

5

23434

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 17 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT SC Court of Appeals
Hon: Deborah Brooks Durden, Judge

Appellate Case No. 2016-002412

Ernest Battle, #165247.....Appellant.

v.

South Carolina Department of Corrections,.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Ernest Battle, #165247
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(Pro-Se)

Kensley Collins, Esquire
Attorney for Respondent
office of General Counsel, SCDC
4444 Broad River Road
Columbia, S.C. 29210

INDEX

INDEX..... 1
STEP 1 & 2 GRIEVANCES.....2-4
INMATE REQUEST..... 5-6
SCDC OFFENDER MANAGEMENT PRINT OUT..... 7
SCDC CLASSIFICATION PRINT OUT.....8-9
LETTER FROM GENERAL COUNSEL.....10-11
LETTER FROM JUDGE T. L. HUGHSTON, JR.....12
SENTENCING SHEETS..... 13& 14
ORDER OF DISMISSAL..... 15
RESPONSE TO APPELLANT'S MOTION FOR REINSTATEMENT.....16 -18
ORDER TO REINSTATE19-20
RESPONSE TO COURT'S ORDER TO REINSTATE21-23
ORDER FOR BRIEFING.....24-29
RESPONDENT'S STATEMENT.....30-34
APPENDIX COVER SHEET AND CERTIFICATE OF SERVICE TO APPENDIX.....35-36
Cover sheet and EXERT FORM Tr. of. Record, Csaе No. 99-GS-10-7109, 7110..37-38
RESPONDENT'S BRIEF.....39-45
APPELLANT'S Brief..... 46 -54

Certificate of Counsel

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

S/ *Ernest Battle*
Ernest Battle, #165247
MacDougall Correctional Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(Pro-Se)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

MacDougall CF
0134-15

INMATE NAME: Ernest Battle
SCDC NUMBER: 165247
INSTITUTION: MacDougall
HOUSING UNIT: Birch I, A-18B
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. MACD-0124-15
Code: General _____
Policy _____
Disc. Hear. _____
Class. CLICL
Date Received 9/24/15
IGC Initials JS

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
Back in 2011, when I was housed at Lieber Corr. Inst., I was informed by my Unit caseworker, that Division of I/mate Records changed my original sentence by the court from 85% to 100%. I then had my family contact I/mate records to inquire and was informed by them that my sentence was changed through an amended order by the sentencing judge. I then wrote the sentencing judge and he responded via, letter, advising me that he did not amend my sentence to reflect 100% through an amended order by him. See attached letter. I also contacted Chris Florian/SCDC General Counsel, and he advised that if I felt that my sentence was being calculated incorrectly to file a grievance. See attached The sentence of the court do not reflect that I was to serve my time under 100% or Mandatory Minimum (25) years, only (25) years. I feel that SCDC Division of I/mate Records is without authority to alter, amend, or to change a circuit judge court order to reflect a sentence different than that which a defendant was sentenced.

ACTION REQUESTED: I request that my sentence be changed back to reflect the 85% in which I was sentenced by the sentencing judge and that my goodtime and earned work credits be restored.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
I attempted informal resolution by submitting an I/mate request through the kiosk to my Unit caseworker, Ms. Lumpkin Bailey on August 18, 2015, and she responded on August 26, 2015, advising me that my sentence was changed by I/mate records section and that there is nothing that she can do about the changes. Classification # 15-770276. Author (013281).

Ernest Battle 8/28/15
Grievant Signature Date

ACTION TAKEN BY IGC:

XXX

I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.

IGC Signature _____ Date _____
Grievant Signature _____ Date _____

WARDEN'S DECISION AND REASON:

Inmate Battle:

This is in response to MacD-0124-15. Your concern has been reviewed. You state that you want your sentence to be changed to reflect 85% in which you were sentenced by the Judge, and you want your goodtime, and earned work credits to be restored. I have contacted Mrs. Boyd Classification Case Manager. She stated that your offense of trafficking, 25 years is an exempt sentence which is required to serve day for day. In addition you have a 90 day sentence that is consecutive to your 25 year sentence. You have lost good time and your earned work credit level went from 2 to 3 because of your disciplinary. The trafficking sentence is 85% (due to June 7, 1995 legislation)

Based on this information, I consider this matter denied. If not satisfied with my response, see Step 5 below.

Ed T Taylor 10-27-15
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Ernest Battle 10-26-15
Grievant Signature Date

Francis Jones 10/20/15
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. 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, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 INMATE GRIEVANCE FORM
 STEP 2



RECEIVED

Office Use Only

INMATE NAME: Ernest Battle
 SCDC NUMBER: 165247
 INSTITUTION: MacDougall **INMATE GRIEVANCE**
 HOUSING UNIT: Birch -I- Unit
 WORK ASSIGNMENT: Dorm

OCT 29 2015

Grievance No. Ma0010124-15
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class 1 _____
 PREA _____
 Date Received: _____
 IGC Initials: _____
 Date Received: 11/2/15
 IGA Initials: MW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): **I am appealing for the following reason(s): The Warden decision is in contradiction of the Classification casemanager, the case manger/MS, Boyd is stating that my offense of trafficking in cocaine is exempt from classification, therefore, I am required to serve my sentence day for day. However, for purposes of definition under S.C. law, a "no parole offense" mean a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), such as trafficking in cocaine, but the statute does not specify that a defendant convicted of the offense of trafficking in cocaine must serve his/her sentence day for day. It only defines misdemeanors from felony crimes. See §24-13-125, and §24-13-150, which only require a service of 85%. Only risoners serving a sentence for life imprisonment or a mandatory minimum sentence of imprisonment for thirty years pursuant to §16-3-20 are not entitled to credits under the provision and must serve a sentence of day for day. See also State v. Taub, S.C.310, 519 S.E. 2d 797 (S.C.Ct.App.1999). Defining the Legislative intent pursuant to mandatory minimum trafficking in cocaine offenses, §44-53-370(e)(2). My sentence only reflects (25) years by the Court. See attached.**

Grievant Signature Ernest Battle Date 11-24-15

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your grievance and the facts. A review of your sentencing sheet indicates that you were sentenced by Judge Hughston to twenty-five (25) years for Indictment # 99-GS-10-7109, Trafficking in Cocaine. Agency records indicate you are serving a mandatory twenty-five (25) year sentence for CDR Code Offense 3545, Trafficking Cocaine 28 to 100 grams, 3rd offense. In accordance with Statute 44-53-37(E)(2)(B)(3), the twenty-five (25) years may not be suspended and the person may not complete his term of imprisonment in less than twenty-five (25) years pursuant to good-time credits or work credits, but may earn credits during this period. The allegations you have raised that the Inmate Records Office altered, amended or changed the sentence you were given by Judge Hughston cannot be substantiated. Agency records indicate that your sentence has been applied correctly and your projected max-out date of January 20, 2026 is correct.

