

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT JUDGE:
RALPH KING ANDERSON

CASE NO. 21-ALJ-04-0118-AP

WILLIE YOUNG

v

APPELLANT

South Carolina Department of
Corrections

Respondent

RECEIVED

OCT 12 2021

SC Court of Appeals

DESIGNATION OF MATTER;

INCLUDED IN THE RECORD OF APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Willie Young, #285487,)	Docket No. 21-ALJ-04-0118-AP
)	
Appellant,)	
)	
v.)	ORDER
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
<hr/>		

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Willie Young (Appellant), an inmate incarcerated with South Carolina Department of Corrections (SCDC or Department). Appellant challenges the calculation of his sentence.

BACKGROUND AND PROCEDURAL HISTORY

On June 28, 2002, Appellant was convicted and sentenced to thirty years' imprisonment for Armed Robbery under section 16-11-330 of the South Carolina Code (2015). On November 22, 2020, Appellant filed a Step 1 Grievance, arguing that his sentence was incorrectly calculated, and he did not receive all of his earned work credits (EWC). The Warden denied Appellant's Step 1 Grievance, finding that:

According to your classification casework, Ms. Sorrenti, you arrive at Kershaw CI on 2/19/20. Due to Covid-19 precautions, she was unable to conduct your initial review and assign you a job. On May 20, 2020, your initial review was conducted and job was assigned. She explained from February 19, 2020 to May 20, 2020 you were not earned work credits as you were not assigned a job. Ms. Sorrenti stated, you have been earning work credits since job assignment in May. Your earned work credits have been applied and I find no errors in the calculation of your (EWC) Earned Work Credits.

Appellant then filed a Step 2 Grievance on December 17, 2020, asserting that "covid precaution was not implemented by the Director until 3/20 giving Kershaw Classification two weeks before that effect to modify [his] e.w.c." Appellant also argued that the "Warden failed to acknowledge the new classification-2/18/20-which denied [him] the earning of e.w.c." In its response to the grievance, the Department stated that Appellant has:

FILED
08/30/2021
SC Admin. Law Court

A mandatory service requirement of 25 years and 6 months. Your projected release date as of 3/13/21 is 3/7/27. You have been credited with earned 2,507 days of work credit and a total service time earned of 7,021 days. SCDC may award inmates with credits for good behavior and participation in work/educational programs. Your projected release date is correct, and you been given credit for all the time that you deserve.

Appellant then filed a Notice of Appeal with this Court on April 1, 2021, asserting that his sentence was miscalculated. The case was assigned on April 22, 2021. The Department filed the Record on Appeal on June 22, 2021. Appellant filed his brief on July 12, 2021. The Department filed its brief on August 10, 2021. Appellant thereafter filed his reply brief.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the South Carolina Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty interests in which an inmate contends that prison officials have erroneously calculated his/her sentence. *Id.* The Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754.

"A reviewing court will not disturb findings of [an administrative agency] if its findings are supported by substantial evidence on the record as a whole." *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 397, 489 S.E.2d 219, 220 (Ct. App. 1997). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Furthermore "the party challenging a[n administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record." *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

DISCUSSION

Appellant alleges his projected release date is incorrect. Specifically, he argues that he has not been given all the credits he is entitled to and further argues in his brief that he should not serve eighty-five percent of his sentence because he can participate in the work release program.

Initially, that Court finds Appellant failed to preserve his argument that he should not serve eighty-five percent of his sentence because he did not raise this issue in his Step One or Step Two Grievances or in his Notice of Appeal. *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.”) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)); *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) (“The issue preservation requirement applies to assertions of constitutional violations as well.”).

Furthermore, Appellant asserts that he has not been given all the work credits he is entitled to and, as a result, his projected release date was incorrect. Nonetheless, Appellant’s work credit history reflects that Appellant received earned work credits during the time he had a job. Appellant was sentenced for Armed Robbery under section 16-11-330, which is a felony and, “upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.” § 16-11-330. Furthermore, pursuant to section 24-13-100, “a class A, B, or C felony” is a “no parole offense.” S.C. Code Ann. § 24-13-100 (2007). Thus, Appellant’s offense is a “no parole offense.” *See id.* Regarding no parole offenses, section 24-13-150(A) provides:

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, **an inmate convicted of a “no parole offense” as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. . . .** Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (2007 & Supp. 2020) (emphasis added). Because Appellant is serving time for a “no parole offense” that generally requires 85 percent of the sentence be served,

he must serve at least twenty-five years and six months of his thirty-year sentence, which is approximately 85 percent of thirty years.

In total, as of March 13, 2021, Appellant had earned 2,507 earned work credits and forty-eight earned education credits. However, because Appellant was convicted of a no parole offense, the credits cannot be used to reduce his sentence below 85 percent. The Record reflects that all earned work credits have been properly subtracted from Appellant's sentence and, thus, Appellant has been given all earned work credits to which he is entitled. In sum, Appellant failed to carry his burden of proving that SCDC improperly calculated his sentence. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332.

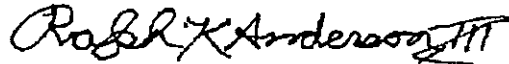
Accordingly, Appellant's projected max out date is March 7, 2027, and the Department correctly calculated his sentence.

ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

August 30, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Stephanie Perez
Judicial Law Clerk

August 30, 2021
Columbia, South Carolina

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Step 12
12-23-20

STEP 2

Office Use Only

3/22 DEC 18 2020
(ML)

INMATE NAME: Willie Young
SCDC NUMBER: 285487
INSTITUTION: Kershaw ✓
HOUSING UNIT: OB-57
WORK ASSIGNMENT: Dorm

Grievance No. KACT 0908-20
Code: General _____
Policy _____
Disc. Hear. _____
Class ✓ _____
PREA _____
Date Received: 12-22-20
IGC Initials: EJC
Date Received: 1/11/21
IGA Initials: Ch

RECEIVED

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): At no time did Kershaw classification explain anything to me about my E.W.C at the review the warden mentions 5/20/20. Further the Covid precaution was not implemented by the Director until 3/20, giving Kershaw classification 2 weeks before that effect to modify my E.W.C. The warden failed to acknowledge the new classification - 2/18/20 - which denied me the earning of E.W.C. because of a disciplinary charge - 3/16/20 - that has been dismissed and this classification failed to disclose my credits calculation and current sentence after deduction according to S.C. State law!
Grievant Signature Willie Young Date 12/17/20

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that on 9/18/20 and subsequent days you asked Kershaw Classification about application of Earned Work Credits (EWCs) as a reduction in your sentence. You did not make statement in the Action Requested Section of SCDC Form 10-5. It appears that you would like your sentence recalculated. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 12/15/20. You have a mandatory service requirement of 25 years and 6 months. Your projected release date as of 3/13/21 is 3/727. You have been credited with 2,507 days of earned work credits and you have a total service time earned of 7,021 days. SCDC may award inmates with credits for good behavior and participation in work/educational programs. Your projected release date is correct, and you have been given credit for all the time that you deserve.

Therefore, your grievance is denied.

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

Responsible Official Signature Steve Helms Date 3/17/21

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 _____ 8 IGC Signature _____ Date _____

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

NOV 20 2020

STEP 1

INMATE NAME: <u>Willie Yang</u> SCDC NUMBER: <u>285487</u> INSTITUTION: <u>Kerchaw</u> HOUSING UNIT: <u>OB 57</u> WORK ASSIGNMENT: <u>Unit</u>	<p align="center">OFFICE USE ONLY</p> Grievance No. <u>KRC 0808-20</u> Code: <u>General</u> Policy: _____ Disc. Hear.: _____ Class.: <input checked="" type="checkbox"/> _____ PREA: _____ Date Received: <u>11-23-20</u> IGC Initials: <u>FW</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.)

On 9/18/20, 8/17/20, and 7/6/20 I engaged Kerchaw classification about the application of my e.w.c to the deduction of my sentence, in accordance with S.C.D.C. reclassification! - 20-01664667; 20-01662241; 20-01633198 S.C. Code ann. 24-13-210(A)-(B): inmates convicted of crimes against the state may earn good-time credits: these credits entitle inmates to a sentence deduction for each month of incarceration. "Inmates convicted of no-parole offenses (16-11-330(a)) are eligible to earn three days a month. Classification has violated both the new classification policy and S.C. code of laws! Nowhere does it reflect that classification has applied my earned work credits and by policy and law my work credits in their entirety must be calculated, applied, and shown.

Willie Yang 11/22/20
 Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

I have reviewed pertinent documentation. Please review the Warden's Decision.

9 Crime Assoc 12-14-20
 IGC Signature Date

WARDEN'S DECISION AND REASON:

Inmate Young #285487

KRCI-0808-20

I have reviewed your concerns. In your grievance you stated, you conferred with Classification during the months of July, August and September concerning application of your earned work credits. You added, according to the classification policy, you are entitled to earn work credits in exchange for sentence deduction for each month of incarceration. You further stated, inmates convicted of non-parole able offenses are eligible to earn three (3) days a month. You stated, Classification has violated the new policy. You continued, Kershaw Classification has not applied your earned work credits. It appears you're requesting your earned work credits in their entirety be calculated, applied and shown. According to your classification caseworker, Ms. Sorrenti, you arrived at Kershaw CI on 2/19/20. Due to Covid-19 precautions, she was unable to conduct your initial review and assign you a job. On May 20, 2020, your initial review was conducted and job was assigned. She explained from February 19, 2020 through May 20, 2020 you were not earning work credits as you were not assigned a job. Ms. Sorrenti stated, you have been earning work credits since job assignment in May. Your earned work credits have been applied and I find no errors in the calculation of your (EWC) Earned Work Credits.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision, you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box, within five (5) days of your receipt of this decision.

[Handwritten Signature] *James* 12/15/20
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.

[Handwritten Signature] 12-16-20
Grievant Signature Date

[Handwritten Signature] 12-16-20
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.

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Inmate Request - General

Today's Date: 12/3/20 16:08

Name: YOUNG, III, WILLIE

Booking #: 285487

Permanent #: 285487

Reference #: 20-01664667

Date Requested: 08/17/20 17:44

Request Type: Classification

Requested By: Kiosk

Request Details: i just recently requested to find out information about my ewc having an effect on my maxout date though i have a different position from legislation. i just want to know does scdc classification apply the credits to reduce my maxout. though my sentence is not a mandatory minimum. thank you

Disposition: Complete

Officer:

Disposition Date: 09/18/20 12:01

Request Responses

Date	Author	Note
09/18/20 12:04	c038240	See case worker during open door

11

Inmate Request - General

Today's Date: 12/3/20 16:20

Name: YOUNG, III, WILLIE
 Booking #: 285487
 Permanent #: 285487

Reference #: 20-01633198
 Date Requested: 07/06/20 09:39
 Request Type: Classification
 Requested By: Kiosk

Request Details: I HAD SUBMITTED A REQUEST BEFORE ABOUT THE MATTER OF WHEN MY EWC WOULD BE APPLIED TO EFFECT MY MAXOUT DATE. I WAS TOLD WOULD BE SENT AN OTR BUT HAVNT RECEIVED IT

Disposition: Complete
 Officer:
 Disposition Date: 08/14/20 15:36

Request Responses

Date	Author	Note
08/14/20 15:37	c056610	maxout 3/27/2027

12

Inmate Request - General

Today's Date: 12/3/20 16:22

Name: YOUNG, III, WILLIE
Booking #: 285487
Permanent #: 285487

Reference #: 20-01662241
Date Requested: 08/14/20 08:27
Request Type: Classification
Requested By: Kiosk

