hon. Shirley C. Robinson</i> |
| v.                              | ) |                                 |
|                                 | ) |                                 |
| S.C. Department of Corrections, | ) | <b>RESPONDENT'S BRIEF</b>       |
|                                 | ) |                                 |
| Respondent.                     | ) |                                 |
| <hr/>                           |   |                                 |

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC) pursuant to the appeal of Bernard McFadden (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant is appealing the Department's Step 2 final decision of May 21, 2015, in which Mrs. Jannita Gaston, Regional Director and Division Director for Inmate Records and Classification, denied the Step 2 grievance and responded to Appellant's claim that the Department is improperly calculating his sentence.

**STANDARD OF REVIEW**

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, our supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the

20

ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, our supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, 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) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008).

Additionally, "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." *Matthews v. S.C. Dep't of*

81

*Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, J.); see S.C. Code Ann. § 1-23-380(5)(e); see also *Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep't of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm’n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, our supreme court “underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a ‘hands off’ approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA.” *Matthews v. S.C. Dep’t of Corr.*, *supra*, page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters . . . .”)); see also *Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands off” approach of South Carolina courts regarding internal prison

discipline and policy).

**BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE DEPARTMENT'S FINAL AGENCY ACTION, THE COURT SHOULD AFFIRM.**

The Department relied on substantial evidence when it concluded in its Step 2 response that Appellant projected release date is being correctly calculated.

Appellant is incorrect that the Department has miscalculated his projected release date. Respondent is serving two active sentences. *Exhibit A*. The first sentence, Burglary in the Second Degree, Non-Violent, is related to indictment number 2011-GS-14-0342; Appellant received credit for 496 days he was in jail. *Exhibit B*. The second sentence, Burglary in the Second Degree, Violent, is related to indictment number 2010-GS-43-0257; Appellant received credit for 496 days he was in jail. *Exhibit C*. Therefore, Respondent continues not to understand why Appellant is referencing indictments 1995-GS-14-306 (Burglary in the Second Degree, Violent [15-year sentence]) and 1995-GS-14-187 (Burglary in the Second Degree, Violent [10-year sentence]), both of which have been completed. *See Exhibit A* (showing remitted 15-year sentence for Burglary in the Second Degree, Violent); *Exhibit E* (details of the 15-year sentence that was reversed and remanded by the South Carolina Supreme Court, *see* Pl.'s Attach. A, p. 1 of 2); *Exhibit D* (showing the 10-year Burglary in the Second Degree, Violent was completed in December of 2000).

If, indeed, Appellant's argument is that the Department failed to credit him the 75 days of Jail Time Credit listed on Appellant's copy of the 1995 sentencing sheet signed by Judge McInnis, the Court should not now—*twenty years after the fact*—attempt to address this issue. Even if, *arguendo*, Plaintiff is correct that the Department should have credited him 75 days of Jail Time Credit on indictment number 1995-GS-14-306 (Burglary in the Second Degree, Violent [15-year

23

sentence)), that sentence was vacated in 2002 by our state Supreme Court, making the point moot entirely. Importantly, neither of the two indictments Appellant mentions are related in any way to his *current* incarcerative sentences. In fact, in the Step 2 reply, the Department specifically noted for Plaintiff that there are 496 days of Jail Time Credit that have been credited to his two extant burglary charges. *Exhibit A* (notice difference between sentence start date and date of sentencing). Accordingly, the Department relied on substantial evidence when it concluded in its Step 2 response that that Plaintiff's projected release date is correct and that his sentences are being calculated correctly. Appellant's arguments to the contrary are without merit.

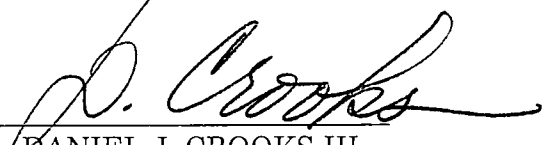
### CONCLUSION

The Department relied on substantial evidence when it denied Appellant's Step 2 grievance. Thus, this Court should affirm the Department's final agency action.

Respectfully Submitted,

### SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: \_\_\_\_\_

  
DANIEL J. CROOKS III

Staff Attorney

Office of General Counsel

4444 Broad River Road

Columbia, South Carolina 29221

(803) 896-1355

Columbia, South Carolina  
October 16, 2015

CMTI100D  
OMCOMITASCDC OFFENDER MANAGEMENT SYSTEM  
COMMITMENT APPLICATION  
CONVICTION SUMMARY10/15/15  
C055212

JH

SCDC# > 199135  
MCFADDEN, BERNARD -

CURR LOC: KERSHAW

SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

| NUM      | CONVICTION OFFENSE   | INCARC | SENT | SENT | SENT     | DATE     | START      | PROJ | COMP | STAT | IND | CONV | VIO |
|----------|----------------------|--------|------|------|----------|----------|------------|------|------|------|-----|------|-----|
| S00010   | BURGLARY-2ND DEG/NON | 004    | 00   | 000  | 07/20/11 | 03/11/10 | 06/11/2012 | ACT  | N    | N    |     |      |     |
| * S00009 | BURGLARY-2ND DEGREE  | 015    | 00   | 000  | 11/19/10 | 07/11/09 | 07/21/2017 | ACT  | V    | V    |     |      |     |
| S00002   | BURGLARY-2ND DEGREE  | 015    | 00   | 000  | 08/16/95 | 04/15/95 | 04/15/1995 | REM  | V    | V    |     |      |     |

PAGE: 0001

MAKE A SELECTION AND PRESS &lt;ENTER&gt;...

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 10/15/15  
OMCOMITA COMMITMENT APPLICATION C055212  
SCDC #: 199135 INQUIRY CURR LOC: KERSHAW  
MCFADDEN, BERNARD - NONCONFORM SENT: N RTRN TO COURT: Y  
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE  
CONVICTION NUM: S00010 INDICT NUM: 11-GS-140342 WARRANT NUM: M083417  
DATE SENTENCED..: 07/20/2011 JUDGE LAST..: COTHRAN FI: R  
STATUTE: 16-11-0312(B) CDR CODE.: 0080 GPS IND: N  
OFFENSE: 2223 BURGLARY-2ND DEG/NON-VIOL OFFENSE DATE: 05/16/2009  
CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 14 CLARENDON  
PLEA...: G GUILTY TYPE OF COURT....: 01 GENERAL SESSIO  
TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE..: 07/20/2011  
TOTAL SENTENCE...: 004 00 000 MAND SERV REQMT...: 000 00 000  
INCARC SENTENCE...: 004 00 000 PAROLE FACTOR....: 1 1/4 SENT. REQ.  
PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000  
HIP SENT.....: 000 00 000  
RESTITUTION REQMT: Y AMT: 100.00 JAIL CRED: 00496 EXTRA CRED: 00000  
CONVICTION STATUS: AC ACTIVE SENT START DATE: 03/11/2010 DOM.IND:  
CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: NON-VIOLENT  
DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION.....: NON-VIOLENT  
SEX REG: N PRED OFF: N LAST UPDATE: K FOGLE DATE: 04/30/13  
NO PAROLE: NOT APPLIC CREATED BY.: K FOGLE DATE: 08/02/11

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

15:31:53 Thursday, October 15, 2015

Exhibit "C"

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 10/15/15  
OMCOMITA COMMITMENT APPLICATION C055212  
SCDC #: 199135 INQUIRY CURR LOC: KERSHAW  
MCFADDEN, BERNARD - NONCONFORM SENT: N RTRN TO COURT: N  
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE  
CONVICTION NUM: S00009 INDICT NUM: 10-GS-430257 WARRANT NUM: M001180  
DATE SENTENCED...: 11/19/2010 JUDGE LAST...: YOUNG FI: W  
STATUTE: 16-11-312(B) CDR CODE...: 0086 GPS IND: N  
OFFENSE: 2221 BURGLARY-2ND DEGREE OFFENSE DATE: 07/03/2009  
CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 43 SUMTER  
PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO  
TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 11/19/2010  
TOTAL SENTENCE...: 015 00 000 MAND SERV REQMT...: 000 00 000  
INCARC SENTENCE...: 015 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.  
PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000  
HIP SENT...: 000 00 000  
RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00496 EXTRA CRED: 00000  
CONVICTION STATUS: AC ACTIVE SENT START DATE: 07/11/2009 DOM.IND: N  
CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT  
DNA OFFENSE IND...: Y EEC ELIG: N SCDC CLASSIFICATION...: VIOLENT  
SEX REG: N PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12  
NO PAROLE: NOT APPLIC CREATED BY.: L ROBERSON DATE: 11/22/10

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

CMTI700M SCDC OFFENDER MANAGEMENT SYSTEM 10/15/15  
 CMTI700D COMMITMENT APPLICATION C055212  
 SCDC# > 199135 COMPLETED SCDC PRIORS  
 MCFADDEN, BERNARD - CURR LOC: KERSHAW  
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE SCDC CLASSIFICATION...: VIOLENT

| NUM      | T X | CONV OFFENSE  | YRS | MO | DYS | DATE     | START    | PROJ       | COMP | STAT | IND |
|----------|-----|---------------|-----|----|-----|----------|----------|------------|------|------|-----|
| S00008   | 4 N | RESIST ARREST | 008 | 00 | 000 | 09/25/03 | 04/27/03 | 09/27/2007 | COM  | N    | N   |
| S00006   | 2 N | CRACK DISTRIB | 008 | 00 | 000 | 08/17/95 | 08/17/95 | 01/16/2000 | COM  | N    | N   |
| S00005   | 1 N | DRIVING UNDER | 000 | 00 | 045 | 08/16/95 | 08/16/95 | 09/16/1995 | COM  | N    | N   |
| S00007   | 2 N | GRAND LARCENY | 005 | 00 | 000 | 08/16/95 | 06/01/95 | 02/28/1998 | COM  | N    | N   |
| Y S00004 | 4 N | BURGLARY-2ND  | 010 | 00 | 000 | 08/16/95 | 06/01/95 | 12/25/2000 | COM  | V    | V   |
| S00003   | 2 N | CRACK POSSESS | 005 | 00 | 000 | 08/16/95 | 06/01/95 | 02/28/1998 | COM  | N    | N   |
| S00001   | 2 N | CRACK DISTRIB | 002 | 00 | 000 | 08/04/93 | 05/12/93 | / /        | REV  | N    | N   |

95-65-14-185

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...  
 PF4-MODCONV PF6-NON-SCDC PRIORS

IV. STATEMENT OF CLAIM - continued.

State of South Carolina  
County of Richland

In The Administrative Law Court  
Case # 15-ALJ-04-0289-AP

Bernard McFadden, 199135,  
Appellant,

Ordinance # KRCI-1176-14  
Judge Robinson

VS.

