STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III
Docket No. 20-ALJ-04-0495-AP
Grievance TYRCI 389-20

Case No. 2021-000718

John Ward, #171770, ... APPELLANT,

South Carolina Department
of Corrections, ... RESPONDENT.

FINAL BRIEF OF APPELLANT

John M. Ward, #171770
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

APPELLANT

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II The ALC did err in declining to accept and give Judicial notice to Appellant's appeal which provided full context and clear view as to the circumstances of the case and which Appellant had provided to the South Carolina Department of Corrections.

STATEMENT OF THE CASE

On July 4, 2006, in Oconee County, Appellant involved himself in a single chain of circumstances wherein multiple crimes arose out of the single event. Consequently, Appellant was arrested by deputies of the Oconee County Sheriff's Office on July 8, 2006. Upon arrest, Appellant was served with arrest warrants whereby he was charged with the crimes of assault and battery with intent to kill (2 counts) (Arrest Warrant Nos. K150666 & K150667); Burglary 1st Degree (Arrest Warrant No. K150668); and Petit Larceny (2 counts) (Arrest Warrant Nos. K150669 & K150670). Wherefore Appellant was then booked in the Oconee County Detention Center on the date of service of the warrants. (ROAp. 75, 80, 85, 90, 95, 108-110)

Upon providing notification to the victims involved in the crimes to inform of the date and time a bond hearing would be convened regarding the crimes, a bond hearing was held on the same date of the arrest. (ROAp. 67, 68)

Appellant remained in the Oconee County Detention Center as his crime of Burglary 1st Degree was deemed to be a non-bailable offense. (ROAp. 67, 69) As Appellant remained in the Oconee County Detention Center, the Oconee County Grand Jury returned true-billed indictments on all of Appellant's charged crimes on October 17, 2006. (ROAp. 76-77, 81-82, 86-87, 91-92, 96-97)

Further, on the same date of October 17, 2006, the Oconee County Grand Jury also returned a true-billed direct indictment on a crime charging Appellant with the crime of Armed Robbery. (ROAp. 101-103)

Appellant continued to remain in the Oconee County Detention Center and did move by way of a Motion for Bond, (filed with the Oconee County Clerk of Court on October 20, 2006), whereby he sought that the Oconee County General Sessions Court would set a reasonable bond for Appellant's release. (ROAp 69)

Appellant never bonded out from the Oconee County Detention Center. Ultimately, a Court of General Sessions was convened at the Oconee County Courthouse on December 11, 2006, wherein Appellant entered a plea of guilty before the Honorable Alexander S Macaulay to the crimes of Assault and Battery with Intent to Kill (Arrest Warrant No. K150667, Indictment No. 2006-GS-37-1377) and was sentenced to a 20 year concurrent term of imprisonment (ROAp 79); Burglary 1st Degree (Arrest Warrant No. K150668, Indictment No. 2006-GS-37-1378) and was sentenced to a 20 year concurrent term of imprisonment (ROAp 84); and Armed Robbery (Indictment No. 2006-GS-37-1381) and was sentenced to a 20 year concurrent term of imprisonment (ROAp. 100).

In sentencing Appellant concurrently, the Honorable just Alexander S. Macaulay further specified and ordered that Appellant was to be given credit for time served

in the Oconee County Detention Center as a pretrial detainee, pursuant to SC Code Ann. §24-13-40. ROAP 72. All Appellant's sentencing sheets were also marked accordingly specifying, "TheDefendant is given credit for time served pursuant to SC Code 24-13-40 to be calculated and applied by the State Department of Corrections". ROAP 79, 84, 100.

Upon commitment to the South Carolina Department of Corrections (SCDC) (hereinafter "Department"), Appellant found that the Department declined to award him credit for pretrial detainee time served on any of his charges. After much extreme diligent requests in this regard, the Department ultimately applied 156 days credit for time served pursuant to 24-13-40 to Appellant's charges of Assault and Battery with Intent to Kill and Burglary 1st Degree.

However, the Department would continue to decline to apply any time served credit to Appellant's Armed Robbery sentence, as Appellant sought to receive the 156 days credited to this sentence as well.

After many continuous unsuccessful requests to gain the Department's understanding regarding the matter and prayer that the Department would equitably apply the 156 days credit for time served concurrently to the Armed Robbery charge and properly calculate the Armed Robbery sentence accordingly; Appellant asked the Department to perform a review/audit of his case regarding the matter.