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.

Quith D. Hugh 12/7/15
 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)

I/M Battle,

your sentence was change to 85% or 100% by the inmate record section . I can not do nay thing about those changes.

Bailey-Lumpkins
Macdougall

196 Jail credit

(12/7/2009) Lonnie Brawley - PUBLIC - Appendix - APPENDIX - Case Number;200636183 - Order-Opinion;26633 - F

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/24/05
OMCOMITA RELEASE DATE SCREEN C023981
SCDC# > 165247 LOC: LIEBER
BATTLE, ERNEST - SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE... ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
SEXUAL PREDATOR... NOT APP
DNA STATUS... COMPLETED
TOTAL SENTENCE... 025-03-000 CONSECUTIVE SENTENCE... Y
CURRENT SENTENCE... 025-03-000 CURRENT SENT START DATE: 06/07/2001
PROJECTED COMPLETION DATES
MAXOUT DATE... 10/26/2022 CURRENT EWC... 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC... NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 09/07/2022 NEXT PAROLE HEARING DATE: 09/07/2022

TOTAL GT DAYS EARNED... 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS... 000325 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS... 000000 OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS... 000
TOTAL SERVICE TIME EARNED... 001367

PFKEYS: 5: HISTORY OF DATE CHANGES
4-2 1 Sess-1 167.7.50.33 TNET1244 3/11

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS
CUSTODY AND PRIVILEGES**

~~Exhibit~~ Exhibit-F

Inmate Name Battle, Ernest Inmate Number 165247
Assigned/Recommended Custody MI 2

	MINIMUM OUT (MO)	MINIMUM OUT RESTRICTED (MOR)	MINIMUM IN (MI)	MEDIUM (ME)	SMU (SD, DD, PC, PHD)
ACCESS TO PROGRAMS & ACTIVITIES	Outside the perimeter <i>off</i> institutional property	Inside the perimeter or Outside the perimeter <i>on</i> institutional property	Inside the perimeter	Inside the perimeter	Selected cell activity only
ACCESS TO JOBS	Outside the perimeter <i>off</i> SCDC property	Inside the perimeter or Outside the perimeter <i>on</i> institutional property	All inside the perimeter	All inside the perimeter	None except job assignments <i>within unit for Statewide PC which is closely supervised (none the 1st 90 days)</i>
WORK/EDUCATION CREDITS	2	2	Under armed supervision outside the perimeter 3 until meets behavior & time requirements to MOR, then automatically to 2	Under armed supervision outside the perimeter	None, except 7 for <i>Statewide PC (none the 1st 90 days)</i>
ACCESS TO CANTEEN	\$125 week limit	\$125 week limit	\$125 week limit	\$40 week limit	Refer to OP-22.16 for Death Row, OP-22.12 for SMU, OP-22.32 for Statewide PC. Pre-Trial SK inmates are eligible for canteen privileges.
ACCESS TO VISITS	See SCDC Policy/Procedure OP-22.09, Inmate Visitation, OP-22.12, Special Management Unit, OP-22.11, Maximum Security Unit, or OP-22.32, Statewide Protective Custody for information on visitation privileges.				
*ACCESS TO TELEPHONE	Normal	Normal	Normal	4 calls per month	Up to 1 call per month (depending upon Security Detention level designation) Statewide PC - 1 per day

*This does not affect access to legal telephone calls.

Projected Release Date as of: May 22, 2015
 Max-out 1/20/26 Parole Eligibility 12/1/2005 SFII-A N/A
 Labor Crew Eligibility none
 Sentence Start Date 12/1/00 Sentence Length 25yrs 3mo.
 Detainers none
 Annual Hardship Review Month 2/16

MI B1, B2 Bailey-Lumpkins

Exhibit C-1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION AND INMATE RECORDS

INMATE CORRESPONDENCE

INMATE: Ernest Battle

INST: Lieber

SCDC #: 165247

CB-47

FROM: Michael R. Mathews, Branch Chief – Institutional Classification

SUBJECT: CORRESPONDENCE

DATE: June 23, 2011

- Custody
- Time/Sent.
- Parole
- Max-Out
- SFII – A
- 85%
- EWC/ECC
- Goodtime

- Jailtime
- I/M Pay/Job
- Staff Complaints
- Detainers
- Transfer
- MSU Admission/Release
- Other –

Ms. Gilmore is correct - based on the state statute you were sentenced under, you have a mandatory service requirement of 25 years. Therefore, your sentence is being served day for day. Sorry, but I do not remember a conversation with your brother. If I did talk to him, he must have misunderstood what I said. Your letter and attached paperwork will be forwarded to the Inmate Records Office for review.

For future reference, Classification issues should be addressed to your assigned Caseworker.

S/ Michael R. Mathews
Michael R. Mathews

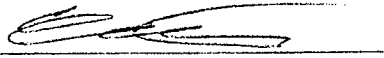
cc: Case Manager
Inmate Records
Document Processing

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
MEMORANDUM**

TO: Inmate Ernest Battle
FROM: Chris Florian
RE: Request to Staff Member
DATE: July 14, 2011

As I explained in my previous correspondence, your sentence has been correctly implemented based on the available documentation. However, if you still feel your sentence is not being correctly calculated, I suggest you pursue the matter by filing an inmate grievance.

S/


Chris Florian

CF/ndh

cc: Warden
Inmate Records

Exhibit-C

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
RESPONSE TO INMATE CORRESPONDENCE**

TO: Inmate Ernest Battle
SCDC #: 165247
INSTITUTION: Lieber Correctional Institution
FROM: Chris Florian
DATE: June 17, 2011
RE: Request to Staff Member

Because your conviction carries a mandatory minimum penalty of 25 years, you must serve that period day-for-day.

