

South Carolina Court of Appeals

Appeal from the Administrative Law Court

Hon. H.W. Funderburk, Jr.

Appeal case No. 2019-001410

Gregory Penille, #312332, Appellant

v.

SC Dept. of Corrections, Respondent.

APPELLANT BRIEF

RECEIVED

OCT 17 2019

SC Court of Appeals

Gregory Penille, #312332

Evans CJ F4A 253

610 Hwy 9 west

Bennettsville, SC, 29512

Appellant, Pro Se

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ISSUE ON APPEAL

Did the South Carolina Administrative Law court improperly affirm the Department of Corrections Sentence calculation of Appellant Perille's Jail credit?

Where the order issued by the ALC improperly indicates an indictment number [2010-65-2604686] twice, [Exhibit A] which is not an actual indictment number. Does this error invalidate the ALC's order in its entirety?

STATEMENT OF THE CASE

On November 7th, 2005, Appellant was sentenced in Horry County to twelve (12) years for kidnapping on indictment number [2005-65-2054]. [Exhibit B.]

On August 9th, 2010, Appellant was sentenced in Horry County to thirty (30) years for criminal sexual contact, first degree on indictment number [2008-65-2604686]. [Exhibit C] from a case allegedly occurring in 2004. This sentence was to run concurrently with the 05' sentence for kidnapping that appellant was still serving. However, the Judge along

with Solicitor. Lively's insistence allowed jail credit for time served from October 2008. The Dept. calculated the appellant was entitled to 677 days from Oct 1st, 2008 to August 9th, 2010. Effectively, the Judge calculated the sentence start date to be October, 1st, 2008.

Appellant filed Step 1 Grievance on August 15th, 2018 [Exhibit D.] arguing that credit should have been calculated from Nov. 7th, 2005. The Grievance was denied on August 24th, 2018, but in SCDC's response by the Warden it clearly states that the appellant's sentence are concurrent, but claims that Percille only has 677 days jail credit on his 30 year sentence despite that his confinement originally began on Nov. 7th, 2005. 677 days credit is clearly far less days than the difference between August 9th, 2010 commitment on CSC, 1st, and the original Nov. 7th, 2005 commitment. [Perversely, SCDC explains possible loss of good time credit due to failure to earn work credits or possible RAV lockup time. Percille has never been or never will be entitled by law to good time earned credits.] Appellant filed Step 2 Grievance on August 30th, 2018 [Exhibit F] contesting the same issue of original start date of sentence and credits to be calculated from Nov 7th, 2005. This Grievance was denied

October 25th, 2018 and in the agencies response stated the 30 year sentence with the start date of Nov, 7th, 2005, but then projected a release date of ~~Nov~~ March 26th, 2034. In this case SCDC correctly identified the sentence start date (despite the illegal start-date marked upon the sentencing sheet by the trial court) but failed to properly calculate that a 30 year sentence at 85% only requires 25 years and 6 months, (that would obviously place Pencille's release date in 2030 not 2034).

Appellant promptly filed an appeal with the ALC on Nov. 16th, 2018 [Exhibit H] raising the same issue of jail time credits. Appellant filed his brief on December 7th, 2018 [Exhibit I, 4 pages] followed by SC DOC filing record on appeal Feb. 1st, 2019 and its brief on March 19th, 2019. Nothing further was filed until the final order was filed July 24th, 2019, 4 months to render a decision affirming the Dept's calculation, for which appellant filed a response to the order Aug. 6th, 2019 [Exhibit J, 2 pages] to correct the error in the order of the indictment number being false, corrupting the entire order. The ALC did not respond or address this issue, Appellant then timely filed with the

SC Court of Appeals on August 20th, 2019

ARGUMENT

Where Appellant argued that SCDC improperly constructed and computed Pencille's concurrent 30 year commitment for CSC, 1st, sentenced in 2010, indicted in 2008, issued warrant in 2007. When Pencille had been in custody continuously from 2005, [Upon the face of the sentencing sheet, the trial court ordered Pencille to begin service of his concurrent sentence in 2008 but ordered it in the court room to be served concurrent with the charge currently serving; (Plea transcript, pg 25, Ln 19-20)]

Court: ... I'm going to run that concurrent with the sentence that you are presently serving. I'll give you credit for the time you were charged with this, okay?
but this was in violation of SC code

Ann § 24-13-40 that requires mandatory credit for time served. The CSC, 1st for which Pencille was sentenced in 2010 was allegedly committed in 2004 - plainly prior to his arrest in 2005].

