

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0293-AP
Appellate Case No. 2018-002013

RECEIVED
OCT 07 2019
SC Court of Appeals

LUTHER BRIAN MARCUS, # 218408,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

AMENDED RECORD ON APPEAL

LUTHER B. MARCUS, # 218408
Pro Se

Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

CHRISTINA C. 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

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ATTORNEY FOR RESPONDENT

INDEX

Step 1 Grievance Form	1
Step 2 Grievance Form	3
Sentence Sheet dated 4/27/10 (2009-GS-37-1190)	5
Sentence Sheet dated 4/27/10 (2009-GS-37-1192)	6
Sentence Sheet dated 4/27/10 (2009-GS-37-1192)	7
Sentence Sheet dated 3/16/10 (2010-GS-39-00445)	8
Sentence Sheet dated 12/12/17 (2017-GS-39-183)	9
Form 9 dated 12/12/2017 (2009-GS-37-1190)	10
Form 9 dated 12/12/17 (2009-GS-37-1190)	11
Form 9 dated 12/12/17 (2009-GS-37-1192)	12
Form 9 dated 12/12/17 (2009-GS-37-1192)	13
Form 9 dated 12/12/17 (2009-GS-37-1196)	14
Form 9 dated 12/12/17 (2009-GS-37-1196)	15
Jail time form dated 12/12/17	16
Inmate Conviction Summary	17
Inmate Commitment Application Inquiry (Sentence 13 – 2009-GS-37-1196)	18
Inmate Commitment Application Inquiry (Sentence 14 – 2009-GS-37-1192)	19
Inmate Commitment Application Inquiry (Sentence 15 – 2009-GS-37-1190)	20
Completed SCDC Priors	21
ALC Order dated October 29, 2018	22

CERTIFICATE OF COUNSEL

I, counsel for Respondent, do hereby certify that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I further certify that I have complied, to the best of my ability, with the South Carolina Supreme Court's "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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ATTORNEY FOR RESPONDENT

October 7, 2019

F2-2210

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1



INMATE NAME: <u>Luther Brian Marcus</u>	OFFICE USE ONLY
SCDC NUMBER: <u>218408</u>	Grievance No. <u>LECT 0154-18</u>
INSTITUTION: <u>Lee Correctional Inst.</u>	Code: General _____
HOUSING UNIT: <u>F5 263</u> <u>APR 02 2018</u>	Policy _____
WORK ASSIGNMENT: <u>Cafe</u>	Disc. Hear. _____
	Class. <input checked="" type="checkbox"/>
	PREA _____
	Date Received <u>4/3/18</u>
	IGC Initials <u>KUP</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

Sir, I wasn't given 1805 days of time served credit pursuant S.C. Code 24-13-40 to be calculated and applied against this 8 years probation violation sentence I am now serving. On March 16, 2010 in Pickens County I was sentenced to 15 years by Judge Welmaker back dated to Nov 5, 2008 Indictment # 2010GS3900445. On April 27, 2010 in Oconee County I was sentenced to 15 years, suspended to 7 years, 5 years probation back dated to Nov 5, 2008 and to run concurrent with Pickens County sentence. I was incarcerated from Nov 5, 2008 until Sept 30, 2016. The 15 years/7 years suspended from Oconee would of max. out in May 2016 but I was still incarcerated on the Pickens 15 years and the 15 years/7 years suspended sentence was still running concurrent with Pickens 15 years sentence because the Oconee sentence probation was never toll. That's 1580 days of time served, plus 75 days I was out under supervision from Sept 30, 2016 to Dec 15, 2016. ~~and~~ Another 150 days from Dec 15, 2016 to May 26, 2017, I was in Pickens County awaiting trial still under supervision. According to S.C. Code 24-13-40, State v. Ellis, State v. Miller, I am owed these time served credit. S.C. DC has records of everything I stated here.

Luther B Marcus 4.2.18
Grievant Signature Date

Kiosk Reference # 18-873741

ACTION REQUESTED: To be given the 1805 days of time served credit I am owed, to be calculated and applied to my current sentence

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

[Signature] 4/4/18
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Luther Marcus

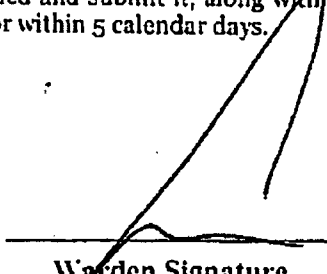
#218408

LEECI-0154-18

This is in response to the above referenced grievance. Pertinent information and documentation have been reviewed. Central Classification was contacted. Central stated that when you are released from SCDC and then return to SCDC, your jail credits from your previous convictions are gone. Jail credits are not carried over. It is noted on your Sentence Sheet dated 12/12/17 Judge Miller gave you 363 days on your Indecent Exposure conviction. Your projected max-out date is July 14, 2021.

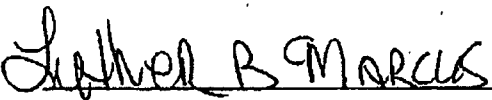
It appears that your convictions and jail time credit has been applied appropriately in the Offender Management System. If you should have any further Classification concerns, I suggest you address them with your assigned Classification Caseworker. Based on this information, I see no further action warranted on this issue.


If you are not satisfied with my response, you have the opportunity to appeal to the appropriate official. If you wish to do so, complete the Step 2 Grievance Form provided and submit it, along with your copy of the Step 1 Grievance Form, to the Inmate Grievance Coordinator within 5 calendar days.


