STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Ceo, #258464,	)	Docket No. 21-ALJ-04-0328-AP
	)	
Appellant,	)	
	)	
vs.	)	ORDER
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed on December 31, 2019, by Ronald Ceo (Appellant), an inmate housed with the South Carolina Department of Corrections (Department or SCDC).

On June 11, 2021, Appellant filed a Step 1 Grievance alleging that he was not appropriately receiving good time and work credits against his sentence. Appellant's grievance was investigated and resolved when it was determined that Respondent had properly applied all available credits to Appellant's sentence.

Appellant filed a Step 2 Grievance on July 1, 2021. In the Step 2 Grievance, Appellant complained the Department denied him his good time and earned work credits. Appellant argued the Department's actions were a violation of Appellant's state created liberty interest that is protected by the Fourteen Amendment. The Department denied Appellant's Step 2 Grievance stating the information Appellant received was incorrect and Appellant had been earning good time credits at a rate of three (3) days per month.

On September 1, 2021, Appellant filed a Notice of Appeal. In the Notice of Appeal, Appellant stated that the Department denied him good time credits and earned work credits. He claimed the Department's action has resulted in a violation of a protected liberty interest under the Fourteenth Amendment of the United States Constitution. On September 16, 2021, the Notice of Assignment was filed and served. On November 12, 2021, the Department filed the Record on Appeal (Record). On November 16, 2021, Appellant filed his brief. On January 4, 2022, the Department filed its Respondent's Brief. On January 11, 2022, Appellant filed his reply brief.

STANDARD OF REVIEW

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz v. State*, 338 S.C. 354, 377; 527 S.E.2d 742, 754 (2000); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2020).

"'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

Additionally, in the context of appeals in prison disciplinary matters, the United States Supreme Court has held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455-456, 105 S.Ct. 2768 (1985). Moreover, in *Al-Shabazz*, the South Carolina Supreme Court underscored that, except where there is a possible

Constitutional violation, the courts adhere to a "hands off" approach when reviewing internal prison disciplinary matters under the Administrative Procedures Act because prison officials are in the best positions to decide these matters. 338 S.C. at 382, 527 S.E.2d at 757.

DISCUSSION

The ALC's subject matter jurisdiction over inmate appeals is derived from the decision of the South Carolina Supreme Court (Supreme Court) in *Al-Shabazz v. State*, 338 S.C. 354, 376, 527 S.E.2d 742, 754 (2000). In *Al-Shabazz*, the Supreme Court determined an inmate may "seek review of [the] Department's final decision . . . in a non-collateral or administrative matter." *Id.* at 354, 376, 527 S.E.2d at 754. Generally, these matters implicate a "protected liberty interest" or "state-created liberty interest." *Id.* at 382, 527 S.E.2d at 757; *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) ("But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated."). The Supreme Court further emphasized it was "not holding that all APA provisions apply to the internal prison disciplinary or decision-making processes, to which courts "traditionally take a 'hands off'" approach. *Al-Shabazz*, 338 S.C. at 369, 382, 527 S.E.2d at 750, 757. In *Slezak v. South Carolina Department of Corrections*, the Supreme Court clarified that this Court has jurisdiction of all inmate grievance appeals that have been properly filed; however, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when (1) an inmate is disciplined and punishment is imposed or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750. Additionally, under certain circumstances, an inmate may have a state-created liberty interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *see*

Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (applying Sandin to resolve a "condition of confinement claim").

In his brief, Appellant essentially argues that he has earned good time credits and work credits, but those credits are not being applied to his sentence. Appellant is therefore alleging prison officials have erroneously calculated his sentence and/or sentence-related credits and this Court has jurisdiction. *See Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750.

The Record shows that on May 23, 1999, Appellant was sentenced to thirty-five (35) years for homicide by child abuse under S.C. Code 16-3-85(A)(1). At the time Appellant was sentenced in 1999, these were considered no-parole offenses, which meant Appellant must serve at least eighty-five percent of the actual term of imprisonment imposed. S.C. Code 24-13-150(A) (2021). Furthermore, Appellant's sentence must be calculated without the application of earned work credits or good time credits. *Id.*

Due to Appellant's sentence being classified as a no-parole offense, Appellant is entitled to earn three days of good time credit per month under S.C. Code 24-13-210(B) and only six days of work credits per month under S.C. Code 24-13-230(B). According to the Record, Appellant is receiving these credits and prison officials are not erroneously calculating his sentence related credits. The Record reflects that Appellant was informed he has been earning his good time credits, but due to a technology issue, the credits were not being displayed when Appellant's caseworker reviewed his file. Appellant was advised that this technological issue was being corrected and that he had been earning his credits.

Furthermore, even with these credits being applied, Appellant cannot be released until he has served at least eighty-five percent of his sentence. Application of these credits brings Appellant's release date down from 100% of thirty-five years to 85% of thirty-five years. Appellant has not submitted any evidence to show the Department's max-out calculation is incorrect. Therefore, I find the substantial evidence in the Record shows the Department has appropriately calculated Appellant's sentence-related credits. *See Lark*, 276 S.C. at 135, 276 S.E.2d at 306 ("'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.").

Because I find substantial evidence supports the Department's decision in this case,

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

AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

January 24, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

January 24, 2022
Columbia, South Carolina