

STATE OF SOUTH CAROLINA )  
IN THE COURT OF APPEALS )

David Mills Hancock #268655 )

Appellant, )

v. )

South Carolina Department of Corrections, )

Respondent. )

APPELLATE CASE NO: 2020-000277

MOTION FOR LEAVE TO  
REINSTATE APPEAL

**RECEIVED**  
MAY 15 2020  
SC Court of Appeals

Here comes the Appellate asking this Honorable Court for leave to reinstate appeal in the above-mentioned case, under SC ACR 260, under the following reasons:

- 1) Appellate states his appeal was prematurely dismissed. The part of Judge S. Phillip Lenski's order that the appellate wished to appeal was final. His Honor stated Appellate wasn't eligible for credit for time served from July 10, 2018 until his sentencing in Lexington County June 4, 2019. That part of his order wasn't remanded to SCDC and therefor Appellate should have been allowed to appeal that decision (Exhibit A Page 3).
- 2) Appellant is a pro se litigant and should be held to a less strict standard.
- 3) Appellant states he is entitled to this jail time credit under S.C. Code 24-13-40 (Allen v. State, 529 S.E.2d 2d).
- 4) Appellant states there can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest (Tant v. SCDC, 759 S.E.2d 398).
- 5) Appellant states he received a letter from SCDC on March 27, 2020 that took action on Judge Lenski's whole order and that made the order final. Therefore this court is the proper jurisdiction (Exhibit B).

**Conclusion**

Appellate states he has shown good cause, and for these foregoing reasons, Appellate prays that this Honorable Court will grant him leave to reinstate his appeal in the above-mentioned case.

Respectfully submitted,



David Mills Hancock #268655  
Lee Correctional Institution F6-B-1231  
990 Wisacky Highway  
Bishopville, S.C. 29010

Date: **May 12, 2020**

C.C.  
Annie L. Rumler, Esq.

STATE OF SOUTH CAROLINA )  
IN THE COURT OF APPEALS )

APPELLATE CASE NO: 2020-000277

David Mills Hancock #268655 )

CERTIFICATE OF SERVICE

Appellant, )

**RECEIVED**

v. )

MAY 15 2020

South Carolina Department of Corrections, )

SC Court of Appeals

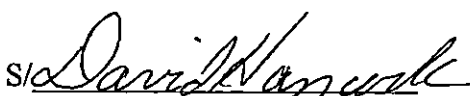
Respondent. )

The undersigned hereby certifies that the Motion to Reinstate an Appeal was served upon the below-listed individuals in the above-mentioned case upon this date by mailing it through the U.S. Mail at Lee Correctional Institution in Bishopville, S.C:

S. Phillip Lenski  
Administrative Law Judge  
Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, S.C. 29201

Annie L. Rumler, Esq.  
Office of General Counsel  
P.O. Box 21787  
Columbia, S.C. 29221

Respectfully submitted,



David Mills Hancock #268655  
Lee Correctional Institution F6-B-1231  
990 Wisacky Highway  
Bishopville, S.C. 29010

Date: May 12, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

David Mills Hancock, #268655, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
----- )

Docket No.: 19-ALJ-04-0473-AP

FINAL ORDER RECEIVED  
MAY 15 2020  
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by David Mills Hancock (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). After the Appellant's Step 1 and Step 2 Grievances were denied, the Appellant filed a Notice of Appeal with the court on September 19, 2019. The Appellant is appealing the Department's denial of his grievance in which the Appellant alleges that the Department has incorrectly calculated the amount of time served credit to be applied to his sentences, resulting in an erroneous sentence max-out date.

STANDARD OF REVIEW

The ALC has jurisdiction to consider appeals where an inmate believes his sentence-related credits have been erroneously calculated by prison officials. *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in its appellate capacity, applying the appellate standard of the Administrative Procedures Act. *See id.*, 338 S.C. at 377, 527 S.E.2d at 754. Consequently, review in inmate grievance cases is limited to the record presented. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of an appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure;

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affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion. *Id.* A liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

### DISCUSSION

On May 17, 2016, the Appellant was arrested for Second Degree Burglary in Lexington County and served three (3) days before he was released on bond. The Appellant was then arrested again on October 10, 2016 for Second Degree Burglary also in Lexington County and served 177 days before being released on bond. Later, on January 18, 2018, the Appellant was arrested for Second Degree Burglary in Aiken County. The Appellant stayed in jail from January 18, 2018 until July 10, 2018 when he was sentenced to five (5) years for Second Degree Burglary in Aiken County. On June 4, 2019, while serving his 5 year sentence for Second Degree Burglary, the Appellant was transported to Lexington County where he pleaded guilty to the two (2) 2016 Second Degree Burglary charges and was sentenced to thirteen (13) years confinement on each charge, both to run concurrent with his five-year sentence from Aiken County.