Warden Signature 4/19/18
Date

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

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


Grievant Signature 4-20-18
Date


IGC Signature 4/20/18
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Lee 4/24/18

INMATE NAME: Lee Marcus
SCDC NUMBER: 218408
INSTITUTION: Lee
HOUSING UNIT: F2-2210
WORK ASSIGNMENT: _____

APR 27 2018
MAY 21 2018

Office Use Only
Grievance No. Lee CF- 0154-18
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 4/24/18
IGC Initials KH

RECEIVED
APR 24 2018

INMATE'S REASON FOR APPEAL (state specific dissatisfaction with classification or classification)
if jail credit for the Indecent Exposure conviction, its the time served
edit on the probation violation where I wasn't given full time served
edit on that sentence, it was concurrent with pickens sentence.
I am owed 1805 days time served credit under S.C. code laws 24-
5-40. my dissatisfaction is S.C.OC isn't understanding the laws on
current sentence and time credits. The probation was never toll
or further information refer to step-one grievance and
WSK reference # 18-873741.

Lee B Marcus 4-20-18
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final
Agency response.

[Signature] 5-22-18
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 _____

[Signature] 5/30/18
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

I have reviewed your concern. In your grievance, you stated that you would like 1,805 days of time served to be given to you on your SCDC sentence. You would like for the same to be applied toward the eight years of probation violation sentence from the 15-year sentence from March 16, 2010. You would like jail credits from a previous incarceration to be given. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 4/19/18. You were sentenced on 12/12/2017 for violating SC Code of Laws 16-11-0312 (B), offense 2221, Burglary - 2nd Degree which is classified as Violent; 16-11-0312(B) offense 2221, Burglary - 2nd Degree which is classified as Violent; 16-11-0312, offense 2223, Burglary - 2nd Degree which is classified as non-violent; and 16-15-0130, offense 3605, Indecent Exposure which is classified as non-violent. Your Sentence Sheet dated July 12, 2017 provides for you to receive 363 days for time served. Your SCDC Inmate Record reflects such credit as being applied. Your projected maxout date is 7/14/2021. You have not provided any evidence to support your contention that your SCDC incarcerated sentence is incorrect.

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.

COUNTY OF Oconee

* Exhibit B-3

INDICTMENT/CASE#: 2009GS3701190

VS. Mr. Luther Brian Marcus

AW#: J435571

Date of Offense: 10/31/2008

S.C. Code §: 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

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

*CDL Yes No CMV Yes No Hazmat Yes No On disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

Charge: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 15 yrs

Solicitor: SC Bar # Defendant: Attorney for Defendant: SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections or a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed 7 years

provided that upon the service of 5 months/years and payment of costs and assessments as applicable; the balance is suspended with probation for 5 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 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 Substance Abuse Counseling

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc.

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.

Clerk of Court/Deputy Clerk Court Reporter: Robin Hild

Presiding Judge: Judge Code: 63 Sentence Date: 04/27/10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Oconee
STATE _____

Exhibit A-3

INDICTMENT/CASE#: 2009GS3701192

VS.
Mr. Luther Brian Marcus

AW#: K363693
Date of Offense: 9/8/2008
S.C. Code §: 16-11-0312(B)
CDR Code #: 0086

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

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree
In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

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

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. 15 yr. 7 mo

ATTEST: _____
Solicitor SC Bar # _____ Defendant _____ Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center commit
for a determinate term of 15 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 7 days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for 5
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: Nov. 5, 2002 (PICKENS COUNTY)
 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. 562 DAYS T/S. Criminal no. 0115185

The Defendant is to be placed on 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: \$ 1,809.00 plus 20% fee: \$ _____

Payment Terms: RESTITUTION ORDER

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>700.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§58-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§47-12 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>175.00</u>
§14-1-213 (Drug Court Surcharge)	\$100	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
§90-7 (SCCJA Surcharge)	\$5	\$ <u>35.00</u>
1% to County (if paid in installments)		\$ <u>42.30</u>
TOTAL		\$ <u>1452.30</u>

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.

Clerk of Court/Deputy Clerk Beverly H. Whitfield
Court Reporter: Robin Hill

Presiding Judge [Signature]
Judge Code: 63
Sentence Date 04/27/10

COUNTY OF Oconee
 STATE OF SOUTH CAROLINA
 VS.
Mr. Luther Brian Marcus
 KA: _____
 Race: _____ Sex: _____ Age: _____
 OB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 ID# _____ SID# _____

Exhibit C-3

INDICTMENT/CASE#: 2009GS3701196
 A/W#: K363723
 Date of Offense: 10/11/2008
 S.C. Code §: 16-11-0312
 CDR Code #: 0080

SENTENCE SHEET

CDL Yes No CMV Yes No Hazmat Yes No
 Disposition of the said Indictment comes now the Defendant who was

CONVICTED OF or PLEADS

of: Burglary / Burglary (Non - Violent) (After June 20, 1985)

2 counts

violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

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

he charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 he plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. 15 yrs → 3/3

RESTITUTION: 71741 (comment)
 Solicitor [Signature] SC Bar # _____ Defendant [Signature] Attorney for Defendant [Signature] SC Bar # _____

HEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, Youthful Offender Act not to exceed _____ years
 for a determinate term of 15 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 7 days/months/years and 5 payment
 of 5 plus costs and assessments as applicable; the balance is suspended with probation for 5
 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 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 _____

Substance Abuse Counseling

Line:	\$	
4-1-206 (Assessments 107.6%)	\$	
4-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>200.00</u>
4-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
6-5-2995 (DUI Assessment)	\$12	\$ _____
6-1-286 (DUI Breath Test)	\$25	\$ _____
7-12 (Public Def/Prob)	\$500	\$ _____
4-1-212 (Law Enforce. Funding)	\$25	\$ <u>50.00</u>
4-1-213 (Drug Court Surcharge)	\$100	\$ _____
0-21-114 (BUI Breath Test Fee)	\$50	\$ _____
6-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
0-7 (SCCJA Surcharge)	\$5	\$ <u>10.00</u>
to County (if paid in installments)		\$ <u>7.80</u>
TOTAL		\$ <u>267.80</u>

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.