Reply Brief Pursuant To Rule  
60 (A) With Declaration In  
Support

South Carolina Dept. Of Corrections,  
Respondent.

Reply # 1 To Respondent's Brief At Page 4:

Where Respondent states, "If, indeed, Appellant's argument is that the Department failed to credit him the (75) days of jail time credit listed on Appellant's copy of the 1995 sentencing sheet signed by Judge McGinnis", and that, "the court should not now - twenty years after the fact - attempt to address this issue", Appellant directs the Court's attention to his argument that his (10) year burglary 2d - conviction, indictment # 95-G-5-14-187, still persists as argued on page 2 of 4 in his Brief, citing Johnson vs. State, 489 S.E.2d. 915, 916 (S.C. 1997) (stating Petitioner has standing to petition for post conviction relief if he is in custody or results of his prior conviction still persist) (Appellant, regardless of whether he served jail time, may bring action for post conviction relief if he demonstrates he is prejudiced by persistent results of his conviction.).

Appellant also argues that it's not (75) days, but a correct 4/15/1995 sentence start date on Indictment # 95-G-5-14-187 to render

it too remote for relief on Issue # 3 in a pending (PCR) case # 201-CP-43-1952, as alleged in the subject-matter grievance # KRCE-1176-14.

### Reply # 2 To Respondent's Brief At Page 5:

Where Respondent states, "Importantly, neither of the two indictments Appellant mentions are related in any way to his current incarcerative sentences", Appellant directs the Court's attention to erroneous information contained in his prison file within the meaning of Paine vs. Baker, 595 Fed. 197, 302 (IF erroneous information is contained in a state prison inmate's prison file is relied on to deny parole or statutory good time credits, or to revoke probation or parole, inmate's constitutional liberty interest is at stake and the due process is called into play.) Particularly, Appellant complains about being denied jailtime credits from 4/15/1995 when arrested and jailed according to arrest warrant # E-017123. (See Attachment C, Arrestwarrant # E-017123, served 4/15/1995, attached to Appellant's Brief.)

Respondent's own Exhibit E shows this 4/15/1995 sentence start date. (See Attachment A, Respondent Exhibit E applying this 4/15/1995 sentence start date to the wrong Indictment # 95-GS-14-306, the 15 year sentence that was vacated which was in connection with the arrestwarrant issued 6/2/1995.) (Compare Attachment B, Simpson Hardware burglary warrant # E-390482 which was served 6/2/1995 with Respondent's own Exhibit E, SCOC's clear error via applying it to arrestwarrant # E-390482, Indictment # 95-GS-14-306; indeed, this Simpson Hardware burglary arrestwarrant wasn't served here until 6/2/1995, as shown thereon. (See Attachment B, Simpson Hardware warrant.)

### Reply # 3 To Respondent's Exhibits Attached To Its Brief:

Where Respondent has submitted Exhibits, Appellant objects to these Exhibits on the grounds that they are not the records of the contested case as described by S.C. Administrative Law Court Rules of Court, Rule 58. (See Rule 58, Record After Final Decision, Subsections A through F.) (See also Attachment E, Respondent's Record consisting of Inmate Grievance # KRCI-1176-15 via Respondent's own cover letter is the true records submitted.)

**WHEREFORE,** Appellant prays that this court finds the Respondent / SCDC is maintaining false information within the meaning of Paine vs. Baker, cited above, regarding a 4/15/1995 sentence start date via deliberately applying it to the wrong sentence or warrant # E-390483, when this warrant was issued 6/1/1995. (See Attachment B, clearly showing a 6/2/1995 delivery date, and not a 4/15/1995 date.) That this Court finds this correct information will ultimately grant Appellant relief by rendering his (10) year sentence<sup>A)</sup> for burglary 2d. conviction too remote when used by the trial court in November of 2010 on Issue # 3 in his pending (PCR) case # 2011-CP-43-1952, McFadden vs. State, as alleged in Grievance # KRCI-1176-14. That this Court finds the Appellant has a liberty interest in his statutory jailtime credits and possible relief in PCR with the correct 4/15/1995 sentence start date. And that this Court finds that Appellant's prior 1995 burglary conviction would be considered too remote and still persists within the meaning of Jackson vs. State, cited above.

### Declaration Of Bernard McFadden / Authenticity Of Documents

<sup>A)</sup> See State vs. Johnson, 609 S.E.2d. 520, 522 (S.C. 2005) (... holding trial court erred in calculating ten-year time period under Rule 609, SCRE ...).

IV. STATEMENT OF CLAIM - continued.

Proving Jailtime Credits Being Improperly Denied From 4/15/1995 To Deny New Trial In Pending (PER) Case, Mentioned Above:

I, Bernard McFadden, 199135, declare under penalty of perjury that all documents attached to the Original Brief and this Reply Brief, as well as those submitted by Respondent on August 26<sup>th</sup> 2015, are true and correct copies of the records and should be considered substantial evidence for which the Department did not consider when denying Appellant's Grievance # KRCI-1176-14. That Attachment D to Appellant's Brief clearly shows that the judge gave jailtime credit, contrary to Warden Dunlap's decision in Attachment B to Appellant's Brief dated 7/31/2015. That these facts are declared true and correct under perjury this 28<sup>th</sup> day of October 2015.

Bernard McFadden, 199135

Appellant, pro se

Sworn And Subscribed Before Me  
This 28 day of October 2015  
Cheryl R. Frost

Notary Public For South Carolina  
My commission expires: 1/27/25

Respectfully Submitted

Bernard McFadden, 199135

Kershaw CI/0426  
4848 Goldmine Hwy  
Kershaw, SC 29067

Proving Jailtime Credits Being Improperly Denied From 4/15/1995  
To Deny New Trial In Pending (PCR) case, Mentioned Above:

I, Bernard McFadden, 199135, declare under penalty of perjury  
that all documents attached to the Original Brief and this Reply  
Brief, as well as those submitted by Respondent on August 26<sup>th</sup>,  
2015, are true and correct copies of the records and should  
be considered substantial evidence for which the Department did  
not consider when denying Appellant's Grievance # KRCI-1876-  
14. That Attachment D to Appellant's Brief clearly shows that  
the judge gave jailtime credit, contrary to Warden Dentep's decision  
in Attachment B to Appellant's Brief dated 7/31/2015. That those  
facts are declared true and correct under perjury this 28<sup>th</sup> day of  
October 2015. 8/1 BM

Bernard McFadden, 199135  
Appellant, pro se

Sworn And Subscribed Before Me  
This 28<sup>th</sup> day of October 2015  
Cheryl R. Ford  
Notary Public For South Carolina  
My Commission Expires: 1/27/25

Respectfully Submitted,  
8/1 BM  
Bernard McFadden, 199135  
Kershaw CI/OA26  
4848 Goldmine Hwy  
Kershaw, S.C. 29067

5 CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 10/15/15  
 OMCOMITA COMMITMENT APPLICATION C055212  
 SCDC #: 199135 INQUIRY CURR LOC: KERSHAW  
 MCFADDEN, BERNARD - NONCONFORM SENT: N RTRN TO COURT:  
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE  
 CONVICTION NUM: S00002 INDICT NUM: 95-GS-140306 WARRANT NUM: E 390482  
 DATE SENTENCED...: 08/16/1995 JUDGE LAST...: MCINNIS FI: D  
 STATUTE: CDR CODE.. GPS IND: N  
 OFFENSE: 2221 BURGLARY-2ND DEGREE OFFENSE DATE: 04/07/1995  
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 14 CLARENDON  
 PLEA...: G GUILTY TYPE OF COURT....:  
 TYPE SENTENCE...: S ADULT-STRAIGHT SCDC JURIS DATE...: 04/15/1995  
 TOTAL SENTENCE...: 015 00 000 MAND SERV REQMT...: 000 00 000  
 INCARC SENTENCE...: 015 00 000 PAROLE FACTOR....: 2 1/3 SENT. REQ.  
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000  
 HIP SENT.....: 000 00 000  
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 EXTRA CRED: 00000  
 CONVICTION STATUS: RM REMANDED SENT START DATE: 04/15/1995 DOM. IND: N  
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT  
 DNA OFFENSE IND...: Y EEC ELIG: N SCDC CLASSIFICATION.....: VIOLENT  
 SEX REG: N PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12  
 NO PAROLE: NOT APPLIC CREATED BY.: A BRAZELL DATE: 08/30/95

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

15yr. Sentence for Burglary 2d, Indictment #  
 4/15/1995 sentence start date for 15 year sentence for burglary  
 2d, Arrest warrant # E-390482, is before the warrant  
 was issued. (See Attachment B, Warrant # E-390482,  
 served 6/2/1995.)