If SC. DOC is only an administrator for calculating an inmates sentence and has

No sentencing authority. Tant V. SC, DOC, 408, SC 334, 759 S.E.2d 398, 399 (2014). Then how does a "court-ordered ATU and 44-48-50 SVPA statute show added to Percille's S.C.D.C institutional record [Exhibit K], where it does not appear anywhere on the face of the sentencing sheet [Exhibit C]?

The concurrent sentence is the legal standing for which the Judge imparts the sentence structure for Percille's sentence, but "since 2008" is an illegal enhancement that the Judge added to the sentence sheet, [Exhibit C]. Statute § 24-13-40(c)(2) can not apply due to the sentence not being a second offense.

In the ALC's final order respondent argues round-about issues and only one pertaining to the issue of sentence start-date which derives from SC, code Ann § 24-13-40 (2). Which respondent misapplies its meaning, Allen V. State, 339 SC 398, 529 S.E.2d 541 (2000). Where the terms of a statute are clear, The court must apply those terms according to their literal meaning.

"2). when the prisoner is serving a sentence for one offense and is awaiting trial and sentencing for a Second offense in which case he shall not receive credit for the time served prior to trial in a reduction of his sentence for the Second

offense, [emphasis added]. The use of the word "Second, (Webster's Dictionary 10th Ed.). Next to the first in place or time." An offense which occurred prior to the first offense could not be a second offense. If it is, It becomes an illegal Ex post facto enhancement violating Art. I, § 10, c11 of the US, and state constitutions and implicates an 8th Amendment issue. The respondent changes the word "second" to "different" to explain the meaning of § 24-13-40(2) statute [Exhibit A, page 3] which changes its interpretation. Paschel v. State Election Comm'n, 317 S.C. 434, 454 SE 2d 840 (1995). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope.

SC. code Ann § 1-23-600(E); and § 1-23-380 (A)(5) places descresion within the ALC's Jurisdiction. see. Alshabazz v. State, 338, S.C. 354, 527 SE 2d 742 (2000). SC. code Ann § 123380 (A)(5)(a-f) all apply in this instance. Reciting the Black's Law definition of "substantial Evidence" while looking elegant is in actuality a stratagem, as is the use of the incorrect indictment number twice, [Exhibit A]. While the issues of the court ordered ATU program and SVPA additions to

Percille's sentence that are not on the sentencing sheet and the illegally added "since 2008" back-date that appears on the sentencing sheet [Exhibit C] are prima facie is reversal of the ALC's decision. The Appellant's ALC initial Brief [Exhibit I] should be reviewed de novo.

CONCLUSION

Appellant requests and prays that for the above reasons this court reverses the ALC's decision to affirm the SC. DOC ruling and that this court rule that the Administrative Law Judge order that SC. DOC Classification recalculate Percille's sentence start-date to Nov. 7th, 2005 and recalculate Percille's release date to 2030.

Date: October 16th, 2019

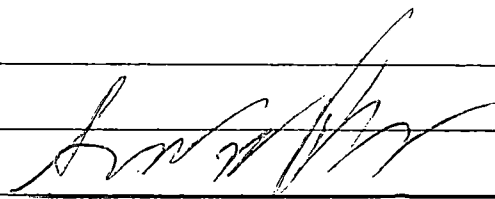

Gregory Percille #312352
Pro Se

Exhibit A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Pencille, # 312332,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 18-ALJ-04-0547-AP
[Grievance No.: LCI 0724-18]