Request Details: THIS REQUEST IS IN REGARDS TO TH SAMETHINGS FROM DIFFERENT PERSPECTIVES.THE CLASSIFICATION STATED EWC WOULD BE CALCULATED AND APPLIED TO MODIFY MY RELEASE DATE, AND IM INQUIRING AS TO WHEN THAT WILL HAPPEN. ALSO I AM REQUESTING THAT CLASSIFICATION ACCORDING TO S.C. LEGISLATURE SECTION 24-13-125,-A,.....THAT MY EWC ARE TO BE APPLIED TO THE SENTENCE IMPOSED.,AND THAT HAS NOT HAPPENED YET. PRESUMING THIS DEPARTMENT DOES NOT KNOW THIS VITAL INFORMATION,I AM ASKING FOR A TIMELY RESPONSE TO PRESENT THIS MATTER BEFORE THE ADMINISTRATION COURT.I HAVE OVER 1400 DAYS OF WORK CREDIT I WOULD LIK FOR THEM TO BE APPLIED. THANK YOU

Disposition: Complete
Officer:
Disposition Date: 08/17/20 10:52

Request Responses

Date	Author	Note
08/17/20 10:53	c038240	The system is showing that you have 1622 EWC credits projected max out is 3/2027

CMT1100D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION
CONVICTION SUMMARY

06/17/21
C052640

SCDC# > 285487
YOUNG, III, WILLIE -

CURR LOC: KERSHAW
SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	CONV	VIO
		YRS	MO	DYS	DATE	START	PROJ COMP STAT IND
* S00001	ARMED ROBBERY	030	00	000	06/28/02	09/12/01	03/07/2027 ACT V V

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...

PF3-ADD PF4-MODIFY/RVK PF5-ADD DUPL PF6-DISP CONSEC PF9-DETAIN PF12-SUMRPT

14

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 06/17/21
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 285487 INQUIRY CURR LOC: KERSHAW
 YOUNG, III, WILLIE - NONCONFORM SENT: N RTRN TO COURT:
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: 800001 INDICT NUM: 01-GS-382492 WARRANT NUM: G731578
 DATE SENTENCED.: 06/28/2002 JUDGE LAST.: WILLIAMS FI: J
 STATUTE: 16-11-330 CDR CODE.: 0139 GPS IND: N
 OFFENSE: 1299 ARMED ROBBERY OFFENSE DATE: 05/09/2001
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 38 ORANGEBURG
 PLEA...: G GUILTY TYPE OF COURT...:
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 06/28/2002
 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 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00289 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 09/12/2001 DOM.IND: N
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASS: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y DEATH UTERO: SCDC CLASS...: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: KMINIT DATE: 02/22/12
 NO PAROLE: NO PAROLE CREATED BY.: F CHAMBERS DATE: 07/09/02

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

15

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

STATE VS

William Young III

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2001 GS-38 2492

AW#: 6731578

Date of Offense: 5-9-01

S.C. Code §: 16-11-330

CDR Code #: 0111319

CASE RESTORED

SENTENCE

PLEA TRIAL

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

TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0111319

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

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

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

ATTEST: [Signature]

Solicitor

Defendant

Attorney for Defendant

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 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.

The Defendant is to be given credit for _____ days/months/jail time

CONCURRENT or CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total \$ _____ plus 20% fee: \$ _____

Payment Terms:

set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 100%) \$ _____

\$14-1-211(A)(1) (Surcharge) \$ 100.00

\$14-1-211(A)(2) (Surcharge) \$ _____

\$56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) \$ 300

TOTAL \$ 1030

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corps

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: _____

PRESIDING JUDGE

Judge Code: 011114

Sentence Date: 6/28/02

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Orange - Probation

Pink - Defendant

JAIL TIME REPORT FOR SCDC TRANSFER
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE RECORDS OFFICE, PO BOX 21787, COLUMBIA, SC 29221-1787
OFFICE #: (803) 896-8531 FAX #: (803) 896-1217

COUNTY SUBMITTING FORM: OCRC

PURSUANT TO SC STATUTE 24-13-40 ... In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing ...

Name: <u>Young Willie</u>		Date of Birth: [REDACTED]		
Social Security #: [REDACTED]		Race/Sex: [REDACTED]		
SID #:		FBI #:		
Arrest Date	Charge	Warrant # (or) Indictment #	Release Date	Reason for Release *
<u>9-20-01</u>	<u>Armed Robbery</u>	<u>W# C731578</u>	<u>7-9-02</u>	<u>SCDC</u>
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
		W #		
		I #		
Approved By: _____		<u>18</u>	Date: _____	

* Reason for Release (i.e., Explain if transferred to another county/city jail, or if inmate bonded). Please submit this form at the time of the inmate's transfer and admission to the SCDC, however, if unable to do so, please mail or fax to the address or number listed above.

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM06/17/21
C052640

SCDC ID: 285487

DISPLAY INMATE OFFENSE HISTORY

YOUNG, III, WILLIE -

CURR LOC: KERSHAW

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00035	UNAUTH I/M ORGAN/PART	MAJOR DI	05/26/21	06/21/21	00000		2
00033	POSS. OR/ATTEMPT TO P	MAJOR DI	04/02/19	04/15/19	00000	CONVICTED	1
00032	POSS. OR/ATTEMPT TO P	MAJOR DI	01/29/19	02/07/19	00000	CONVICTED	1
00031	POSS. OR/ATTEMPT TO P	MAJOR DI	03/12/18	03/21/18	00000	CONVICTED	1
00030	POSS. OR/ATTEMPT TO P	MAJOR DI	07/15/17	07/25/17	00000	CONVICTED	1
00029	LYING TO EMPLOYEE/MAK	OTHER AC	04/06/13	04/12/13	00000	CLOSED	3
00028	POSSESSION OF A WEAPO	MAJOR DI	02/28/12	03/19/12	00060	CONVICTED	2
00027	OUT OF PLACE	MAJOR DI	03/31/11	04/21/11	00000	CONVICTED	3
00026	I/M UNDER INFLUENCE/P	ADMINIST	01/29/10	02/03/10	00000	CONVICTED	3
00025	REFUSING OR FAILING O	OTHER AC	01/11/10	/ /	00000	CLOSED	3
00024	THREATENING TO INFLIC	MAJOR DI	08/03/09	09/08/09	00000	CONVICTED	2
00023	I/M UNDER INFLUENCE/P	ADMINIST	03/14/09	/ /	00000	CONVICTED	3