(Attachment A)

## ARREST WARRANT

E- 390482

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

MANNING

THE STATE

against

BERNARD MCFADDIN

Address: MANNING, S.C. 29109

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: MA Race: BLK Height: 508 Weight: 178

DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: \_\_\_\_\_

Prosecuting Agency: \_\_\_\_\_

Prosecuting Officer: \_\_\_\_\_

Offense: Burglary - 2 & Larceny

Offense Code: \_\_\_\_\_

Code/Ordinance Sec. 16-11-312 & 16-13-30

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date: \_\_\_\_\_

## RETURN

A copy of this arrest warrant was delivered to defendant BERNARD MCFADDINon 06/02/95Signature of Constable/Law Enforcement Officer C. Johnson

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA )

☐ County/ ☒ Municipality of

MANNING )

Personally appeared before me the affiant ASSISTANT CHIEF JOE BRADHAM whobeing duly sworn deposes and says that defendant MCFADDIN, BERNARDdid within this county and state on 4-7-95 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of \_\_\_\_\_ )in the following particulars: BURGLARY-2ND DEGREE AND LARCENY - VIOLATION OFDESCRIPTION OF OFFENSE: CS 16-11-312 OF THE SC CODE OF LAWS AND LARCENY16-13-30

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts: ON 4-7-95 IN THE NIGHTTIMETHE DEFENDANT DID ENTER SIMPSON'S HARDWARE STORE WITHOUT CONSENT ANDWITH THE INTENT TO COMMIT A CRIME THEREIN; AND DID TAKE, STEAL ANDCARRY AWAY A LARGE QUANTITY OF RIFLES, TOTAL VALUE BEING APPR \$4,210.THE DEFENDANT GAINED ENTRY BY BREAKING A GLASS DOOR. 7 BROWNINGRIFLES WERE STOLEN. ONE OF THE RIFLES HAS BEEN RECOVERED AND WASTRACED BACK TO ANTHONY CANTY, WHO GAVE A STATEMENT THAT HE GOT THEGUN FROM THE DEFENDANT. ANOTHER SUBJECT HAS GIVEN A STATEMENT TO THEMANNING POLICE THAT THE DEFENDANT ADMITTED TO HIM THAT HE COMMITTEDTHIS CRIME. DEFENDANT HAS ADMITTED TO POLICE THAT HE WAS IN POSSESSIOF THESE RIFLES. OFFENSE OCCURRED IN MANNING, CLARENDON CO, SCDEFENDANT IS WITNESS TO PROVE ALONG WITH UNNAMED INFORMANT.

Sworn to and subscribed before me

on 6-2-95 )

Signature of Issuing Judge )

ANNELE G. POWELL

Signature of Affiant

Affiant's Address MANNING POLICE DEPTMANNING, SC.Affiant's Telephone 435-8859

STATE OF SOUTH CAROLINA )

☐ County/ ☒ Municipality of

MANNING )

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 4-7-95 defendant BERNARD MCFADDIN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of \_\_\_\_\_ ) as set forth below:DESCRIPTION OF OFFENSE: BURGLARY-2ND DEGREE AND LARCENY - VIOLATION OF  
CODE SECTION 16-11-312 & 16-13-30 SC CODE OF LAWS

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address CITY HALL - MANNING, SCSignature of Issuing Judge (L.S.) ) Judge's Telephone 435-8477Judge Code: \_\_\_\_\_ Issuing Court: ☐ Magistrate ☒ Municipal ☐ CircuitANNELE G. POWELL  
ORIGINAL

AFFIDAVIT

Form Approved by  
S.C. Attorney General  
July 26, 1990  
SCCA 518

(Attachment B)

DO NOT  
CERK OF COURT  
CLARENDON COUNTY, S.C.

4 01 PM '95

35

7 CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 10/15/15  
 OMCOMITA COMMITMENT APPLICATION C055212  
 SCDC #: 199135 INQUIRY CURR LOC: KERSHAW  
 MCFADDEN, BERNARD - NONCONFORM SENT: N RTRN TO COURT: N  
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE  
 CONVICTION NUM: S00004 INDICT NUM: 95-GS-140187 WARRANT NUM: E 017123  
 DATE SENTENCED...: 08/16/1995 JUDGE LAST...: MCINNIS FI: D  
 STATUTE: CDR CODE: GPS IND: N  
 OFFENSE: 2221 BURGLARY-2ND DEGREE OFFENSE DATE: 06/01/1995  
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 14 CLARENDON  
 PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO  
 TYPE SENTENCE...: S ADULT-STRAIGHT SCDC JURIS DATE...: 06/01/1995  
 TOTAL SENTENCE...: 010 00 000 MAND SERV REQMT...: 000 00 000  
 INCARC SENTENCE...: 010 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.  
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000  
 HIP SENT...: 000 00 000  
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 EXTRA CRED: 00000  
 CONVICTION STATUS: CO COMPLETE SENT START DATE: 06/01/1995 DOM.IND: Y  
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT  
 DNA OFFENSE IND...: Y EEC ELIG: N SCDC CLASSIFICATION...: VIOLENT  
 SEX REG: N PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12  
 NO PAROLE: NOT APPLIC CREATED BY..: A BRAZELL DATE: 08/30/95

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

Arrest warrant #

1040 Sentence for Burglary 2nd, Indictment #

(Attachment C)

Incorrect sentence start date of 6/1/1995 where Attachment C  
 to Appellant's Brief shows this warrant was served  
 on 4/15/1995. (See Attachment D showing warrant  
 # E-017123 being served 4/15/1995, and not 6/1/1995,  
 as Attachment B, warrant # E-390452, shows)

## ARREST WARRANT

E-017123

STATE OF SOUTH CAROLINA  
☐ County/ ☒ Municipality of  
 Summerton

THE DATE

against

Bernard McFadden

Address: Manning, S.C.

Phone: 485-4971 SSN: 5-8-170

Sex: Race: Height: Weight:

DL State: NI #:

DOB: Agency ORI#:

Prosecuting Agency: Summerton Police

Prosecuting Officer: Chief Brown

Offense: Burglary; second

Code/Ordinance Sec: 16-11-312 Offense Code:

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

Signature of Judge (L.S.)

Date:

## RETURN

A copy of this arrest warrant was delivered to  
 defendant Bernard McFadden

on 15 day of April 95

Signature of Constable/Law Enforcement Officer  
 Sgt. Henry McEwen

RETURN WARRANT TO:  
 Judge E.A. failmezger

## STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
 Summerton

## AFFIDAVIT

Form Approved by  
 S.C. Attorney General  
 July 28, 1990  
 SCCA 518

Personally appeared before me the affiant Chief Brown  
 being duly sworn deposes and says that defendant Bernard McFadden  
 did within this county and state on 4-13-95  
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of )  
 in the following particulars:

## DESCRIPTION OF OFFENSE:

16-11-312 Burglary; Second

I further state that there is probable cause to believe that the defendant named above did commit  
 the crime set forth and that probable cause is based on the following facts:

That on or about 4-13-95 in the Town of summerton in the County  
 and State aforesaid at the Lawson B.P. station on South Church St on  
 Bernard McFadden did commit the offense of Burglary second degree,  
 in that he did willfully, unlawfully and feloniously break and enter  
 the business of Lawson B.P. during the night time with the intention  
 to commit a felony therein.

Probable cause was based on investigation of S.P.D.

Sworn to and subscribed before me  
 on 4-14-95

Signature of Affiant  
 Affiant's Address 10 Main St Summerton Police Dept  
 Summerton, S.C.  
 Signature of Issuing Judge (L.S.)  
 Affiant's Telephone 485-4385

## STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
 Summerton

## ARREST WARRANT

## TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
 on 4-13-95 defendant Bernard McFadden  
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of ) as set forth below:

## DESCRIPTION OF OFFENSE:

Burglary second 16-11-312

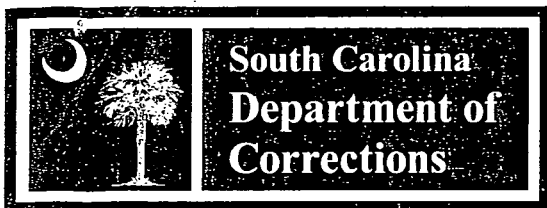
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
 defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)  
 Judge's Address 102 Main St Summerton, S.C.  
 Judge's Telephone 485-2855  
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

APR 21 10 07 AM '95

DOUG H. MCFADDEN  
CLERK OF COURT  
ALABAMA COUNTY, SC



31

NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

August 26, 2015

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, SC 29201

Reference: Inmate Bernard McFadden, #199135, vs. SCDC  
Docket No. 15-ALJ-04-0289-AP

Dear Judge Shirley C. Robinson:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance KRCI 1176-14, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,

Cheron M. Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate Bernard McFadden, #199135  
File

