

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Hon. H.W. Funtinbark, Administrative Law Judge

Opinion NO. 2022-UP-099 (SS.ch App March 9, 2022)

Appeal Case No. 2019-001410

Gregory Perette 312332

Petitioner

V.

SS. Dept. of Corrections

Respondent

APPENDIX

Gregory Perette 312332
Evens CE F4A275
610 Hwy 9 west
Bennettsville SC 29512
Petitioner, Pro Se

Kersey Evers
Deputy General Counsel, SCDC
PO Box 21787
Columbia, SC 29221
Attorney for Respondent

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The South Carolina Court of Appeals

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

Appeal No. 2019-001410

Gregory Perilli, #312332, Appellant
v.

SC. Dept. of Corrections, Respondent

RECORD ON APPEAL [AMENDED]

Gregory Perilli, 312332
Evers CI F4A275
610 Hwy 9 west
Bennettsville, SC 29512
Appellant, Pro Se

Christina Cate Bigelow
Dept. of Corrections, General Counsel
P.O. Box 21787
Columbia, SC. 29221
Attorney for Respondent

~~NOTICE OF CONVICTION~~
2020
17 day of July
S. Bigelow
Notary Public of South Carolina
2117124
1071



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Exhibits A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Pencille, # 312332,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 18-ALJ-04-0547-AP
[Grievance No.: LCI 0724-18]

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Gregory Pencille (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS AND PROCEDURAL HISTORY

On November 7, 2005, Appellant was sentenced in Horry County to incarceration for twelve (12) years for kidnapping on indictment number 2005-GS-26-2054. On August 9, 2010, Appellant was sentenced in Horry County to incarceration for thirty (30) years for Criminal Sexual Conduct, First Degree, on indictment number 2010-GS-2604686. This sentence was to run concurrently with the sentence for kidnapping that he was still serving. However, the judge allowed credit for time served from October 2008. The Department calculated that Appellant was entitled to credit of 677 days from October 1, 2008, to August 9, 2010. Effectively, the trial judge allowed Appellant's sentence to start on October 1, 2008.

Appellant filed a Step 1 Grievance on August 15, 2018, challenging the Department's sentencing calculation. Appellant argued that he was entitled to credit for time served against his sentence for Criminal Sexual Conduct from the sentencing date for the kidnapping charge on November 7, 2005. When his grievance was denied, Appellant filed a Step 2 Grievance on August 30, 2018, again contending that time-served credits for his sentence for Criminal Sexual Conduct should start on November 7, 2005, since he had been incarcerated since that date. This grievance was denied on October 25, 2018. He filed a timely appeal to the ALC on November 16, 2018, raising the same issue that he should be credited for time served on the Criminal Sexual Conduct sentence from November 7, 2005.

FILED

JUL 24 2019

Appellant filed a brief on December 7, 2018. The Department filed the Record on Appeal on February 1, 2019. The Department filed its brief on March 19, 2019.

ISSUE

Did the Department err in its sentence calculation by failing to give Appellant proper credit for time served?

STANDARD OF REVIEW

The Court’s jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep’t of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2017). *See also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)

(quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant's argument alleges that the Department erred by not applying all of the time he served on his 2005 conviction against his 2010 conviction.

The statute governing time served, S.C. Code Ann. § 24-13-40 (Supp. 2017), provides:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

The statute is clear that Appellant cannot get credit for time served while "serving a sentence for one offense and ... awaiting trial and sentence for a second offense." See *State v. Boggs*, 338 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (Section 24-13-40 "mandates prisoners receive credit for the time they served prior to trial unless one of two exceptions exist, either: (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense.")

The statute's language is clear and applies in this case.

The trial judge allowed Appellant credit for time served in the sum of 677 days. The sentencing sheet for indictment number 2010-GS-2604686 is without ambiguity; therefore, SCDC is confined to the face of the sentencing sheet in determining Appellant's sentence. See *Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014).

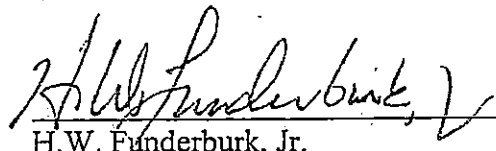
Therefore, substantial evidence supports the Department's calculations for Appellant's sentences, including its application of credit for time served as ordered by the trial judge.

ORDER

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

AND IT IS SO ORDERED.

July 24, 2019
Columbia, South Carolina



H.W. Funderburk, Jr.
Administrative Law Judge

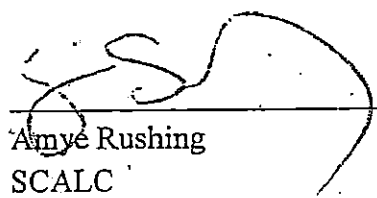
CERTIFICATE OF SERVICE

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

Kensey Barrett
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, SC 29211

Gregory Pencille
#312332
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512

July 24, 2019
Columbia, South Carolina



Amye Rushing
SCALC

FILED
JUL 24 2019
SC ADMIN. LAW COURT

Exhibit B ⁶

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Harley
STATE VS.

Gregory Thomas Penelle

AKA: [REDACTED]
Race: [REDACTED] Sex: M Age: [REDACTED]

Address: 303 20th Avenue South #200

Myrtle Beach, SC 29577

SID#: [REDACTED]

INDICTMENT/CASE#

05 -GS- 26 - 2054

A/W#: N 893827

Date of Offense: 3-19-05

S.C. Code #: 16-03-0910

CDR Code #: 0101915

CASE RESTORED

SENTENCE

PLEA TRIAL

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

TO: Kidnapping

In violation of S.C. Code of Laws 16-03-0910 bearing CDR Code # 0101915

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury 12 YEARS

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

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 years or under the Youthful Offender Act not to exceed 12 years and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and/or payment of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for [REDACTED] months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

See Offense Register is Required. SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED] PTUP [REDACTED] days/hours Public Service Employment

Payment Terms: [REDACTED] Obtain GED

set by SCDPPPS [REDACTED] Attend Voc. Rehab. or Job Corp.

Recipient: [REDACTED] May serve W/E beginning [REDACTED]

*Fine: [REDACTED] Substance Abuse Counseling

\$14-1-206 (Assessments 107.5%) [REDACTED] Random Drug/Alcohol Testing

\$14-1-211(A)(1) (Conv. Surcharge) \$100 [REDACTED] Fine may be pd. in equal, consecutive weekly/monthly

\$14-1-211(A)(2) (DUI Surcharge) \$100 [REDACTED] pmfs. of \$ 25.00 beginning 04/17/05

\$56-5-2995 (DUI Assessment) \$12 [REDACTED] \$ [REDACTED] paid to Public Defender Fund

\$ 35-13 (Public Det/Prob.) \$500 [REDACTED] Other: [REDACTED]

\$73-3-1B-TP (Law Enforce. Funding) \$25 [REDACTED] \$ 25.00

\$33-7-1B-TP (Drug Court Surcharge) \$100 [REDACTED] \$ [REDACTED]

\$50-21-114(BUI Breath Test Fee) \$50 [REDACTED] \$ [REDACTED]

\$56-5-2942(J) (Vehicle Assessment) \$40/ea. [REDACTED] \$ [REDACTED]

3% to County (if paid in installments) [REDACTED] \$ 3.15

TOTAL [REDACTED] \$ 513.15

Melanie Huggins Clerk of Court/Deputy Clerk

Court Reporter: [REDACTED]

PRESIDING JUDGE [Signature]

Judge Code: [REDACTED]

Sentence Date: 11/7/05

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Gregory Thomas Pencille

AKA:

Race: [redacted] Sex: [redacted] Age: [redacted]

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL#: [redacted] SID#: [redacted]

*CDL Yes No CMV Yes No Hazmat Yes No

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

IN THE COURT OF GENERAL SESSIONS

Exhibit C [7]
3/23/10
KP

INDICTMENT/CASE#: 2008GS2604686

A/W#: J740369

Date of Offense: 6/3/2004

S.C. Code §: 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: [Signature] 12/23 [Signature] [Signature]
Lively, Candice SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended probation for _____

with _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: for sentence currently serving
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. since Oct 2008
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-35.