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY

PF4-MODIFY PF6-DISMISSED/NOT GUILTY

PF11-QUIT PF10-MAIN MENU

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM

06/17/21
C052640

SCDC ID: 285487

DISPLAY INMATE OFFENSE HISTORY

YOUNG, III, WILLIE -

CURR LOC: KERSHAW

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00022	POSSESSION OF CONTRAB	ADMINIST	12/09/08	/ /	00000	CONVICTED	3
00021	REFUSING OR FAILING O	MAJOR DI	11/17/08	12/09/08	00000	CONVICTED	3
00020	USE OBSCENE, VULGAR, PR	MAJOR DI	09/21/07	10/15/07	00000	CONVICTED	3
00019	SEXUAL MISCONDUCT	MAJOR DI	05/19/07	06/04/07	00000	CONVICTED	2
00018	USE OBSCENE, VULGAR, PR	ADMINIST	02/12/07	/ /	00000	CONVICTED	3
00017	REFUSING OR FAILING O	OTHER AC	12/01/06	/ /	00000	CLOSED	3
00016	REFUSING OR FAILING O	ADMINIST	08/10/06	/ /	00000	CONVICTED	3
00015	USE, POSS NARC, MARIJ, U	MAJOR DI	06/10/06	07/06/06	00090	CONVICTED	1
00014	INTERFERING WITH COUN	ADMINIST	06/01/06	/ /	00000	CONVICTED	3
00013	USE, POSS NARC, MARIJ, U	MAJOR DI	02/21/06	03/16/06	00000	CONVICTED	1
00012	POSSESSION OF CONTRAB	ADMINIST	11/29/05	/ /	00000	CONVICTED	3
00011	USE, POSS NARC, MARIJ, U	MAJOR DI	08/31/05	09/20/05	00000	CONVICTED	1

PAGE 0002

PF4-MODIFY

PF6-DISMISSED/NOT GUILTY

PF11-QUIT

PF10-MAIN MENU

20

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM

06/17/21
C052640

SCDC ID: 285487

DISPLAY INMATE OFFENSE HISTORY

YOUNG, III, WILLIE -

CURR LOC: KERSHAW

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00009	FIGHTING WITHOUT A WE	ADMINIST	05/21/05	/ /	00000	CONVICTED	3
00008	UNAUTH I/M ORGAN/PART	ADMINIST	08/09/04	/ /	00000	CONVICTED	3
00007	OUT OF PLACE	OTHER AC	12/22/03	/ /	00000	CLOSED	3
00006	DISRESPECT	MAJOR DI	04/25/03	04/29/03	00000	CONVICTED	3
00005	REFUSING OR FAILING O	MINOR DI	01/07/03	01/14/03	00000	CONVICTED	3
00004	REFUSING TO WORK	MINOR DI	11/28/02	12/05/02	00000	CONVICTED	3
00003	MUTILATION	MINOR DI	11/22/02	12/02/02	00000	CONVICTED	4

END OF LIST

PAGE 0003

PF4-MODIFY

PF6-DISMISSED/NOT GUILTY

PF11-QUIT

PF10-MAIN MENU

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EWCI100D SCDC OFFENDER MANAGEMENT SYSTEM 06/17/21
EWCI100M EARNED WORK CREDIT ASSIGNMENT C052640
OMEWCA HISTORY OF EWC ASSIGNMENTS

SCDC #> 285487 CURR LOC.....: KERSHAW
YOUNG, III,WILLIE - POP ASSIGN...: ME
OFFENDER TYPE: ADULT-STRAIGHT SENTENCE CUSTODY LIMITATIONS...: Y
ASSIGNMENT...: 6020 BUILDING #3

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL	EWC DYS	F/P	TOT EWC
WARDKEEPER	10/06/20			2	5	F	0.000
WARDKEEPER	05/20/20	10/05/20	CUSTODY REVIEW	3	5	F	33.095
FOOD SERVICE AIDE	01/21/20	02/19/20	INSTIT TRANSFER	2	5	F	10.714
ROOFER	01/09/20	01/17/20	LATERAL TRANSFER	2	5	F	3.214
WARDKEEPER	10/04/19	01/07/20	INSTIT TRANSFER	2	5	F	34.285
WARDKEEPER	09/06/17	10/03/19	MI ELIGIBLE FOR	3	5	F	180.476
HAULER	10/31/13	07/25/17	PLACED IN ST/SP	3	5	F	324.761
CUSTODIAL WORKER	02/06/13	08/21/13	INMATE REQUEST	3	5	F	46.904
WARDKEEPER ASSISTANT	03/25/10	04/01/11	PLACED IN ST/SP	3	5	F	88.809
FOOD SERVICE AIDE	04/16/09	08/12/09	INMATE REQUEST	3	7	F	39.666
FOOD SERVICE AIDE	10/18/08	04/15/09	PROMOTION	3	5	F	42.857
PLUMBER	03/20/08	10/17/08	COMPLETED EDUC	3	5	F	50.476

PAGE.> 0001

SELECT A RECORD AND PRESS <ENTER>...