Upon review, the Department determined that it had erred in not crediting Appellant credit for pretrial time served on the Armed Robbery sentence. Never-the-less, the Department determined that Appellant was only entitled to 55 days credit, as this amount reflected the amount of time served from the date (October 17, 2006) Appellant was directly indicted on the Armed Robbery charge to the date that Appellant entered a plea of guilty to the charge (December 11, 2006). (Kiosk RTSM SCDC 20-01567650)

Appellant then filed Step 1 and Step 2 grievance seeking to resolved the matter through the Department's internal grievance system. (ROAP. 62-65). The Department maintained its position regarding the matter.

Appellant then filed an appeal to the South Carolina Administrative Law Court (ALC) on December 9, 2020. The case was assigned on January 7, 2021. (ROA.p.1)

Appellant filed a Designation of Matter To Be Included In the Record on Appeal on January 21, 2021. (ROA.p.2). Respondent filed the Record on March 18, 2021. (ROA.p.6).

On March 25, 2021, Appellant filed a brief along with a Motion for Leave to Exceed Page Limit. (ROA.p.32; 112). Along with this brief and motion, Appellant also filed a Motion For An Order Compelling Designation (Motion to Compel), and also an Appellant's Appendix. (ROA.p.113; 56).

Appellant exclaimed that he wished that the ALC would compel the Department to file for the Record in the case those documents which Appellant specifically identified and enumerated within the Designation of Matter he filed on January 21, 2021, as Respondent had failed to include those documents.

Appellant sought to cure this by filing the Appellant's Appendix in accordance with SCALC, Rule 60(c).

On April 5, 2021, the ALC issued a letter in which it requested the Department respond to Appellant's Motion to Compel within fifteen days of the date of the letter. (ROA.p.114). Within this same letter the ALC also informed the parties that until the Department submitted a response

to the Motion to Compel, the court would not consider the Record closed and the deadline for the Department's brief would be extended until the matter was resolved.

On April 13, 2021, the Department filed a Motion to Deny Appellant's Motion Compelling Designation of Matter. (ROA p. 120).

On April 20, 2021, the ALC issued an Order denying Appellant's motions (without providing Appellant the ten-day period to file a response to the Department's Motion to Deny Appellant's Motion Compelling Designation of Matter, as provided for by SCALC, Rule 63) (ROA p. 130).

Appellant filed a Reply to the Department's Motion to Deny, on April 21, 2021, however, the ALC had already issued its Order Denying the Motions. (ROA. p. 124).

As Appellant's Motion for Leave to Exceed the Page Limit was also denied, Appellant filed an Amended Brief that was within the page limit required by the ALC Rules, on April 30, 2021. (ROA. p. 137). Also, on April 30, 2021, Appellant filed a Motion for Judicial Notice. In the Motion for Judicial Notice, (ROA. p. 151), Appellant asked the ALC to take notice of: (1) Appellant's Amended Brief which was filed within the proper page limits; (2) Appellant's fifty-three-page Appendix which was filed

On March 25, 2020; and (3) Appellant's Reply To Respondent's Motion To Deny Appellant's Motion Compelling Designation of Matter.

The Respondent failed to file a response to Appellant's Motion For Judicial Notice. The Respondent also failed to timely file a Respondent's Brief in the case.

However, notwithstanding these failures of Respondent, the ALC issued an Order on June 16, 2021, whereby it denied the Appellant's Motion for Judicial Notice, and also further Ordered that the Department's final agency decision Affirmed. (ROA p. 155).

This decision was made regardless of bias and partiality of the ALJ.

This appeal follows.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard of review in appeals from the ALC. S.C. Code Ann. §1-23-610(B) (Supp. 2020). An appellate court may reverse or modify a decision if the ALC's findings or conclusions 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.

ARGUMENT

I **The Department did err in declining to set the date of arrest as the start date for credit for time served on all charges which arose out of a muti-crime incident, albeit Appellant was not initially charged for one of the crimes upon arrest, but later received a true-billed direct indictment for one of the crimes.**

The Department declines to credit Appellant the full amount of time he served in the Oconee County Detention Center as a pretrial detainee. Appellant was initially arrested on July 8, 2006, due to warrants which were issued for his arrest for the crimes of Assault and Battery with Intent to Kill (two counts) (Arrest Warrants K150666& K150667) (ROA p. 75, 80); Burglary First Degree (Arrest Warrant K150668) (ROA p. 85); and Petit Larceny (two counts) (Arrest Warrants K150669 & K150670) ROA p. 90, 95.