(Attachment E)  
p. 1 of 8

10

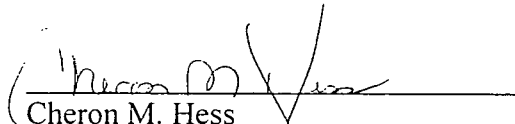
38

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Bernard McFadden  
Inmate Number: 199135  
Kershaw Correctional Institution  
Dorm-Room-Bunk: OA-0026-T

Columbia, South Carolina  
August 26, 2015

  
Cheron M. Hess  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broad River Road  
P. O. Box 21787  
Columbia, SC 29221-1787  
(803) 896-3922

(Attachment E)  
p. 2 of 8

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 2  
DEC 29 2014

INMATE NAME: Bernard McLean  
SCDC NUMBER: 199133  
INSTITUTION: Kershaw CI JAN 09 2015  
HOUSING UNIT: MAG4 INMATE GRIEVANCE DEC 30 2014  
WORK ASSIGNMENT: Dorm / Shower KERSHAW CI

Office Use Only  
Grievance No. 1176-14  
Code: General  
Policy  
Disc. Hear.  
Class. ☒  
Date Received 12/30/14  
IGC Initials [Signature]

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

*I appeal the Warden's decision because the sentencing sheets attached for indictments 95-GS-14-306 and 95-GS-14-187 clearly have an indication from Circuit Judge David Mc Ginnis that I should be given credit for jail time served. (See Attachments A and B, Indictments 95-GS-14-306 and 95-GS-14-187 clearly showed Mc Ginnis' handwriting indicating credit for time serve.) Indeed, caseworker Ms Cynthia York has this information, but refuses to process a jail-time request form to prevent a new trial on Issue #3 in PCR case # 2011-CP-43-1952 - a conspiracy.*

Grievant Signature [Signature] Date 12/25/2014

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Kershaw CI is in compliance with SCDC Policy OP-21.04, Inmate Classification Plan. It is noted that the two (2) indictments referenced in your grievance, 95-GS-14-306 and 95-GS-14-187 (both dated August 16, 1995), pertain to your previous incarceration and you were released 8/31/07 at the expiration of your sentence/time served. Currently, you are serving time on a different sentencing order. SCDC records denote that you have been credited with 496 days jail time credits and your projected MAXOUT date is July 21, 2017 which includes your jail time credits. Your actual date is determined based on different factors including an analysis of your behavior. If you maintain your status quo, then your projected date will remain your actual 'maxout date'. However, should you receive a disciplinary charge(s), terminate employment, etc. then your 'maxout date' could be extended.

Therefore, your grievance is denied.

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

[Signature] 5-21-15  
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.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Attachment E  
p. 3 of 8

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP OCT 14 2014

"Recorded"

|                                       |                                                                                    |                                                 |
|---------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------|
| INMATE NAME: <u>Bernard, McFadden</u> | <div style="text-align: center; font-size: 2em; font-weight: bold;">RECEIVED</div> | OFFICE USE ONLY                                 |
| SCDC NUMBER: <u>199135</u>            |                                                                                    | Grievance No. <u>189 1176-14</u>                |
| INSTITUTION: <u>Kershaw</u>           |                                                                                    | Code: General                                   |
| HOUSING UNIT: <u>Mt 64</u>            |                                                                                    | Policy                                          |
| WORK ASSIGNMENT: <u>Dorm</u>          |                                                                                    | Disc. Hear. <input checked="" type="checkbox"/> |
|                                       |                                                                                    | Class. <input checked="" type="checkbox"/>      |
|                                       |                                                                                    | PREA                                            |
|                                       |                                                                                    | Date Received <u>10/15/14</u>                   |
|                                       |                                                                                    | IGC Initials <u>AKL</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.)

This grievance is filed on Ms. Diane Hingle (See kiosk Reference #14-23937.) Ms. White and Ms. York for refusing to audit a 1995 sentence start date for a (10) year sentence on Burglary 2d. (See also kiosk Reference #14-216471.) indictment # 95-GS-14-187 by processing a jail-time request form through State Classification so it can be forwarded to Clarendon County Detention Center in these 10/10/2014 dispositions.

The incorrect max-out date is 12/25/2000. The correct max-out date is below 11/1/2000, rendering it too remote for my 2010 burglary trial (See Attachment F, Exery's 2/23/2012 disposition confirming no jail-time was added for this offense.)

To obtain (PCR) relief in McFadden vs. State, Case # 2011-CP-43-1952, on Issue # 3, the correct date needs to be presented to this court by giving jail-time.

See also Attachment E, York's 2/10/2012 disposition rejected court documents and my claim.)

ACTION REQUESTED: 1) All jail time, and 2) Explain why no transfers. Content and deposit witnessed 10/13/2014 by: PL Personal copy #4 signed PL and kept #

ACTION TAKEN BY IGC: ☒ PROCESSED ☐ UNPROCESSED ☐ OTHER

IGC conferred with Case Manager Mrs York. See Ovarren's Response

P. Nourti 12/2/14

IGC Signature

Date

(CONTINUE ON REVERSE SIDE)

(Attachment E)

3

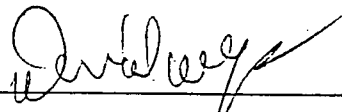
WARDEN'S DECISION AND REASON:

Inmate Mcfadden;

This is in response to KRCI-1176-14. All pertinent information and documentation has been reviewed. Nothing has been found to support your allegation that your maxout date is incorrect. Case Manager, Mrs. York was contacted and indicated that Mr. Eury answered your request to staff appropriately. You were advised by Mr. Eury that due to the sentencing Judge and the Clerk of Court failure to add any jail time credit, this issue cannot be adjusted by SCDC. You were advised to contact the sentencing Judge or the Clerk of Court in regards to this matter.

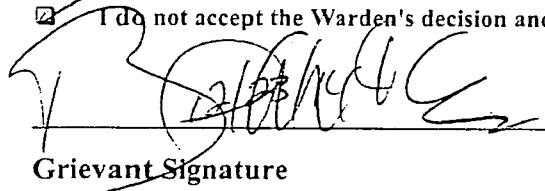
Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

41

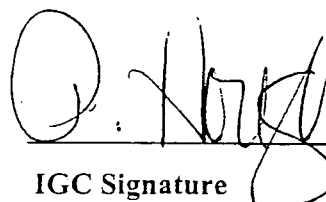
  
Warden Signature 12/18/14  
Date

☐ I accept the Warden's decision and consider the matter closed.

☒ I do not accept the Warden's decision and wish to appeal.

  
Grievant Signature

12/23/14  
Date

  
IGC Signature

12/23/14  
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM:

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

(Attachment E)  
p. 5 of 8

SCDC  
Request To Staff Member

"Recorded"

|                                         |                      |                                |
|-----------------------------------------|----------------------|--------------------------------|
| To: Name:<br>Mrs. York - Classification | Title                | Date:<br>2/9/2012              |
| From Name:<br>Bernard McFadden          | SCDC #<br>199135     | <b>RECEIVED</b><br>FEB 10 2012 |
| Inst.<br>Kershaw CF                     | Living Area:<br>MB2A |                                |

RE: (C) Year Sentence For Burglary 2d. (Violent), Indictment  
95-65-14-187

CLASSIFICATION

Request For Audit

Dear Mrs. York:

The December 25<sup>th</sup> 2000, max-out date is incorrect for the above referenced matter. Records show a sentence start date on 6/1/95. (See Attachment A.) However, the arrestwarrant shows I was served with the arrestwarrant April 15<sup>th</sup> 1995. (See Attachment B.) The Court of General Sessions disposition sheet shows 4/15/95. (See Attachment C.) And the Clarendon County Clerk of Court's September 21<sup>st</sup> 2011, letter confirms no security bond for this arrestwarrant. (See Attachment D.)

Therefore, my max-out date should not have exceeded 11/1/2000.  
\* Content and deposit witnessed 2/9/2012 by:  
CC: Dianne Hingle  
Mr. Eury

P/Personal copy signed and init #

Disposition:  
Inmate McFadden

The information you need concerning your max out for Offense Burglary 2nd is correct. See your letter dated 9/21/11. That states: However, that does not mean bond was not set,

Date:  
2/10/12

Signature:  
Jm

(Attachment E)

96 of 8

43

SCDC  
Request To Staff Member "Recorded"

|                                |                         |                      |
|--------------------------------|-------------------------|----------------------|
| To: Names<br>Mr. Eury -        | Title<br>Classification | Date:<br>2/9/2012    |
| From Name:<br>Bernard McFadden |                         | SCDC #:<br>199135    |
| Inst.<br>Kershaw CI            |                         | Living Area:<br>MB2A |

RE: (10) Year Sentence For Burglary 2d (Violent),  
95-GS-14-187

**RECEIVED**

FEB 10 2012

Request For Audit

CLASSIFICATION

Dear Mr. Eury:

The December 25<sup>th</sup> 2000, max-out date is incorrect for the above referenced matter. Records show a sentence start date on 6/1/95. (See Attachment A.) However, the arrestwarrant shows I was served with the arrestwarrant April 15<sup>th</sup>, 1995. (See Attachment B.) The Court of General Sessions disposition sheet shows 4/15/95. (See Attachment C.) And the Clarendon County Clerk of Court's September 21<sup>st</sup>, 2011, letter confirms no security bond for this arrestwarrant. (See Attachment D.)

Therefore, my max-out date should not have exceeded 11/1/2000.