ORDER

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

FACTS AND PROCEDURAL HISTORY

On November 7, 2005, Appellant was sentenced in Horry County to incarceration for twelve (12) years for kidnapping on indictment number 2005-GS-26-2054. On August 9, 2010, Appellant was sentenced in Horry County to incarceration for thirty (30) years for Criminal Sexual Conduct, First Degree, on indictment number 2010-GS-2604686. This sentence was to run concurrently with the sentence for kidnapping that he was still serving. However, the judge allowed credit for time served from October 2008. The Department calculated that Appellant was entitled to credit of 677 days from October 1, 2008, to August 9, 2010. Effectively, the trial judge allowed Appellant's sentence to start on October 1, 2008.

Appellant filed a Step 1 Grievance on August 15, 2018, challenging the Department's sentencing calculation. Appellant argued that he was entitled to credit for time served against his sentence for Criminal Sexual Conduct from the sentencing date for the kidnapping charge on November 7, 2005. When his grievance was denied, Appellant filed a Step 2 Grievance on August 30, 2018, again contending that time-served credits for his sentence for Criminal Sexual Conduct should start on November 7, 2005, since he had been incarcerated since that date. This grievance was denied on October 25, 2018. He filed a timely appeal to the ALC on November 16, 2018, raising the same issue that he should be credited for time served on the Criminal Sexual Conduct sentence from November 7, 2005.

FILED

JUL 24 2019

SC ADMIN. LAW COURT

Appellant filed a brief on December 7, 2018. The Department filed the Record on Appeal on February 1, 2019. The Department filed its brief on March 19, 2019.

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

Appellant's argument alleges that the Department erred by not applying all of the time he served on his 2005 conviction against his 2010 conviction.

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.

The statute is clear that Appellant cannot get credit for time served while "serving a sentence for one offense and ... awaiting trial and sentence for a second offense." *See State v. Boggs*, 338 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (Section 24-13-40 "mandates prisoners receive credit for the time they served prior to trial unless one of two exceptions exist, either: (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense.") The statute's language is clear and applies in this case.

The trial judge allowed Appellant credit for time served in the sum of 677 days. The sentencing sheet for indictment number 2010-GS-2604686 is without ambiguity; therefore, SCDC is confined to the face of the sentencing sheet in determining Appellant's sentence. *See Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014).

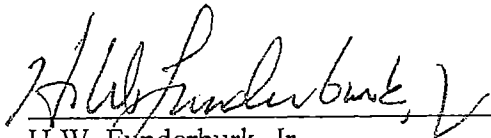
Therefore, substantial evidence supports the Department's calculations for Appellant's sentences, including its application of credit for time served as ordered by the trial judge.

ORDER

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

AND IT IS SO ORDERED.

July 24, 2019
Columbia, South Carolina



H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Amye Rushing, hereby certify that I have this date served this Order upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, inter-agency, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Kensey Barrett
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, SC 29211

Gregory Pencille
#312332
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

July 24, 2019
Columbia, South Carolina



Amye Rushing
SCALC

FILED

JUL 24 2019

SC ADMIN. LAW COURT

Exhibit B

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Harley
STATE VS.

INDICTMENT/CASE#

Gregory Thomas Penelle

05 -GS- 26 - 2054

AKA: _____
Race: W Sex: M Age: 28

A/W#: N-893827

Date of Offense: 3-19-05

S.C. Code §: 16-03-0910

CDR Code #: 010915

CASE RESTORED

SENTENCE

PLEA TRIAL

Address: 303 20th Avenue South #200
Myrtle Beach SC 29577
SID# _____

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Kidnapping

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 010915

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury 12 YEARS

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

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 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.