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

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: _____
 Set by SCDPPPS

Recipient: _____
*Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Nelanie Huggins - Hard
Court Reporter Brenda Babb

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

2010 AUG 18 10:37 AM
CLERK OF COURT

Exhibit D⁸

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

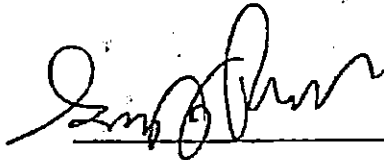
Due 9/3/18

STEP 1

INMATE NAME: <u>Gregory Penick</u>	OFFICE USE ONLY
SCDC NUMBER: <u>312332</u>	Grievance No. <u>LeeCI 6724-18</u>
INSTITUTION: <u>Lee CI</u>	Code: <u>General</u>
HOUSING UNIT: <u>F2B 2254</u> <u>1AUG 16 2018</u>	Policy _____
WORK ASSIGNMENT: <u>Education</u> <u>(DP)</u>	Disc. Hear. <input checked="" type="checkbox"/>
	Class. <input checked="" type="checkbox"/>
	PREA _____
	Date Received <u>8/17/18</u>
	IGC Initials <u>[Signature]</u>


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

SCDC is improperly calculating my sentence imposed in 2010 by calculating my sentence start-date from 2008, when I have been in custody since 2005. I wrote classification on the kiosk on 7/1/18 # 18-00981303; Response 8/2/18 and they simply informed me of the time that classification is calculating for my sentence. Their calculation is wrong because my sentence start-date should be 2005


 Grievant Signature 8/17/18
 Date

ACTION REQUESTED:
 Recalculate my sentence time to ~~2008~~ 2005 when I was incarcerated. I never was released from prison.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER


 IGC Signature 8/22/18
 Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Gregory Pencille

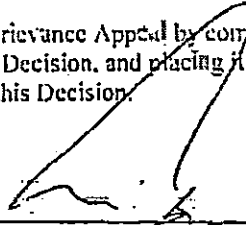
312332

LecCI-0724-18

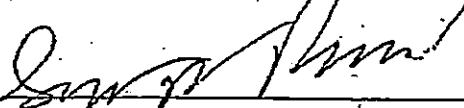
This is in response to the above referenced grievance. Pertinent information and documentation have been reviewed. You are implying that your sentence imposed in 2010 has been improperly calculated. You state you have been in custody since 2005. Agency records do show that your SCDC start date for Indictment NO. 05-GS-262054 is 11/07/2005. This was a sentence of 12 years with a mandatory sentence requirement of 10 years, 2 months and 12 days. You completed your time for this indictment on 11/6/2016. The sentence start date for Indictment 08-GS-2604686 is 8/9/2010 with a total sentence of 30 years requiring you to serve a mandatory sentence requirement of 25 years 6 months. For this indictment, you had a 677 jail credit. These sentences are concurrent. Your Max-Out date is 3/16/34. Reminder, when you receive a disciplinary charge, you do not earn good time and when you are in RHU Lockup, you do not earn work credit. This will made a difference in your Max-Out date.

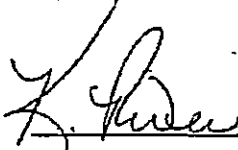
Therefore, your grievance is resolved.

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


8/24/18
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.


Grievant Signature Date


8/30/18
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.

Exhibit F 547 [10]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2 DIVISION OF CORRECTIONS Office Use Only

RECEIVED

INMATE NAME: Gregory Pencile SEP 10 2018
SCDC NUMBER: 312 332
INSTITUTION: Lee CF ✓
HOUSING UNIT: F2 - 2254 SEP 04 2018
WORK ASSIGNMENT: Education DP

Grievance No: CI-0724-18
Code: General PRECONDITION
Policy PRECONDITION
Disc. Hear. ✓
Class ✓
PREA _____
Date Received: 9-20-18
IGC Initials: DP
Date Received: 9/20/18
IGA Initials: DP

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The Warden's Response Gives almost accurate information; The start date (11/07/2005) is correct and the sentence was completed at (11/6/2016). However, I was never released from incarceration on that date and being the fact that the sentences are concurrent, the 677 jail credit is incorrect as it improperly calculates my sentence start date. SCDC must add credit to the correct start date of (11/8/2005). This recalculation is without gain time or earned work credits.

Grievant Signature [Signature] Date 8/30/18

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final Agency response.

Responsible Official Signature [Signature] Date 10/25/18

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

11

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

I have reviewed your concern. In your grievance, you stated that your sentence has been miscalculated. You would like for your sentence to be calculated back to 2005 when you were incarcerated. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 8/24/18. You were convicted of violating SC Code of Laws 16-03-652, Criminal Sexual Conduct 1st Degree and sentenced to 30 years which is classified as violent and no parole; 16-03-910, Kidnapping and sentenced to 12 years which is classified as violent and no parole.. You have a mandatory service requirement of 25 years and 6 months on the first offense and on the second offense 10 years 2 months and 12 days. Your sentence is 30 years with a start date of 11/07/2005. Your projected release date is 3/26/2034. If you still do not understand your classification, you are advised to speak with Classification Caseworker.

Therefore, your grievance is resolved.

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Pencille, 312332

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-
GRIEVANCE NO.: Lee CI-0724-18

Notice is hereby given that Gregory Pencille does hereby appeal the final decision of the South Carolina Department of Corrections dated October 25, 2018 and received on November 06, 2018, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

~~SCDC has erroneously miscalculated Pencille's concurrent 30 years sentence by failing to grant him full credit for time served in jail, in violation of SC Code Section 24-13-40. By attempting to misapply SC Code Section 24-13-40. SCDC has violated Pencille's 6th, 8th, and 14th Amendment rights under the United States Constitution, and similar rights under the appropriate articles of the South Carolina state constitution.~~

Gregory Pencille
Appellant's Name

990 Wisacky Hwy
Mailing Address

[Signature]
Signed

11/15/2018
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Gregory Pencille (your name), on the 15th day of November, 2018, in Beaufort (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address: SCALL
1205 Penciller St. Box 224

City, State, Zip Code: Columbia SC 29201

General Counsel
P.O. Box 21787
Columbia SC 29221

Exhibit I [13]

State of South Carolina
In the Administrative Law Court

Gregory Pencille 312332,
Appellant,
v
South Carolina Department of Corrections,
Respondent.

Case No. 18C0547
Grievance No: LEECI-0724-18

Honorable HW Funderburk

Appellant's Brief

Statement of the Issue on Appeal

Did the South Carolina Department of Corrections ("SCDC") properly construct and compute Gregory Pencille's ("Appellant") concurrent 30-years commitment for CSC First, sentenced in 2010, when Pencille had been in custody continually from 2005? [Upon the face of the sentencing sheet, the trial court ordered Pencille to begin service of his concurrent sentence in 2008, but this was in violation of SC Code § 24-13-40 that requires mandatory credit for time served. The CSC First for which Pencille was sentenced in 2010 was allegedly committed in 2004—plainly prior to his arrest in 2005.]

Statement of the Case

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed November 16, 2018, by Gregory Pencille ("Appellant"), an inmate incarcerated in the South Carolina Department of Corrections ("SCDC"). Appellant appeals SCDC's Final Agency Response to Appellant's original grievance of August 15, 2018. The case was assigned to Judge HW Funderburk on November 30, 2018. The grievance proceeds from Respondent's miscalculation of Appellant's sentence from his belated 2010 conviction.

SCDC admits, in its Warden's Decision dated August 24, 2018, that Appellant's sentences are concurrent, but claims that Pencille has only 677 days jail credit on his 30-year sentence despite that his confinement originally began on November 7, 2005. 677 days is clearly far less days than the difference between Pencille's August 9, 2010 commitment on CSC First

and the original 2005 commitment. [Perversely, SCDC also explains that Pencille’s release date may also be constrained by loss of good-time (but Pencille has never been, and never will be, entitled by law to good-time), and that Pencille’s release date may also be constrained by failure to earn work-credit due to time spent on RHU lockup (even though Pencille had already accrued, through work, all work-credit that he will ever be entitled by law to apply to his release—as such, any work-credit loss through prospective confinement to RHU lockup would have been superfluous.)]

SCDC then contended, in its Final Agency Response of October 25, 2018, that Pencille’s sentence was 30 years, with a sentence start-date of November 7, 2005, but a projected release date of March 26, 2034. In this case, SCDC did correctly identify the sentence start-date (despite the illegal start-date marked upon the sentencing sheet by the trial court), but failed to properly calculate that a 30 years sentence only requires service of 25 years and 6 months. (That would clearly place Pencille’s release in 2030, not 2034. Oddly, in the Warden’s Decision, SCDC properly indicated the required service length, but then promptly forgot that number and miscounted the time required in the Final Agency Response.)