The Appellant asserts that pursuant to S.C. Code Ann. § 24-13-40, he is entitled to 502 days of jail time credit on his two Lexington County charges because he was in jail from January 18, 2018 until he was sentenced on June 4, 2019. The Department argues that the Department has applied the correct jail time credits to the Appellant's sentence. The Department asserts that it applied 177 days jail time credit for the Appellant's May 17, 2016 arrest charge, 178 days jail time credit for his October 10, 2016 arrest charge, and 173 days jail time credit for his January 18, 2018 arrest charge.

Section 24-13-40 of the South Carolina Code requires that a prisoner receive credit for time served prior to trial and sentencing unless one of two exceptions exists: "(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." S.C. Code Ann. § 24-13-40. It therefore follows that credit for time served *must be*

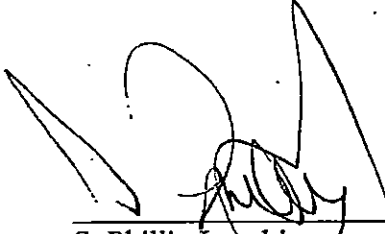
*applied* any time a prisoner spends time in jail during which he is neither already serving a sentence nor currently an escapee. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542; *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (citing *McCord*, 349 S.C. at 487, 562 S.E.2d at 694). Moreover, an inmate is entitled to credit against "all charges" for which he was in custody. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542 (emphasis in original); *see also Blakeney v. State*, 339 S.C. 86, 88, 529 S.E.2d 9, 10-11 (2000) (citing *Crooks v. State*, 326 S.C. 171, 485 S.E.2d 374 (1997)). The application of time served in accordance with Section 24-13-40 is mandatory and not within the discretion of the sentencing judge. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598; *McCord*, at 349 S.C. at 487, 562 S.E.2d at 696 (citing *Allen*, 339 S.C. at 395, 529 S.E.2d at 542). Moreover, the denial of credit for time served where no exception applies is an error of law. *Boggs*, 388 S.C. at 316, 696 S.E.2d at 598.

Therefore, because the Appellant started serving a sentence for his Aiken County conviction on July 10, 2018, the Appellant's Lexington County charges fall within the second exception in § 24-13-40, such that the Appellant is not eligible for credit for time served from July 10, 2018 until his sentencing in Lexington County on June 4, 2019. The Appellant is however, entitled to 173 days of credit for time served on both of his Lexington County charges for the 173 days he was in jail beginning January 18, 2018 until he was sentenced on July 10, 2018. Based on the foregoing,

**IT IS HEREBY ORDERED** that the Department's decision is **REVERSED** and this matter is **REMANDED** to the Department to recalculate the jail time credits applicable to Appellant's sentence under the law. Within sixty (60) days from the date of this order, the Department must recalculate Appellant's jail time credits and apply the additional credits to Appellant's sentence max-out date.

**AND IT IS SO ORDERED.**

February 6, 2020  
Columbia, South Carolina

  
S. Phillip Lenski  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I, the undersigned, has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof in the United States mail, postage paid, or in the ordinary mail service addressed to the party(ies) or their attorney(s).

This is done this 6 day of February 2020



HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

Exhibit B

27 March 2020

**Via US Mail**

David M. Hancock (SCDC 268655)  
Lee Correctional Institute  
F6B-1231-B  
990 Wisacky Highway  
Bishopville, SC 29010

**RE: Jail Time Credits**

Dear David M. Hancock:

This letter is in response to Judge Lenski's order dated February 6, 2020 (Docket No. 19-ALJ-04-0473-AP). Per Judge Lenski's order, the South Carolina Department of Corrections (SCDC) was required to recalculate jail credits that were applicable to the three sentences you are currently serving.

Although our brief stated otherwise, prior to the Administrative Law Court action, SCDC had already given you jail time credits on each of your three sentences based on the period of incarceration in Aiken County (176 days that covered the time periods of 11/14/2017 to 11/17/2017 and 1/18/2018 to 7/10/2018), the same day arrest and bond out in Lexington County (5/18/2016) and the same day arrest and bond out in Lexington County (1/19/2017).

After receiving a copy of Judge Lenski's order, our office contacted Lexington County to see if there was any additional jail time that should be awarded on any of your three sentences. Lexington County provided the attached jail time report, which showed an additional 47 days of jail time (8/31/2017 to 10/17/2017). The 47 days was added to both Lexington County sentences to increase the jail time on these sentences to 224 days (Sentence 11) and 225 days (Sentence 10). The 47 days of jail time from Lexington County cannot be included in the Aiken County sentence (Sentence 9) because the date of offense for the Aiken County burglary occurred after the period of jail time in Lexington County. Applying the additional 47 days of jail time credit from Lexington County resulted in your projected release date changing from 7/21/2025 to 6/16/2025. Below is a summary of the actions SCDC has taken on your three sentences per Judge Lenski's order.