Sex Offender Registry is Required.
SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, 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 <u>\$100.00</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>\$ 25.00</u>
\$33-7, 1B TP (Drug Court Surcharge)	\$100 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	<u>\$148.75</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 weeks/monthly pmts. of \$ 25.00 beginning 01/17/07
\$ _____ paid to Public Defender Fund
Other: _____

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

PRESIDING JUDGE [Signature]

Judge Code: _____

Sentence Date: 11/7/05

Melanie Huggins

Clerk of Court, Deputy Clerk

Court Reporter: Dixie Eubank

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Exhibit C
3/23/32
KE

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2008GS2604686

Gregory Thomas Pencille

A/W#: J740369

AKA:

Date of Offense: 6/3/2004

Race: [redacted] Sex: [redacted] Age: [redacted]

S.C. Code §: 16-03-0652

DOB: [redacted] SS#: [redacted]

CDR Code #: 0160

Address: [redacted]

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Criminal Sexual Conduct - 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
 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) 3

The plea is: Without Negotiations or Recommendation. Negotiated Sentence, Recommendation by the State. 4

ATTEST: [Signature] Lively, Candice SC Bar# 12123 [Signature] Defendant [Signature] Attorney for Defendant SC Bar# [redacted]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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 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: for sentence currently serving
 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. since Oct 2008
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-35.

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 _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
*Fines:

§ 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 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 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 (SCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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: _____

Condition Discharge. § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Melanie Huggins - Hard
Court Reporter Brenda Bobb

Presiding Judge [Signature]
Judge Code: 2152
8/9/10

Exhibit D

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due 9/3/18

STEP 1

INMATE NAME: <u>Gregory Penick</u>	OFFICE USE ONLY Grievance No. <u>LeeCE0724-18</u> Code: General _____ Policy _____ Disc. Hear. <u>/</u> _____ Class. <u>/</u> _____ PREA _____ Date Received <u>8/17/18</u> IGC Initials <u>[Signature]</u>
SCDC NUMBER: <u>312332</u>	
INSTITUTION: <u>Lee CI</u>	
HOUSING UNIT: <u>F2B 2254</u> <u>AUG 16 2018</u>	
WORK ASSIGNMENT: <u>Education</u> <u>(LP)</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.)

SCDC is improperly calculating my sentence imposed in 2010 by calculating my sentence start-date from 2008, when I have been in custody since 2005. I wrote classification on the kiosk on 7/5/18 # 18-00981303; Response 8/2/18 and they simply informed me of the time that classification is calculating for my sentence. Their calculation is wrong because my sentence start-date should be 2005

[Signature] 8/17/18
Grievant Signature Date

ACTION REQUESTED:
Recalculate my sentence time to ~~2008~~ 2005 when I was incarcerated, I never was released from prison

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

[Signature] 8/22/18
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Gregory Pencille

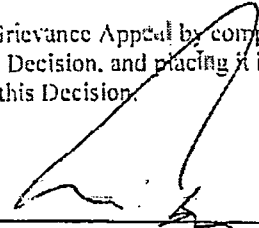
312332

1ccCI-0724-18

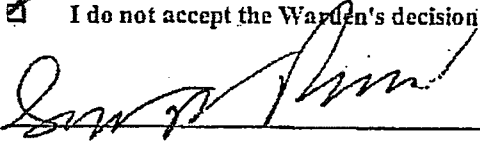
This is in response to the above referenced grievance. Pertinent information and documentation have been reviewed. You are implying that your sentence imposed in 2010 has been improperly calculated. You state you have been in custody since 2005. Agency records do show that your SCDC start date for Indictment NO. 05-GS-262054 is 11/07/2005. This was a sentence of 12 years with a mandatory sentence requirement of 10 years, 2 months and 12 days. You completed your time for this indictment on 11/6/2016. The sentence start date for Indictment 08-GS-2604686 is 8/9/2010 with a total sentence of 30 years requiring you to serve a mandatory sentence requirement of 25 years 6 months. For this indictment, you had a 677 jail credit. These sentences are concurrent. Your Max-Out date is 3/16/34. Reminder, when you receive a disciplinary charge, you do not earn good time and when you are in RHU Lockup, you do not earn work credit. This will made a difference in your Max-Out date.

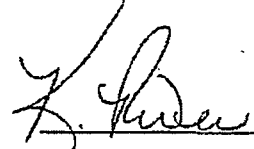
Therefore, your grievance is resolved.