Clerk of Court/Deputy Clerk Beverly H. Whitfield
 Court Reporter: Robin Hild

Presiding Judge [Signature]

Judge Code: 63

Sentence Date 04/27/10

Exhibit D

COUNTY OF Pickens VS. Luther Brian Marcus

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

INDICTMENT/CASE#: 2010GS3900445 A/W#: I335903 Date of Offense: 7/22/2008 S.C. Code §: 16-11-0312(B) CDR Code #: 0086

SENTENCE SHEET 0-15 yrs

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Burglary, Second Degree (building) (ps)

CONVICTED OF or PLEADS

In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086 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, The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signatures] 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 15 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: Set by SCDPPPS Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, § 47.12 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$100, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, § 90.7 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Clerk of Court/ Deputy Clerk: Harold P. Welborn Court Reporter: Nanette Hanks

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.

Presiding Judge: [Signature] Judge Code: 2137 Sentence Date: 3-16-10

STATE OF SOUTH CAROLINA)
 COUNTY OF Pickens)
 STATE VS.)
 Luther Brian Marcus)
 AKA:)
 Race: [redacted] Sex: [redacted] Age: [redacted])
 DOB: [redacted] SS#: [redacted])
 Address: [redacted])
 City, State, Zip: [redacted])
 DL#: [redacted] SID#: [redacted])

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT CASE#: 2017GS3900183
 A/W#: 2016A3920700232
 Date of Offense: 12/13/2016
 S.C. Code §: 16-15-0130
 CDR Code #: 0091

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Indecent Exposure CONVICTED OF or PLEADS

in violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/ minor 1st or Lewd Act) § 17-23-45

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.

WITNESSETH: Shannon Odom 77891 SC Bar# CANTRELL, DAVID 01116 SC Bar#
 Odom, Shannon Defendant CANTRELL, DAVID

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 3 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. 363 DAYS
 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waiver Hearing Ordered PTUP
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____
 days/hours Public Service Employment

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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-213 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL	\$	\$ 128.75

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Harold R. Wells
 Court Reporter: Charly Smith
 CA 217 (07/2016)

Presiding Judge: [Signature]
 Judge Code: 2130
 Sentence Date: 12-12-18

Exhibit B-1

STATE OF SOUTH CAROLINA
 County of Pickens

STATE Pickens vs. Brian L. Marcus

AKA: _____
 Race: _____ Sex: _____
 DOB: _____
 SSN: _____
 SID# _____

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: _____
09 - GS - 37 - 001190
 Probation C/W#: W-39-17-0141
 Name of Original Offense: Burglary 2nd
 Original A/W#: J43557P
 Date of Original Offense: 10-31-08
 Conviction S.C. Code §: 16-11-0312(B)
 Conviction CDR Code #: 0101816
 Original Sentence: 15 yrs. prob. upon Tyr. 5 yrs. prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/27/10 in the Court of General Sessions of Darke County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 2/6/11. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation; (List by number or indicate special conditions as provided in the affidavit)
2, 6, 7, 9, 10, 11, special conditions

- Therefore, IT IS ORDERED that:
- the suspended sentence be revoked and the above named defendant be required to serve 8 months/years, the remainder of the original sentence, and/or pay \$ _____
 - the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
 - the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
 - probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
 - the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
 - Financial Obligations: Order satisfies:

<input checked="" type="checkbox"/> Department fees (arrears)	Civil Judgment:	<input type="checkbox"/> Department fees
<input checked="" type="checkbox"/> Fines and other fees (arrears / balance)		<input type="checkbox"/> Fines and other fees
<input type="checkbox"/> Restitution (and 20%) (arrears / balance)		<input checked="" type="checkbox"/> Restitution (and 20%)
 - Additional Conditions ordered by the Court:

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).
- The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2011
Pickens, SC

 Presiding Judge

 Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____
 Signed this _____ Day _____ day of _____ Month _____ Year _____ at _____ City _____ SC

STATE OF SOUTH CAROLINA

County of Pickens

STATE VS.

AKA: Brian L Marcus

Race: [Redacted] Sex: [Redacted]

DOB: [Redacted]

SSN: [Redacted]

SID#: [Redacted]

Exhibit B-2

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

09 -GS- 37 - 101190

Probation C/W#: W-39-17-0141

Name of Original Offense: Burglary (Violent) - 2nd Deg.

Original A/W#: J435571

Date of Original Offense: 10-31-08

Conviction S.C. Code §: 16-11-0312

Conviction CDR Code #: 0 / 10 / 8 / 6

Original Sentence: 15 yrs. SS of 7 yrs. and 1

5 yrs. prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4 / 27 / 10 in the Court of General Sessions of Oconee County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 5-26-17. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

2, 6, 7, 9, 10, 11 & Special Conditions

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve 8 1/2 months/years, the remainder of the original sentence, and/or pay \$ _____

the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Financial Obligations: Order satisfies: Department fees (arrearage) Civil Judgment: Department fees
 Fines and other fees (arrearage / balance) Fines and other fees
 Restitution (and 20%) (arrearage / balance) Restitution (and 20%)

Additional Conditions ordered by the Court:

The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).

The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.