S/ 
Chris Florian

CF/ndh

cc: Warden McCabe
Inmate Records

Exhibit-C

State of South Carolina



THOMAS L. HUGHSTON, JR.
CIRCUIT JUDGE RETIRED

100 BROAD STREET, SUITE 368
CHARLESTON, SC 29401-2285
TELEPHONE (843) 958-5100
FAX (843) 958-5108
E-MAIL: thughstonj@sccourts.org

May 13, 2011

Mr. Ernest Battle, #165247
Lieber Correctional Inst.
Cooper Unit B-47
P.O. Box 205
Ridgeville, SC 29472

Re: State vs. Ernest Battle, 99-GS-10-7109 and 7110

Dear Mr. Battle:

I received your letter of May 3, 2011 concerning the fact that someone at SCDC State Classification told you that your sentences were changed from 85% to 100% by an Amended Order from me. I have checked the records in the Clerk of Court's office and I have not signed any such order. Further, I have nothing to do with any percentage of time required to be served on a sentence. SCDC is responsible for calculating the time required to be served on any sentence—not me. I am returning everything that you sent to me.

Very truly yours,

A handwritten signature in black ink that reads "T.L. Hughston, Jr." with a stylized flourish at the end.

Thomas L. Hughston, Jr.

Enclosure

H-1

COUNTY OF Charleston)
 STATE VS.)
Ernest Battle)
 AKA: VS)
 Race: Black Sex: Male Age: 40)
 DOB: 11/27/62 SS#: 247-21-8641)
 Address: 3955 Old Pine Cir.)
N. Charleston, S.C.)
 DL# _____ SID#: _____)

1997 -GS- 10 - 7110
 A/W#: F980727
 Date of Offense: 7/16/1999
 S.C. Code §: 44-52-445
 CDR Code #: 011017

CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Distr. probation with duties to Distr. Prob. of School in violation of § 44-52-445 of the S.C. Code of Laws, bearing CDR Code # 011017

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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

ATTEST:
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 500 provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. FINE - \$10,000

ATTEST: A TRUE COPY
JILLIE J. ARMSTRONG (SEAL)
 CLERK, S.C. JCS

The Defendant is to be given credit for _____ days/months/jail time.
 CONCURRENT or CONSECUTIVE to sentence on: _____
 DEPUTY CLERK

SPECIAL CONDITIONS:

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

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

Recipient: _____
 *Fine:\$ _____
 §14-1-206 (Assessments 100%)\$ _____
 §14-1-211(A)(1) (Surcharge)\$ 100.00
 §14-1-211(A)(2) (Surcharge)\$ _____
 §56-5-2995 (DUI Assessment)\$ _____
 3% to County (if paid in installments) ...\$ 3.00
 TOTAL\$ 103.00

[Signature]
 Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]
 Judge Code: 0101018
 Sentence Date: 6/15/01

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Earnest Butler

AKA: _____

Race: Black Sex: Male Age: 40

DOB: 11/27/60 SS#: 247-21-8681

Address: 3955 Old Pine Cir.
N. Charleston, S.C.

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

1999 -GS- 10 - 7109 ✓

A/W#: E 980726 ✓

Date of Offense: 7/16/1999 ✓

S.C. Code §: 44-53-370 ✓

CDR Code #: 011/1/8 ✓

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Traffic King Cocaine 28 to 100 grams 3d offense ✓

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 011/1/8

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: [Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 ~~years~~ years or under the Youthful Offender Act not to exceed _____ years and to pay a fine of \$ 50,000.; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.
 CONCURRENT or CONSECUTIVE to sentence on:

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & C.S.
By [Signature]
DEPUTY CLERK

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
§14-1-206 (Assessments 100%) _____ \$
§14-1-211(A)(1) (Surcharge) _____ \$ 100.00
§14-1-211(A)(2) (Surcharge) _____ \$
§56-5-2995 (DUI Assessment) _____ \$
3% to County (if paid in installments) _____ \$ 3.00
TOTAL _____ \$ 103.00

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter: Stacy Sheppard
White - Clerk Green - Corrections

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

PRESIDING JUDGE [Signature]
Judge Code: 010/0/8
Sentence Date: 6/15/01

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ernest Battle, #165247,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0003-AP

Grievance No. MaCCI 0124-15

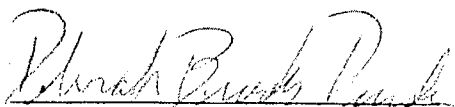
ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the Notice of Appeal filed January 4, 2016 by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (Department). Pursuant to ALC Rule 60(A), Appellant was required to file an appellate brief in the above-captioned matter with this court and to serve all parties with the same "within ninety (90) days after the date of assignment." ALC Rule 60(A). This case was assigned on January 29, 2016. The Appellant had until April 29, 2016 to file his appellate brief. However, to date, Appellant has not filed an appellate brief in this matter.

ALC Rule 62 provides that "[u]pon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, *including the failure to comply with any of the time limits provided by this section.*" ALC Rule 62 (emphasis added). By virtue of his request for an appeal, Appellant had an obligation to advance his position, and Appellant was given ample time to do so. Nonetheless, Appellant failed to file an appellate brief in support of his appeal. It is therefore,

ORDERED that this appeal is **DISMISSED, WITH PREJUDICE, sua sponte.**

IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 24, 2016
Columbia, South Carolina

FILED

MAY 24 2016

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

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

This 24th day of May, 2016.

By [Signature]
JUDGE Law Clerk



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

June 29, 2016

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

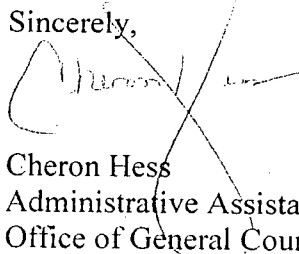
Reference: Inmate Ernest Battle, #165247, vs. SCDC
Docket No. 16-ALJ-04-0003-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Response to Appellant's Motion for Reinstatement* 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 Ernest Battle, #165247
File

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ernest Battle, #165247,	)	Docket No.: 16-ALJ-04-0003-AP
	)	Grievance No.: MACCI 124-15
Appellant,)	
	)	RESPONSE TO APPELLANT'S
v.	)	MOTION FOR REINSTATEMENT
)	
South Carolina Department of Corrections,	)	<i>Honorable Deborah Brooks Durden</i>
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>		

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Ernest Battle ("Appellant"). Appellant filed his Notice of Appeal on December 31, 2015, after his Step One and Two Grievances were denied. Appellant served his Brief on Respondent on March 1, 2016. Respondent filed its Brief with this Court and served the same on Respondent on May 18, 2016, requesting that, because Appellant's sentence has been properly calculated, the final determination of the Department be affirmed. This Court dismissed the case for Appellant's failure to file a brief, via an Order dated May 24, 2016. Appellant motioned for reinstatement on June 8, 2016. Respondent has no objection to this Court reinstating and reconsidering this case. Should the Court direct it to do so, Respondent will forward the copy of Appellant's Brief it previously received.