PF3:ASSIGN EWC PF4:MODIFY EWC PF5:TERMINATE EWC PF6:HDQS ADD EWC

22

EWCI100D SCDC OFFENDER MANAGEMENT SYSTEM 06/17/21
 EWCI100M EARNED WORK CREDIT ASSIGNMENT C052640
 OMEWCA HISTORY OF EWC ASSIGNMENTS
 SCDC #> 285487 CURR LOC.....: KERSHAW
 YOUNG, III, WILLIE - POP ASSIGN...: ME
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE CUSTODY LIMITATIONS...: Y
 ASSIGNMENT...: 6020 BUILDING #3

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL	EWC DYS	F/P	TOT EWC
FOOD SERVICE AIDE	06/27/06	06/21/07	INMATE REQUEST	3	5	F	85.714
FOOD SERVICE AIDE	07/15/05	03/16/06	PLACED IN ST/SP	3	5	F	58.333
FOOD SERVICE AIDE	10/23/03	05/21/05	INMATE REQUEST	3	5	F	137.380
FOOD SERVICE AIDE	10/06/02	12/01/02	UNSAT JOB PERFO	3	5	F	13.571
WARDKEEPER ASSISTANT	08/27/02	10/03/02	INSTIT TRANSFER	3	5	F	9.047
FOOD SERVICE AIDE	08/15/02	08/26/02	INMATE REQUEST	3	7	F	4.000
WARDKEEPER ASSISTANT	08/08/02	08/14/02	INMATE REQUEST	3	5	F	1.666

PAGE.> 0002

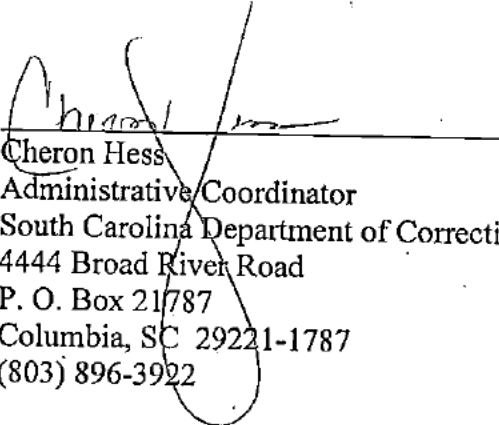
PF3:ASSIGN EWC PF4:MODIFY EWC PF5:TERMINATE EWC PF6:HDQS ADD EWC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document(s) was/were, this date, served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Willie Young, III.
Inmate Number: 285487
Kershaw Correctional Institution
Dorm-Room-Bunk: OB-0057-T


Cheron Hess
Administrative Coordinator
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

June 21, 2021

STATE OF SOUTH CAROLINA
Administrative Law Court

WILLIE YOUNG
Plaintiff

DOCKET NO. 21-ALJ-04-0118
BRIEF OF APPELLANT

V.
South Carolina Dept. Of Corrections

STATEMENT OF ISSUE(S) ON APPEAL

1. Did SCDC deny Appellant His State-Created Liberty RIGHT'S:
Denial Of Work Credits, Elegibility For Parole?

STATEMENT OF THE CASE

Comes now before the S.C. Administrative Law Court this matter filed by WILLIE YOUNG, a inmate in the custody of the South Carolina Department Of Corrections.

Appellant moves this court to grant his Earned Work Credits For RELEASE! The Respondent has denied his step 1 grievance (3/17/21) and step 2 grievance (3/17/21) !

A notice of appeal was filed with this court April 1, 2021. The Appellant asserts his earned work credits entitle him to release, and is accorded by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, as well as his state constitutional due process right's, amounting to cruel and unusual punishment.

ARGUMENT

The Appellant is challenging the south carolina department of corrections failure to adhere to state law, and being denied the availability of his earned good time for his release!

The Courts appellate jurisdiction in inmate appeals is limited to cases involving the denial of a state-created liberty interest AL Shabazz v. State 338 S.C.354(2000).....This appellant contends that the south carolina department of corrections have erroneously failed to apply and calculate hisv' earned work credits which would allow his immediate release, and the denial places him in a atypical significant hardship, as it infringes on his life, freedom and liberty!

This issue arises from the south carolina department of corrections application of both the " no parole offense " label, as well as it's denial to apply the appellants earned work credits for his release.

When appellant was indicted, the offense of § 16-11-330 (a), was classified as a " NO PAROLE OFFENSE ". see § 24-13-100 However, the S.C. Legislature mandated - In pertinent part- " a person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

The appellant was sentenced to 30 years for the crime of armed robbery and the department of corrections applied the " eighty-five percent rule ", requiring him to serve twenty-five years and five months.

In south carolina (as in the federal system) the imposition of a thirty year sentence does not necessarily mean the convicted will remain behind bars for thirty years.

As relevant here, south carolina inmates may be entitled to apply work credits and good time credits to the balance of their sentence.

The director of the Dept. of Corrections may allow an inmate sentenced for a " no parole offense " as defined in section § 24-13-100, who is assigned to a productive duty assignment or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of six days per month he is employed or enrolled. However, no prisoner serving a life sentence or a mandatory minimum term of imprisonment for thirty years pursuant to section 16-3-20 is entitled to credits under this provision.

Although these credits may cut the time a prisoner spends behind bars, they do not apply to all S.C. inmates without restrictions.