These charges and arrest warrants were related to and resulted from an incident which took place on July 4, 2006, wherein multiple crimes were committed in a single chain of circumstances. As such, the crimes involved the same victims. (See Appx. Pg. 10, regarding Warrants K150666 thru K150670). The Oconee County Grand Jury returned true-billed indictments on these charges on October 17, 2006. On this same date, a true-billed direct indictment was returned, therefore charging Appellant also with the crime of armed robbery. (ROA p. 68).

Appellant pled guilty before the Honorable Alexander S. Macaulay at the Oconee County Court of General Sessions on December 11, 2006, to the charges of ABWIK, Burglary 1st Degree, and Armed Robbery. Judge Macaulay sentenced Appellant to concurrent sentences and further ordered that Appellant was to be given credit for the time served in the Oconee Detention Center as a pretrial detainee. ROA p. 101-103 ROA p. ~~102-103~~ 71-73

The South Carolina Department of Corrections (SCDC) declines to apply any pretrial detainee credit time served to Appellant's armed robbery charge. As such, the Department errors and Appellant will show why below.

Analysis

The Department declines to apply the total 156 days "Jail Time" credit to Appellant's armed robbery charge/sentence based on the fact that Appellant did not get indicted for the armed robbery charge until October 17, 2006. While this is true that Appellant did not get or receive an indictment and notification of this charge until the October 17, 2006, date when the Oconee County Grand Jury returned true-billed indictments on Appellant's charges; it is inequitable and also contrary to

the South Carolina's legislature's intent that prisoners receive credit for all time served and S.C. Code Ann. §24-13-40.

The ultimate question is whether Appellant is entitled to receive credit for the time served as pretrial detainee from the date of his arrest from when the crime was committed or only from the date when the Oconee County Sheriff's office or Solicitor's Office decided that it would seek a conviction from the charge.

This question has already been answered by the Supreme Court of South Carolina by Justice Burnett in Blakeney v State, 339 SC 86, 529 Se2d 9 (2009) (Beaufort County's decision not to execute the arrest warrant until... later, should not preclude [the Defendant] from received credit [for time served as a pretrial detainee]).

Most important, for indulgence, in the case subjudice are the facts that: (1) The crimes were committed on the same date (See ROA p. 75-76, 80-81, 85-86, 90-91, 95-96, 101); (2) The crimes were temporally connected, happened in a single incident and single course of conduct, and involved the same victims (See ROA p. 75-76, 80-81, 85-86, 90-91, 95-96, 101). Appellant was arrested for this incident on July 8, 2006 and remained in jail for this incident and his conduct during this incident until the date of entry of his plea of guilty to the crimes committed during the multi-crime incident.

As Appellant was not actually served an arrest warrant that specifically charged him with the crime of Armed Robbery on the date of his arrest; Appellant will provide more clarification and reasoning with regard to the matter.

Appellant's Armed Robbery charge arose out of a single chain of circumstances. There was a single course of conduct which resulted in a multi-crime incident as all crimes were committed at the same exact time and in one single motion or chain of events.

Appellant would show the Court the indictment for the Armed Robbery charge. (See ROA p. 101-103). Indulgence should be given to the fact that this is a direct indictment which specifically indicates that it relates back to the Arrest Warrant No. K150668.

This arrest warrant was for the charge of Burglary 1st Degree. The Affiant, in setting forth the facts to establish probable cause to arrest Appellant, provides the following statement in Affidavit within the warrant:

> "The Defendant did, on 7-04-06, did break and enter the residence of Claude Earl Waddell without consent and with the intent to commit a

crime therein. The defendant was armed with a knife at nighttime when he entered the residence."

(See ~~Appx Pg. 27~~ ROA p. 85)

See State v Porter, 251 SC 393, 162 SE2d 843 (1968), (An arrest warrant may be issued upon an affidavit reciting the facts necessary to establish probable cause).

However, in the case at bar, the Oconee Sheriff's Office did not decide to charge Appellant with the Armed Robbery offense at genesis of his arrest. Rather, the solicitor's office would seek to directly indict Appellant for the Armed Robbery offense.