Respectfully submitted,



Kensey Collins
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

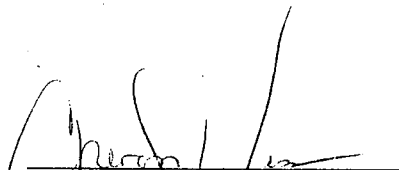
June 29, 2016
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ernest Battle, #165247,)	
)	
Appellant,)	
	)	Certificate of Service
vs.)	
	)	Docket# 16-ALJ-04-0003-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 Ernest Battle
Inmate Number: 165247
MacDougall Correctional Institution
Dorm-Room-Bunk: B1B-0003-B



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

June 29, 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ernest Battle, #165247,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0003-AP
Grievance No. MaCCI 0124-15

ORDER TO REINSTATE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

The Appellant filed a grievance with the Department concerning his sentence calculation and received the Departments' final decision on December 7, 2015.

On January 4, 2016, the Appellant filed a Notice of Appeal and this case was assigned on January 29, 2016. Respondent filed the Record on April 8, 2016 and Respondent's Brief on May 18, 2016. On May 24, 2016 this Court issued an Order of Dismissal stating that Appellant has not filed an appellate brief in this matter. On June 8, 2016, Appellant filed a Motion for Reinstatement stating that he filed a timely brief with this Court on April 18, 2016 and requested that this Court reinstate the case. On June 29, 2016, the Respondent filed a Response to Appellant's Motion for Reinstatement stating that Appellant served his brief upon Respondent on March 1, 2016. Respondent also stated that it does not object to this Court reinstating and reconsidering this case and offered to forward a copy of Appellant's brief.

IT IS THEREFORE ORDERED that this case be reinstated as of the date of this Order.

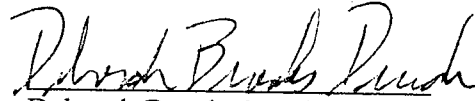
IT IS ALSO ORDERED that Appellant may file a reply brief ten days from the date of this Order.

FILED

JUN 30 2016

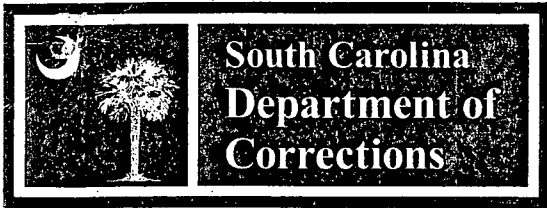
IT IS FURTHER ORDERED that Respondent shall provide this Court with a copy of Appellant's brief received on March 1, 2016.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 30, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30th day of June 2016
By: R E Cole
Assistant Law Clerk



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

July 7, 2016

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Ernest Battle, #165247, vs. SCDC
Docket No. 16-ALJ-04-0003-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Response to Court's Order to Reinstate* 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 Ernest Battle, #165247
File

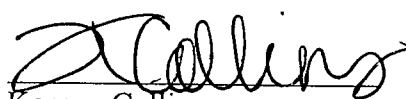
**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ernest Battle, #165247,	)	Docket No.: 16-ALJ-04-0003-AP
	)	Grievance No.: MACCI 124-15
Appellant,)	
	)	RESPONSE TO COURT'S
v.	)	ORDER TO REINSTATE
)	
South Carolina Department of Corrections,	)	<i>Honorable Deborah Brooks Durden</i>
)	
Respondent.)	
_____)	

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Ernest Battle ("Appellant"). This Court issued an Order dated June 30, 2016 reinstating the above captioned case and requiring Respondent to provide this Court with a copy of Appellant's Brief, which was served on Respondent on March 1, 2016.¹

Respondent incorporates and alleges herein all statements and arguments made in its Brief dated May 18, 2016.

Respectfully submitted,



Kensey Collins
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

July 7, 2016
Columbia, South Carolina

¹ A copy of Appellant's Brief is attached.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ernest Battle, #165247,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0003-AP
Grievance No. MaCCI.0124-15

ORDER FOR BRIEFING

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed January 4, 2016, by Ernest Battle (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant requests review of the Department's final decision regarding the calculation of Appellant's sentence.

BACKGROUND

On June 15, 2001, Appellant was sentenced to twenty-five years under Section 44-53-370(e)(2)(b)(3) of the South Carolina Code for Trafficking in Cocaine, 28 grams or more, but less than 100 grams, third offense. On the same day, Appellant was concurrently sentenced to ten years for a distribution charge. He was previously sentenced on October 26, 2000, to three consecutive thirty-day sentences in magistrate court, which the Department appears to have combined into one ninety-day sentence. The Department also appears to be running that ninety-day sentence, which the Appellant received *prior* to the drug sentences, consecutive to the later, *concurrent* twenty-five-year sentence. While this apparent error does affect Appellant's max-out date, the specific issue was not raised before the Department or this Court.

In addition, the Jail Time Report for SCDC Transfer form submitted by Charleston County on March 9, 2011 contains an apparent error. It calculates the jail time served from 6/7/01 to 6/21/01 to be 8 days for a total of 196 days served. SCDC has adopted 196 as the days served in its calculation of Battle's sentence. This is a second issue that apparently affects Appellant's max-out date, but which was not raised by Appellant before the Department or this Court.

FILED

AUG 0 8 2016

SC ADMIN. LAW COURT

During intake, the Department apparently calculated Appellant's sentence as one where only eighty-five percent of the time sentenced must be served.¹ In approximately 2011,² the Department recalculated his twenty-five-year sentence, with the new projected release, or "max-out," date reflecting the requirement that Appellant serve one hundred percent of his sentence, instead of eighty-five percent. In this appeal, Appellant challenges the Department's decision that he must serve his sentence day for day.

ISSUE ON APPEAL

Whether the Department erred in recalculating Appellant's sentence on the basis that he must serve one-hundred percent of his twenty-five-year sentence.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such as a liberty interest is at stake in the calculation of an inmate's sentence. Tant v. S.C. Dept. of Corrs., 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); see also Sullivan v. S.C. Dept. of Corrs., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003) (quoting Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that Al-Shabazz created review in the ALC for sentence calculation cases).