The S.C. legislature has classified certain offenses as no parole offenses. Prisoners convicted of these offenses must serve at least eighty-five percent of their sentence as imposed. § 24-13-150(a) ("Notwithstanding any other provision of law.....An inmate convicted of a no parole offense....is not eligible for early release, discharge or community supervision until the inmate has served at least 85% of the actual term of imprisonment imposed) see also §§ 24-13-210(b)- 230(b)

On June 2, 2010 the omnibus crime reduction and sentencing reform act of 2010 took effect and this amendment entitled the appellant to both work release and interpreted the earning of earned work credits are to be applied. §24-13-125

While the Omnibus Act amended " non-eligibility " to " eligibility " for work release for the crime of armed robbery and made clear the earning of earned work credits are to be applied,

However, the Omnibus Act ' did not ' amend § 24-13-100, which controlled ' no parole offense ' classification, nor did the omnibus act amend § 24-13-150(a), which enumerates the consequences of the no parole offense designation. This created an arguable contradiction in south carolina law, while simultaneously undermining legislature intent because, 1) The omnibus act suggests that appellant is eligible for work release which is an criteria attached to earned work credits, early release, and discharge and 2) S.C. legislature made no amendment to § 16-11-330(a), which required the service of at least seven years before parole eligibility. but § 16-11-330 still falls within § 24-13-100 classification and so the 85% rule interpretation is precluding him from gaining early release based on these credits and further denying his eligibility for parole, a right afforded by s.c. general assembly, which the appellant is being denied due process of!

" In computing the date of parole eligibility it is also necessary to account for any deductions for earned work credits, and education or training credits, as these may apply. The question whether such credits can be used at all as a deduction in the computation of the date of parole eligibility, and, if so, how, depends entirely on the statute.

Because of the ex post facto problem, the application of such credits depends further on the statute in effect at the time the offense was committed. 26 s.c. Jur. Probation, Parole, & Pardon § 15

" The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature ". Bryant v State 384 s.c. 525

When a statute is penal in nature, it must be strictly construed against the state and in favor of the defendant. State v Blackmon 307 s.c. 270 (1991)

Appellant was sentenced under the armed robbery statute, which legislature noted carries a mandatory minimum of not less than " ten or more than thirty years". " also noting a person convicted under this statute is not eligible for parole until completion of seven years. § 16-11-330

Before the amendment of the 2010 omnibus crime bill, an inmate convicted of a no parole offense was not eligible for work release. s.c. code 24-13-125, however after the amendment it permitted inmates convicted of no parole offenses for work release after certain criteria are met and these amendments interprets the earning of earned work credits and their application. Campbell v Florian 972 F.3d 385 (2020)

Armed Robbery is a crime listed under s.c. code § 24-13-100, however, the language statutorily mandated a conviction under this subsection is not eligible for parole until the person has served at least seven years of the sentence, which has been misinterpreted by the south carolina department of corrections that has resulted in the contradiction of clearly established law.

South Carolina law requires the department of corrections to adopt a legal interpretation that harmonizes potentially contradictory provisions of a statute if possible. see, e.g., Justice v Pantry 330 s.c. 37 1998 (ct.app)

Section 37 of the omnibus act, several changes were made to the structure of certain drug offenses. However, affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact that some of the offenses affected are [CLASSIFIED AS SERIOUS] felonies. Campbell v Florian 972 F.3d 385

In Bolin v South Carolina dept. of corrections, 415 s.c. 276 (CT APP 2016), the challenge there was the departments interpretation of the omnibus act. Convicted under a statute, § 44-53-375(b)(2) that due to the amendments of the omnibus crime act, he was no longer subject to the eighty-five percent rule and its consequences. The appellant asserts that here! Armed Robbery is a no parole offense, however the amendment of the omnibus act permitting work release relieves him of the 85% rule and its consequences Bolin v s.c.d.c 415 s.c. 276

The amendment directed the entitlement to work release after meeting certain criterias and these amendments further interpret the earning of earned work credit and their application.

The no-parole offense designation in 24-13-100 might be considered more specific than an amendment to " any " specific statute, the court of appeals acknowledged. see id. at 917; cf varity corp v Howe 516 u.s. 489, 511, 116 s.ct. 1065, 134 L.Ed.2d 130 (1996)

(" [T]he specific govern(s) the general")..... and the omnibus act(s) AMENDMENTS WOULD BE " MEANINGLESS", IF they did not " IMPLICITLY REPEAL" the no parole offense designation in 24-13-100 . Id at 917 Combined with the general intent to " conserve taxpayer dollars by allowing earlier release dates", the appeals court's analysis demands the bolin interpretation. Id at 918 Bolin v South Carolina department of Corrections, 415 s.c. 276 (ct.app 2016) Campbell v Florian 972 F.3d 385 (2020)

CONCLUSION

Asserting both the bolin interpretation and the campbell interpretation, this appellant is entitled to the recalculation of his earned work credits to be applied to his conviction of armed robbery afforded by amendments of the omnibus crime bill and should be released as the time he has accumulated in credits entitles him to release.

THANK YOU Willie Yang

Date June 8-2021

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Willie Young, #285487,)	Docket No.: 21-ALJ-04-0118-AP
)	Grievance No.: KRCI 808-20
Appellant,)	
)	Respondent's Brief
v.)	
)	<i>Hon. Ralph K. Anderson, III</i>
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Willie Young ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on November 22, 2020, claiming earned work credits have not been applied to his sentence and thus the term of his sentence is incorrect. This grievance was investigated and denied when it was determined Appellant did not earn earned work credits from February 19, 2020 until May 20, 2020 because he was not assigned a job. On December 17, 2020, Appellant filed a Step Two Grievance alleging SCDC denied him earned work credits. This grievance was also investigated and denied after it was determined Appellant received all credits and the projected release date is correct. Appellant subsequently filed his Notice of Appeal.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-*

Shabazz. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, Appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

X A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). 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, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

(Emphasis added). Appellant's conviction for armed robbery meets the definition of S.C. Code Ann. § 24-13-100, therefore he must serve at least 85% of his sentence for armed robbery. Appellant must serve at least 25 years and 6 months of the 30-year sentence, which is approximately eighty-five percent of 30 years. Appellant argues SCDC has not applied all earned work credits and his projected max out date is incorrect. Appellant has received earned work credits during the times he had a job. *See R.* pp. 15-16. However, because Appellant has a no-parole offense the credits cannot be used to reduce Appellant's sentence below eighty-five percent. All earned work credits have been properly applied to Appellant's sentence and Appellant's projected maxout date is currently March 7, 2027. *See R.* p. 7.