If you disagree with this Warden's Decision (Decision), you may file a Step 2 Grievance Appeal by completing SCDC Inmate Grievance Form 10-5A, which is provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.


8/24/18
Warden Signature Date

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


Grievant Signature Date


8/30/18
IGC Signature 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.

Exhibit F 547

0

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

Office Use Only

RECEIVED

INMATE NAME: Gregory Percelle
SCDC NUMBER: 312 332
INSTITUTION: Lee CF ✓
HOUSING UNIT: F2 - 2254
WORK ASSIGNMENT: Education

INMATE GRIEVANCE

Grievance No: CI-0724-18
Code: General
Policy: Disc. Hear.
Class: PREA
Date Received: 9-2018
IGC Initials: [Signature]
Date Received: 9/6/18
IGA Initials: [Signature]

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The Worker's Response gives almost accurate information; The start date (11/07/2005) is correct and the sentence was completed on (1/6/2016). However, I was never released from incarceration on that date and being the fact that the sentences are concurrent. The 677 jail credit is incorrect as it improperly calculates my sentence start date. SCDC must add credit to the correct start date of (1/7/2005). This recalculation is without getting in earned work credits.

Grievant Signature [Signature] Date 8/30/18

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final Agency response.

Responsible Official Signature [Signature] Date 10/25/18

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

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

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. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box 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 your sentence has been miscalculated. You would like for your sentence to be calculated back to 2005 when you were incarcerated. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 8/24/18. You were convicted of violating SC Code of Laws 16-03-652, Criminal Sexual Conduct 1st Degree and sentenced to 30 years which is classified as violent and no parole; 16-03-910, Kidnapping and sentenced to 12 years which is classified as violent and no parole.. You have a mandatory service requirement of 25 years and 6 months on the first offense and on the second offense 10 years 2 months and 12 days. Your sentence is 30 years with a start date of 11/07/2005. Your projected release date is 3/26/2034. If you still do not understand your classification, you are advised to speak with Classification Caseworker.

Therefore, your grievance is resolved.

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.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Pencille, 312332

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO ALJ-04-
GRIEVANCE NO.: Lee CI-0724-18

Notice is hereby given that Gregory Pencille does hereby appeal the final decision of the South Carolina Department of Corrections dated October 25, 2018 and received on November 06, 2018, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

~~SCDC has erroneously miscalculated Pencille's concurrent 30 years sentence by failing to grant him full credit for time served in jail, in violation of SC Code Section 24-13-40. By attempting to misapply SC Code Section 24-13-40, SCDC has violated Pencille's 6th, 8th, and 14th Amendment rights under the United States Constitution, and similar rights under the appropriate articles of the South Carolina state constitution.~~

Gregory Pencille
Appellant's Name

[Signature]
Signed

990 Wisacky Hwy
Mailing Address

11/15/2018
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Gregory Pencille (your name), on the 15th day of November, 2018, in Beaufort (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address: SCALC
1205 Pencille St. 2nd 224

General Counsel
P.O. Box 21787

City, State, Zip Code: Columbia SC 29201

Columbia SC 29221

State of South Carolina
In the Administrative Law Court

Gregory Pencille 312332,
Appellant,
v
South Carolina Department of Corrections,
Respondent.

Case No. 18C0547
Grievance No: LEECI-0724-18
Honorable HW Funderburk

Appellant's Brief

Statement of the Issue on Appeal

Did the South Carolina Department of Corrections ("SCDC") properly construct and compute Gregory Pencille's ("Appellant") concurrent 30-years commitment for CSC First, sentenced in 2010, when Pencille had been in custody continually from 2005? [Upon the face of the sentencing sheet, the trial court ordered Pencille to begin service of his concurrent sentence in 2008, but this was in violation of SC Code § 24-13-40 that requires mandatory credit for time served. The CSC First for which Pencille was sentenced in 2010 was allegedly committed in 2004—*plainly prior to his arrest in 2005.*]

Statement of the Case

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed November 16, 2018, by Gregory Pencille ("Appellant"), an inmate incarcerated in the South Carolina Department of Corrections ("SCDC"). Appellant appeals SCDC's Final Agency Response to Appellant's original grievance of August 15, 2018. The case was assigned to Judge HW Funderburk on November 30, 2018. The grievance proceeds from Respondent's miscalculation of Appellant's sentence from his belated 2010 conviction.