In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are

¹ See S.C. Code Ann. § 24-13-150(A) (Supp. 2015).

² There is no evidence in the record of the exact time which the recalculation was made, or at which time Appellant became aware of the change. It is apparent that Appellant was investigating the matter in 2011. The Court notes that, consistent with the standard of review in an appeal to the ALC, it does not consider "exhibits" attached to party briefs. See S.C. Code Ann. § 1-23-380(4) (Supp. 2015).

prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

The Department argues that this appeal must be dismissed because Appellant failed to timely file his grievance. The Court disagrees. The Department argues that Appellant should have filed his grievance "within fifteen days of an alleged incident." This fifteen-day rule comes from an earlier version of the SCDC policy on inmate grievances, GA-01.12, that would have applied at the time Appellant's sentence was recalculated. Where the Department relies on such a policy in making its decision, it must include a copy of that policy in the Record on Appeal. See SCALC Rule 58(B). However, the Department failed to include a copy of the obsolete policy in the record—presumably because this argument was not invoked at the agency level. Indeed, the Department accepted and ruled on Appellant's grievances without any mention of a timeliness issue. The Court thus concludes that the argument cannot be raised on appeal. Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) (citations omitted) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

On the merits, the Department denied Appellant's arguments regarding the recalculation of his sentence. Appellant argues that by requiring him to serve one hundred percent of his sentence, the Department is altering the original sentence imposed by the circuit court judge. The Court disagrees. The Department's recalculation does not change in any way the original term of imprisonment imposed by the sentencing judge, but merely corrects a record-keeping error concerning what portion of the original term of imprisonment Appellant must serve.³ Indeed, the circuit court judge does not control what portion of Appellant's sentence he must serve. The sentencing judge sets the actual term of imprisonment, within the confines of the

³ Appellant has not argued that he was denied due process when the Department recalculated his sentence. As stated, this recalculation did not concern the interpretation or recordation of the actual sentence imposed by the judge, but rather the percentage of that sentence which he must serve. Cf. Tant v. S.C. Dept. of Corrs., 408 S.C. 334, 759 S.E.2d 398 (2014) (holding that the Department must provide formal notice to the inmate when altering the original recording of the sentence imposed by the judge).

statute; however, the amount of that term that the inmate must serve is dictated by the legislature and administratively implemented by the Department. See Nelson v. Ozmint, 390 S.C. 432, 437, 702 S.E.2d 369, 371 (2010) (distinguishing between restrictions on the sentencing judge in suspending a sentence and mandatory provisions under which the Department calculates the time an inmate must remain in prison).

In this case, Appellant was convicted under Section 44-53-370(e)(2)(b)(3):

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:

(b) twenty-eight grams or more, but less than one hundred grams:

3. for a third or subsequent offense, a **mandatory minimum term of imprisonment of not less than twenty-five years** and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]

S.C. Code Ann. § 44-53-370(e)(2)(b)(3) (Westlaw through 2001) (emphasis added).

At the end of subsection (e), the statute also provides:

A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24-13-610, or supervised furlough, as provided in Section 24-13-710.

Id. at § 44-53-370(e).

Under this statute, a person sentenced to a mandatory minimum twenty-five-year sentence, like Appellant, must serve each day of the sentence. See Nelson, 390 S.C. at 436, 702 S.E.2d at 371 (construing the mandatory minimum requirement of a different offense as requiring that the inmate "actually be imprisoned" for the whole sentence); see also Kerr v. State, 345 S.C. 183, 187, 547 S.E.2d 494, 496 (2001); State v. Taub, 336 S.C. 310, 314-16, 519 S.E.2d

797, 799–801 (Ct. App. 1999) (discussing the additional meaning of the term “mandatory minimum”).

Appellant argues that his sentence falls under the normal scheme for “no-parole” offenses—that is, early release after completing eighty-five percent of the actual term of imprisonment. While the Department originally recorded Appellant’s sentence under this rubric, that was an error. A no parole offense is defined as “a class A, B, or C felony or an offense exempt from classification.” S.C. Code Ann. § 24-13-100 (2007). Appellant’s offense is one exempt from classification. S.C. Code Ann. § 16-1-10(D) (2015). For no parole offenses the law provides:

(A) **Notwithstanding any other provision of law**, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a “no parole offense” . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. . . .

S.C. Code Ann. § 24-13-150(A) (Supp. 2015) (emphasis added).

In this case, the mandatory minimum language in Section 44-53-370 is another, more specific, provision of law, which controls. Cf. Bolin v. S.C. Dept. of Corrs., 415 S.C. 276, 282-83, 781 S.E.2d 914, 917 (Ct. App. 2016), reh’g denied (Feb. 24, 2016) (citation omitted) (recognizing that a more specific statute generally controls over a general one). Appellant’s offense is thus excluded from the standard eighty-five percent calculation and he must serve the whole twenty-five-year sentence, as provided by Section 44-53-370.

However, despite the fact that this Court must affirm the Department’s decision on the particular issue raised in the appeal, the identification of two apparent errors which may result in Appellant serving an additional 96 days beyond the sentence imposed is of concern to this Court. Therefore, the parties are directed to submit briefs or statements to the Court answering the following questions:


1. Has SCDC erred in calculating Battle’s jail time served from 6/7/01 to 6/21/01 to be 8 days for a total of 196 days served?
2. Has SCDC erred in calculating a ninety-day sentence, which the Appellant received *prior* to the drug sentences, consecutive to the later, *concurrent* twenty-five-year sentence.

3. What are the parties' positions concerning the procedural handling of this appeal in light of the issues being raised in this order?

ORDER

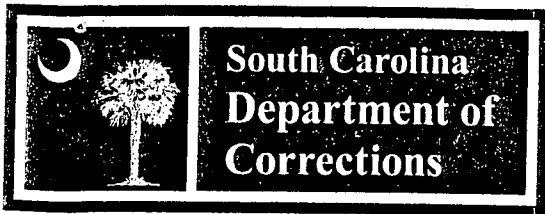
THEREFORE, IT IS HEREBY ORDERED that the Appellant's Brief shall be due twenty (20) days from the date of this order. Respondent shall have twenty days from the date Appellant's brief is filed to submit a brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

August 8, 2016
Columbia, South Carolina cites

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereto, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).
This 8th day of August 2016
By: R. E. Coleman
Judicial Law Clerk



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

September 14, 2016

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Ernest Battle, #165247, vs. SCDC
Docket No. 16-ALJ-04-0003-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Respondent's Statement* 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,

A handwritten signature in black ink, appearing to read "Cheron Hess", is written over a large, stylized, circular scribble.

