

5

Record on Appeal  
The State of South Carolina  
In the Court of Appeals  
Appeal from Administrative Law Court  
Milton G. Kimpson, Judge ALC  
Case No. 2017-002628

James Wesley Patterson, # 296129, Appellant  
v.

South Carolina Department of Corrections, Respondent

Record on Appeal

**James Wesley Patterson**  
401 South Main Street  
Anderson, South Carolina 29624  
Appellant - Pro Se

**Christina Catoe Bigelow**  
Deputy General Counsel  
Office of General Counsel  
South Carolina Dept. of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

**ATTORNEY FOR RESPONDENT**

**RECEIVED**  
MAR 21 2018  
SC Court of Appeals

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

1. Index 1
2. Record of due process hearing 2
3. Inmate Grievance Form Step 1 3
4. Inmate Grievance Form Step 2 4
5. Sentencing Sheet 02-GS-24-294 5
6. Sentencing Sheet 2004 GS2306531 6
7. Sentencing Sheet 2011GS2309776 7
8. Sentencing Sheet 2011GS2309775 8
9. ALC Judgment 9

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
RECORD OF DUE PROCESS HEARING  
3<sup>rd</sup> Offense Drug Offenders

TO INMATE: James Patten SCDC #: 296129  
INSTITUTION: Rickland CI

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

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

Your new projected dates are:

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

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

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

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

Signature: [Signature]

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

Original: Central Record  
cc: Institutional Record  
Inmate

Revised 1/30/17



**RECEIVED**  
**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
**INMATE GRIEVANCE FORM**  
**STEP 2**

Office Use Only  
 Due 4/15/17  
**RECEIVED**  
 Grievance No. KCT 300-17  
 Code: General \_\_\_\_\_  
 Policy \_\_\_\_\_  
 Disc. Hear. \_\_\_\_\_  
 Class. CLCL  
 Date Received 4/12/17  
 IGC Initials JS

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

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

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

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

James W Peterson 4-11-17  
 Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

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

Therefore, your grievance is denied.

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

John D. Ayer 5/9/17  
 Signature Date

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

James W Peterson 6-14-17  
 Grievant Signature Date

S Ayer 6-14-17  
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD  
STATE SOUTH CAROLINA VS. JAMES WESLEY PATTERSON  
AKA: \_\_\_\_\_  
Race: W Sex: M Age: 28  
DOB: 10/19/74 SS#: 251-45-3264  
Address: 2A Second Ave.  
City, State, Zip: Conestee, SC  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

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

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Possid Methamphetamine 1st Off. (6-15 yrs)  
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 011112  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

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

ATTEST: \_\_\_\_\_ Solicitor  
\_\_\_\_\_ James W. Patterson Defendant  
\_\_\_\_\_ Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center for a determinate term of 0 - 0 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\*; the balance is suspended with probation for 02 months and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

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

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

\_\_\_\_\_  
Clerk of Court/ Deputy Clerk  
Court Reporter: \_\_\_\_\_  
PRESIDING JUDGE \_\_\_\_\_  
Judge Code: \_\_\_\_\_  
Sentence Date: 01 11 15  
08 Sept 2003

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
James Patterson )  
 AKA: \_\_\_\_\_ )  
 Race: W Sex: M Age: 32 )  
 DOB: 10-09-1974 SS#: 251-45-3264 )  
 Address: 119 COVENANT )  
PELZER, SC 29669 )  
 DL#: 004164831 SID#: \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

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

SENTENCE SHEET

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

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

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

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

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

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

SPECIAL CONDITIONS:

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

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

Recipient: \_\_\_\_\_

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

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

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

PRESIDING JUDGE [Signature]  
 Judge Code: 2170315  
 Sentence Date: 3-13-07

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville )  
STATE VS. )

INDICTMENT/CASE#: 2011GS2309776

James Wesley Patterson )

A/W#: J993003

AKA: )

Date of Offense: 8/16/2011

Race: WHITE Sex: M Age: 38 )

S.C. Code § : 44-53-0375

DOB: 10-09-1974 SS#: 251-45-3264 )

CDR Code #: 3200

Address: 19 EAGLES VIEW )

City,State,Zip: PIEDMONT, SC 29673 )

DL#: 9999999999 SID#: )

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

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

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3200

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

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

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

ATTEST: Joyce Monts 65331 [Signature] 6535  
Monts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 160 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: Attu Rec

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk Paul B. Wickensamer  
Court Reporter: A. Hixon

Presiding Judge [Signature]  
Judge Code: 2137  
Sentence Date: 6-12-13

SCCA/217 (03/2011)

2962

STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.