SCDC admits, in its Warden's Decision dated August 24, 2018, that Appellant's sentences are concurrent, but claims that Pencille has only 677 days jail credit on his 30-year sentence despite that his confinement originally began on November 7, 2005. 677 days is clearly far less days than the difference between Pencille's August 9, 2010 commitment on CSC First

and the original 2005 commitment. [Perversely, SCDC also explains that Pencille's release date may also be constrained by loss of good-time (but Pencille has never been, and never will be, entitled by law to good-time), and that Pencille's release date may also be constrained by failure to earn work-credit due to time spent on RHU lockup (even though Pencille had already accrued, through work, all work-credit that he will ever be entitled by law to apply to his release—as such, any work-credit loss through prospective confinement to RHU lockup would have been superfluous.)]

SCDC then contended, in its Final Agency Response of October 25, 2018, that Pencille's sentence was 30 years, with a sentence start-date of November 7, 2005, but a projected release date of March 26, 2034. In this case, SCDC did correctly identify the sentence start-date (despite the illegal start-date marked upon the sentencing sheet by the trial court), but failed to properly calculate that a 30 years sentence only requires service of 25 years and 6 months. (That would clearly place Pencille's release in 2030, not 2034. Oddly, in the Warden's Decision, SCDC properly indicated the required service length, but then promptly forgot that number and miscounted the time required in the Final Agency Response.)

Argument

Plainly, the Respondent has answered Pencille's grievance with computer-generated cookie-cutter replies that do little to actually address or attempt remedy of the errors grieved. In fact, the decisions are self-contradictory in a manner that would require a recalculation of Pencille's projected release date—if the writers of the replies had ever bothered to read and assimilate the other reply at all. Consequently, Pencille appeals to this Court.

Pencille was arrested in 2005 and remained in custody continuously from that point in time. In 2010, Pencille was sentenced to serve 30 years concurrently to the sentence he began serving in 2005. But the trial court illegally adjusted his sentence start-date to begin in 2008, and marked the sentencing sheet to indicate this illegal start date. No sentencing court has the authority to deny credit for time served. The requirement that a prisoner receive credit for time served is mandatory, see *State v Boggs*, 388 SC 314, 696 SE 2d 597 (SC Ct App 2010).

The state, in this case, seemed desirous that Pencille's sentence be constructed forward of his original arrest date, plainly relying on the SC Code Ann Sec 24-13-40 provision which applies to the construction of a second offense start-date. But as the court has demonstrated

elsewhere that a second offense is an offense that occurs *after release* from a first offense, or possibly *during the service* of the first offense. Additional or multiple offenses are not second offenses for the purpose of statutory construction without directly implicating the Eighth Amendment. “The State may, indeed, make the drinking of one drop of liquor an offense to be punished by imprisonment, but it would be an unheard-of cruelty if it should count the drops in a single glass and make thereby a thousand offenses”, *O’Neil v Vermont*, 144 US 323. Naturally, if the drinker returned to the glass after he was released from confinement, the *second* offense would be plain.

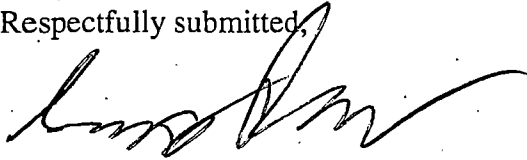
This intention is even more plain when read in light of *Robinson v State*, 329 SC 65, 495 SE 2d 433 (1998). In *Robinson*, the prisoner was granted credit for time served in an *external* jurisdiction and even where that external commitment involved an offense committed *after* the offense in South Carolina. The grant of sentence credit was absolute from the time of confirmed confinement, and the time granted was concurrent service. The instant facts are not an exact match, but it is plain that the SC Supreme Court intends that concurrent sentence credit be fully concurrent, not partially concurrent, as illegally ordered by the court in Horry County.