\* Content and deposit witnessed 2/9/2012 by:

cc: Diane Hingle  
Mrs. York

P/Personal copy signed and initialed  
#

Disposition:

This is something you need to take up w/  
The sentencing Judge & Clerk of Court. They  
didn't add any Jail Time Credit.

Your projected maxout date is 12-25-2000

p. 7 of 8

(Attachment E)

Attachment F

|                  |                                                                                                    |                |
|------------------|----------------------------------------------------------------------------------------------------|----------------|
| Date:<br>2-23-12 | Signature:<br> | (Attachment F) |
|------------------|----------------------------------------------------------------------------------------------------|----------------|

16

44

Offender Management System

## Inmate Request

Today's Date: 12/15/14 10:21

Name: MCFADDEN, BERNARD  
Booking #: 199135  
Permanent #: 199135

Reference #: 14-233937  
Date Requested: 09/07/14 16:37  
Request Type: Classification  
Requested By: Kiosk

Request Details: DEAR MS. DIANE HINGLE : 1) QUESTION : IF I DON'T QUALIFY FOR SERVING THE REMAINDER OF MY TIME IN A COUNTY JAIL , PLEASE INDICATE WHY ? IF I QUALIFY , I WOULD LIKE TO SERVE THE REMAINDER AT SUMTER COUNTY , CLARENDON COUNTY , DILLON COUNTY OR MARION COUNTY .

Disposition: Complete  
Officer:  
Disposition Date: 10/10/14 16:41

| Request Responses |         |                                   |
|-------------------|---------|-----------------------------------|
| Date              | Author  | Note                              |
| 10/10/14 16:42    | c038600 | See your caseworker at open door. |

Inmate Request

Page 1 of 1

11/15/2014 10:21 AM  
P. 8 of 8

## Proof of Mailing

Case #: 15-ALJ-04-2289-APBrrevance # KRCI-1176-15

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly-addressed-stamped envelope in the US Mail this 28<sup>th</sup> day of October 2015, such matter being: McFadden's Reply Brief Pursuant to Rule 60(A) With Declaration In Support:

- |                                                                                                                           |                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1) SCDL Office of General Counsel, P.O. Box 21787,<br><del>4044</del> Broad River Road<br>Columbia, South Carolina 29201; | 2) The Hon. Shirley C. Robinson<br>S.C. Administrative Law Court<br>Edgar A. Brown Building, Suite 224, 1205 Pendleton Street,<br>Columbia, S.C. 29201 |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|

Sworn And Subscribed Before Me

This 28 day of October 2015Cheryl R. Just

Notary Public For South Carolina

My commission expires: 11/27/25Bernard McFadden

Bernard McFadden, 199135

Appellant, pro se

Proof of Mailing  
 Case # : 15-ALJ-04-0289-AP  
 Grievance # KRCI-1176-15

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly addressed - stamped - envelope in the U.S. Mail this 28<sup>th</sup> day of October, 2015; such matter being: McFadden's Reply Brief Pursuant To Rule 60(A) With Declaration In Support:

- 1) SDC Office of General Counsel, P.O. Box 21787,  
 4444 Broad River Road  
 Columbia, South Carolina 29221;
- 2) The Hon. Shirley C. Robinson  
 S.C. Administrative Law Court  
 Edgar A. Brown Building, Suite  
 224, 1205 Pendleton Street  
 Columbia, S.C. 29201

Sworn And Subscribed Before Me  
 This 28 day of October, 2015

Charles R. Felt  
 Notary Public For South Carolina  
 My commission expires: 11/27/25

Bernard McFadden  
 Bernard McFadden, 199135  
 Appellant, pro se

JAN 27 2016 49

SC ADMIN. LAW COURT

Respondent.

On July 11, 2002, in a PCR action, the South Carolina Supreme Court vacated Appellant's conviction for the First Burglary charge, Indictment Number 95-GS-14-306.

Sometime in 2010, Appellant went to trial and was convicted of second degree burglary again.

On February 9, 2012, Appellant submitted two Requests to Staff Member to a Mr. Eury and a Ms. York, requesting an audit of the Second Burglary conviction, arguing his max out date of December 25, 2000, was incorrect and should not have exceeded November 1, 2000. In response, Mr. Eury indicated Appellant needed to take up the issue with the sentencing judge and clerk of court because the judge did not add jail time credit to the sentence. Ms. York indicated Mr. Eury's response was correct.

On October 14, 2014, Appellant filed a Step One Grievance, which was denied. The denial cited with approval Mr. Eury's response that the sentencing judge had failed to indicate Appellant was to receive jail time credit, and, therefore, the Department could not adjust Appellant's sentence. On December 29, 2014, Appellant filed a Step 2 Grievance, which was similarly denied. Appellant then appealed to this Court.

### DISCUSSION

Appellant argues that had the Department properly calculated his sentence-related credits for his Second Burglary conviction, his correct max out date for that sentence would have rendered the Second Burglary conviction too remote under Rule 609, SCRE, to be admitted to impeach his character at his 2010 trial. Accordingly, Appellant argues he needs this Court to correct his 1995 Second Burglary sentence max out date in order to properly challenge the resulting 2010 conviction in his pending PCR action. Essentially, Appellant contends he suffered collateral consequences from the Department's incorrect calculation of his sentence, which persist in his current PCR action.

For its part, the Department appears confused by Appellant's argument, arguing (1) Appellant's current sentences and jail time credits are correctly calculated (although Appellant makes no argument about his current sentences), and (2) the only 1995 conviction for which the judge gave Appellant jail time credit was the First Burglary charge, which was vacated. The Department further argued Appellant's remaining 1995 convictions are in no way connected to his current sentences.

Before this court addresses the merits of this case, it must first address jurisdiction.

Although neither party has raised the issue of subject matter jurisdiction, this Court has the authority to raise it *sua sponte*. Badeaux v. Davis, 337 S.C. 195, 205, 522 S.E.2d 835, 840 (Ct. App. 1999) ("Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.").

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep't of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004), provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).

For the purpose of establishing jurisdiction in this case, a state-created liberty or property interest exists when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. Sullivan, 355 S.C. at 441, 586 S.E.2d at 126. Appellant argues his sentence for his 1995 Second Burglary conviction was wrongly calculated because certain sentence-related credits were not properly applied. Under Al-Shabazz and Sullivan, this would ordinarily give this Court jurisdiction to address the issue. However, in Appellant's case, it has been over ten years since he completed serving the sentence he now contests, which raises the issue of mootness. Moreover, this issue is complicated by the fact that Appellant is ultimately seeking to make a collateral attack upon a later 2010 criminal conviction. I find this Court does not have jurisdiction to address Appellant's sentencing issue for two reasons: (1) to the extent Appellant has raised an issue cognizable in an administrative action, I find that issue is moot; and (2) I find Appellant's challenge to his sentence is more appropriately raised as part of his pending PCR action.

An action becomes moot when rendering judgment would have no legal effect upon the controversy. Collins Music Co. v. IGT, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005). Ordinarily, when an inmate challenges his sentence or a disciplinary conviction, but the inmate completes his sentence and is released before his or her case reaches this Court, this Court will

dismiss the case as moot. See Willie Evans, Jr., #241416, Appellant, Docket No.: 00-ALJ-04-00525-AP, 2001 WL 1262665, at \*1 (Sept. 25, 2001) (holding an inmate's appeal challenging his punishment for a disciplinary conviction was moot because the inmate had been released from state custody and "judgment, if rendered, [would] have no practical legal effect upon the existing controversy (citation omitted)); Earvin Smith, #164245, Appellant, 00-ALJ-04-00232-AP, 2001 WL 1488109, at \*1 (Nov. 6, 2001). However, there are exceptions to the mootness doctrine.

Appellant cites to Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997) to support his argument that his case is not moot. In Jackson, the South Carolina Supreme Court held the appellant was entitled to petition for PCR although he had already served his sentence because he was suffering from "continuing consequences as a result of his alleged invalid conviction." Id. at 489-90, 489 S.E.2d at 916-17. In support of its conclusion, the supreme court cited to Sibron v. State of New York, 392 U.S. 40 (1968). Id. at 490 n. 2, 489 S.E.2d at 917 n.2. In Sibron, the United States Supreme Court discussed the doctrine of mootness as it relates to challenges to criminal convictions that have already been served. Sibron, 392 U.S. at 50-58. The Court noted two exceptions to the doctrine of mootness as it relates to criminal convictions. Id. at 51-54. First, a court has jurisdiction when the petitioner could not have brought the case to the court for review before the expiration of his sentence and, second, a court has jurisdiction when the petitioner can show collateral legal consequences persist from the previous conviction. Id. In Sibron, the petitioner challenged a six-month sentence, which he had already served by the time it reached the Court. Id. at 50-52. The Court found petitioner met both exception to the doctrine of mootness because (1) his case could not have made it to the Court before he finished his sentence, and (2) under New York law his conviction could be used to impeach his character should it be at issue in a future criminal trial and it would be a factor in sentencing in any future criminal conviction. Id. at 50-56.

Jackson and Sibon touch on a similar issue to the one raised here - the collateral consequences of a prior conviction. In particular, the Court in Sibron referenced the collateral consequences of a prior conviction being used as character impeachment in a future criminal proceeding, much like Appellant is trying to argue here. See Sibron, 392 U.S. at 55-56. However, I find Jackson and Sibon, are distinguishable from the case at bar because they discuss the rights of a petitioner to *bring a PCR action challenging the prior conviction, not sentence length*. Therefore, the collateral consequences envisioned by the Jackson and Sibron courts are those

consequences arising from the mere existence of a conviction, not sentence length. Accordingly, I do not find Jackson and Sibron to be directly applicable to Appellant's *administrative action*.

