

South Carolina Court of Appeals

Appeal From the Administrative Law Court
Hon. H.W. Funderburk, Jr.

Appeal case No. 2019-001410

RECEIVED

Gregory Pencille, 312332, Appellant, NOV 12 2019

V.

SC Court of Appeals

SC. Dept. of Corrections, Respondent.

RECORD ON APPEAL

Gregory Pencille, 312332

Evans CE FUA253

610 Hwy 9 West

Bennettsville, SC. 29512

Appellant, Pro Se

Christina Catoe Bigelow

Dept. of General Counsel, SCDC

P.O. Box 21787

Columbia, SC. 29221

Attorney for Respondent

INDEX

of Exhibits;

(A) Exhibit A	, ALC's final order	1-5
(B) Exhibit B	, 2009 sentencing sheet	6
(C) Exhibit C	, 2010 sentencing sheet	7
(D) Exhibit D	, Step 1 Grievance	8,9
(F) Exhibit F	, Step 2 Grievance	10,11
(H) Exhibit H	, Notice of Appeal	12
(I) Exhibit I	, Appellant's Initial Brief	13-16
(J) Exhibit J	, Response to order	17,18
(K) Exhibit K	, SCDC Classification Summary Reports	19-22

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).

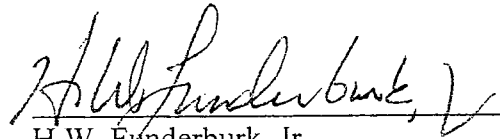
Therefore, substantial evidence supports the Department's calculations for Appellant's sentences, including its application of credit for time served as ordered by the trial judge.

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

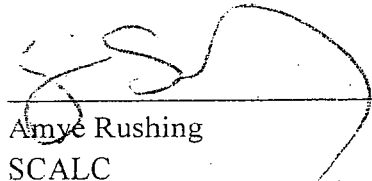
CERTIFICATE OF SERVICE

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 Horry
STATE VS.

Gregory Thomas Penelle

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

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

INDICTMENT/CASE#:

05 -GS- 26 - 2054
A/W#: H-893827
Date of Offense: 3-19-05
S.C. Code §: 16-03-0910
CDR Code #: 0101915

CASE RESTORED
 SENTENCE
 PLEA TRIAL

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 # 0101915

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: _____
Solicitor _____
Defendant _____
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: _____
 sel by SCDPPPS _____
PTUP _____ days/hours Public Service Employment

Recipient:	
*Fine:	\$
\$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
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§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)	\$ 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 \$ 25.00 beginning 11/7/05
\$ _____ paid to Public Defender Fund
Other: _____

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

Melanie Huggins
Clerk of Court, Deputy Clerk
Court Reporter: Dixie Cubank

PRESIDING JUDGE _____
Judge Code: 11219
Sentence Date: 11/7/05

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Gregory Thomas Pencille

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS2604686

A/W#: J740369

Date of Offense: 6/3/2004

S.C. Code §: 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

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 w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense. Defendant Waives Presentment to Grand Jury. (defendant's initials) 3

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

ATTEST: Lively, Candice SC Bar# 12123 Gregory Pencille Defendant J. [Signature] Attorney for Defendant SC Bar# [Signature]

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 § 17-25-135.

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

SPECIAL CONDITIONS:

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

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

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: _____

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 Higgins - Hard
Brenda Babb

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

Exhibit C [7]
312332
KP

2010 AUG 18 10 37 AM

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

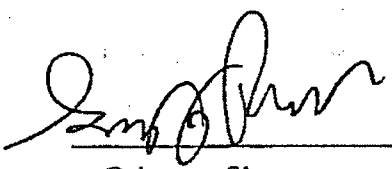
Due 9/3/18

STEP 1

INMATE NAME: <u>Gregory Penelle</u>	OFFICE USE ONLY Grievance No. <u>Lee CI 0724-18</u> Code: General _____ Policy _____ Disc. Hear. _____ Class. <input checked="" type="checkbox"/> _____ PREA _____ Date Received <u>8/17/18</u> IGC Initials <u>JK</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>CDP</u>	

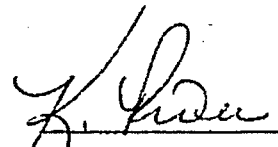
STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

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 7/1/18 # 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

 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

 8/22/18
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Gregory Pencille

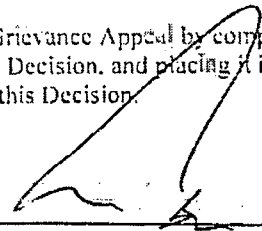
312332

LecCI-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.

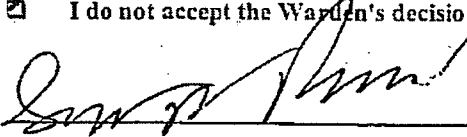
If you disagree with this Warden's Decision (Decision), you may file a Step 2 Grievance Appeal by completing SCDC Inmate Grievance Form 10-5A, which is provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your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



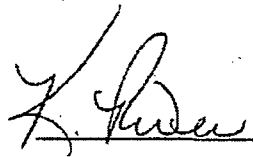
Warden Signature 8/24/18
Date

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 Date



IGC Signature 8/30/18
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.

Exhibit F [10] 547

0

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

RECEIVED
SEP 10 2018
9/5/18
Office Use Only

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

SEP 10 2018
Grievance No: CI-0724-18
Code: General
Policy
Disc. Hear.
Class
PREA
Date Received: 9-2018
IGC Initials: [initials]
Date Received: 9/6/18
IGA Initials: [initials]

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The writer's response gives almost accurate information; the start date (11/07/2005) is correct and the sentence was completed at (11/6/2016). 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 (11/8/2005). This recalculation is without gain time or 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 10/35/18

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)

[11]

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

990 Wisacky Hwy
Mailing Address

[Signature]
Signed

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 Beaufortville (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: SCALC
Address: 1205 Pendleton St. Box 224
City, State, Zip Code: Columbia SC 29201

General Counsel
P.O. Box 21787
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.