James Wesley Patterson

AKA:

Race: Sex: Age:

DOB: SS#

Address:

City, State, Zip:

DL#: SID#:

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2309775

A/W#: J993004

Date of Offense: 8/16/2011

S.C. Code § : 44-53-0375 (A)

CDR Code #: 3016

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3016

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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

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

ATTEST: Joyce Monks, SC Bar# 65331 Defendant; [Signature], SC Bar# 5335 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 \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ plus 20% fee: \$

Payment Terms:  Set by SCDPPPS

Recipient:

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

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

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

[Signature]

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

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



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

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

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

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

#### ISSUE ON APPEAL

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

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

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

## STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382, 527 S.E.2d at 757. "The only way for the [ALC] to obtain subject matter jurisdiction over [an inmate's] claim is if it implicates a state-created liberty interest." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). Because Appellant contends that the Department incorrectly calculated his sentence, the ALC has jurisdiction pursuant to *Al-Shabazz* to decide this matter.

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

## DISCUSSION

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

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

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

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

(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

Conversely, the Record reveals that Appellant’s prior offenses are not limited to simple possession of a controlled substance under Section 44-53-375(A). To wit, Appellant’s conviction summary indicates that he has prior convictions for Possession of Methamphetamine with Intent to Distribute and Possession of Methamphetamine/Cocaine with Intent to Distribute. Accordingly, because all of Appellant’s prior offenses were not for possession of a controlled substance pursuant to Section 44-53-375(A), the no parole mandate of § 24-13-100 continues to apply such that § 44-53-375(B)(3) continues to be a no-parole offense. Thus, Appellant may not have his sentence affected by suspension, nor probation granted, and is not “eligible for parole, supervised furlough, ~~community supervision, work release, work credits, education credits, and good conduct credits~~”

until he serves at least eighty-five (85) percent of his original term of imprisonment.<sup>7</sup> This result is required by the plain meaning of the statutory language and is consistent with *Bolin*. Therefore, the Department correctly determined that Appellant’s sentence should be calculated at eighty-five (85) percent. *See* S.C. Code Ann. § 24-13-150(A) (“an inmate convicted of a “no parole offense” as defined in Section 24-13-100...is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.”)

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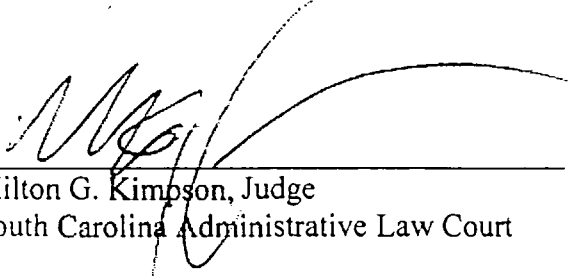
<sup>7</sup> The General Assembly’s intent that the § 44-53-375(A) condition be met before a term of imprisonment for a third offense may be truncated in any manner is further clarified by the instruction contained in the last sentence of § 44-53-375(B) that “[i]n all other cases, the sentence must not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

**ORDER**

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

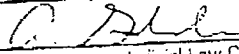
**AND IT IS SO ORDERED.**

December 11, 2017  
Columbia, South Carolina

  
Milton G. Kimpson, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

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

This 11 day of December 2017  
By:   
Judicial Law Clerk

I certify that this Record on Appeal contains no matter which is irrelevant to this appeal.

March 16, 2018

James Wesley Patterson  
Anderson City Jail  
401 South Main Street  
Anderson, SC.

29624