Nevertheless, the similarity of Appellant's plight to the petitioners' plights in Jackson and Sibron raise the question of whether Appellant's action is a PCR action masking as an administrative action. Although Appellant is attacking his sentence length and not his conviction, his ultimate goal is to attack his 2010 conviction in his pending PCR action. The attack on his sentence in this court is merely a part of his PCR case. Therefore, while Al-Shabazz, holds this Court has jurisdiction over non-collateral, administrative matters related to sentencing and sentence-related credits, I find this case is, at its heart, a piece of a collateral attack on Petitioner's 2010 conviction, which the supreme court, in Al-Shabazz, held is a matter for the PCR court. Al-Shabazz, 338 S.C. at 367-68, 367, 527 S.E.2d at 749.]

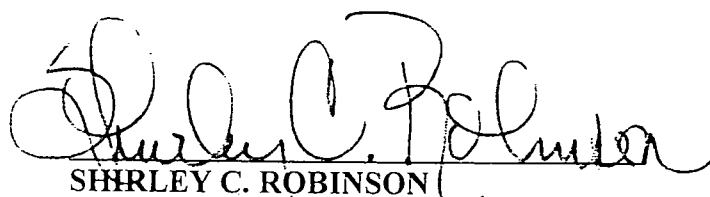
Specifically, the PCR court has the authority to address Appellant's ultimate issue, while this Court does not. Appellant's argument centers on the allegation that he should not have been impeached with the Second Burglary conviction under Rule 609, SCRE, at his 2010 trial because the conviction should have been too remote if the Department had properly calculated his sentence. Under Rule 609(b), SCRCP, evidence of a conviction more than ten years old "since the date of the conviction or other release of the witness from the confinement imposed for that conviction, whichever is the later date" is not admissible "*unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.*" Rule 609, SCRE (emphasis added). This Court has no jurisdiction to review the application of Rule 609, SCRE, in Appellant's 2010 trial or overturn Appellant's conviction. See Al-Shabazz, 338 S.C. at 367-68, 527 S.E.2d at 749. In contrast, the PCR court can, for example, review whether Appellant's counsel at his 2010 trial was ineffective for failing to object to the admission of Appellant's Second Burglary conviction under Rule 609, SCRE, and grant any relief it deems proper. See id.; Green v. State, 338 S.C. 428, 432, 527 S.E.2d 98, 100 (2000) (affirming the PCR court's finding that counsel was ineffective for failing to argue the prejudicial effect of admitting his client's prior convictions under Rule 609, SCRE, outweighed their probative value).

Therefore, because Appellant's appeal to this Court is really part of his attempt to overturn his 2010 conviction in the PCR court, I find the PCR court, not this Court, is the appropriate venue for Appellant's issue. See Al-Shabazz, 338 S.C. at 367-68, 527 S.E.2d at 749. Moreover, to the

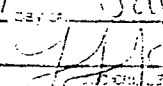
extent Appellant's appeal falls within the administrative realm, I find the appeal is moot. I find it is moot because Appellant has already served his sentence, and this Court's judgment on the matter would have no practical legal effect, except perhaps a hypothetical effect on his pending PCR action. See Collins Music Co., 365 S.C. at 549, 619 S.E.2d at 3; Willie Evans, Jr., #241416, Appellant, Docket No.: 00-ALJ-04-00525-AP, 2001 WL 1262665, at \*1; see also Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006) ("A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract.").<sup>1</sup>

Based on the above, **IT IS HEREBY ORDERED** that this appeal is **DISMISSED** for lack of jurisdiction.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

January 27<sup>th</sup>, 2016  
Columbia, South Carolina

FILED  
CLERK OF COURT  
JAN 27 2016  
COLUMBIA, SOUTH CAROLINA  
27 days January 2016  


<sup>1</sup> I note Appellant had the opportunity to contest his sentence-related credits or max out date at any time during his service of the sentence at issue, but he did not challenge it until over ten years after completing it. Cf. Sibron, 392 U.S. at 51-52 (noting one exception to the mootness doctrine is when the petitioner could not have brought his case for review before the expiration of his sentence).

IV. STATEMENT OF CLAIM - continued.

*The State of South Carolina*  
*In The Court Of Appeals*

*Appeal From The Administrative Law Court [S.C. Dept. of Corrections]*  
*Shirley C. Robinson, Administrative Law Judge*  
*Appeal No. 2016-000431*

*Bernard McFadden, 199135,*

*Appellant,*

*vs.*

*South Carolina Dept of Corrections,*

*Respondent.*

*Final Brief*

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8

54

## Table of Content

|                                                                                                                                                                                                                                                                                                                                                                                                                |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Table of Authorities                                                                                                                                                                                                                                                                                                                                                                                           | 0        |
| Statement of Issues On Appeal                                                                                                                                                                                                                                                                                                                                                                                  | 1        |
| Statement of Case                                                                                                                                                                                                                                                                                                                                                                                              | 2        |
| Facts                                                                                                                                                                                                                                                                                                                                                                                                          | 2-3, 4-7 |
| Arguments                                                                                                                                                                                                                                                                                                                                                                                                      |          |
| 1) Where the PCR court - like McFadden's 2010 criminal trial court - can rely on SCDC's false max-out date in McFadden's file, the Administrative Law Court did err in finding issue moot, in violation of McFadden's 14 <sup>th</sup> Amendment right in light of <u>Paine vs. Baker</u> , 595 Fed. 197, 302 (U.S. App. 4 <sup>th</sup> Cir. 1979)                                                            | 3-4      |
| 2) Where McFadden claimed SCDC miscalculated his sentence start date in violation of procedural due process under the 14 <sup>th</sup> Amendment, the Administrative Law Court did err in finding McFadden's challenge to his sentence is more appropriate in (PCR), in light of <u>State vs. Boggs</u> , 696 SE2d. 579, 598 (S.C. App. 2010); and <u>Alshabazz vs. State</u> , 527 SE2d. 742, 750 (S.C. 2000) | 4-6      |
| Declaration of Bernard McFadden                                                                                                                                                                                                                                                                                                                                                                                | 6-7      |
| Conclusion                                                                                                                                                                                                                                                                                                                                                                                                     | 7        |

## Table of Authorities

### Case Laws

- |                                                                                |     |
|--------------------------------------------------------------------------------|-----|
| 1) <u>Al-Shabazz vs. State</u> , 527 S.E2d 742 (S.C. 2000)                     | 5-6 |
| 2) <u>McClam vs. State</u> , 686 S.E2d 203 (S.C. App. 2009)                    | 4   |
| 3) <u>Paine vs. Baker</u> , 595 F.2d 197 (U.S. App. 4 <sup>th</sup> Cir. 1979) | 2-3 |
| 4) <u>State vs. Briggs</u> , 696 S.E2d 579 (S.C. App. 2010)                    | 5   |

### S.C. Statute

- |             |   |
|-------------|---|
| 1) 24-13-40 | 3 |
|-------------|---|

4

56

## Statement of Issues On Appeal

- 1) Where the (PCR) court - like McFadden's 2010 criminal trial court - can rely on SCOC's false max-out date in McFadden's file, did the Administrative Law Court err in finding issue moot, in violation of McFadden's 14<sup>th</sup> Amendment rights in light of Paine vs. Baker, 595 F.2d. 197, 202 (U.S. App. 4<sup>th</sup> Cir. 1979)?
- 2) Where McFadden claimed SCOC miscalculated his sentence start date in violation of procedural due process under the 14<sup>th</sup> Amendment, did the Administrative Law Court err in finding McFadden's challenge to his sentence is more appropriate in (PCR) in light of State vs. Boggs, 696 S.2d 579, 598 (S.C. App. 2010); and Al-Shabazz vs. State, 527 S.2d 742, 750 (S.C. 2000)?

## Statement Of The Case :

McFadden's conviction was vacated in 2002. (See Record On Appeal at p. 7, S.C. Supreme Court's July 11<sup>th</sup>, 2002, Order.) McFadden requested and was denied an audit to correct an incorrect 12/25/2000 max-out date for arrest warrant # E-07123 (Indictment # 95-GS-14-187) to the correct max-out / sentence start date of April 15<sup>th</sup>, 1995. Appellate filed a grievance on 10/13/2015. After finding that McFadden was advised by a Mr. Eury that the sentencing judge and the clerk failed to add jailtime credit, Warden Dunlap determined McFadden's alleged incorrect max-out date could not be adjusted by SCDC. Appellate then filed a Step Two Grievance; this grievance was denied by Mrs. J. G. Gaston and received on 6/16/2015.

On 6/19/2015, McFadden deposited his Notice of Appeal in the US Mail to the S.C. Administrative Law Court that was docketed 6/24/2015. The ALC found that it lacked jurisdiction for two reasons: 1) to the extent McFadden has raised an issue cognizable in an administrative action, the issue is moot; and 2) McFadden's challenge to his sentence is more appropriately raised as part of his pending (PCR) action. The ALC court dismissed this case on 01/27/2015. This appeal follows.