Here, SCDC admits that the sentences are concurrent—that fact is plain on the sentencing sheet—but in the first review abutted the services of Pencille’s two concurrent sentences, and in the second review simply miscounted the passage of years required for service on the concurrent sentences. The longer sentence is thirty years, to be served concurrently with the twelve years sentence. Plainly, the only sentence required to be considered to properly calculate the total concurrent sentence length is the thirty years sentence (since the twelve years sentence would be entirely contained within it), and the only date required for successful calculation is the date of Pencille’s initial confinement in 2005. Any consideration outside these two factors is plainly erroneous, despite the trial court’s desire to illegally compute Pencille’s sentence from an arbitrarily chosen point in time. See *Boggs*, *supra*.

Conclusion

WHEREFORE, the Appellant respectfully requests that the Court order the Respondent to properly calculate his concurrent sentences and describe his correct projected release date—despite the illegal start-date marked upon the 2010 sentencing sheet by the trial court in Horry County, South Carolina.

Respectfully submitted,



Gregory Pencille 312332 F2B 2254
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

December 7, 2018
Bishopville SC

State of South Carolina
Administrative Law Court

Gregory Percille, 312332
Appellant

Docket No. 18-ALJ-04-0547-AP
Grier. No. LCI 0724-18

v.
S.C. Dept. of Corr.
Respondent

Response to Order

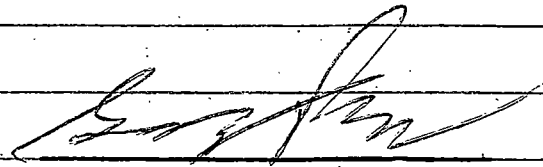
This Response comes Pursuant to order filed Oct. 24th, 2019. The order filed has a main clerical error which by its precedent corrupts the Order as a whole. This comes by Rule 67. SCACR.

~~The~~ The order states in Facts and Procedural history, an "indictment number 2010-GS-2604686". The actual indictment number is 2008-GS-2604686. When in actuality the proper indictment number should have been 2004-GS-2604686 because it was the year of the alleged offense. Percille had already been incarcerated in Oⁿ and was therefore under investigative detention on the indictment in question. The governing Statute S.C. Code Ann

§24-13-40 section (2) which is in question
plainly refers to offenses which occur "second"
or subsequent to the first sentence imposed.
Clearly in Perelli's instance the offense occurred
prior and therefore could not qualify for this
section (2) of the statute.

Therefore, the substantial evidence does
not support the department's calculation and
should be rewritten or ordered differently.

Date: Aug. 6th, 2019


Gregory Perelle, 312332

Return to

Exhibit K

G. Pencille F2-2254T

South Carolina Department of Corrections
Classification Summary Reports

Date: Monday, October 15, 2018

Classification Summary Reports

Inmate Number 312332

Submit

Recent Disc: 11/21/18

Classification Summary Report for PENCILLE, GREGORY THOMAS :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 10/15/2018

SCDC# 00312332

PENCILLE, GREGORY THOMAS

FBI# 632032HC9

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 30 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS: Y SEPREQ:N

MED MED PROB/NO WORK
CLASS: RESTRICT

INST
RESTRICT: NO RESTRICTION

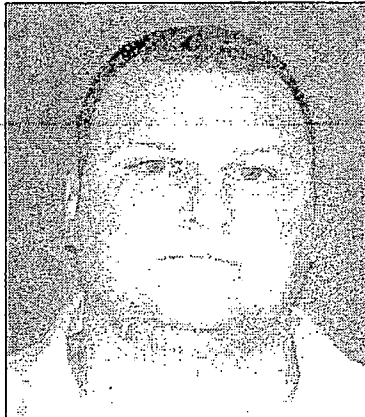
MENTAL SUBSTANCE ABUSE
CLASS: TREATMENT

CURRENT COURT-ORD ATU
PROGRAM:

SEX REGISTRY: Y

DNA: C

AGE: 40



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: F2 2254 T

PROJ MAXOUT
DATE: 03/26/2034

PROJ PAROLE
DATE:

EWC
JOB: TEACHER ASSISTANT

ASSIGNMENT: LIBRARY

EWC
LEVEL: 3F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

Diploma

SECURITY THREAT GROUP DESCRIPTION: NONE
SECURITY THREAT GROUP STATUS: NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	SENTENCE			COUNTY	START	SENTENCE		
		MOS	DYS				V/NV	CAT	INDICT
CRIMINAL SEX CNDCT 1ST DE	30	0	0		HORRY	10/01/2008	V	5	08GS2604686
KIDNAPPING	12	0	0		HORRY	11/07/2005	V	5	05GS262054

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

KIDNAPPING	WANTED	JUDGE BRADLEY D. MAYERS	CATEG:5
CRIMINAL SEX CNDCT 1ST DE	WANTED	JUDGE BRADLEY D MAYERS	CATEG:5

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

11/30/2016	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
10/21/2016	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
10/21/2016	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
02/08/2010	OUT OF PLACE	DISMISSED	ADMINISTRATIVE RESOLUTION
07/10/2007	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	CHARGES DROPPED/INSUFF. E
02/03/2007	GAMBLING AND LOAN SHARKING	CLOSED	OTHER ACTION TAKEN/INFORM

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

09/14/2016	LEE	INCARCERATED	ADMINISTRATIVE
09/14/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
05/16/2016	LEE	INCARCERATED	ADMINISTRATIVE
05/15/2016	TUOMEY REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
11/10/2015	LEE	INCARCERATED	ADMINISTRATIVE
11/09/2015	KIRKLAND	INCARCERATED	RETURN FROM COURT
11/06/2015	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
11/05/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE
07/28/2015	LEE	INCARCERATED	ADMINISTRATIVE
07/28/2015	FLORENCE CO	AUTH ABSENCE (AWL)	MEDICAL
02/03/2015	LEE	INCARCERATED	ADMINISTRATIVE
02/02/2015	KIRKLAND	INCARCERATED	RETURN FROM COURT
01/30/2015	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
01/29/2015	KIRKLAND	INCARCERATED	ADMINISTRATIVE

RECEIVED

OCT 17 2019

Certificate of Service

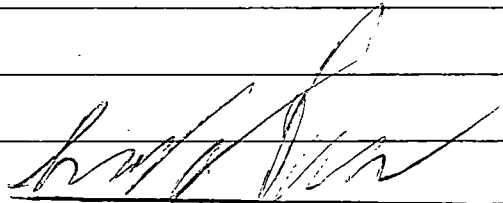
SC Court of Appeals

I hereby certify that I, Gregory Percille on the 16th day of October, 2019, in Bennettsville South Carolina served a copy of the Appellants Brief on all parties in this matter by depositing the same in the U.S. mail, postage paid, or in the institutions mail room and addressed as follows:

Attorney:
Christina Catoe Bigelow
Dept. of General Counsel
SCDC
P.O. Box 21787
Columbia, SC. 29221

Clerk of Court:
Jenny Abbott Kitchings
SC Court of Appeals
P.O. Box 11629
Columbia, SC. 29211

Date: October 16th, 2019

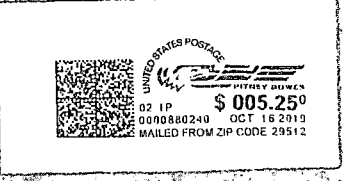


Gregory Percille 312332
Evans CE F4A253
610 Hwy 9 west
Bennettsville, SC. 29512

16 day of October 2019
S. Percille

(Notary Public of South Carolina)
2117124

Gregory Pencille # 31233
Evans C.I. F4A-253
610 Hwy. 9 West
Bennettsville, S.C. 29512



RECEIVED
OCT 17 2018
SC Court of Appeals

Jenny Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