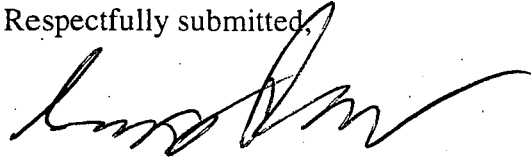
This intention is even more plain when read in light of *Robinson v State*, 329 SC 65, 495 SE 2d 433 (1998). In *Robinson*, the prisoner was granted credit for time served in an *external* jurisdiction and even where that external commitment involved an offense committed *after* the offense in South 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 Crier. No. LCI 0724-18
v. S.C. Dept. of Corr. Respondent	Response to Order

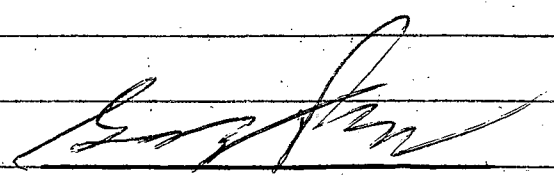
This Response comes Pursuant to order filed Jul. 24th, 2019. The order filed has a main clerical error which by its precedent corrupts the Order as a whole. This comes by Rule 67. SCACR.

~~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 05 and was therefore under investigative detention on the indictment in question. The governing Statute SC 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 Perille'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 Perille, 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



RESIDENT STABILITY: NA

INSTITUTION: LEE

DORMROOMBUNK_CODE: F2 2254 T

SECURITY/CUST: 3 MINIMUM IN

PROJ MAXOUT DATE: 03/26/2034

CURR INCARC 30 YRS 0 MOS 0
SENT: DAYS

PROJ PAROLE DATE:

VICTIM WITNESS: Y SEPREQ:N

EWC JOB: TEACHER ASSISTANT

MED MED PROB/NO WORK
CLASS: RESTRICT

ASSIGNMENT: LIBRARY

INST RESTRICT: NO RESTRICTION

EWC LEVEL: 3F5 EEC LEVEL:

MENTAL SUBSTANCE ABUSE
CLASS: TREATMENT

EDUC PGM: NO CURR EDUC PROGRAM
Diploma

CURRENT PROGRAM: COURT-ORD ATU

SEX REGISTRY: Y

DNA: C

AGE: 40

SECURITY THREAT GROUP DESCRIPTION: NONE

SECURITY THREAT GROUP STATUS: NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	SENTENCE			START	SENTENCE		
		MOS	DYS	COUNTY		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

[21]

CMTI200D
OMCOMETA

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION

12/31/18
C052640

SCDC #: 312332

INQUIRY

CURR LOC: LEE

PENCILLE, GREGORY THOMAS

NONCONFORM SENT: N RTRN TO COURT: Y

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

CONVICTION NUM: 500002 INDICT NUM: 08-GS-2604686 WARRANT NUM: J740369

DATE SENTENCED...: 08/09/2010 JUDGE LAST...: HYMAN FI: L

STATUTE: 16-03-0652 CDR CODE.: 0160 GPS IND: N

OFFENSE: 1101 CRIMINAL SEX CNDCT 1ST DEG OFFENSE DATE: 06/03/2004

CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 26 Horry

PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO

TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 08/09/2010

TOTAL SENTENCE...: 030 00 000 MAND SERV REQMT...: 025 06 000

INCARC SENTENCE...: 030 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.

PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 999 99 999

HIP SENT...: 000 00 000

RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00677 EXTRA CRED: 00000

CONVICTION STATUS: AC ACTIVE SENT START DATE: 10/01/2008 DOM.IND: N

CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT

DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION...: VIOLENT

SEX REG: Y PRED OFF: Y LAST UPDATE: KMINIT DATE: 02/22/12

NO PAROLE: NO PAROLE CREATED BY.: K FOGLE DATE: 08/26/10

21

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 12/31/18
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 312332 INQUIRY CURR LOC: LEE
 PENCILLE, GREGORY THOMAS NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00001 INDICT NUM: 05-GS-262054 WARRANT NUM: H893827
 DATE SENTENCED.: 11/07/2005 JUDGE LAST.: JOHN FI: S
 STATUTE: 16-03-0910 CDR CODE.: 0095 GPS IND: N
 OFFENSE: 1000 KIDNAPPING OFFENSE DATE: 03/19/2005
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 26 Horry
 PLEA.: G GUILTY TYPE OF COURT.: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE.: 11/07/2005
 TOTAL SENTENCE... : 012 00 000 MAND SERV REQMT... : 010 02 012
 INCARC SENTENCE... : 012 00 000 PAROLE FACTOR... : 2 1/3 SENT. REQ.
 PROBATION SENT... : 000 00 000 PAROLE SERV REQMT: 999 99 999
 HIP SENT..... : 000 00 000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00000 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 11/07/2005 DOM.IND: N
 CONSECUTIVE IND.: N SPOUSE ABUSE: STATUTE CLASSIFICATION... : VIOLENT
 DNA OFFENSE IND.: Y EEC ELIG: Y SCDC CLASSIFICATION..... : VIOLENT
 SEX REG: Y PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12
 NO PAROLE: NO PAROLE CREATED BY.: L ROBERSON DATE: 11/09/05

PF8-NEXT CONVICTION

PF9-DETAIN

PF4-RESTITUTION PAID(FA ONLY)