## Facts For Argument # 1:

The record before this court will show the following facts: Although McFadden cited Paine vs. Baker, 595 F.2d 197, 202 (App. N.C. 4<sup>th</sup> Cir 1979) to demonstrate false information in a prisoner's file will deny due process if relied upon in a decision making process, the ALC's 01/27/2016 Order of Dismissal didn't even mention

6

58

Paine. (See ROTA at pgs. 47-52.) And although McFadden cited State vs. Baggs, 696 SEd. 579, 598 (S.C. App. 2010) - to illustrate that even if the trial judge didn't give any jailtime in 1995, SDC will still have to add it because it's a statutory right pursuant to title 24-13-40 - the ALC (like Paine) didn't even mention State vs. Baggs.

In Paine, the 4th Circuit U.S. Court of Appeals stated if an error in a prisoner's file is a technical one which would not reasonably be a factor relied on in decision making process, no claim for relief under due process will lie, but if error is more significant, that is, involves inmate's past criminal record or his record of disciplinary offenses while in prison, fundamental fairness requires its expunction for reason that it may reasonably be relied on. *Id.* at 595. Fed. 197, 202.

### Argument :

Like the 2010 trial court in McFadden's criminal case relied on this false information as a decision making process within the meaning of Paine, the (PCR) court in McFadden's pending case can also rely on this clearly erroneous 12/25/2000 sentence start date for arrest warrant # E-017123. (See ROTA at p. 11, erroneous because McFadden was arrested by George McComer on 4/15/2015 - not on 6/01/1995.

Additionally, because there's a controversy as to whether the 4/15/1995 sentence start date is correct versus the 6/01/1995 date claimed by SDC, McFadden contends this case is not moot. And by correcting the erroneous 6/01/1995, the (PCR) court can

7

59

then rely on accurate administrative agency's records in its decision making process. Thus, there is a practical legal effect upon existing controversy. See McClam vs State, 686 S.W. 203, 206 (S.C. App. 2009) (A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.)

Therefore, because this false information can be again relied on within the meaning of Palme vs. Baker, 595 F.2d 197, 201 (U.S. App. 4<sup>th</sup> Cir. 1979), this court should find an implication of possible violations of McFadden's due process rights under the U.S. Constitution's 14<sup>th</sup> Amendment. And that the ALC finding this case moot (ROA at p. 49) did err in light of the dispute between two dates.

### **Facts For Argument # 2:**

The record before this court will show the following facts: McFadden maintained in his grievances and in the ALC that the SDC [Warden Dunlap] claims that he is not entitled to jail-time credits from 4/15/1995 because the judge didn't give credit. (See ROA at pgs. 3 and 9 of 52, McFadden's Original Brief... and Warden Dunlap's 12/18/2014 decision attached as Attachment B.) No where in McFadden's agency grievance (ROA at p. 2), in McFadden's Original Brief (ROA at pgs 3-16) or in McFadden's Reply Brief (ROA at pgs. 28-36) does McFadden claim the 1995 sentencing judge McGinnis's sentencing is in error - only SDC.

However, the ALC court construed this case as if McFadden is attacking the sentencing court. The ALC stated, "Although Appellant is attacking his sentence length and not his conviction, his

9

60

ultimate goal is to attack his 2010 conviction in his pending (PCR) action. The attack on his sentence in this court is merely a part of his (PCR) case. Therefore, while Al-shabazz holds this court has jurisdiction over non-collateral, administrative matters related to sentencing and sentence-related credits, I find this case, at its heart, a piece of a collateral attack on Pettifanner's 2010 conviction, which the supreme court, in Al-shabazz, held is a matter for the PCR Court. (See ROA at p. 51, Order of Dismissal at p. 5 of 6.)

While McFadden claims SCDC has miscalculated his sentence start date, SCDC claims the judge didn't give McFadden credit. (See ROA at p. 9, Dunlop's 12/18/2014 disposition in Step 1 Grievance #KRCI-1176-14.) Even if Judge McGinnis denied any credit for jailtime, McFadden contends he should still be given credit in light of State vs. Boggis, 686 S.E.2d 597, 598 (S.C. App. 2010) (holding that plea judge denial of jailtime credit for time defendant served in pretrial detention based on state's decision to drop charges against defendant from armed robbery to strong armed robbery was an error of law.)

As the court knows, under title 24-13-40, McFadden has a statutory right to jailtime credit, and because of this statutory right - creating a liberty interest under the U.S. Constitution's 14th Amendment - SCDC has a duty to properly calculate his sentence for time served since 4/15/1995, rather than 6/1/1995.

Additionally, this court is well aware ALC is the sole court for which McFadden must bring his complaint about the miscalculation of his sentence. See Al-shabazz vs. State, 527 S.E.2d 742,

9

61

750 (S.C. 2000) (Stating credit relating issues cannot be raised in (PCR)).

Therefore, where the pending (PCR) court - like McFadden's 2010 criminal trial court - can rely on this false information within the meaning of Dame, and where McFadden has a statutory right to jailtime credit, and where complaints of mis-calculation of sentence can only be raised in the ALC, this court should reverse and instruct an audit of McFadden's sentence to the correct 4/15/1995 start date for arrest warrant # E-017123. (See Rott at p. 11.)

### **Declaration of Bernard McFadden, 199135:**

1) I, Bernard McFadden, 199135, declare that all documents and facts referred to in this Initial Brief are true and correct.

2) That there's reason out-side of the record to believe that SCOC's classification personnel are deliberately maintaining this false information. That, in fact, there's reason to believe prior to trial in September 2010, the false 12/25/2000 max-out date was placed in my record to be relied upon during trial.

3) When a hung jury was declared in my September 2010 trial, I was immediately brought back the next and last term of the year in 2010, for they couldn't use this false information after 12/25/2010.

4) My appointed attorney Willie Brinson was also informed about this erroneous max-out date, but did nothing.

5) I declare under penalty of perjury this 25<sup>th</sup> day of

March 2016, that the foregoing is true and correct.

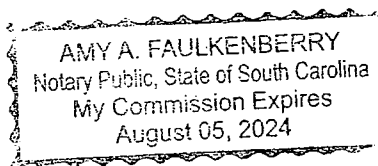
SI [Signature]  
Barnard McFadden, 199135

**Conclusion :**

For the foregoing reason, this court should reverse the judgment of the Administrative Law Court.  
Court of Appeals

Respectfully Submitted,  
SI [Signature]  
Barnard McFadden, 199135  
Kershaw CI 1082  
4848 Addrine Hwy.  
Kershaw, S.C. 29067

Sworn And Subscribed Before Me  
This 25<sup>th</sup> day of March 2016  
Amy A. Faulkenberry,  
Notary Public For South Carolina  
My commission expires: 8-5-24



Proof of Mailing  
Case # 1. 2016 - 000431

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly - addressed - stamped envelope in the U.S. Mail this 13<sup>th</sup> day of May 2016; such matter being: McFadden's Final Brief:

- 1) Christina Catoe Bigelow, Asst. Gen. Counsel, SCOE, 4444 Broad River Road, Columbia South Carolina 29201; and
- 2) Jenny Hobott Kitchings, Clerk, S.C. Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211

Sworn And Subscribed Before Me  
This 13<sup>th</sup> day of May 2016

Catherine A. Amason  
Notary Public For South Carolina  
My commission expires: December 22, 2018

Bernard McFadden, 199135  
Appellant, Pro se

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 15-ALJ-04-0289-AP  
Appellate Case No. 2016-000431

BERNARD MCEADDEN, # 199135

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT  
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ATTORNEY FOR RESPONDENT

65

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF THE ISSUE ON APPEAL .....1

STATEMENT OF THE CASE ..... 2

STANDARD OF REVIEW .....3

ARGUMENT .....4

CONCLUSION.....6

## TABLE OF AUTHORITIES

### **CASES**

|                                                                                             |        |
|---------------------------------------------------------------------------------------------|--------|
| <u>Al-Shabazz v. State</u> , 338 S.C. 354, 527 S.E.2d 742 (2000) .....                      | 4, 5-6 |
| <u>Collins Music Co. v. IGT</u> , 365 S.C. 544, 619 S.E.2d 1(Ct. App. 2005) .....           | 5      |
| <u>Hendley v. Budget &amp; Control Bd.</u> , 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996).. | 3      |
| <u>Slezak v. S.C. Dep't of Corr.</u> , 361 S.C. 327, 605 S.E.2d 506 (2004) .....            | 5      |
| <u>Sloan v. Friends of Hunley, Inc.</u> , 369 S.C. 20, 630 S.E.2d 474 (2006) .....          | 5      |
| <u>Sullivan v. S.C. Dep't of Corr.</u> , 355 S.C. 437, 586 S.E.2d 124 (2003) .....          | 4      |
| <u>Wicker v. S.C. Dep't of Corr.</u> , 360 S.C. 421, 602 S.E.2d 56 (2004) .....             | 4      |

### **STATUTES**

|                            |   |
|----------------------------|---|
| S.C. Code § 1-23-380 ..... | 3 |
| S.C. Code § 1-23-610.....  | 3 |

69

**STATEMENT OF ISSUE ON APPEAL**

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S ISSUE IS MOOT AND THE ADMINISTRATIVE LAW COURT DID NOT HAVE JURISDICTION TO HEAR THE CLAIM.**

**STATEMENT OF THE CASE**

This matter comes before this Court pursuant to the appeal of Bernard McFadden, an inmate in the custody of the South Carolina Department of Corrections. In October of 2014, Appellant submitted a Step 1 grievance complaining that the Department of Corrections failed to properly calculate the max-out date of a previously-served sentence. The Step 1 was denied by the Warden on December 18, 2014. Appellant submitted a Step 2 grievance form on December 29, 2014, which was subsequently denied on March 21, 2015. Appellant submitted a notice of appeal to the Administrative Law Court on June 24, 2015. On January 27, 2016, Administrative Law Judge Shirley C. Robinson issued an Order of Dismissal, concluding that Appellant's claim was not appropriate for the Administrative Law Court and was instead an issue for the post-conviction relief court. The Order of Dismissal also concluded that, even if the Administrative Law Court did have jurisdiction over the claim, the issue was moot. This appeal follows.