See Mattox v City of Beaufort, C/A No. 9:14-cv-0834-DCN (D.S.C. 2015) (Under South Carolina law, a solicitor may "direct indict" an individual on a charge without an underlying warrant. In such a case, the solicitor may present fats to the grand jury to seek an indictment without a pending arrest warrant or after a warrant was dismissed at a preliminary hearing.

In the case subjudice, the solicitor, presented facts to the Grand Jury to seek an indictment to be "true billed" for Armed Robbery. This is significant as the Court and Department must realize that the facts which were presented came from the same facts that the Affiant had when the warrant for the Burglary 1st charge was requested and issued by the magistrate judge. This is why it was clearly specified and indicated on the Armed Robbery indictment that the armed robbery charge relates back to the Burglary 1st charge and warrant and affidavit on the Burglary 1st warrant. The probable cause developed from the affidavit.

See New England Journal on Criminal and Civil Confinement, 21 NENGJCCC 339, ("An indictment is a procedure by which a grand jury instead of a judge determines whether there is probable cause to believe that the subject of the indictment has committed the particular offense charged.")

As a charge had to be taken to to Grand Jury to allow Appellant to be directly indicted, it would be unreasonable to fail to understand that it is inequitable that the Appellant, this Court, or anyone else to be forced to guess when the solicitor's office decided to charge Appellant with the crime of Armed Robbery. A line of reasoning in this direction would leave to guess or wonder exactly when did the solicitor's office decide to charge Appellant and why didn't the solicitor's office proceed with serving a warrant charging Appellant with the crime once the solicitor's office decided it would seek to prosecute? See SC Code Ann. §17-23-130 and Rule 3(c), SCRCRimp (explaining that the solicitor prepares the indictment for presentment to the Grand Jury).

The Grand Jury does not create or prepare the indictment. The indictment is created or prepared by the solicitor and then it is presented to the Grand Jury, whereby it will be deliberated upon by the Grand Jury and a decision reached by the Grand Jury whether to return a "true bill" or "no bill". See e.g., Anderson v State, 338 SC 629, 527 SE2d 398 (2000).

Simply put, declining to set the date of arrest as the start date for credit for time served for Appellant's Armed Robbery charge, rather than the date the Grand Jury returned a true bill indictment on the charge is not the legislative intend and is not reasonable as the facts of this case clearly presents.

The fact that Appellant was not initially charged for the Armed Robbery offense at genesis of his arrest, is of no fault of Appellant as he had no control of the sheriff's office's decision making process. The Appellant emphasizes that this was a multi-crime incident which happened in one motion and chain of events.

The decision not to charge Appellant with the Armed Robbery offense until a later date, does not preclude Appellant from receiving pretrial detainee credit for the time served from the period of arrest for the incident as all charges resulted from the same incident. See e.g., State v Brown, 426 SC 63, 824 SE2d 476 (2019); Blakeney v State, 339 SC 86, 529 SE2d 9 (2000); State v Smith, No. 2007-UP-022 (2007), 2007 WL 8324402.

S.C. Code Ann. §24-13-40 specifies, in relevant portion:

> "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... 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.
>
> SC Code Ann. §24-13-40.

See also, Hayes v State, 413 SC 553, 559, 777 SE2d 6, 10 (2015) ("The requirement that a prisoner receive credit for time served is mandatory."); State v Boggs, 388 SC 314, 316, 696 SE2d 597, 598 (2010) ("Because the language of section 24-13-40 is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the two exceptions applies"); Allen v State, 339 SC 393, 529 SE2d 541 (2000) (explaining the language "when already serving a sentence" which exists in

24-13-40, means a person who has actually been to court and before a judge and is serving a sentence for such; not a person who is merely sitting in jail for unconvicted offenses/charges).

The solicitor's office and Oconee County Sheriff's Office decision not to charge Appellant until a later date does not preclude Appellant from receiving the credit for time served beginning at his arrest date for the incident in which the crime arose as Appellant did not commit the crime at a separate or later time. See e.g., State v Brown,426 SC 63, 824 SE2d 476 (2019); Blakeney v State, 339 SC 86, 529 SE2d 9 (2000).

Appellant would also emphasize that the victim(s) of the crime did provide a statement of what happened in this incident. The victim's statement and investigation of such is what allowed the Affiant to provide information and Affidavit to the magistrate judge whereby warrants for Appellant's arrest were pursued. Appellant had no control over what charges or warrants the sheriff's office would seek or pursue at that time and therefore Appellant should not be punished or sanctioned for the sheriff's office's delay in charging the crime.