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Ernest Battle, #165247
File

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ernest Battle, #165247,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

) Docket No.: 16-ALJ-04-0003-AP

) Grievance No.: MACCI 124-15

)

) RESPONDENT'S STATEMENT

)

) *Honorable Deborah Brooks Durden*

)

)

)

)

STATEMENT OF THE CASE

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Ernest Battle ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). In response to the Honorable Judge Durden's August 8, 2016 Order for Briefing, Respondent submits this Statement. In her Order, Judge Durden affirmed SCDC's decision on the original issue on appeal, but raised separate concerns regarding Appellant's sentence. These issues are addressed below.

ISSUE 1

Appellant was arrested on June 7, 2001 for his third offense of Trafficking Cocaine and Distribution with Intent to Distribute within the Proximity of a School. Appellant was then transferred to SCDC on June 21, 2001. However, Appellant was sentenced on both of these charges on June 15, 2001. The sentencing date ends the accrual of jail time credit. S.C. Code Ann. § 24-13-40 ("In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing . . ."). Once Appellant was sentenced, the sentence started

running and he cannot receive jail time credit. Therefore, SCDC did not err in the calculation of Appellant's jail time credit.¹

ISSUE 2

On the same day Appellant was transferred to SCDC for his Trafficking Cocaine and Distribution sentences, he was served with three Bench Warrants from Charleston County, each for a fraudulent check charge. This was on June 21, 2001. Each Bench Warrant states that the sentence will run consecutively with any other charges. Therefore, SCDC must apply the sentence as Judge Koontz stated. *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014) (SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets."). Therefore, SCDC has not erred in calculating a sentence for ninety days, because the three separate sentences must run consecutively.²

ISSUE 3³

SCDC answered the issues raised in this Court's August 8, 2016 Order, out of consideration to the Court. However, these issues have not been properly preserved for appeal. Should the Court disagree with the statements in this Brief or Appellant disagree with this Court's decision, Appellant would then be required to complete the internal grievance process prior to perfecting his appeal. *Al-Shabazz v. State*, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000).

¹ See attached Sentencing and Jail Time Credit sheets for Appellant's Trafficking and Distribution charges.

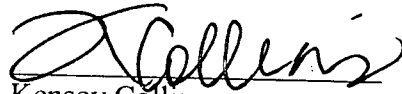
² See attached Bench Warrants, three in total.

³ Respondent is not readdressing the issue already ruled on by the Honorable Judge Durden in her Order. Appellant has raised many of the same arguments he already covered in his previous brief on the issue of his serving a day-for-day sentence. This issue has been ruled on, and SCDC accepts that ruling.

CONCLUSION

SCDC did not err in its calculations of Appellant's jail time credit or ninety-day consecutive sentence. SCDC has addressed these issues, however, the issues have not been preserved for appeal and if Appellant disagrees with SCDC's decision, he must complete the internal grievance process prior to appealing the final agency decision.

Respectfully submitted,



Kensey Collins
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

September 14, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ernest Battle, #165247,

Appellant,

vs.

South Carolina Department of Corrections,

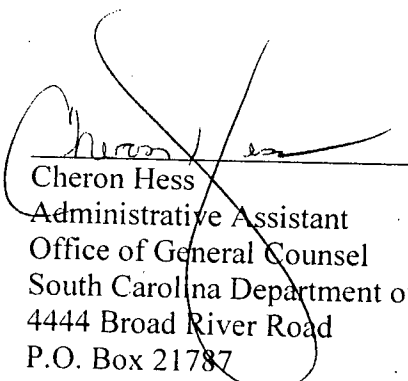
Respondent.

)
)
)
) **Certificate of Service**
)
)

) Docket# 16-ALJ-04-0003-AP
)
)
)
)

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 Ernest Battle
Inmate Number: 165247
MacDougall Correctional Institution
Dorm-Room-Bunk: B1B-0003-B


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

September 14, 2016

RECEIVED

MAR 03 2016

GENERAL COUNSEL

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

ERNEST BATTLE,

APPELLANT,

v.

**S.C. DEPT of CORRECTIONS,
GENERAL COUNSEL**

RESPONDENT.

**APPELLATE CASE NO. 16C0003
GRIEVANCE NO. MACD 124-15
HONORABLE JUDGE, DURDEN**

APPENDIX

**ERNEST BATTLE
APPELLANT**

**MacDougall Correctional Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472**

Prose

**CHRIS FLORIAN
GENERAL COUNSEL for SDC**

**4444 Broad River Road
Columbia, S.C. 29201**

Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of the Appellant's Brief in case n0:16C0003, along with Appendix in this case have been served on SDC Office of General Counsel/Chris Florian at 4444 Broad River Road, Columbia, S.C. 29201, on February ____ 2016.

State of SC County of Berkeley
The foregoing instrument was acknowledged before me
this 15 day of May, 2016
by Ernest Battle
Lisa M. Cross Notary Public
My Commission Expires Jan 16, 2024

Respectfully submitted,
Ernest Battle
Ernest Battle/165247

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024



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

May 18, 2016

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

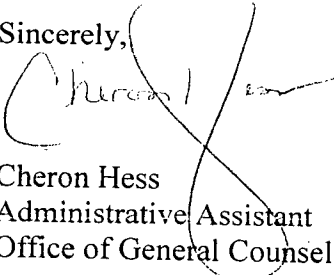
Reference: Inmate Ernest Battle, #165247, vs. SCDC
Docket No. 16-ALJ-04-0003-AP

Dear Judge Durden:

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 Ernest Battle, #165247
File

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Ernest Battle, #165247,	)	Docket No.: 16-ALJ-04-0003-AP
	)	Grievance No.: MACCI 124-15
Appellant,)	
	)	RESPONDENT'S BRIEF
v.)	
	)	<i>Honorable Deborah Brooks Durden</i>
South Carolina Department of Corrections,)	
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>		

STATEMENT OF THE CASE

This case is before the Administrative Law Court (“ALC”) pursuant to the appeal of Ernest Battle (“Appellant”), an inmate incarcerated with the Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on August 28, 2015, claiming his projected max out date was not being calculated properly. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant’s sentence. Appellant filed a Step Two Grievance on November 27, 2015. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal. Because Appellant’s sentence has been properly calculated, the final determination of the Department should be affirmed.