## STANDARD OF REVIEW

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

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

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

S.C. Code Ann. § 1-23-380(5).

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

## ARGUMENT

### **THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S ISSUE IS MOOT AND THE ADMINISTRATIVE LAW COURT DID NOT HAVE JURISDICTION TO HEAR THE CLAIM.**

In his Brief, Appellant contends that the Administrative Law Court erred in dismissing his appeal. To the contrary, the Administrative Law Court correctly dismissed the appeal because the issue regarding Appellant's previously-served sentence was moot and because the Administrative Law Court did not have proper jurisdiction over Appellant's claim.

The ALC's jurisdiction to hear prison matters is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In this case, the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added). Moreover, regarding categories (2) and (3) above, the Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is state created. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in Wicker] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); Slezak v. S.C. Dep't of

11

Corr., 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate’s state created liberty or property interest”) (emphasis added).

First, the Administrative Law Court properly found that Appellant’s issue was moot. As the lower court noted, it has been over ten years since Appellant completed the sentence he now challenges. (R. p. 49). An action generally becomes moot when rendering judgment would have no legal effect upon the controversy. See e.g., Collins Music Co. v. IGT, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005). Altering Appellant’s previously-served sentence’s completion date would have no practical legal effect upon any controversy. See Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006) (“A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract.”). Further, as discussed at length in the ALC order, none of the exceptions to the mootness doctrine apply here, where the sentence Appellant is attempting to contest has long since been served and he is currently in prison on totally separate offenses.<sup>1</sup> (R. p. 49-51). Accordingly, the issue is moot.

Second, the Administrative Law Court properly concluded that it did not have jurisdiction to rule upon Appellant’s claim because “this case is, at its heart, a piece of a collateral attack on [Appellant’s] 2010 conviction,” which our Supreme Court has held is a matter for the post-conviction relief court. (R. p. 51). See Al-Shabazz v. State, 338 S.C. 354, 367-68, 527 S.E.2d 742, 749 (2000) (stating that PCR is a proper avenue for relief when an

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<sup>1</sup> As the Administrative Law Court noted, Appellant could have challenged his max-out date at any time during the service of the 1995 burglary sentence, but he failed to do so until over ten years after completing it. (See R. p. 52).

7/2

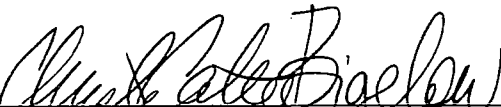
applicant mounts a collateral attack challenging the validity of his conviction or sentence). As the Administrative Law Judge's order points out, the post-conviction relief court has the authority to address Appellant's ultimate issue, and contrary to Appellant's suggestion on appeal, the PCR judge would not be bound by the South Carolina Department of Corrections' max-out date calculations with regard to the 1995 burglary sentence. (R. p. 51). Accordingly, the Administrative Law Court properly concluded it did not have jurisdiction over Appellant's claim.

### **CONCLUSION**

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

Respectfully submitted,

### **SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

BY: 

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

May 4, 2016

73

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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ALC Case No. 15-ALJ-04-0289-AP  
Appellate Case No. 2016-000431

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BERNARD MCFADDEN, # 199135,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

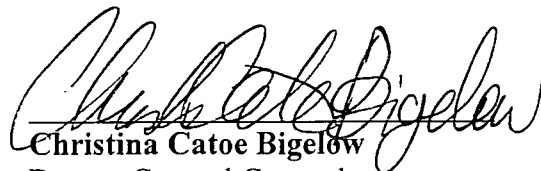
RESPONDENT.

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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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May 4, 2016

74

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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ALC Case No. 15-ALJ-04-0289-AP  
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BERNARD MCFADDEN, # 199135,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

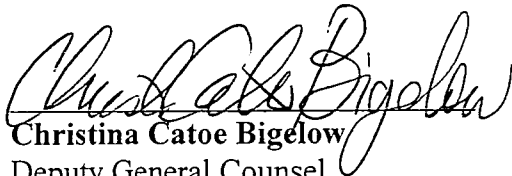
RESPONDENT.

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**CERTIFICATE OF SERVICE**

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Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Final Brief of Respondent** to Appellant, addressed as follows: Bernard McFadden, # 199135, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina, 29067.

  
Christina Catoe Bigelow  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
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May 4, 2016

15

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Bernard McFadden, #199135, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-000431

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Appeal From The Administrative Law Court  
Shirley C. Robinson, Administrative Law Judge

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Unpublished Opinion No. 2017-UP-054  
Submitted December 1, 2016 – Filed January 25, 2017

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**AFFIRMED**

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Bernard McFadden, pro se.

Christina Catoe Bigelow, of the South Carolina  
Department of Corrections, of Columbia, for Respondent.

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**PER CURIAM:** Bernard McFadden appeals the Administrative Law Court's (the ALC's) order dismissing his inmate grievance, alleging the South Carolina Department of Corrections (SCDC) failed to apply jail time credits to his sentence for his 1995 convictions and miscalculated his projected max-out date. On appeal, McFadden argues the ALC erred by (1) finding the issue moot and (2) finding it

IV. STATEMENT OF CLAIM - continued.

The State of South Carolina  
In The Court of Appeals

Appeal From The Administrative Law Court [S.C. Dept of Corrections]  
Shirley C. Robinson, Administrative Law Judge  
Appeal No. 2016-000431

Bernard McFadden, 149135,

Appellant,

vs.

South Carolina Dept. of Corrections,

Respondent.

Rule 221 Petition For Rehearing

Bernard McFadden, 149135  
Kershaw CI/ 0132  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067

Christina Catoe Bigelow, Asst.  
General Counsel, SCDC 4444  
Broad River Rd., Columbia  
South Carolina 29221

77

This Court affirmed Administrative Law Court's decision on 01/25/2017.  
Appellant moves before this Court for a rehearing on the following  
issues overlooked or not comprehended by the Court:

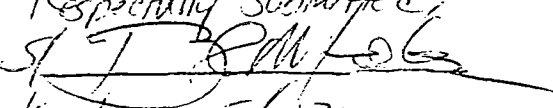
1) False Information In Prison Record Violates Due Process If Considered

This Court did not determine whether SCDC is violating McFadden's federal due process right under the U.S. Constitution by maintaining the false 6/01/1995 sentence start date, resulting into the incorrect 12/25/2000 max-out date.<sup>1)</sup> And thus, no court will now correct the 2010 Burglary trial court's erroneous determination in its decision making process within the meaning of Paine vs. Baker, 395 Fed. 197, 202 (U.S. App 4<sup>th</sup> Cir. 1979) for arrest warrant # E-C17123.

2) Issue Not Moot, Correct Records Will Give Appellant New Trial / PCR

The SCDC records still being incorrect can cause the S.C. Supreme Court - or any court for that matter - to affirm the denial of McFadden's (PCR) appeal; or that this false 6/01/1995 sentence start date can cause other courts to conclude the 12/25/2000 max-out date is correct.

Classification's willfully refusing to correct this 06/01/1995 start date is a controversy, and should expose record officers to liability from these continual acts for prolonged incarceration from refusal to expunge this incorrect information.

Respectfully Submitted,  
  
Kershaw CI/035  
4848 Colcluche Hwy  
Kershaw, S.C. 29067

Date: 02/01/2017

<sup>1)</sup> See RCT at p. 11, erroneous because McFadden was arrested by George McConner on 4/15/1995 - not 6/01/1995.

Proof of Mailing  
Case # 2016 - 000431

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the persons listed below by depositing a properly-addressed-stamped-envelope in the U.S. Mail this 02<sup>nd</sup> day of February, 2017; such Matter being: McFadden's Rule 221 Petition For Rehearing

1) Christina Catoe Byelow, Assist.  
General Counsel, SCDC, 4444  
Broad River Rd., Columbia  
South Carolina 29221; and

2) Jenny Abbott Kitchings, Clerk  
S.C. Court of Appeals, P.O.  
Box 11629, Columbia, South  
Carolina 29211

Sworn And Subscribed Before me

This 2<sup>nd</sup> day of February, 2017

Cathrine A. Carrigan

Notary Public For South Carolina

My commission expires: December 22, 2018

SK [Signature]

Bernard McFadden, 129135-

Plaintiff, pro se

# The South Carolina Court of Appeals

Bernard McFadden, 199135, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-000431

## ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

MAY 08 2017

KERSHAW  
LIBRARY

Thomas E. Huff J.

Paul E. Short, Jr. J.

James E. Moore A.J.

Columbia, South Carolina

cc:

Bernard McFadden, 199135

Christina Catoe Bigelow, Esquire

The Honorable Shirley C. Robinson

**FILED**

April 21, 2017

Dead-line 05/19/2017  
Writ of certiorari must be filed  
by 05/21/2017 in S.C. Supreme  
Court.

79