Argument

Plainly, the Respondent has answered Pencille’s grievance with computer-generated cookie-cutter replies that do little to actually address or attempt remedy of the errors grieved. In fact, the decisions are self-contradictory in a manner that would require a recalculation of Pencille’s projected release date—if the writers of the replies had ever bothered to read and assimilate the other reply at all. Consequently, Pencille appeals to this Court.

Pencille was arrested in 2005 and remained in custody continuously from that point in time. In 2010, Pencille was sentenced to serve 30 years concurrently to the sentence he began serving in 2005. But the trial court illegally adjusted his sentence start-date to begin in 2008, and marked the sentencing sheet to indicate this illegal start date. No sentencing court has the authority to deny credit for time served. The requirement that a prisoner receive credit for time served is mandatory, see *State v Boggs*, 388 SC 314, 696 SE 2d 597 (SC Ct App 2010).

The state, in this case, seemed desirous that Pencille’s sentence be constructed forward of his original arrest date, plainly relying on the SC Code Ann Sec 24-13-40 provision which applies to the construction of a second offense start-date. But as the court has demonstrated

elsewhere that a second offense is an offense that occurs *after release* from a first offense, or possibly *during the service* of the first offense. Additional or multiple offenses are not second offenses for the purpose of statutory construction without directly implicating the Eighth Amendment. "The State may, indeed, make the drinking of one drop of liquor an offense to be punished by imprisonment, but it would be an unheard-of cruelty if it should count the drops in a single glass and make thereby a thousand offenses . . .", *O'Neil v Vermont*, 144 US 323.

Naturally, if the drinker returned to the glass after he was released from confinement, the *second* offense would be plain.

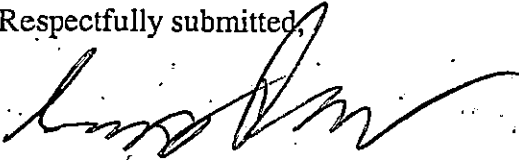
This intention is even more plain when read in light of *Robinson v State*, 329 SC 65, 495 SE 2d 433 (1998). In *Robinson*, the prisoner was granted credit for time served in an *external* jurisdiction and even where that external commitment involved an offense committed *after* the offense in South Carolina. The grant of sentence credit was absolute from the time of confirmed confinement, and the time granted was concurrent service. The instant facts are not an exact match, but it is plain that the SC Supreme Court intends that concurrent sentence credit be fully concurrent, not partially concurrent, as illegally ordered by the court in Horry County.

Here, SCDC admits that the sentences are concurrent—that fact is plain on the sentencing sheet—but in the first review abutted the services of Pencille's two concurrent sentences, and in the second review simply miscounted the passage of years required for service on the concurrent sentences. The longer sentence is thirty years, to be served concurrently with the twelve years sentence. Plainly, the only sentence required to be considered to properly calculate the total concurrent sentence length is the thirty years sentence (since the twelve years sentence would be entirely contained within it), and the only date required for successful calculation is the date of Pencille's initial confinement in 2005. Any consideration outside these two factors is plainly erroneous, despite the trial court's desire to illegally compute Pencille's sentence from an arbitrarily chosen point in time. See *Boggs*, supra.

Conclusion

WHEREFORE, the Appellant respectfully requests that the Court order the Respondent to properly calculate his concurrent sentences and describe his correct projected release date—despite the illegal start-date marked upon the 2010 sentencing sheet by the trial court in Horry County, South Carolina.

Respectfully submitted,



Gregory Pencille 312332 F2B 2254
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

December 7, 2018
Bishopville SC

State of South Carolina
Administrative Law Court

Gregory Percelle, 312332

Appellant

Docket No. 18-ALJ-04-0547-AP

Grier. No. LCP 0724-18

v.

SC Dept. of Corr.

Respondent

Response to Order

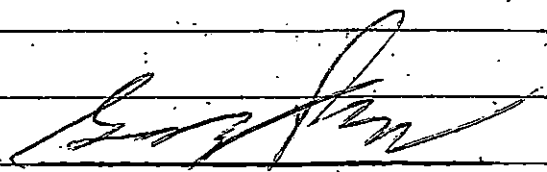
This Response comes Pursuant to order filed Jul. 24th, 2019. The order filed has a main clerical error which by its precedent corrupts the order as a whole. This comes by Rule 67. SCACR.

~~The~~ The order states in Facts and Procedural history, an "indictment number 2010-GS-2604686". The actual indictment number is 2008-GS-2604686. When in actuality the proper indictment number should have been 2004-GS-2604686 because it was the year of the alleged offense. Percelle had already been incarcerated in 05 and was therefore under investigative detention on the indictment in question. The governing Statute SC Code Ann

§24-13-40 section (2) which is in question
plainly refers to offenses which occur "second"
or subsequent to the first sentence imposed.
Clearly in Perillo's instance the offense occurred
prior and therefore could not qualify for this
section (2) of the statute.

Therefore, the substantial evidence does
not support the department's calculation and
should be rewritten or ordered differently.

Date: Aug. 6th, 2019


Gregory Perillo, 312332

Return to

Exhibit K [19]

G. Pencille FZ-2254T

South Carolina Department of Corrections
Classification Summary Reports

Date: Monday, October 15, 2018

Classification Summary Reports

Inmate Number 312332

Submit

Recent Disc: 11/21/18

Classification Summary Report for PENCILLE, GREGORY THOMAS :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 10/15/2018

SCDC# 00312332

PENCILLE, GREGORY THOMAS

FBI# 632032HC9

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 30 YRS 0 MOS 0
SENT: DAYS

VICTIM WITNESS: Y SEPREQ:N

MED MED PROB/NO WORK
CLASS: RESTRICT

INST RESTRICT: NO RESTRICTION

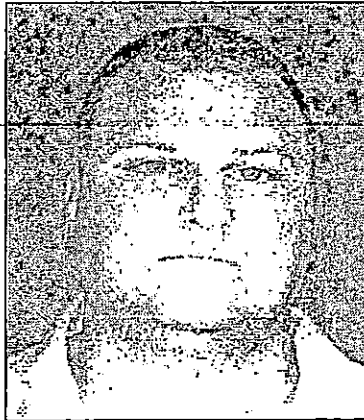
MENTAL SUBSTANCE ABUSE
CLASS: TREATMENT

CURRENT PROGRAM: COURT-ORD ATU

SEX REGISTRY: Y

DNA: C

AGE: 40



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: F2 2254 T

PROJ MAXOUT DATE: 03/26/2034

PROJ PAROLE DATE:

EWC JOB: TEACHER ASSISTANT

ASSIGNMENT: LIBRARY

EWC LEVEL: 3F5 EEC LEVEL:

EDUC PGM: NO CURR EDUC PROGRAM
Diploma

SECURITY THREAT GROUP DESCRIPTION:
NONE

SECURITY THREAT GROUP STATUS:
NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	
					START	V/NV CAT INDICT
CRIMINAL SEX CNDCT 1ST DE	30	0	0	HORRY	10/01/2008	V 5 08GS2604686
KIDNAPPING	12	0	0	HORRY	11/07/2005	V 5 05GS262054
COMPLETED OFFENSES						
NO COMPLETED OFFENSES						
PRIOR COMMITMENTS OVER 90 DAYS:						
INMATE HAS NO PRIORS						
OFFENSES UNDER PREVIOUS NUMBER:						
NO PREVIOUS OFFENSES						
DETAINERS (HOLD,WANTED,NOTIFY):						
KIDNAPPING		WANTED	JUDGE BRADLEY D. MAYERS			CATEG:5
CRIMINAL SEX CNDCT 1ST DE		WANTED	JUDGE BRADLEY D MAYERS			CATEG:5
ESCAPES:						
NO ESCAPE HISTORY						
CRIMINAL CHARGES:						
NO CRIMINAL CHARGES HISTORY						
ASSAULTIVE DISCIPLINARIES:						
NO ASSAULTIVE DISCIPLINARY HISTORY						
PREVIOUS ASSAULTIVE DISCIPLINARIES:						
NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY						
NON-ASSAULTIVE DISCIPLINARIES:						
11/30/2016	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT		CONVICTED	MAJOR DISC. HEARING		
10/21/2016	POSS. OR/ATTEMPT TO POSSESS CELL PHONE		CONVICTED	MAJOR DISC. HEARING		
10/21/2016	POSSESSION OF CONTRABAND		CONVICTED	MAJOR DISC. HEARING		
02/08/2010	OUT OF PLACE		DISMISSED	ADMINISTRATIVE RESOLUTION		
07/10/2007	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT		DISMISSED	CHARGES DROPPED/INSUFF. E		
02/03/2007	GAMBLING AND LOAN SHARKING		CLOSED	OTHER ACTION TAKEN/INFORM		
PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:						
NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY						
HISTORY OF MOVEMENTS:						
09/14/2016	LEE		INCARCERATED	ADMINISTRATIVE		
09/14/2016	RICHLAND CO		AUTH ABSENCE (AWL)	MEDICAL		
05/16/2016	LEE		INCARCERATED	ADMINISTRATIVE		
05/15/2016	TUOMEY REGIONAL		AUTH ABSENCE (AWL)	MEDICAL		
11/10/2015	LEE		INCARCERATED	ADMINISTRATIVE		
11/09/2015	KIRKLAND		INCARCERATED	RETURN FROM COURT		
11/06/2015	HORRY CO		AUTH ABSENCE (AWL)	TO COURT		
11/05/2015	KIRKLAND		INCARCERATED	ADMINISTRATIVE		
07/28/2015	LEE		INCARCERATED	ADMINISTRATIVE		
07/28/2015	FLORENCE CO		AUTH ABSENCE (AWL)	MEDICAL		
02/03/2015	LEE		INCARCERATED	ADMINISTRATIVE		
02/02/2015	KIRKLAND		INCARCERATED	RETURN FROM COURT		
01/30/2015	HORRY CO		AUTH ABSENCE (AWL)	TO COURT		
01/29/2015	KIRKLAND		INCARCERATED	ADMINISTRATIVE		

[21]

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 12/31/18
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 312332 INQUIRY CURR LOC: LEE
 PENCILLE, GREGORY THOMAS NONCONFORM SENT: N RTRN TO COURT: Y
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00002 INDICT NUM: 08-GS-2604686 WARRANT NUM: J740369
 DATE SENTENCED.: 08/09/2010 JUDGE LAST.: HYMAN FI: L
 STATUTE: 16-03-0652 CDR CODE.: 0160 GPS IND: N
 OFFENSE: 1101 CRIMINAL SEX CNDCT 1ST DEG OFFENSE DATE: 06/03/2004
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 26 Horry
 PLEA.: G GUILTY TYPE OF COURT.: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE.: 08/09/2010
 TOTAL SENTENCE... : 030 00 000 MAND SERV REQMT... : 025 06 000
 INCARC SENTENCE... : 030 00 000 PAROLE FACTOR... : 2 1/3 SENT. REQ.
 PROBATION SENT... : 000 00 000 PAROLE SERV REQMT: 999 99 999
 HIP SENT... : 000 00 000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00677 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 10/01/2008 DOM.IND: N
 CONSECUTIVE IND.: N SPOUSE ABUSE: STATUTE CLASSIFICATION... : VIOLENT
 DNA OFFENSE IND.: Y EEC ELIG: Y SCDC CLASSIFICATION... : VIOLENT
 SEX REG: Y PRED OFF: Y LAST UPDATE: KMINIT DATE: 02/22/12
 NO PAROLE: NO PAROLE CREATED BY.: K FOGLE DATE: 08/26/10

2A

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

[22]

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

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



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

Exhibit L [23]
HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

January 31, 2019

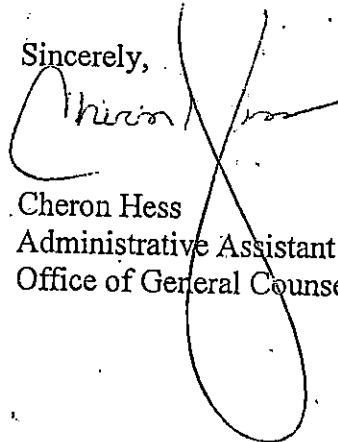
The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Reference: Inmate Gregory Thomas Pencille, #312332, vs. SCDC
Docket No. 18-ALJ-04-0547-AP

Dear Judge H. W. Funderburk, Jr.:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance LEECI 724-18, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,



Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

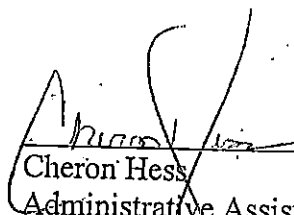
cc: Inmate Gregory Thomas Pencille, #312332
File:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was 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 Gregory Thomas Pencille
Inmate Number: 312332
Lee Correctional Institution
Dorm-Room-Bunk: F2-2254-T

Columbia, South Carolina
January 31, 2019


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



Offender Management System

Routing Engine/Tools OMS Messenger Search

File Inmate Non-Inmate Settings Tools Reports Help

Name	PERCIE GREGORY TH	Release	Housing	0551	F2	2254	T	Send/Re Status	Not Get/Loaded
DOB	00000000	Adm #	Location	LEL				Receivers of File	
Sex-Race	W	Booking #	Perm #	312332	Sp #/Pr				
Reg Date	05/08/2013		CIQ #		Class			State #	312332

RTSM

RTSMs

Request Range: 1800881303

Request Type: Classification Reference Number: 1800881303

Date Requested: _____

Requested By: Kiosk

Request Details: My incarceration is being improperly calculated I was incarcerated in 2005 please advise and/or recalculate. Thank you very much for your time in this matter.

Review Level: _____

Disposition: Calculate

Office: KIOSK

Disposition Date: 08/02/2018 10:58

Request Responses

Date	Author	Note

Date	Author	Note



1800547
[26]

ROAI200D
ROAI200M
OMROAUDA

SCDC OFFENDER MANAGEMENT SYSTEM
RECORD AUDIT APPLICATION
DISPLAY RECORD AUDIT

12/20/18
C056427

SCDC#: 312332
NAME.: PENCILLE, GREGORY THOMAS

CURR STATUS.: INCARCERATED
CURR LOC....: LEE
CURR CUSTODY: MI3

AUDIT TYPE: 01 RECORDS AUDIT

AUDIT DATE: 11/22/05

UPDATED BY: GIBSON-WHITE, AUDREY DATE: 11/22/05

RECORD AUDIT DISPLAYED...
CLEAR: SUMMARY

ENTER: DISPLAY NOTES

PF8: FORWARD

DIS1100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM

12/31/18
C052540

[27]

SCDC ID: 312332

DISPLAY INMATE OFFENSE HISTORY

CURR LOC: LEE

PENCILLE, GREGORY THOMAS

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV REINSTATE 11/ 1/2019
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
00008	POSSESSION OF A NEGOT	MAJOR DI	10/21/18	11/05/18	00000	CONVICTED	2
00007	POSS. OR/ATTEMPT TO P	MAJOR DI	10/21/18	11/05/18	00000	CONVICTED	1
00006	USE, POSS NARC, MARIJ, U	MAJOR DI	11/30/16	12/12/16	00000	CONVICTED	1
00005	POSSESSION OF CONTRAB	MAJOR DI	10/21/16	11/08/16	00000	CONVICTED	3
00004	POSS. OR/ATTEMPT TO P	MAJOR DI	10/21/16	11/08/16	00000	CONVICTED	1
00001	GAMBLING AND LOAN SHA	OTHER AC	02/03/07	/ /	00000	CLOSED	3

END OF LIST

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



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

Exhibit M [28]

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

March 19, 2019

The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Gregory Thomas Pencille, #312332, vs. SCDC
Docket No. 18-ALJ-04-0547-AP

Dear Judge Funderburk:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Gregory Thomas Pencille, #312332
File

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Pencille, #312332,)	Docket No.: 18-ALJ-04-0547-AP
)	Grievance No.: LEECI 724-18
Appellant,)	
v.)	RESPONDENT'S BRIEF
)	
South Carolina Department of Corrections,)	<i>Honorable H. W. Funderburk, Jr.</i>
)	
Respondent.)	
)	

STATEMENT OF THE CASE

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Gregory Pencille ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on August 15, 2018, claiming his sentence calculation was not correct. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on August 30, 2018. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal. Because Appellant's sentence, including his jail time credit, has been properly calculated, the final determination of the Department should be affirmed.