Appellant would further emphasize that the Oconee County's Grand Jury task was to true bill or no bill an indictment. The Department's reasoning that Appellant should only be credited for the time he served in the Detention Center after the indictment was true billed is unreasonable. The Department fails to realize that the indictment existed and was created and prepared before the convening of the Grand Jury. The indictment existed already and it was only "presented" to the Grand Jury and thereafter deliberated upon, returned, and filed. The solicitor's office had time to present Appellant with an arrest warrant, but rather decided to wait and later seek a direct indictment. Appellant should not be punished or sanctioned for such delay. It would further be unreasonable as it would leave to question or to "guess" exactly when did the solicitor's office actually decide to charge Appellant, when did the solicitor create or prepare the indictment for presentation, deliberation, etc., and why did the solicitor wait. See Mattox v City of Beaufort, C/A No. 9:14-cv-0384-DCN (D.S.C. 2015) (Where the court was left to guess regarding similar issue).

Simply put, denying time-served credit from the time of Appellant's initial arrest date for his conduct which the record clearly reflects took place at the multi-crime incident, would be at odds with the General Assembly's express language in SC Code Ann. §24-13-40, mandating that prisoners receive credit for all time served; and more importantly the interest of equity.

The Department's decision is in violation of the 24-13-40 statutory provision, affected by error of law, clearly erroneous in view of the reliable, probative, and substantial evidence in the record, and characterized by an abuse of discretion or

clearly unwarranted exercise of discretion; therefore this Court should reverse the Department's decision.

Lastly, to ultimately provide this Court with indulgence it deserves regarding this matter, Appellant will direct this Court's attention to the charges which were nolle prossed. The two charges for petit larceny (Arrest Warrant Nos. K150669 and K150670), as well as an account of assault and battery with intent to kill (Arrest Warrant No. K150666) were all dropped or nolle prossed. See Taken In Consideratioin (TIC)).

Appellant brings this Court's focus on the victim (alleged) in the specific counts of petit larceny (Arrest Warrant K150670) and Assault and Battery with Intent to Kill (Arrest Warrant K150666). The charges with regard to this (alleged) victim was dropped. (See RoAp. 74, 75, 94, 95)

A wallet is what provided much truth of the circumstances of this case at genesis. See Arrest Warrants K150669 and K150670 as both persons claimed to have the wallet and both persons provide different calculation of its contents. As this wallet provided sight to truth, Arrest Warrants K150666 and K150670 were rightfully nolle prossed. This would leave Arrest Warrant K150669.

However, the elements of Arrest Warrant K150669 and the Affidavit which was provided for probable cause within the Burglary 1st Arrest Warrant would both together lay foundation for an Armed Robbery charge. The solicitor's office, with this probable cause (the the elements of Arrest Warrant K150669 and the Affidavit which was provided for probable cause within the Burglary 1st Arrest Warrant which had been there and known about since date of Appellant's arrest), would then seek to "upgrade" the petit larceny charge arrest warrant K150669) to an Armed Robbery charge. However, as this petit larceny charge involved the same victim, same circumstance and chain of events, and were based on the same facts; the solicitor's officer could not charge and seek conviction of both the petit larceny and Armed Robbery charges without violating double-jeopardy. Therefore, the Armed Robbery offense was charged and the petit larceny offense was nolle prossed.

As Appellant has provide this Court with clear presentation of these facts and of this case, is should be also clear that the Department errors in its reasoning and determination.

It is unreasonable that Appellant would not be given time served credit for the time served prior to the upgrading of his charge, from Petit Larceny to Armed Robbery; or form combining the fats of the Petit Larceny with the weapon present in the Burglary 1st charge to ultimately result in the Armed Robbery charge.

The ALJ did err in affirming the Department's final agency decision as the ALJ's finding, conclusion, and ultimate decision is: (1) in violation of constitutional and statutory provisions, (2) affected by error of law, (3) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and especially arbitrary and capricious and characterized by abuse of discretion.