The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2017,
Pickens, SC

Presiding Judge

13th

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this _____ day of _____, _____

at Pickens, SC

STATE OF SOUTH CAROLINA
 County of Pickens
 STATE Brian L. Marcus vs
 AKA: _____
 Race: _____ Sex: _____
 DOB: _____
 SSN: _____
 SID#: _____

Exhibit A-1
 IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 0A - GS - 37 * 01192
 Probation C/W#s: W-39-17-0141
CC-39-17-0024
 Name of Original Offense: Burglary 2nd co.
 Original A/W#: 12363193, 95, 97, 100, 101, 103
 Date of Original Offense: 9-5-08
 Conviction S.C. Code §: 16-11-0312 (B)
 Conviction CDR Code #: 01 01 8 16
 Original Sentence: 15 yrs. prob. upon 7 yrs. 5 mths probat.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/27/10 in the Court of General Sessions of Oconee County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 2/26/11. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
2, 6, 7, 9, 10, 11 & special conditions

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 8 months/years the remainder of the original sentence, and/or pay \$ _____
- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor):
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage / balance)
 - Restitution (and 20%) (arrearage / balance)
 Civil Judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court:

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).
- The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2011
Pickens, SC

[Signature]
 Presiding Judge
13th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within this period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____
 Signed this _____ day of _____ at _____ City _____ SC

STATE OF SOUTH CAROLINA

County of Pickens

STATE VS.

AKA: Brian L. Marcus

Race: [Redacted] Sex: [Redacted]

DOB: [Redacted]

SSN: [Redacted]

SID#: [Redacted]

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

09 -GS- 37 - *1192

Probation C/W#: W-39-17-0141

Name of Original Offense: Burglary (4th. Cent) 2nd d.

Original A/W#: K363693

Date of Original Offense: 9-5-08

Conviction S.C. Code §: 16-11-0312 (B)

Conviction CDR Code #: 0 / 0 / 8 / 6

Original Sentence: 15 yrs. SS of 7 yrs. and 5 yr

Prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4 / 27 / 10 in the Court of General Sessions of Oconee County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 5-26-17.

After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probal on: *(List by number of note special conditions as provided in the affidavit)*
2, 6, 7, 9, 10, 11 & special conditions

Therefore, IT IS ORDERED that:

- * the suspended sentence be revoked and the above named defendant be required to serve 28 months/years the remainder of the original sentence, and/or pay \$ _____
- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage / balance)
 - Restitution (and 20%) (arrearage / balance)
- Civil Judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court:

The defendant is given credit for pre-arrest hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).

* The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.

The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2017,
Pickens SC

Presiding Judge 13th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, this order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this _____ day of _____, _____ at _____

_____ at Pickens SC

STATE OF SOUTH CAROLINA
 County of Pickens
 STATE vs.
Brian L. Marcus
 AKA: _____
 Race: _____ Sex: _____
 DOB: _____
 SSN: _____
 SID#: _____

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: #16152021
DA - GS - 37 - 01196
 Probation C/W#s: W-39-17-0147
CC 39-17-0024
 Name of Original Offense: Burglary 2nd NV
 Original A/W#: 14363723 7410
 Date of Original Offense: 10-11-08
 Conviction S.C. Code #: 16-11-312
 Conviction CDR Code #: 0101810
 Original Sentence: 1 YRS PROBATION TMS
2 YRS PROBATION

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/27/10 in the Court of General Sessions of Anderson County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 5-26-10. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
2, 6, 7, 9, 10, 11 - special conditions

- Therefore, IT IS ORDERED that:
- the suspended sentence be revoked and the above named defendant be required to serve 8 months/years, the remainder of the original sentence, and/or pay \$ _____.
 - the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
 - the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
 - probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
 - the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
 - Financial Obligations: Order satisfies:
 - Department fees (arrange)
 - Fines and other fees (arrange / balance)
 - Restitution (and 20%) (arrange / balance)
 Civil Judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
 - Additional Conditions ordered by the Court:

- The defendant is given credit for pre-arrest detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).
- The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2017.
Pickens SC

 Presiding Judge

 Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____
 Signed this _____ day of _____ at _____ SC
 Day Month Year City

STATE OF SOUTH CAROLINA
County of Pickens

Exhibit C-2

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

STATE VS.

09 -GS- 37 - *01196

Probation C/W#s: W-39-17-0141

Name of Original Offense: Burglary (non-violent)

Original A/W#: K363723 2nd deg

Date of Original Offense: 10-11-08

Conviction S.C. Code §:

Conviction CDR Code #: 0101810

Original Sentence: 15 yrs SS of 7 yrs and 5

4 yrs prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/17/10 in the Court of General Sessions of Dillon County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 5-26-17. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: *(List by number or indicate special conditions as provided in the affidavit)*
2, 6, 7, 9, 10, 11 & Special Conditions

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 8 months/years, the remainder of the original sentence, and/or pay \$ _____.
- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage / balance)
 - Restitution (and 20%) (arrearage / balance)
 Civil judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court:

- The defendant is given credit for pre-arrest hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).
- The defendant has served 7 days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 12 day of December, 2017
Pickens, SC

Presiding Judge
13th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature
Signed this _____ day of _____ at _____
Day Month Year

Witnessed by _____

City SC

CMTI100D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION
CONVICTION SUMMARY

06/29/18
C056427

SCDC# > 00218408
MARCUS, LUTHER BRIAN

CURR LOC: LEE
SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	DATE	START	PROJ	COMP	STAT	IND	CONV	VIO
* S00015	BURGLARY-2ND DEGREE	008	00	000		12/12/17	05/26/17	07/14/2021		ACT	V	V	
S00014	BURGLARY-2ND DEGREE	008	00	000		12/12/17	05/26/17	07/14/2021		ACT	V	V	
S00013	BURGLARY-2ND DEG/NON	008	00	000		12/12/17	05/26/17	07/14/2021		ACT	N	N	
S00012	INDECENT EXPOSURE	003	00	000		12/12/17	12/14/16	09/10/2018		ACT	N	N	

MAKE A SELECTION AND PRESS <ENTER>...