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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the South Carolina Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan*

v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the South Carolina Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. See *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

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

STANDARD OF REVIEW

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 the 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).

ARGUMENT

**APPELLANT'S SENTENCE HAS BEEN CORRECTLY
CALCULATED BY RESPONDENT**

On August 9, 2010, Appellant was sentenced to thirty years for Criminal Sexual Conduct in the First Degree ("CSC").¹ See Sentencing Sheet for Indictment Number 2008-GS-26-04686. Appellant was sentenced under S.C. Code Ann. § 16-3-652, which "is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court." 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."); § 24-13-150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses); § 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."). Therefore, Appellant must be incarcerated at least 85% of his sentence.

Appellant argues that his CSC conviction start date should be November 7, 2005, based on his Kidnapping conviction. However, this is not correct. As shown in the Record, Appellant was credited 677 days of jail time credit for his CSC sentence. See Commitment Application Inquiry for Conviction Number 2. S.C. Code Ann. § 24-13-40 states:

¹ Appellant also has a conviction from Kidnapping, for which he was sentenced to twelve years' incarceration on November 7, 2005. See Sentencing Sheet for Indictment Number 2005-GS-26-2054. This sentence has already been completed.

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. [. . .] In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. **Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.**

(Emphasis added). Therefore, Appellant is not entitled to jail time beginning November 7, 2005, as he was serving his Kidnapping conviction. See Sentencing Sheet for Indictment Number 2005-GS-26-2054 and the Conviction Summary sheet.

SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets." *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014). Appellant's sentencing sheet, which was filed with the Record, is in no way ambiguous. Appellant's CSC sentencing sheet was clear that he should be credited with jail time "since October 2008". See Sentencing Sheet for Indictment Number 2008-GS-26-04686. Therefore, 677 days were added to his conviction as there are 677 days between October 1, 2008 and August 9, 2010. Based on this jail time and his 85% sentence calculation, Appellant's max-out date is March 26, 2034.

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.

CONCLUSION

**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 the Department's final agency decision should be upheld.

Respectfully submitted,



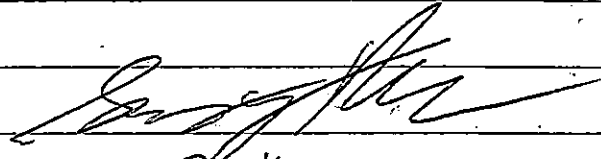
Kensey E. Barrett
Deputy General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-8508

March 19, 2019
Columbia, South Carolina

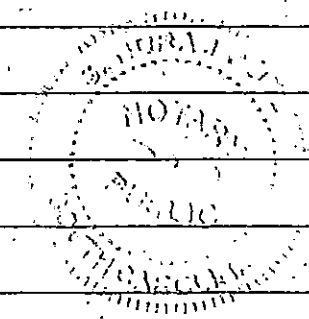
Certificate of Exhibits
Record on Appeal

I, Gregory Penille, Appellant, Pro se, hereby certify that the record on Appeal contains all material proposed to be included in this matter and no other material.

June 17, 2020



Gregory Penille, 312332
Appellant, Pro Se



NOTARY PUBLIC STATE OF SOUTH CAROLINA
on the 17th day of June 2020
Gregory Penille
Notary Public of South Carolina
My Commission Expires 2/17/24

Certificate of Service

I, hereby certify that the undersigned on the 17 day of June, 2020 in Bennettsville South Carolina served a copy of the Appellants Motion to Request the Court to supplement the record on appeal, Record on Appeal [Amended], motion to file Amended Record on Appeal on all parties in this matter by depositing the same in the US. mail, postage paid, or in the institutions mail room and addressed as follows:

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

Kelsey Evers, Esq
General Counsel, SCDC
P.O. Box 21787
Columbia, SC 29221

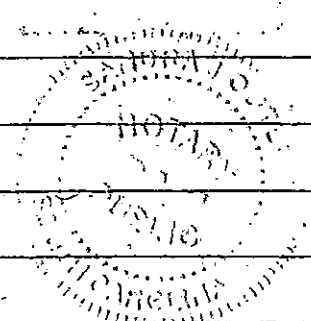
June 17, 2020

Gregory Perille, 312335

Evers CI F4A-275
610 Hwy 9 West
Bennettsville, SC 29512

Appellant, Pro Se

17 day of June 2020
S. Perille
Notary Public of South Carolina
217/24



South Carolina Court of Appeals

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

Appeal case No. 2019-001410

Gregory Pencille, #312332, Appellant,
v.

SC. Dept. of Corrections, Respondent

APPELLANT BRIEF

Gregory Pencille, #312332
Evans CI F4A253
610 Hwy 9 West
Bennettsville, SC. 29512

Appellant, pro se

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ISSUE ON APPEAL

Did the South Carolina Administrative Law Court improperly affirm the Department of Corrections Sentence calculation of Appellants Pencille's Jail credit?

Where the order issued by the ALC improperly indicates an indictment number [200-65-2604686] twice, [Exhibit A] which is not an actual indictment number. Does this error invalidate the ALC's order in its entirety?

STATEMENT OF THE CASE

On November 7th, 2005, Appellant was sentenced in Horry County to twelve (12) years for kidnapping on indictment number 2005-65-2054. [Exhibit B].

On August 9th, 2010, Appellant was sentenced in Horry County to thirty (30) years for Criminal Sexual conduct, first degree on indictment number 2008-65-2604686 [Exhibit C] from a case allegedly occurring in 2004. This sentence was to run

concurrently with the 05 sentence for kidnapping that appellant was still serving. However, the Judge along with Solicitor Lively's insistence allowed Jail credit for time served from October 2008. The Dept. calculated the appellant was entitled to 677 days for Oct. 1st, 2008 to August 9th, 2010. Effectively, the Judge calculated the sentence start date to be October 1st, 2008.

Appellant filed Step 1 Grievance on August 15th, 2018 [Exhibits D, E] arguing that credit should have been calculated from Nov. 7th, 2005. The Grievance was denied on August 24th, 2018, but in SCDC's response by the Warden it clearly states that the appellant's sentences are concurrent, but claims that Percille only has 677 days Jail credit on his 30 year sentence despite that his confinement originally began on Nov. 7th, 2005. 677 days credit is clearly far less days than the difference between August 9th, 2010 commitment on CSC, 1st, and the original Nov. 7th, 2005 commitment. [Perversely, SCDC explains possible loss of good time credit due to failure to earn work credits or possible RHU lockup time. Percille has never been or never will be entitled by law to good time earned credits]. Appellant's

filed Step 2 Grievance on August 30th, 2018 [Exhibit F, ~~G~~] contesting the same issue of original start date of sentence and credits to be calculated from Nov. 7th, 2005. This Grievance was denied October 25th, 2018 and in the Agencies response stated the 30 year sentence with the start date of Nov. 7th, 2005, but then projected a release date of March 26th, 2034. In this case SCDC correctly identified the sentence start date (despite the illegal start-date marked upon the sentencing sheet by the trial court) but failed to properly calculate that a 30 year sentence at 85% only requires 25 years and 6 months (that would obviously place Perailles release date in 2030 not 2034).

Appellant promptly filed an appeal with the ALC on Nov. 16th, 2018 [Exhibit H] raising the same issue of jail ^{fine} credits. Appellant filed his brief on December 7th, 2018 [Exhibit I, 4 pages] followed by SC, DOC filing record on appeal Feb. 1st, 2019 and its brief on March 19th, 2019. Nothing further was filed until the final order was filed July 24th, 2019, 4 months to render a decision affirming the Dept's calculation. For which appellant filed a response to the order Aug. 6th, 2019

[Exhibit J, 2 pages] to correct the error in the order of the indictment number being false, corrupting the entire order. The ALC did not respond or address this issue. Appellant then timely filed with the SC Court of Appeals on August 20th, 2019

ARGUMENT

Where Appellant argued that SCDC improperly constructed and computed Perille's concurrent 30 year commitment for CSC, 1st, sentenced in 2010, indicted in 2008, issued warrant in 2007, when Perille had been in custody continuously from 2005. [Upon the face of the sentencing sheet, ^[Exhibit C] the trial court ordered Perille to begin service of his concurrent sentence in 2008 but ordered in the court room to be served concurrent with the charge currently serving; (Plea transcript, pg 25, Lr 19-20)

Court: ... I'm going to run that concurrently with the sentence that you are presently serving. I'll give you credit for the time you were charged with this, okay?

but this was in violation of SC Code

Ann § 24-13-40 that requires mandatory credit for time served. The CSC, 1st for which Penille was sentenced in 2010 was allegedly committed in 2004 - plainly prior to his arrest in 2005.]