The decisions of the ALJ and Department should be reversed in the interest of Justice and fairness. The ALC, within its order affirming the Department's final agency decision, states that it, "accepts that the Armed Robbery indictment stemmed from the same incident or series of events leading to the First Degree Burglary and ABWIK charges." (ROA.p. 160

The ALC also claimed that it "does not have authority under Blakeney [339 SC 86, 529 SE2d 9 (2000)]" to exercise reasonableness and equity in this matter, notwithstanding the court's understanding that the department's determination is clearly contrary to legislature intent with regard to credit for time served. (ROA.p. 160

This is a novel matter; South Carolina has no case law which addresses these matters. The Appellant would

emphasize that this Court can, however, set precedence in this regard. This Court can balance equity and legislative intent and set clear the unreasonableness and inequity which would exist should credit for time served not be granted in cases of Appellants circumstance. Appellant provides a clear record which displays clearly why denial of credit for time served would be both arbitrary and capricious.

Appellant has also shown clearly that the Armed Robbery was essentially an upgrade to a greater offense from the petit larceny charge. The petit larceny charge was dropped because it had to be so that double-Jeopardy would not occur. The exact same affidavit, same exact actions of the Appellant, and same exact facts of the case is what provided the basis for the charges. It is unreasonable to see this any other way or to turn a blind eye to this fact as the record and circumstances of the case clearly reveal this.

II The ALC did err in declining to accept and give Judicial notice to Appellant's Appendix which provided full context and clear view as to the circumstances of the case and which Appellant had provided to the South Carolina Department of Corrections.

In realizing that the agency is expected to file the record with the Court prior to the filing of briefs, (SCALC, Rule 59), Appellant sought to ensure that the record would be complete and thus filed a Designation of Matter To Be Included In The Record On Appeal, on January 20, 2021. (ROA.p.2). Within this designation, Appellant enumerated/listed all relevant documents which he would seek to be in the record as he had presented the records to the SCDC in the process of attempting to rectify the matter/issue both during the informal resolution process and grievance process.

On March 17, 2021, Respondent filed the Record, however, it did not include the documents which Appellant had designated to be included. (ROA.p.6). Upon finding this omit, and while the time limit is narrow in length in which Appellant was to file the Brief of Appellant, in the interest of compliance, Appellant

proceeded to file his Brief. (ROA.p.32). Motions to extend the time for filing briefs will only be granted in exceptional circumstances. SCALC, Rule 60(A).

Appellant filed an Appendix at the same time he filed his brief, pursuant to SCALC, Rule 60(C), which states, "At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal." (ROA.p.56).

Appellant also filed a Motion For An Order Compelling Designation, whereby he asked the court to compel the Respondent to comply by filing for the record, those documents which Appellant specifically designated (ROA.p.113).

Because Respondent failed to acknowledge or respond in any way to Appellant's Designation and Motion to Compel Designation, the court ordered Respondent to respond to Appellant's motions within 15 days of the order. (ROA.p.114). Respondent responded by filing a Motion to Deny Appellant's Motion Compelling Designation. (ROA.p.118).

Within Respondent's motion, it claimed that the documents which Appellant sought to be included in the record were not relevant. (quoting SCALC, Rule 58, with emphasis added to "relevant") (ROA.p.121). Respondent also argued that it is the agency's responsibility to provide the record. SCALC, Rule 59. (ROA.p.122).

Lastly, Respondent claimed the documents which Appellant sought to be included in the record "were not included in Appellant's packet nor were they considered by prison officials in reaching their decision." (ROA.p. 122).

Albeit Respondent filed this Motion to Deny Appellant's Motion to Compel on April 13, 2021, (ROA.p. 118), it was not until April 16, 2021, when Appellant received a copy of this motion by and through the Tyger River Correctional Institution mailroom. (ROA.p. 126).

Appellant responded by filing a Return to Respondent's Motion to Deny on April 21, 2021 (ROA.p. 124). However, on April 23, 2021, Appellant received a copy of an Order of the ALC wherein it denied Appellant's motion for an Order compelling. (ROA.p. 134). This Order of denial had been signed by the ALJ on April 20, 2021, without providing Appellant opportunity time to reply to Respondent's Motion to Deny the Appellant's Motion to Compel. (ROA.p. 130). See, SCALC Rule 63 ("Any response to the motion must be filed within ten (10) days after receipt of the motion..."). Appellant was not provided the 10-day benefit to respond.

The ALC contended, in its Order denying Appellant's Motion to Compel, that the arrest warrant and sentencing sheets for the Burglary 1st charge and also the Victim Notification form associated with his charges were irrelevant. However, as Appellant has shown above and below, these documents are in-fact relevant as they provide context, proof, and a clear picture of the circumstances as to why it would be unreasonable to not understand that all charges occurred at once, in one single motion with the single set of victims. Most importantly, the documents show that the crimes were all committed at the same exact time and within one sole action.