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC

PF9-DETAIN

PF12-SUMREPT

PAGE: 0001

15.09.08 Thursday, July 05, 2018

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 07/05/18
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 218408 INQUIRY CURR LOC: LEE
 MARCUS, LUTHER BRIAN NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE FULL REVOCATION OF S00009
 CONVICTION NUM: S00013 INDICT NUM: 09-GS-3701196 WARRANT NUM: K363723
 DATE SENTENCED...: 12/12/2017 JUDGE LAST...: MILLER FI: E
 STATUTE: 16-11-0312 CDR CODE.: 0080 GPS IND: N
 OFFENSE: 2223 BURGLARY-2ND DEG/NON-VIOL OFFENSE DATE: 10/11/2008
 CHARACT: F FACILITATION OF COUNTS: 02 OFFENSE CNTY: 37 OCONEE
 PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 12/12/2017
 TOTAL SENTENCE...: 008 00 000 MAND SERV REQMT...: 000 00 000
 INCARC SENTENCE...: 008 00 000 PAROLE FACTOR...: 1 1/4 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000
 HIP SENT...: 000 00 000
 RESTITUTION REQMT: Y AMT: .00 JAIL CRED: 00200 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 05/26/2017 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: NON-VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION...: NON-VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: L ROBERSON DATE: 01/03/18
 NO PAROLE: NOT APPLIC CREATED BY.: S PHILLIPS DATE: 12/14/17

 PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

13:39:07 Thursday, July 05, 2018

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 07/05/18
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 218408 INQUIRY CURR LOC: LEE
 MARCUS, LUTHER BRIAN NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE FULL REVOCATION OF 800007
 CONVICTION NUM: 800014 INDICT NUM: 09-GS-3701192 WARRANT NUM: K363693
 DATE SENTENCED...: 12/12/2017 JUDGE LAST...: MILLER FI: E
 STATUTE: 16-11-0312(B) CDR CODE.: 0086 GPS IND: N
 OFFENSE: 2221 BURGLARY-2ND DEGREE OFFENSE DATE: 09/05/2008
 CHARACT: F FACILITATION OF COUNTS: 07 OFFENSE CNTY: 37 OCONEE
 PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO
 TYPE SENTENCE... : 8 ADULT-STRAIGHT SCDC JURIS DATE...: 12/12/2017
 TOTAL SENTENCE...: 008 00 000 MAND SERV REQMT...: 000 00 000
 INCARC SENTENCE...: 008 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000
 HIP SENT.....: 000 00 000
 RESTITUTION REQMT: Y AMT: 9,809.00 JAIL CRED: 00200 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 05/26/2017 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: N SCDC CLASSIFICATION.....: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: L ROBERSON DATE: 01/03/18
 NO PAROLE: NOT APPLIC CREATED BY.: S PHILLIPS DATE: 12/14/17

PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

20170705 09:00:00

CMTI200D SDCD OFFENDER MANAGEMENT SYSTEM 07/05/18
 OMCOMITA COMMITMENT APPLICATION C052640
 SDCD #: 218408 INQUIRY CURR LOC: LEE
 MARCUS, LUTHER BRIAN NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE FULL REVOCATION OF S00008
 CONVICTION NUM: S00015 INDICT NUM: 09-GS-3701190 WARRANT NUM: J435571
 DATE SENTENCED.: 12/12/2017 JUDGE LAST.: MILLER FI: E
 STATUTE: 16-11-0312(B) CDR CODE.: 0086 GPS IND: N
 OFFENSE: 2221 BURGLARY-2ND DEGREE OFFENSE DATE: 10/31/2008
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 37 OCONEE
 PLEA...: G GUILTY TYPE OF COURT....: 01 GENERAL SESSIO
 TYPE SENTENCE...: S ADULT-STRAIGHT SDCD JURIS DATE..: 12/12/2017
 TOTAL SENTENCE...: 008 00 000 MAND SERV REQMT...: 000 00 000
 INCARC SENTENCE...: 008 00 000 PAROLE FACTOR....: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000
 HIP SENT.....: 000 00 000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00200 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 05/26/2017 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: N SDCD CLASSIFICATION.....: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: L ROBERSON DATE: 01/03/18
 NO PAROLE: NOT APPLIC CREATED BY.: S PHILLIPS DATE: 12/14/17

PFB-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

14:02:38 Friday, June 29, 2018

CMTI700M SCDC OFFENDER MANAGEMENT SYSTEM 06/29/18
CMTI700D COMMITMENT APPLICATION C056427
SCDC# > 00218408 COMPLETED SCDC PRIORS

MARCUS, LUTHER BRIAN CURR LOC: LEE
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE SCDC CLASSIFICATION..: VIOLENT

NUM	T X	CONV OFFENSE	INCARC	SENT	SENT	SENT	PROJ	COMP	STAT	IND
			YRS	MO	DYS	DATE	START			
S00011	2 N	GRAND LARCENY	005	00	000	04/27/10	12/17/08	10/28/2011	COM	N N
S00010	3 N	BRG-SAFE-VAUL	007	00	000	04/27/10	12/17/08	11/27/2014	COM	N N
S00009	3 N	BURGLARY-2ND	007	00	000	04/27/10	12/17/08	12/14/2012	REV	N N
S00008	4 N	BURGLARY-2ND	007	00	000	04/27/10	12/17/08	12/14/2012	REV	V V
S00006	2 N	GRAND LARCENY	005	00	000	03/16/10	11/05/08	09/27/2011	COM	N N
S00005	4 N	BURGLARY-2ND	005	00	000	03/16/10	11/05/08	09/27/2011	COM	V V
Y S00004	4 N	BURGLARY-2ND	015	00	000	03/16/10	11/05/08	10/26/2016	COM	V V
S00007	4 N	BURGLARY-2ND	007	00	000	04/27/10	10/12/08	10/12/2012	REV	V V
Y S00003	4 Y	BUGGERY	005	00	000	09/18/02	09/18/02	04/18/2006	COM	N N
S00001	4 Y	CRIM SEX COND	012	00	000	11/30/94	04/18/94	03/30/2003	COM	V V
S00002	4 Y	CRIM SEX COND	012	00	000	11/30/94	04/18/94	03/30/2003	COM	V V

00201538

PAGE: 0001

PF4-MODCONV PF6-NON-SCDC PRIORS

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Luther Brian Marcus, # 218408,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
_____)

Docket No. 18-ALJ-04-0293-AP
[Grievance No.: LCI 0154-18]

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Luther Brian Marcus (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS/PROCEDURAL HISTORY

On March 16, 2010, Appellant was sentenced in Pickens County to fifteen (15) years on indictment number 2010-GS-39-0445, Burglary, 2nd Degree, none of this sentence was suspended. Other sentences imposed on this date have no bearing on the issues in this case.