If SC. DOC is only an administrator for calculating an inmates sentence and has No sentencing authority, Tant v. SC. DOC, 408 SC, 334, 759 SE.2d 398, 399 (2014). Then how does a "Court-ordered ATV and 44-4B-50 SVPA statute show added to Penille's SCDC institutional record [Exhibit K], where it does not appear anywhere on the face of the sentencing sheet [Exhibit C]?

The concurrent sentence is the legal standing for which the judge imparts the sentence structure for Penille's sentence, but "since 2008" is an illegal enhancement that the Judge added to the sentence sheet. [Exhibit C] Statute § 24-13-40(c)(2) can not apply due to the sentence not being a second offense.

In the ALC's final order respondent argues round-a-bout issues and only one pertaining to the issue of sentence start-date which derives from SC. code Ann § 24-13-40(c), which respondent misapplies its meaning. Allen v. State, 339 SC 398, 529 SE.2d 541 (2000). Where the terms of a statute are

clear, The court must apply those terms according to their literal meaning. "2). When the prisoner is serving a sentence for one offense and is awaiting trial and sentencing 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. [emphasis added]

The use of the word "second. (Webster's Dictionary 10th Ed) Next to the first in place or time." An offense which occurred prior to the first offense could not be a second offense. If it is, It becomes an illegal Ex post facto enhancement violating Art 1 §10, cl 1 of the U.S. and State constitution and implicates an 8th Amendment issue.

The respondent changes the word "second" to "different" to explain the meaning of §24-13-40(2) statute [page 3 ^{Exhibit A} ALC final order] which changes its interpretation.

Paschel V. State Election Comm'n, 317 S.S. 434, 454 S.E.2d 840

(1995), The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope.

S.C. Code Ann § 1-23-600(E); and § 1-23-380

(A)(5) places description within the ALC's Jurisdiction. See Al-Shabazz V. State, 338, S.L. 354, 527 S.E.2d 742 (2000).

S.C. Code Ann § 1-23-380(A)(5) a-f all apply in this

incorrect indictment number twice. While the issues of the court ordered ATU Program and SVPA additions to Percille's sentence that are not on the sentencing sheet and the illegally added "since 2008" back date that appear on the sentence sheet are prima facie is reversal of the ALC's decision. The Appellant's ALC initial brief [Enclosed for this court's convenience, Exhibit I] should be reviewed de novo.

CONCLUSION

Appellant requests and prays that for the above reasons this court reverses the ALC's decision to affirm the SC DOC ruling and that this court rule that the administrative law Judge order that SC DOC classifications recalculate Percille's sentence start date to November, 7th, 2005 and recalculate Percille's release date to 2030.


Certificate of Service

I hereby certify that I, Gregory Penille, on the 16th day of October, 2019 in Bennettsville, South Carolina served a copy of the Appellants Brief on all parties in this matter by depositing the same in the U.S. Mail, postage paid, or in the Institutions mailroom and addressed as follows:

Attorneys:
Christina Caboe Bigelow
Dept of General Counsel
S.C.D.C.
P.O. Box 21787
Columbia, S.C. 29221

Clerk of Court:
Jenny Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

Date: October 16th, 2019


Gregory Penille, 312332
Evers C/F4A 253
610 Hwy 9 West
Bennettsville - S.C. 29512



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

November 21, 2019

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Gregory Pencille, #312332 v. South Carolina Department of Corrections
Appellate Case No. 2019-001410

Dear Ms. Kitchings:

Enclosed please find the original and a copy of the **Initial Brief of Respondent, Designation of Matter to be Included in the Record on Appeal, and Motion to File Out of Time**, with six (6) copies for the Court, in the above captioned appeal, along with **Proof of Service**. Please file the originals and copies of the motion with the Court, and clock stamp and return the second set of copies to myself in the enclosed, stamped envelope.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kensey Evans
Deputy General Counsel
South Carolina Department of Corrections

cc: Gregory Pencille, 312332
Evans Correctional Institution
4A-0253-B
610 Highway 9 West
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Gregory Pencille, an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on August 15, 2018, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on August 30, 2018. This grievance was also investigated and denied. Appellant filed a Notice of Appeal in the Administrative Law Court on November 15, 2018. Thereafter, on July 24, 2019, the Honorable H. W. Funderburk, Jr. issued an order affirming the decision of the Department of Corrections. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections, and Appellant has failed to show that the Department of Corrections committed any error with respect to the calculation of his sentence. On August 9, 2010, Appellant was sentenced to thirty years for Criminal Sexual Conduct in the First Degree ("CSC").¹ See Sentencing Sheet for Indictment Number 2008-GS-26-04686. Appellant was sentenced under S.C. Code Ann. § 16-3-652, which "is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court." 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."); § 24-13-150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses); § 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."). Therefore, Appellant must be incarcerated at least 85% of his sentence.

¹ Appellant also has a conviction from Kidnapping, for which he was sentenced to twelve years' incarceration on November 7, 2005. See Sentencing Sheet for Indictment Number 2005-GS-26-2054. This sentence has already been completed.

Appellant argues that his CSC conviction start date should be November 7, 2005, based on his Kidnapping conviction. However, this is not correct. Appellant was credited 677 days of jail time credit for his CSC sentence. See Commitment Application Inquiry for Conviction Number 2. S.C. Code Ann. § 24-13-40 states:

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. [. . .] In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. **Provided, however, that credit for time served prior to trial and sentencing shall not be given:** (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) **when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.**

(Emphasis added). Therefore, Appellant is not entitled to jail time beginning November 7, 2005, as he was serving his Kidnapping conviction. See Sentencing Sheet for Indictment Number 2005-GS-26-2054 and the Conviction Summary sheet; see also ALC Order, p. 3.

SCDC is “confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets.” *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014); see also ALC Order, p. 3. Appellant’s sentencing sheet, is in no way ambiguous. Appellant’s CSC sentencing sheet was clear that he should be credited with jail time “since October 2008”. See Sentencing Sheet for Indictment Number 2008-GS-26-04686; see also ALC Order, p. 3.² Therefore, 677 days were added to his conviction as there are 677 days between October 1,

² To be clear, this is the only jail time to which Appellant is entitled on this conviction due to his previous conviction of Kidnapping for which he was already serving. This was explained in more details in the foregoing paragraphs.

2008 and August 9, 2010. Based on this jail time and his 85% sentence calculation, Appellant's max-out date is March 26, 2034.

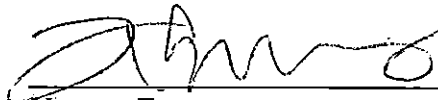
The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met his burden to demonstrate SCDC is incorrectly calculating his sentence.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

November 21, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, #312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

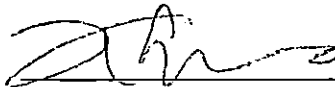
RESPONDENT.

**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent submits that the following should be included in the Record on Appeal:

- (1) Step One and Step Two Grievance Forms;
- (2) All filings in the Administrative Law Court;
- (3) Administrative Law Judge Funderburk's Order dated July 24, 2019.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.



Kensey Evans
Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

November 21, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC. Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Gregory Pencille**, Evans Correctional Institution, 4A-0253-B, 610 Highway 9 West, Bennettsville, SC 29512.



Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

November 21, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, she mailed a copy of the **Motion to File out of Time** to Appellant via U.S. Mail addressed as follows: **Gregory Pencille**, Evans Correctional Institution, 4A-0253-B, 610 Highway 9 West, Bennettsville, SC 29512.



Kensey Evans
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

November 21, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

MOTION TO FILE OUT OF TIME

The Initial Brief of Respondent and Designation of Matter were due to be served and filed on November 16, 2019. Due to an oversight on the part of the undersigned, Respondent has not filed its brief. Respondent is hereby requesting to file Respondent's Initial Brief out of time. No previous motions have been filed on behalf of Respondent at this time.