ADD Appellant argues, for the first time, in his brief that he should not have to serve eighty-five percent of his sentence because he can participate in the work release program. *See generally* Appellant Brief. However, Appellant failed to raise this issue in the Step 1 Grievance. Because Appellant failed to raise this issue during the grievance process, it is not preserved for Appellate review. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 486 (2004) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review")(citing *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)).

Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying Appellant's Step Two grievance be upheld.

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II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

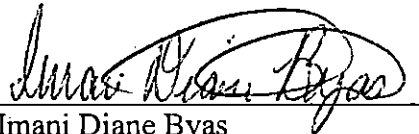
The record conclusively establishes that the “substantial evidence on the whole record” supports the Department’s final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm’n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

CONCLUSION

Appellant has not met his burden to demonstrate SCDC is incorrectly calculating his sentence, and the Department’s calculation is supported by substantial evidence. Therefore, Respondent respectfully requests this Court affirm the final agency decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Imani Diane Byas
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508


August 10, 2021
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Willie Young, III., #285487,)	
)	
Appellant,)	Certificate of Service
vs.)	
)	Docket# 21-ALJ-04-0118-AP
South Carolina Department of Corrections,)	
)	
Respondent.)	

I hereby certify that a copy of the foregoing brief was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Willie Young, III.
Inmate Number: 285487
Kershaw Correctional Institution
Dorm-Room-Bunk: OB-0057-T



Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

August 10, 2021

ARGUMENTS

I. THE FINAL AGENCY DECISION SHOULD BE AFFIRMED BECAUSE SCDC HAS PROPERLY CALCULATED APPELLANT'S SENTENCE

On June 28, 2002, Appellant was sentenced to thirty years for Armed Robbery under South Carolina section 16-11-330. *See* R. p. 9 (Indictment 2001GS3822492). Appellant contends SCDC has not applied Appellant's earned work credits to the armed robbery sentence which has affected the projected release date. Appellant was sentenced under S.C. Code Ann. § 16-11-330, which is a felony and a person convicted of such "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted." By definition, this meets the classification of a "no parole offense." *See* S.C. Code Ann. § 24-13-100 ("A 'no parole offense' means a class A, B, or C felony . . . which is punishable by a maximum term of imprisonment for twenty years or more."); § 16-1-30 ("All criminal offenses created by statute after July 1, 1993, must be classified according to the maximum term of imprisonment provided in the statute and pursuant to Sections 16-1-10 and 16-1-20 . . ."); § 16-1-20(A)(1) ("A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.").

Appellant must be incarcerated at least 85% of his sentence. S.C. Code Ann. § 24-13-150(A) provides:

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections [. . .] is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served **at least eighty-five percent of the actual term of imprisonment imposed**. This percentage must be calculated without the application of earned work credits, education credits, or good conduct

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Willie Young # 285487
Appellant

V

South Carolina Department of
Corrections
Respondent

Docket No.21-ALJ-04-0118-AP
Grievance No.KRCI 808-20
Appellant's Reply Brief

Judge Ralph K. Anderson, III

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STATEMENT OF THE CASE

This case is before the Administrative Law Court pursuant to the appeal of Willie Young, an inmate incarcerated with the Department of Corrections. Appellant raised in his step one Grievance on November 22,2020 he is being " essentially" denied the provisions of 16-11-330(a) AND 24-13-210(a)(b), which makes him eligible for both earned work credits and parole. see R.p.1-2 The respondent noted the appellant was credited with 2,507 days of earned work credits but that he is denied the application of these credits because of it's contention he is a no-parole offender and required to serve a sentence of 25 years and 6 months, and this appeal follows!

STANDARD OF REVIEW

While the interpretation of a statute by the agency charged with its administration " will be accorded the most respectful consideration" , an agency's interpretation " affords no basis for the perpetuation of a patently erroneous application of the statute" ! State V SWEAT 386 S.C. 339

Stated by the S.C. Court of Appeals;
South Carolina law requires the Department of Corrections to adopt a legal interpretation that harmonizes potentially contradictory provisions if possible. Justice V Pantry 330 S.C. 37 (1998 ct.app)

I.Appellants objection to scdc improper time calculation..

In the framing of the appellants conviction for Armed Robbery, when he was indicted, South Carolina legislature deemed § 16-11-330(a) as a offense of parole eligibility after serving seven(7) years of the sentence. HOWEVER,THE RESPONDENT HAS DENIED appellant this ' lawful state liberty.', and now suggests the administrative law court should uphold ' the possibilities of drawing two " inconsistent" conclusions from the evidence on the record. As noted in appellants initial brief, ' in computing the date of parole eligibility,it is necessary to account for earned work, training and education credit(s) deductions, and because of the ex post facto problem,their application depends on the statute in effect at the time of the offense. 26 S.C. Jur.Probation,Parole,& Pardon § 15

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Appellant object's to the respondent's error, the indictment number for the offense(Armed Robbery) to which appellant is sentenced, 2001-38-2492, occurred may 9, 2001 and scdc was required by South Carolina Code of Law §16-11-330(a) to apply appellant's earned work credit's to arrive at his parole eligibility date.