**Sentence 9 - 2018GS0201466 (Arrest Warrant – 2018A0210200083) – Burglary 2<sup>nd</sup> – Aiken County – Date of Offense 1/18/2018**

- Prior to Judge Lenski's order SCDC had credited you 176 days of jail time on this sentence.
- The 176 days of jail time are for the period that you were in the Aiken County Detention Center for the offense dated 1/18/2018. You were arrested for this offense on 1/18/2018 and held at the Aiken County Detention Center until 7/10/2018, when you were released to SCDC to serve your sentence. This equals 173 days. We actually gave you an additional credit of three days for the time period of 11/14/2017 to 11/17/2017, which resulted in a total jail time credit of 176 days on this sentence.
- Although we received a jail time report from Lexington County showing an additional 47 days, we cannot add this to the Aiken County sentence because this jail time occurred in 2016 and 2017, which was before the Aiken County offense occurred.
- The total amount of jail time on Sentence 9 is 176 days.

**Sentence 10 - 2016GS3202268 (Arrest Warrant – 2016A3210700104) – Burglary 2<sup>nd</sup> – Lexington County – Date of Offense 3/28/2016**

- Prior to Judge Lenski's order SCDC had credited you 178 days of jail time on this sentence.
- The 178 days were for the period of time that you were in the Aiken County Detention Center (11/14/2017 to 11/17/2017 and 1/18/2018 to 7/10/2018 - 176 days) plus the arrest in Lexington County on 5/18/2016 (bonded out same day – 1 day credit), and the arrest in Lexington County on 1/19/2017 (bonded out same day – 1 day credit).
- After receiving the additional 47 days of jail time credit from Lexington County (arrest in Lexington on 8/31/2017, in which you bonded out 10/17/2017), SCDC credited 47 days to Sentence 10. The total amount of jail time on Sentence 10 is now 225 days.
- As you began serving Sentence 9 at SCDC on 7/10/2018, you cannot get any additional jail time for Sentence 10 after 7/10/2018. The statute does not allow jail time credits on a sentence for time that the individual was serving a sentence for another offense. Therefore, SCDC cannot give credit on this sentence from July 10, 2018 to June 4, 2019, as you were serving Sentence 9 at the time.
- The total amount of jail time on Sentence 10 is 225 days.

**Sentence 11 - 2017GS3200067 (Arrest Warrant – 2016A3220500607) – Burglary 2<sup>nd</sup> – Lexington County – Date of Offense 10/10/2016**

- Prior to Judge Lenski's order SCDC had credited you 177 days of jail time on this sentence.
- The 177 days are for the period of time that you were in the Aiken County Detention Center (11/14/2017 to 11/17/2017 and 1/18/2018 to 7/10/2018 - 176 days) plus the arrest in Lexington County on 1/19/2017 (bonded out same day – 1 day credit). You cannot get the 1 day credit for the arrest in Lexington County on 5/18/2016 as the arrest was prior to this date of offense.
- After receiving the additional 47 days of jail time credit from Lexington County - arrest in Lexington on 8/31/2017, in which you bonded out 10/17/2017, SCDC credited 47 days to Sentence 11. The total amount of jail time on Sentence 11 is now 224 days.
- As you began serving Sentence 9 at SCDC on 7/10/2018, you cannot get any additional jail time for Sentence 11 after 7/10/2018. The statute does not allow jail time credits on a

sentence for time that the individual was serving a sentence for another offense. Therefore, SCDC cannot give credit on this sentence from July 10, 2018 to June 4, 2019, as you were serving Sentence 9 at the time.

- The total amount of jail time on Sentence 11 is 224 days.

You may contact our office if you have any additional questions about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Player", with a stylized flourish at the end.

T. Player

cc: The Honorable S. Phillip Lenski

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

**RECEIVED**  
MAY 15 2020  
SC Court of Appeals

**RE: David Hancock v. SCDC**  
**Appellate Case No. 2020-000277**

Dear Clerk,

Please find enclosed a Motion to Reinstate Appeal, Certificate of Service, under S.C. ACR Rule 260. Please let me know of any deficiency in this matter.

Respectfully Submitted,

*David Hancock*

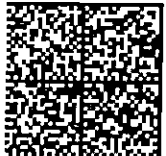
David Mills Hancock #268655  
Lee Correctional Institution F6-B-1231  
990 Wisacky Highway  
Bishopville, SC 29010

C.C.  
Annie Laurie Rumler, Esquire

Date: May 12, 2020

Lee Curry  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

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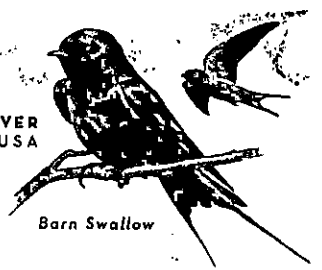
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MAY 15 2020

SC Court of Appeals

Jenny A. Kitchings  
Clerk of Court  
Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29201

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USA



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