WHEREFORE, Respondent respectfully requests that this Court allow the Motion for Extension for Time be filed out of time.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Kensey E. Barrett

Deputy General Counsel

Office of General Counsel

S.C. Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1805

ATTORNEY FOR RESPONDENT

November 21, 2019

The South Carolina Court of Appeals

Appeal from the Administrative Law Court

Hon. H.W. Funderburk, Jr.

Case No. 2019-001410

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

[INITIAL] REPLY BRIEF/ MOTION TO STRIKE

Appellant requests that this court review its order from March 12, 2020. In which this order states, [Appellant has filed a "motion to amend and file 'letter to clerk' as motion for default judgement/ motion to compel response of previous filings." The request for default judgement is denied.]

In this statement the court does not stipulate whether "motion to compel response of previous filings", was granted or denied. As such by this court's order, appellant moves to file **Motion to Strike** respondent's Initial Brief and amended Designation of Matter ("DOM"). 1) Respondents brief for failing to file timely and for failing to show "good cause" for filing out of time. 2) Respondent's amended DOM for failing to file by motion making the DOM filed out of time. Furthermore, the respondent amended her DOM without requesting by motion which is in violation of SCRAP 240(g) resulting in the abandonment of the motion or failing to file timely.

Appellant reargues "Notice to Court" originally filed Nov. 27th, 2020. As evidence in support of Motion to Strike.

In the above entitled case the appellant addresses the court by way of motion that pursuant to Rule 208 (2) SCACR. Brief of Respondent, within (30) thirty days after service of appellants brief, respondent shall serve one copy of his brief on all parties to the appeal...

Appellants' Initial brief was served and filed with certificate of service October 16th, 2019. By affirmation of Respondent, respondent's Initial brief was due to be served and filed on November 16th, 2019. Respondent's request to file out of time states respondent failed to timely file "due to an oversight". This in no form can be considered as (good cause) shown. The respondent is represented by a professional attorney and should be held to that professional standard. And as such, appellant states as follows:

"Pursuant to Rule 208 (a)(4), upon failure of respondent to timely file a brief, the appellate court [may take such action as it deems proper]. The South Carolina Courts have recognized the failure of a respondent to file a brief could justify a reversal. Turner v. Santee Cement Carriers, Inc., 272 S.C. 91, 96 282 S.E.2d 858,860 (1981); Robinson v. Hassiotis, 364 S.C. 92, 93n2 610 S.E.2d 858n2. (ct.app2005). noting the respondent had not filed a brief and this court may take such action as it deems proper, including reversal.

Furthermore, when respondent does not file a brief, this court has found it proper to address the issues presented by the appellant, Durham v. United Companies, fin. Corp., 326 S.C. 403, 404, 483 S.E.2d 786 (ct. app.1997); Wierszewski v. Tokarick, 308 S.C. 441, 444n2., 418S.E.2d557, 559n2. (ct. app1992) . stating where the respondent failed to file a brief [it was proper to reverse on the points presented rather than to search the record for reasons to affirm].

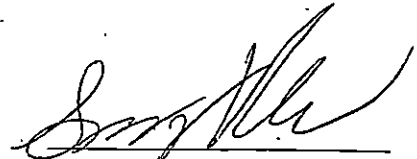
As it is against court rules to address issues presented in respondents initial brief in this filing, appellant merely states respondents arguments are without merit.

Also, appellant recognizes to this court the redundancy as to which the respondent has argued through this cases progression. Facts remain that previous decisions to appellants substantive rights have been prejudiced by the findings, conclusions, and decisions in violation of S.C. code Ann § 1-23-610(B)(a-f). And under Equal Protection of the U.S. and State constitutions had appellant failed to timely file his initial brief [Pro-Se] this court would have dismissed his appeal.

Appellant does not understand this courts motive as to actions granted and/or denied in the March 12th, 2020 order. As to appellants layman understanding by granting respondent's continued violations of court rules and denying appellants request for respondent to follow court rules prejudices appellants Due process and Fundamental Fairness Doctrines.

Therefore, appellant prays this court reverses the decision of the administrative law judge and requires the Dept. of Correction to recalculate Pencille's sentence from Nov. 5th, 2005 and remove added sentence conditions."

Date: March 30, 2020



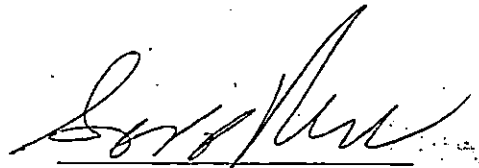
Gregory Pencille, #312332
Appellant, Pro Se

Certificate of service -

I hereby certify that Gregory Pencille on the 30 day of March, 2020: In Bennettsville S.C. Served Initial reply brief/ motion to strike on all parties by depositing the same in the U.S. mail, postage prepaid or in the institutions mailroom and addressed as follows;

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

S.C. General Counsel, SCDC
P.O. Box 21787
Columbia S.C. 29221



Gregory Pencille, #312332
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512

Date: March 30, 2020

SWORN to and subscribed before me this 30th

Day of March, 2020

Sarah A. Outlaw (L.S.)

Notary Public

My Commission Expires: 2/17/24

The South Carolina Court of Appeals

Appeal from the Administrative Law Court

Hon. H.W. Funderburk, Jr.

Case No. 2019-001410

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

REPLY TO RESPONSE FROM THIS COURT

Comes now, Gregory Pencille, #312332, ^{AP} ~~we~~ ^{who} duly swears and deposes the following: Appellant Pencille requests explanation of the letter dated April, 23rd, 2020 and received by appellant on April 28th, 2020. In which the court states that no action will be taken on the appellant's "Motion to strike the respondent's Initial brief and Amended Designation of matter" filed on March 1st, 2020 Pursuant to rule 221(c) SCACR. Rule 221(c) clearly states that it pertains to petitions for rehearing. Appellant clearly points out the prejudice of granting the brief and designation filings. And this court only responded to part of appellant's filing. By the court not addressing the original responses of the appellant from "way back" this court has acted in a prejudicial manner and has voided justice. The court is acting outside the scope of the judicial system in this matter and ruling on the matter as a whole in the favor of the appellant is the only way to bring this case back inside its bounds of the law. By the order filed on March 12th, 2020 in which the court allowed illegal and prejudicial filings of the respondent's and allowing the appellant to file a reply brief it allowed the previous briefs to again be heard and properly be

ruled on but also allowed the motion to strike to be timely filed and this court to "take action" on the motion.

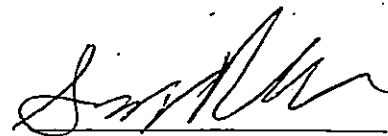
Appellant does not understand 1) why the court would use a rule that does not apply to the situation, rule 12(f) SCRCF motion to strike is plainly not a motion for rehearing. 2) even if rule 221(c) did apply "which it does not", the action this court would take on the motion would have the effect of dismissing or finally deciding a party's appeal. Respondent would not have admissible evidence and this court would decide the case based on the appellant's filings alone as is just.

The only reasoning appellant can arrive at ^{is} if this court has abused its discretion in this matter. An abuse of discretion occurs when the conclusions of the court are either controlled by an error of law or are based on unsupported factual conclusions Belle Hall Plantation Homeowner's Association, Inc V. Murray, 419 S.C. 605, 799 S.E.2d 310. An error of law by the court is by definition an abuse of discretion, Gannett Co., Inc v. Clark const. Group, Inc. 286 F3d 737 (2002). A court's ruling on the admissibility of evidence (or properly filed motions and petitions) will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice. State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (2004). In which both an abuse of discretion and legal error has occurred in this case.

As it stands the appellant does not know where or at what point this case is at and would like guidance as to the next proper filing.

Appellant requests this court take action on previous proper and timely filed motion.

Cc: Kensey Evans, Esquire



Gregory Pencille, #312332
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512
Appellant, Pro se

Date: May 13, 2020.

SWORN to and subscribed before me this 7th
Day of May, 2020
S. C. Cullow (L.S.)
Notary Public
My Commission Expires: 2/17/24

Certificate of service

I hereby certify that Gregory Pencille on the 5th day of May, 2020. In
Bennettsville S.C. Served reply to response of this court on all parties by depositing the same in
the U.S. mail, postage prepaid or in the institutions mailroom and addressed as follows;

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

S.C. General Counsel, SCDC
P.O. Box 21787
Columbia S.C. 29221



Gregory Pencille, #31233
Evans CI F4A-275
610 Hwy 9 West
Bennettsville, S.C. 29512

South Carolina Court of Appeals

Appeal From Administrative Law Court

Hon. H. W. Enderburt Jr.