It should be first and foremost " the fundamental canon"..... Legislation intent is controlling. SCANA Corp. V South Carolina Dept. of Revenue 384 S.C. 388,392 (2009)

The respondent noted the appellant has earned, " since the beginning of his incarceration a total of 2,507 earned work credit days(respondent brief pg.1) However, it is here, as respondent asserted, ' it was " alright" to draw " two" inconsistent conclusions from the evidence, that makes clear an error in interpretation, and minimizes legislature intent. " While the interpretation of a statute by the agency charged with its administration," will be accorded the most respectful consideration", AN AGENCY'S INTERPRETATION " AFFORDS NO BASIS FOR THE PERPETUATION OF A PATENTLY ERRONEOUS APPLICATION OF THE STATUTE". State V. Sweat 386 S.C. 339

The courts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature. State V Johnson 396 S.C. 182,189(2011)

The statutory interpretation by the respondent that Armed Robbery is a no parole offense is erroneous, but respondent expressed a similar misinterpretation in , Bolin V. South Carolina Dep't of Corrections, 415 S.C.276 , 781 S.E.2d 914,916-17(CT.App.2016), to no avail, however, there the respondent argued: the amendment to section 44-53-375(b), which made a conviction for a first or second offense now eligible for; suspended sentence, probation, parole eligible, supervised furlough, work release, work credits..." was still considered a no parole offense unless the inmate is granted parole. Respondents oral arguments asserted clearly it's definition of ' parole eligibility' and ' no parole offense' are defined differently. Further arguing, a no parole offense as defined in section 24-13-100, is not defined by whether or not someone is eligible for parole! DOC, further argued that the determination of parole eligibility and the application of good conduct, work or education credits to a sentence for a no-parole offense are two separate " parallel courses and both of those interpretations of the statutes do not conflict with one another".However, The S.c. Court of Appeals did not agree with the respondent(DOC) In this regard. The court stated; It is without doubt that the statutory definition for ' no parole' offense in section 24-13-100... Simply describes the types of offenses for which an offender is not eligible for parole, and that this interpretation is consistent with provisions in related statutes stating that a no-parole offender is not eligible for parole, but that it is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense pursuant to section 24-13-100, even if the maximum sentence for the offense places it within a classification encompassed by section 24-13-100. Bolin V. South Carolina Dep't of Corrections, 415 S.C.276, 781 S.E.2d 914,916-17

As noted in appellants brief, the amended section 44-53-375(b) BECAME EFFECTIVE JUNE 2, 2010 by the Omnibus Crime Bill Act.

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Bolin was convicted of the amended statute(44-53-375(b) IN MAY,2012 two years after it became effective(june 2,2010) and like bolin, the respondent has explained away the language of section 16-11-330(a) which states clearly the eligibility of parole after serving seven(7) YEARS OF THE SENTENCE and makes it error for the respondent to " require" the appellant to serve eighty-five (85) percent of his sentence when he is in fact eligible for parole!

All rules of statutory construction are subservient to the one that legislature intent must prevail if it can be reasonably discovered in the language used. State V Sweat 386 S.C. 339

Appellant objects to respondents erroneous contention that because appellant has a ' no-parole offense' his credits cannot be used to reduce his sentence(resp.brief pg.4) because unlike BOLIN, legislative intent for section 16-11-330(a), made clear that at the time of appellants conviction, he was eligible for parole. " When a statute is penal in nature, it must be strictly construed against the state and in favor of the defendant. State V Blackmon 307 S.c. 270(91)

I.SCDC Agency Decision is a direct contradiction to S.C.Legislation?

Appellant object 's to the respondents error, stating he failed to raise prior to his initial brief, his claim of not having to serve eighty-five(85) percent of his sentence because of his eligibility for work release. Resp. Brief pg.4 The appellant humbly asserts to this court that his claim to the erroneous application of his work credits for his release is subsumed in title 24 of South Carolina Code of Laws.

As stated by respondent in its standard of review; A reviewing court will not disturb substantial evidence as a whole(Resp. Brief)(pg.2)

The Omnibus Crime Bill Amendment to S.C. Code 24-13-125 interpreted the participation/permittal for work release and the earning of work credits and their application. See Omnibus Act(2010) The agency has made modifications to 'certain' inmates sentences due to the acts amendments, so with evidence as a whole that the respondent has already acted on, it is one acknowledged too, while again, the issue here is the respondents interpretation of s.c. state law.

The amendment to s.c. code 24-13-125 directs work release eligibility and earned work credits, and since s.c. legislature deemed armed robbery a parole eligible offense, the appellant is " not" subjected to the eighty-five percent rule and consequences. As in Campbell V Florian 972 F.3d 385(2020), campbell when he was indicted, his offense 44-53-375(b)(2) was classified as a ' no-parole offense' , however, the omnibus act of 2010(june 2) amended 44-53-375(b)(2), making campbell eligible for parole , though the amendment did not amend 24-13-100, nor did it amend 24-13-150 which created contradiction because the offense fell within 24-13-100's classification of no-parole offenses.

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CONCLUSION

Both the Omnibus ACT and S.c. Code of Law § 16-11-330(a) suggests appellants is eligible for parole....and work credits for his release and that the specific-omnibus act 2010- governs the general! S.C. legislature did not amend §16-11-330(a), which is binding on scdc and the courts. Had the respondent adhered to s.c. state law, appellant would have been considered-possibly granted- for parole and released had his earned work credits been applied. This court should follow the S.C.Court of Appeals ruling in Bolin and Campbell, and recalculate the appellants work credit and release him from the DOC. This appellant has established good and binding law on the court(S)

THANK, YOU WJ

DATE _____

NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

**APPEAL FROM ADMINISTRATIVE LAW COURT JUDGE RULING: Ralph
king Anderson**

Case no. 21-ALJ-04-0118-AP

**Willie Young
Appellant**

v

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Respondent**

NOTICE OF APPEAL

**Willie Young appeals the decision of the honorable RALPH KING
ANDERSON August 30, 2021. Appellant received a copy of this dec-
ision september 8, 2021 by institutional mailroom**

CC: SCDC OFFICE OF GENERAL COUNSEL

PROOF OF SERVICE

I, WILLIE YOUNG, attest a copy of this brief has been served on
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