On April 27, 2010, Appellant was sentenced in Oconee County on additional indictments. Numbers 2009-GS-37-1190, -1192, and -1196, for counts of Burglary, 2nd Degree, for each of which he was sentenced to fifteen (15) years, suspended upon service of seven (7) years of incarceration plus probation for five (5) years. He was also sentenced to seven (7) years on indictment number 2009-GS-37-1191, for four (4) counts of Burglary/Safecracking, and to five (5) years on indictment number 2009-37-1193, for four (4) counts of Larceny/Grand Larceny. All of these sentences were to run concurrently with each other and with the fifteen-year sentence he received on March 16, 2010, with credit for 562 days of time served. The start dates for these sentences were backdated to December 17, 2008.

Appellant completed the seven-year incarceration portion of one of his April 27, 2010 sentences on October 12, 2012, and the other two on December 14, 2012.¹ The parties agree that Appellant

¹ Appellant in his reply brief and Respondent in a subsequent filing call attention to an erroneous reference to 2018 as the completion date of the latter two of these sentences.

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OCT 29 2018

SC ADMIN. LAW COURT

was released from SCDC custody on September 30, 2016, and began serving the probation portion of his split sentences.

On or about December 15, 2016, Appellant was arrested for Indecent Exposure. On December 12, 2017, Appellant was convicted of that charge, (indictment number 2017-GS-39-0183) and sentenced to three (3) years reduced by credit for 363 days of time served. Also, on December 12, 2017, Appellant's probation was revoked on his April 27, 2010, sentences on indictment numbers 2009-GS-37-1190, -1192, and -1196, and Appellant was required to serve the remaining eight (8) years of his concurrent fifteen-year sentences.²

Appellant filed a Step 1 Grievance on April 2, 2018, challenging the Department's sentencing calculation. Appellant argued that he was entitled to credit for 1805 days of time served on the "8 years' probation violation sentence [he is] now serving." He stated that on March 16, 2010, he was sentenced in Pickens County to fifteen (15) year backdated to November 5, 2008. He also stated that on April 27, 2010, he was sentenced in Oconee County to fifteen (15) years, suspended to seven (7) years, five (5) years' probation, also backdated to November 5, 2008, and to run concurrently with the prior (Pickens County) sentence. He then asserted that the "[t]he 15 years/years suspended [sentence] would of [sic] max[ed]-out in May 2012," but he was still incarcerated on the prior fifteen-year sentence because his second "sentence probation was never toll[ed]." Appellant calculated that he was owed 1580 days of time served,³ plus 75 days that he was "out under supervision from Sept 30, 2016 to Dec 15, 2016 [and] another 150 days from Dec 15, 2016 to May 26, 2017," when he was awaiting trial still under supervision." The total requested credit is for 1805 days of time served.

On April 19, 2018, the Warden denied Appellant's Step 1 Grievance, noting that Central Classification "stated that when you are released from SCDC and then return to SCDC, your jail

² Curiously, the Record includes two orders of revocation issued on the same day for indictment numbers 2009-GS-37-1190 and -1192. These orders contain a line through the number "8" in reference to the number of years remaining on Appellant's sentence and has a handwritten "15" beside the lined-through "8" with what appear to be initials handwritten beside the "15." Each of these sentencing forms also refers to the fact that Appellant has served seven (7) of the fifteen (15) years to which he was originally sentenced. Therefore, Appellant had only eight (8) years remaining to serve. The "8" was not stricken-through on the probation revocation order for indictment number 2009-GS-37-1196.

³ In his brief, Appellant refers to being owed approximately "1508" days for incarceration between June 2012 and September 30, 2016, when he was released on probation. However, based on his Step 1 Grievance and the approximate amount of time in that date range, the Court will interpret his brief as intending to state "1580" days.

credits from your previous convictions are gone.” The Warden also noted that Appellant’s sentencing sheet dated December 12, 2017, reflects that he was given 363 days of jail credit, and that he has a max-out date of July 14, 2021.

Appellant subsequently filed a Step 2 Grievance, in which he argued that the jail credit for the Indecent Exposure conviction was not at issue, but that it was instead about the time served on his “probation violation where [he] wasn’t given full time served credit on that sentence. It was concurrent with” his first sentence. He again asserted that he was owed 1805 days of credit for time served and again noted that his “probation was never tolled.”

In denying Appellant’s Step 2 Grievance, the Responsible Official summed up Appellant’s argument as seeking 1805 days of time served to be applied to his sentence and “the same to be applied toward the eight (8) years of probation violation sentence from the 15-year sentence from March 16, 2010[, that he] would like jail credits from a previous incarceration to be given.” The official then noted that he had been sentenced on December 12, 2017, for two counts of Offense 2221, Burglary – 2nd Degree, which is a violent offense; one count of Offense 2223, Burglary – 2nd Degree, which is a non-violent offense; and one count of Offense 3605, Indecent Exposure, which is non-violent offense. The official also noted that the 363 days for time served listed on his sentencing sheet date July 12, 2017, had been applied, and that his max-out date is July 14, 2021.