JURISDICTION

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). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC’s appellate jurisdiction in inmate appeals is

limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's state created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, Appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *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. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT'S APPEAL IS UNTIMELY

At the time Appellant's sentence was recalculated, the version of SCDC Policy GA-01.12, Inmate Grievance System dated October 1, 2010, required inmates to submit a Step One Grievance within fifteen days of an alleged incident. Here, Appellant was informed on June 17, 2011 by the Office of General Counsel that Appellant is required to serve his sentence day-for-day. (App. Brief at 2 and App. Brief Exhibit C). Appellant was again informed by the Office of General Counsel on July 14, 2011 that Appellant's day-for-day sentence had been correctly calculated, and if Appellant still disagreed, he should begin the grievance process. See Exhibit A. Appellant then waited until August 28, 2015 to file his Step One Grievance, more than four years after he was made aware of the issue. Appellant began his appeal process years out of time, and, therefore, SCDC respectfully requests Appellant's claim be dismissed with prejudice.

APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On June 15, 2001, Appellant was sentenced to twenty-five years' incarceration for a third offense of Trafficking in Cocaine, with 196 days of jail time credit. Appellant argues that he is required to serve only eighty-five percent of his sentence. Furthermore, Appellant argues that he was originally provided a projected max out date of October 26, 2022 (App. Brief at 4). After a recalculation, his projected max out date changed to January 20, 2026. (*Id.*).

Appellant is correct that his sentence was recalculated. The recalculation was performed in order to comply with the statute under which he was sentenced. Appellant

was sentenced to twenty-five years' incarceration under S.C. Code Ann. § 44-53-370(e)(2)(b)(3), which states:

Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into [South Carolina], or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into [South Carolina], or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of[. . .] ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is[. . .] twenty-eight grams or more, but less than one hundred grams[. . .] for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]

Because this is a mandatory minimum sentence, Appellant is required to serve the full length of his sentence, day-for-day. The sentence was originally entered incorrectly as only requiring eighty-five percent of the sentence to be served. This was corrected in 2011 to comply with the mandatory minimum requirement of the above statute. SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets." *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014). As there is no ambiguity in the sentencing sheet, SCDC simply applied a term of incarceration of twenty-five years and later corrected a mistake in order to comply with the mandatory minimum language of the statute at hand. *See Exhibit B.*

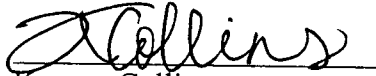
Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying Appellant's Step Two Grievance be upheld.

CONCLUSION

**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

Respectfully submitted,



Kensey Collins
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

May 18, 2016
Columbia, South Carolina

S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004). The (citation omitted). Such as a liberty interest at stake in the calculation of an inmate's sentence. Tant v. S.C. Dept. of Corrs., 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt that the length of an inmate's incarceration implicates a constitutional liberty interest."); see also Sullivan v. S.C. Dept of Corrs., 355 S.C. 437, 441-42, 586 S.E.2d 124,126 (2003) (quoting Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750).

ISSUE I.

SCDC has erred in its calculation of Appellant's jail time served as from 6/7/01 to 6/21/ to be 8 days for a total of 196 days served. This miscalculation of Appellant's sentence by SCDC also implicates a constitutional liberty interest which violates Applicant's substantial and procedural due process rights protection the Fourteenth Amendment guarantees an inmate.

This miscalculation by SCDC of Appellant's sentence apparently affects Appellant's max-out date. The Jail Time Report for SCDC Transfer form submitted by Charleston County on March 9, 2011, is in error. It calculates Appellant's jail time served from 6/7/01 to 6/21/01 to be 8 days fo a total of 196 days served. SCDC has adopted the 196 days as the days served in its calculation of Appellant's sentence. This was error.

ISSUE II.

SCDC has erred in calculating a ninty-day sentence, which the Appellant received "prior" to the drug sentences, for which he is incarcerated, consecutive to the later, concurrent twenty-five-year sentence, which also violate's Appellant's right to procedural and substantial due process guaranteed by the fourteenth Amendment.

Appellant was previously sentenced on October 26, 2000, to three consecutive thirty-day sentences in magistrate court, which was also prior to him being convicted for the drug offenses for which he is currently serving twenty-five-year sentence. The Department combined the three thirty-day sentences into one ninety-day sentence. The Department also ran the ninety-day sentence, the Appellant received "prior" to the drug sentences, consecutive to the later twenty-five-year sentence. This was error, which violated Appellant's substantial and procedural due process rights protected by the Fourteenth Amendment to the U.S Constitution. Only a judge is authorize to determine whether a sentence is to be ran concurrent or consecutive, The Department has no authority to make that determination. This error also affect Appellant's maxout-date, which creates a liberty interest.

Although the intent of a judge is controlling in determining whether sentence run concurrent or consecutive, ambiguity or doubts relative to sentence, should be resolved in favor of accused. Cf. Tant v. S.C. Dept. of Corrs, 408 S.C. 334, 759 S.E.2d 398 (2014).

ISSUE III.

The Appellant's position concerning the procedural handling of this appeal in light of the issues being raised in this order are that the Court is misinterpreting the legislative intent governing the application of a mandatory minimum sentence, which violates Appellant's Fourteenth Amendment right to due process, and the Department's recalculation of Appellant' sentence.

The amount of time that an inmate must serve on a sentence is dictated by the legislature and administratively implemented by the Department. Nelson v. Ozmint, 390 S.C. 432, 437, 702 S.E.2d 369, 371 (2010).

IN this case, Appellant was convicted under Section 44-53-30(e)(b)
(3): The statue provides that:

(e) Any person who knowingly sell, manufactures, cultivates, delivers, pruchases, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, pruchase, or bring into this State, or otherwise who is knowingly in actual or constructive possession or who knowingly attempt to become in actual or constructive possession of:

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-370(b)(4), is guilty of a felony which is kone as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is:

(b) twenty-eight grams or more, but less than one hundred grams:

3. for a third or subsequent offense, a mandatory minimum term o of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars].