The Respondent does concede that there was a "packet." (ROA.p.122). Respondent also does emphasize that notwithstanding the fact that other records may be submitted for the agency's review, they will not be included in the record if the agency deems them not to be "relevant." (ROA.p.122).

Appellant would emphasize that he did submit all records to the SCDC. The Appellant should not be punished due to SCDC's failure to deem the records "relevant" and forward them in the packet to Respondent's

Office. Appellant, once he has submitted documents to the SCDC, has no way of ensuring that the SCDC forwards all of the documents and information to Respondent office. In the SCDC grievance process, SCDC provides no way, nor any option, to serve as proof what the inmate has provided to the office during the Informal resolution and grievance process.

Appellant filed a Motion For Judicial Notice on April 30, 2021, (ROA.p.151), wherein he emphasized that he "did present the documents within the Appellants Appendix to the Department "when he filed his grievance and informal resolution and albeit the department may have chosen "not to consider Appellants evidence, the Department was presented and did receive the evidence" at the grievance stages. (ROA.p.151).

It is for this reason that the legislature wisely provided that Appellant would file any appendix at the time of filing his brief. SCALC, Rule 60(c). Notwithstanding the fact that Respondent would file the Record. This is because Appellant would have no control in what documents the Respondent says it has or has not received and considered.

See Harkins v Greenville County, 340 SC 606, 616, 533 S.E.2d 886, 891 (2000) (stating the appellants have the burden of providing this Court an adequate record).

Appellant will also shine light on the bias of the ALC in this case. With regard to the Respondents' timeliness and submission of filing in this case, Appellant shows:

Appellant filed a Designation of Matter. (ROA.p.2). Without acknowledging Appellants filing or filing any pleading in opposition to this Designation, Respondent filed a Record and did not include the Designated Matter. (ROA.p.6).

Appellant filed a Motion to Compel the Designation. (ROA .p.). The ALC then provided the Respondent fifteen days to respond to the motion to compel. (ROA.p.114).

The Respondent filed a Motion to Deny the Motion to Compel. (ROA.p.120). The ALC quickly issued an order denying Appellants motions without providing Appellant even the ten-day period to file a response to the Respondents motion; and certainly not an additional fifteen-day period as was provided to the Respondent. (SCALC, Rule 63; ROA.ps. 130, 120, 114).

Later, Appellant filed a Motion For Judicial Notice (ROA.p. 151); The Respondent failed to file a response or any opposition to this Motion For Judicial Notice.

The Respondent also failed to file a brief at all in this case. Notwithstanding these failures and lack of expressed opposition to Appellant's pleadings, the ALC still denied the Motions of Appellant and also Affirmed the Department's decision. The ALC also declined to accept Appellant's Appendix. This clearly displays bias of the ALC.

See Halsey v Simmons, 432 SC 54, 849 SE2d 578 (2020) (The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way.

See Rule 501, SCACR, Canon 3B(7) (A Judge shall accord to every person who has a legal interest in a proceeding ... the right to be heard according to law. (See also Canon 3B(7)(a)(i)).

See Rule 501, SCACR, Canon 3B(5) (A Judge shall perform Judicial duties without bias or prejudice. A Judge must perform Judicial duties impartially and fairly. A Judge must be alert to avoid behavior that may be perceived as prejudicial.

The ALJ did violate these Canons in this case as he did perform his Judicial duties with bias, partiality, and unreasonableness; thereby abusing his discretion.

CONCLUSION

For the above stated reasons, this Court should reverse the decision of the ALC and Department and ultimately grant Appellant credit for time served.

Should there be any records that this Court would question if Respondent has seen and considered, this Court should, in the alternative, remand the record so as to allow the Respondent and ALC to consider, albeit this would be moot should this Court grant credit for time served, which it should do in the interest of justice and equity.

Respectfully submitted, John M Ward

John M. Ward
APPELLANT

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 30 day of November, 2021.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III
Docket No. 20-ALJ-04-0495-AP
Grievance TYRCI 389-20

Case No. 2021-000718

John Ward, #171770, ---------- APPELLANT,

South Carolina Department
of Corrections, ---------- RESPONDENT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

John M Ward

John M. Ward
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335
APPELLANT

This 30 day of November, 2021.