Appellant filed his Notice of Appeal on June 4, 2018, asserting that “1805 days of time served credit was not applied to his current eight-year sentence from a[n] ongoing 2010 concurrent suspended/split sentence”

Appellant filed a brief on June 27, 2018. The Department filed the Record on Appeal on August 20, 2018. Appellant filed a “Motion to Amend Brief” on August 23, 2018. On October 4, 2018, the Department filed its brief. On October 12, 2018, Appellant filed a reply brief. On October 22, 2018, the Department filed a Reply to Appellant’s Reply.

ISSUE

Did the Department err in its sentence calculation by failing to give Appellant proper credit for time served?

STANDARD OF REVIEW

The Court’s jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C.*

Dep't of Prob., Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

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

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

S.C. Code Ann. § 1-23-380(5) (Supp. 2017). *See also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). 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

As an initial matter, Appellant's Indecent Exposure charge is not at issue. The Record reflects that Appellant completed that sentence on September 10, 2018, and Appellant expressly stated in his Step 2 Grievance that “[his] grievance isn't about [his] jail credit for the indecent exposure

conviction[.]” Therefore, to the extent that Appellant argues in his brief that the sentence for his Indecent Exposure charge was miscalculated, this argument is not preserved on appeal. *See State v. Bryant*, 383 S.C. 410, 418, 680 S.E.2d 11, 15 (Ct. App. 2009) (“An issue must be raised and ruled upon [by the trier of fact] in order to be preserved for appellate review.”).

Appellant’s remaining argument alleges that the Department erred by not applying 1805 days of time served “to his current eight-year sentence from a[n] ongoing 2010 concurrent suspended/split sentence” Appellant asserts that he is entitled to time served between the completion of his seven-year period of incarceration on his April 27, 2010, split sentences for indictment numbers 2009-GS-37-1190, -1192, and -1196, and when he was released on probation on September 30, 2016, which Appellant calculates to be 1580 days. He also argues that he is entitled to seventy-five (75) days of credit for the period during which he was on probation, specifically between September 30, 2016, and December 15, 2016. Finally, he argues that he is entitled to 150 days of credit for the time he spent in the Pickens County Detention Center, between December 15, 2016, when he was arrested for Indecent Exposure, to May 26, 2017, when he was served the probation revocation warrant. In sum, Appellant argues he was entitled to a total of 1805 days of credit for time served.

Period between Completion of Seven Years on the Split Sentences and Start of Probation
Appellant first argues that he is entitled to 1580 days of time served for the period between the completion of seven (7) years of his sentence and his release on probation. There appears to be a disagreement between the parties as to when Appellant’s seven-year period of incarceration on his April 27, 2010, split sentences ended, though both parties agree that Appellant’s probation began on September 20, 2016. Appellant contends that he “max[ed]-out in May 2012.” He bases this belief on the idea that offenses not classified as “no-parole” offenses only require service of 51% of the sentences imposed for those offenses. However, though Burglary, 2nd Degree is not a no-parole offense and therefore does not require the service of 85% of the sentence, Appellant has cited to no legal authority to support his contention that he only had to serve 51% of his sentence to receive, or be eligible to receive, probation. Moreover, the Department’s record of completed prior offenses dated 06/29/18 shows that Appellant’s completion date for indictment numbers 2009-GS-37-1190, -1192, and -1196 was October 12, 2012, for one and December 14, 2012, for the other two. Nevertheless, these completion dates are not relevant for calculating time served

because Appellant was still serving a straight fifteen-year sentence for indictment number 2010-GS-39-0445 until he was released on probation (September 20, 2016).

The statute governing time served, S.C. Code Ann. § 24-13-40 (Supp. 2017), provides:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. 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, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

Appellant seeks credit for time served against the eight (8) years he was required to serve in prison following his probation revocation because he had been in prison beyond the service of the first seven (7) years' imprisonment required in the original split sentences prior to being released on probation. However, an inmate is not entitled to credit for time served following the expiration of the incarceration portion of split sentences while he is still serving a sentence for a separate offense. Appellant cannot get credit for time served while "serving a sentence for one offense and ... awaiting trial and sentence for a second offense." The language from the statute is clear and applies in this case.

Further, Appellant cannot get credit towards a sentence for an offense before he is charged with the offense and confined for it while awaiting trial and sentencing, or while serving time for a prior conviction. *Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000) (stating that the Court in *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997) "held 'time served' in § 24-13-40 means the time during which a defendant is in pre-trial confinement *and* charged with the offense for which he is sentenced (so long as he is not serving time for a prior conviction)") (emphasis in original). Therefore, Appellant is not entitled to time served while still serving time for indictment number 2010-GS-39-0445 and prior to his probation revocation.

Probation Period

Appellant also argues that he is entitled to seventy-five (75) days of time served during the period that he was on probation, specifically between September 30, 2016, and December 15, 2016. However, as discussed earlier, Appellant cannot serve time towards a sentence for an offense prior to being charged with the offense and confined for it while awaiting trial. *Blakeney*, 339 S.C. at 88, 529 S.E.2d at 10-11. Appellant was not charged with an offense prior to his arrest for Indecent Exposure on December 15, 2016, and was not in pre-trial or pre-sentencing confinement.