S.C. Code Ann. § 44-53-370(e)(2)(b)(3) (Westlaw through 2001) (emphasis added)

At the end of subsection (e), the statue also provides:

A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of im-
p risonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24-13-610, or supervised furlough, as provided in Section 24-13-710.

Id at § 44-53-370(e).

See Kerr v. State, 345 S.C. 183, 187, 547 S.E.2d 494, 496 (2001), which held:

AT the time Kerr committed his offense of trafficking in cocaine, § 44-53-370 (e)(2)(c), (1985), provided that where the quantity of cocaine involved is 100 grams or more, but less than 200 grams, the defendant shall be sentence to a mandatory term of imprisonment of 25 years, no part of which may be sus- pended, and a fine of fifty thousand dollars. Kerr was convicted in 1988 and at that time the statue had been amended to read as follows:

S.C. Code Ann. 44-53-370 (e)(2)(c) (1988)(emphasis added) Regarding parole eli gibility, an unnumerated paragraph at the end of Section 44-53-370(e) stated as follows:

Any person convicted and sentenced under this subsection to a mandatory minimum term of impriisonment of twenty-five years is not eligilibe for parole. (emphasis added).

Kerr argued that he was not sentenced to a mandatory minimum, but a mandatory sentence, which makes him eligible for parole.

The Supreme Court agrees:

While Section 44-53-370(e), prescribes sentences for trafficking based on quantity of drugs involved, several different section authorizes at least a 25 year sentence, however, some provide for a mandatory sentence, while others provide for a mandatory minimum sentence. Despite the various ways that Section 44-53-370(e) mandated a term of imprisonment of at least 25 years sentence the unenumerated paragraph detailing parole eligibility simply stated that someone sentenced to a "mandatory minimum term of imprisonment of 25 years is not eligible for parole.

This enumerated paragraph was amended in 1988 to read as follows:

Any person convicted and sentenced under Section 44-53-370(e) to a mandatory minimum term of imprisonment of 25 years or a mandatory term of imprisonment of 25 years or more is not eligible for parole...§ 44-53-370(e)(supp.1988 (emphasis on added term)).

The primary rule of statutory construction is that the Court must ascertain the intention of the legislature...Eg., State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning without resort to subtle or forced construction to limit or expand the statute's operation. Furthermore, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

The Court further held: We specifically find that the 1988 amendment which added "mandatory term" of imprisonment of 25 years to parole ineligibility portion of Section 44-53-370(e), effectuated a substantial change to the law.

Whereas, prior to the amendment to Section 44-53-370(e)(1985-1988), a defendant convicted under this statute was eligible for parole. the amendment

added mandatory to make a defendant convicted under this statute ineligible for parole, only!

Amendment eff. July 1, 1988, 1988 S.C. Act No. 565.

In its current form, the parole ineligibility paragraph is ever more specific: Any person convicted and sentenced under this Subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years, or a mandatory minimum term of imprisonment of 25 years, nor more than 30 years is not eligible for parole...44-53-370(e)(Supp.2000).

Nowhere in the statute does it state that a defendant convicted under this Subsection must serve his/her sentence day for day, the statute specifically addresses whether a defendant convicted under this Subsection is parole eligible only, not the amount of time a defendant is required to serve on his/her sentence. 44-53-370 (e)(2)(b)(3).

The S.C. Legislature introduced House Bill No. H3096, and in that Bill an Act. to amend the S.C. Code of Laws of South Carolina, 1976, by adding Section 24-13-100 so as to provide the conditions and define "No Parole Offenses"

"Section 24-13-100. For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.

Appellant offense is one exempt from classification, because he was sentenced to 25 years. S.C. Code Ann. § 16-1-10(D) (2015). For no parole offenses the law provides:

(A) Notwithstanding any other provision of law, except in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense"... is not eligible for early release, discharge, or community supervision... until the inmate has served at least eighty-five percent

of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed not including any portion of the sentence which has been suspended...

S.C. Code Ann. § 24-13-150(A)(Supp. 2015)(emphasis added).

In this case, the mandatory minimum language in Section 44-53-370(e), specifically addresses parole eligibility, only, not the amount of time an inmate is required to serve on a sentence, therefore, it is error to interpret the statute as mandating that Appellant must serve his sentence day for day, which it clearly does not authorize. This violates Appellant's substantial and procedural right to due process guaranteed by the U.S. Constitution. Amend.14.

This Court, in its order found that the Department's recalculation of Appellant's sentence does not change in any way the original term of imprisonment imposed by the sentencing judge, but merely corrects a record-keeping error concerning what portion of the original term of imprisonment Appellant must serve, is error because the Department recalculated Appellant's sentence without notice to the Appellant as required by due process.

The Supreme Court held that:

1. When Dept. decides its original recordation of a sentence was erroneous, it must afford the inmate formal notice of the amended sentence and advise him of his opportunity to be heard through the grievance procedures.
2. Dept. of Corrs. is generally confined to the face of the sentencing sheet in determining the length of a sentence, but may refer to the sentencing transcript if there is any ambiguity in the sentencing sheet.
3. Fundamental requirements of due process includes notice, an opportunity to be heard in a meaningful way, and judicial review.
4. Length of inmate's incarceration implicates a Constitutional liberty interest for due process purposes. U.S.C.A. Amend. 14.

The Court further held that: The Dept. of Corrs. must provide an inmate with timely formal notice when it seeks to recalculate its initial determination of his sentence and advise him of his right to file a grievance and obtain

a hearing. Cf. Tant v. S.C. Dept of Corrs., 408 S.C. 334, 759 S.E.2d 398 (2014)

CONCLUSION

Based on the following, the Department of Correction's decision should be reversed.

Respectfully submitted,

S/ 
Ernest Battle/165247

CERTIFICATE OF SERVICE

I, Ernest Battle, #165247, certify that one original Brief of Appellant was forwarded to the Administrative Law Court, for South Carolina for filing on the 25 day of August, 2016, and a true copy was mailed to opposing counsel, at the below address.

Cheron Hess
Administrative Assistant
Office of General Counsel
4444 Broad River Road
Columbia, S.C. 29221-1787

Respectfully submitted
s/ *Ernest Battle*
Ernest Battle

The Honorable: Beborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, S.C. 29201

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 20 DAY OF August
2016
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 4/2024
SOUTH CAROLINA

RECEIVED
JUL 17 2017
SC Court of Appeals