Appellant argues that his probation is part of his “term of imprisonment” and, as such, he should be given credit for time served while on probation. He cites *Thompson v. S.C. Dep’t of Pub. Safety*, 335 S.C. 52, 515 S.E.2d 761 (1999) and *State v. Ellis*, 397 S.C. 576, 726 S.E.2d 5 (2012). Appellant is correct that in both of these cases, the S.C. Supreme Court stated, “Probation, a suspension of the period of incarceration, is clearly part of a criminal defendant’s ‘term of imprisonment,’ as is actual incarceration, parole, and the suspended portion of a sentence, or “supervised furlough.” *Thompson*, 335 S.C. at 55-56, 515 S.E.2d at 763 (citation omitted); *Ellis*, 397 S.C. at 579, 726 S.E.2d at 7 (quoting *Thompson, supra*). However, as the Court also stated in *Ellis*, probation, unlike parole, is a “suspension of a part of the imprisonment,” whereas “parole means a conditional release from imprisonment and *does not* suspend the running of the prisoner’s sentence.” *Ellis*, 397 S.C. at 579, 726 S.E.2d at 7 (citing *Crooks v. Sanders, Superintendent of State Penitentiary*, 123 S.C. 28, 34, 115 S.E. 760, 762 (1922) (emphasis in original). Because probation does not run parallel to the incarceration portion of inmate’s sentence but is often different in time from the suspended portion of the sentence, probation cannot be treated as service of a sentence in the Department’s custody; rather, probation is a suspension of (a release from) that custody. This differs from actual imprisonment or from parole, where “[a] prisoner upon release on parole continues to serve his sentence outside the prison walls. The word parole is used in contradistinction to suspended sentence and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence.” *Sanders v. McDougall*, 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964).⁴

⁴ Calculation of credit for “time served” is not necessary for time spent on parole, as the inmate’s service of his sentence continues unbroken while he or she is out on parole.

Appellant was not in the legal custody of the Department while continuing to serve his sentence; indeed, his sentence was suspended during probation. While *Thompson* and *Ellis* include probation as part of a broad definition of “term of imprisonment,” neither of these cases set forth a sweeping rule for probation revocation cases that credit for time served should be bestowed upon inmates for the time he or she spent on probation prior to revocation. Even in the context of imprisonment, credit for time served is not automatically granted; there are exceptions where inmates are not entitled to time served. The conditions and exceptions for the calculation of time served are specifically set forth in Section 24-13-40.

According to Section 24-13-40, “when ... (b) the commencement of the service of the sentence follows the revocation of probation, ... the computation of the time served must be calculated from the date of the commencement of the service of the sentence[.]” and “the commencement of the service of the sentence follows the revocation of probation[.]” The statute then provides that “[i]n every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest.” (Emphasis added). These are the only two periods for which credit for time served may be given; and even then, there are two exceptions that would preclude credit for time served prior to trial and sentencing. To allow Appellant to get credit for time served for the period that he was on probation prior to revocation would contradict the logic of these provisions in Section 24-13-40 and create an absurd result.

Appellant also cites *Hayes v. State*, 413 S.C. 553, 777 S.E.2d 6 (Ct. App. 2015) to argue that Section 24-13-40 “does not make a distinction for split sentences[.]” that it is thus applicable to his probation revocation, and that he should receive time served credit in his case. However, though the Court agrees that an inmate can receive credit for time served against a reinstated sentence following a probation revocation, the inmate in *Hayes* received credit for “time served prior to trial[.]” or “pre-trial detention time[.]” *Id.* at 560, 777 S.E.2d at 10. The inmate in that case did not receive credit for time served for the time he spent on probation.

Therefore, Appellant is not entitled to time served for the period during which he was on probation.

Period between Arrest for Indecent Exposure and Trial and Probation Revocation

Appellant further argues that he is entitled to 150 days of credit for the time he spent in the Pickens County Detention Center, between December 15, 2016, when he was arrested for Indecent

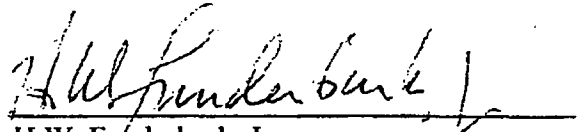
Exposure, to May 26, 2017, when he was served the probation revocation warrant.⁵ Appellant also made the same arguments discussed in the preceding section regarding the probation period. First, the Court notes that Appellant's calculation of days is incorrect, that there are 162 days between December 15, 2016 and May 26, 2017. The Department argues that he is not entitled to time served for this period "because he was not charged with the offenses in question until May 26, 2017[,] when he was served with the probation revocation warrant." I agree. Appellant cannot receive credit for time served during this period against the remaining eight (8) years of his concurrent sentences for indictment numbers 2009-GS-37-1190, -1192, and -1196 because he was not served the probation revocation warrant for these offenses and awaiting a subsequent revocation hearing until May 26, 2017. To reiterate, Appellant cannot serve time towards a sentence for an offense prior to being charged with the offense and confined for it while awaiting trial. *Blakeney*, 339 S.C. at 88, 529 S.E.2d at 10-11; *see also* S.C. Code Ann. 24-13-40 (Supp. 2017) (limiting credit for time served against a sentence to time served prior to trial and sentencing, with certain exceptions, and for any time spent under monitored house arrest).

In conclusion, substantial evidence supports the Department's calculations for Appellant's sentences, including its application of credit for time served.

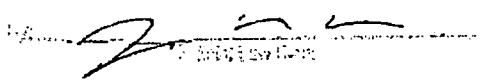
ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.

October 29, 2018
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

FILED IN THE CLERK'S OFFICE OF THE SC ADMIN. LAW COURT
ON THE 29th DAY OF OCTOBER 2018
AT COLUMBIA, SOUTH CAROLINA
BY _____

29th October 2018


FILED

OCT 29 2018

SC ADMIN. LAW COURT

⁵ To the extent that Appellant argues in his brief that he was entitled to time served for the period between May 26, 2017, and December 12, 2017, the date of his sentence for Indecent Exposure and his probation revocation, Appellant did not raise that issue in his Step 1 and Step 2 Grievances, and therefore it is not preserved for review on appeal. *See State v. Bryant*, 383 S.C. at 418, 680 S.E.2d at 15. Also, the Department avers that it has already given Appellant 200 days of credit for time served for that period. Therefore, even if the issue was preserved on appeal, it would be moot.