Appeal case No. 2019-001410

Gregory Pencille, 312332, Appellant

vs

SC Dept. of Corrections, Respondent

FINAL BRIEF

Gregory Pencille 312332

Evans CE FYA 275

610 Hwy 9 west

Bennettsville, SC 29312

Appellant, Pro Se

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ISSUE ON APPEAL

Did the South Carolina Administrative Law Court improperly affirm the Department of Corrections sentence calculation of Appellants Pencilled Jail credit?

Where the order issued by the Administrative Law Court improperly indicates an indictment number [2010-65-26-04686] twice, [Exhibit A, p. 3] which is not an actual indictment number. Does this error invalidate the ALC's order in its entirety?

STATEMENT OF THE CASE

On November 7th, 2005, Appellant was sentenced in Horry County to twelve (12) years for kidnapping on indictment number 2005-65-2054. [Exhibit B, p. 6]

On August 9th, 2010, Appellant was sentenced in Horry County to thirty (30) years for Criminal Sexual Conduct, first degree on indictment number 2008-65-2604686 [Exhibit C, p. 7] from a case allegedly occurring in 2004. This sentence was to run concurrently with the 2005 sentence for kidnapping that appellant was still serving, however,

the judge along with Solicitor Lively's insistence allowed jail credit for time served from October 2008. The Dept. calculated the appellant was entitled to 677 days for Oct. 1st, 2008 to August 9th 2010. Effectively, the judge calculated the sentence start date to be October 1st, 2008.

Appellant filed Step 1 Grievance on August 15th 2018 [Exhibit D, p 8-9] arguing that credit should have been calculated from November 7th, 2005. The Grievance was denied on August 24th, 2018 but in SCDC's response by the warden it clearly states that the appellants sentences are concurrent, but claims that Pencille only has 677 days jail credit on his thirty (30) year sentence. Despite that his confinement originally began on Nov. 7th 2005, 677 days credit is clearly far less days than the difference between August 9th, 2010 commitment on CSC¹²² and the original Nov. 7th, 2005 commitment. [Perversely, SCDC explains possible loss of good time credit due to failure to earn work credits or possible R46 lockup time, Pencille has never been or never will be entitled by law to good time earned credits]. Appellant filed Step 2 Grievance on August 30th, 2018 [Exhibit E, p 10-11] contesting the same issue of original start date of sentence and credits to be calculated from

Nov. 7, 2008. This grievance was denied October 25th 2018 and in the agencies response stated the thirty (30) year sentence with the start date of Nov, 7th 2005, but then projected a release date of March 26th, 2034. In this case SCDC correctly identified the sentence start date (despite the illegal start date marked upon the sentencing sheet by the trial court) but failed to properly calculate that a thirty (30) year sentence at 85% only required 25 years and 6 months. (That would obviously place Penciles release date in 2030 not 2034).

Appellant promptly filed an appeal with the Administrative Law Court on Nov. 16th, 2018. [Exhibit H, p12] raising the same issue of jail time credits. Appellant filed his brief on Dec. 7th 2018 [Exhibit I, p13-16] followed by SCDC filing record on appeal Feb 1st, 2019 and his brief on March 19th, 2019. Nothing further was filed until final order was filed July 24th 2019; 4 months to render a decision affirming the Dept's calculation for which appellant filed a response to the order Aug 6th 2019 [Exhibit J, p17-18] to correct the error in the order of the indictment number being false, comprising the entire order. The ALC did not respond or address this issue. Appellant then timely filed with the SC Court of Appeals on August 20th, 2019.

ARGUMENT

where Appellant argued that SCDC improperly constructed and computed Pencille's concurrent thirty (30) year commitment for CSC ^{1st} sentenced in 2010, indicted in 2008, issued warrant in 2007. When Pencille had been in custody continually from 2005 (upon the face of the sentencing sheet [Exhibit C p 7] the trial court ordered Pencille to begin service of his concurrent sentence in 2008 but ordered in the court room to be served concurrent with the charge currently serving [Plain transcript, p. 25, Ln 19-20]

Court: ... I'm going to run that concurrent with the sentence that you are presently serving. I'll give you credit for the time you were charged with this, okay?

but this was in violation of SC code Ann § 24-13-40 that requires mandatory credit for time served. The CSC ^{1st} for which Pencille was sentenced in 2010 was allegedly committed in 2004 - plainly prior to his arrest in 2005).

If SCPC is only an administrator for calculating an inmate's sentence and has no sentencing authority, Tant v. SC DOC, 408 SC 339, 759 SE 2d 398, 399 (2014).

Then how does a "court -

ordered" ATU and 44-48-JO SVPA statute show added to Pencille's SCDC institutional record [Exhibit K, p 19-22] where it does not appear anywhere on the face of the sentencing sheet [Exhibit C, p 7]?

The concurrent sentence is the legal standing for which the judge imparts the sentence structure for pencilled sentence, but "since 2008" is an illegal enhancement that the judge added to the sentence sheet [Exhibit C, p 7] statute § 24-13-40 (c)(e) can not apply due to the sentence not being a second offense.

In the ALC's final order the respondent argues round-about issues and only one pertaining to the issue of sentence start date which derives from SC Code Ann. § 24-13-40 (2), which respondent mis-applies its meaning. Allen v. State 339 SC 398, 529 SE 2d 541 (2000), where the terms of a statute are clear, the court must apply those terms according to their literal meaning." 2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentencing 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 [Emphasis added]. The use of the word "Second": (websters dictionary 10th Ed) NEXT to the first in place or time. "An offense which occurred prior to the first offense

could not be a second offense. If it is, it becomes an illegal Ex-post facto enhancement violating Art 1 § 10, cl. 1 of the U.S. and state constitution and implicates an 8th Amendment issue. The respondent changed the word "second" to "different" to explain the meaning of § 24-13-40(2) statute [Exhibit A, p. 3] which changes its interpretation. Parshel v. State, election comm'n 312 SC 434, 454 SE 2d 840 (1995); The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope.

SC Code Ann § 1-23-600(E); and § 1-24-380(A)(6) places description within the ALC's jurisdiction. See Al-Shabazz v. State, 338 SC 354, 527 SE 2d 742 (2000). SC Code Ann § 1-23-380(A)(9) a-f all apply in this incorrect indictment number twice, while the issues of the court ordered ATU program and SVPA addition to Penciler sentencing that are not on the sentencing sheet and the illegally added "since 2008" back date that appear on the sentencing sheet are prima facie reversal of the ALC's decision. The Appellants ALC initial brief [Enclosed for this court's convenience, Exhibit E, p. 13-16] should be reviewed de novo.

CONCLUSION

Appellant request and prays that for the above reasons this court reviews the ALC's decision to affirm the SC DOC ruling and that this court rule that the Administrative Law Judge order that SC DOC classification recalculate Pencille's sentence start date to November 07th, 2005 and recalculate Pencille's release date to 2030.

CERTIFICATE OF APPELLANT PRO SE

The undersigned certifies that this final brief complies with Rule 20 (b), SCALR.

Date July 28, 2020

[Handwritten Signature]

Gregory Pencille 312332

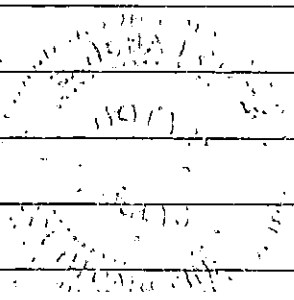
Evans CI F44225

610 Hwy 9 west

Bennettsville SC 29512

Appellant, PRO SE

~~Notary Public~~
28th day of July
[Signature]
(Notary Public of South Carolina)
Commission Expires 2/17/24



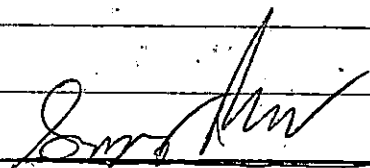
CERTIFICATE OF SERVICE

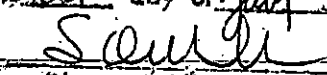
I hereby certify that I, Gregory Penille, on the 28 day of July, 2020 in Bennettsville, South Carolina served a copy of the Appellants final Brief on all parties in this matter by depositing the same in the US mail, postage paid, or in the institutions mail room and addressed as follows:

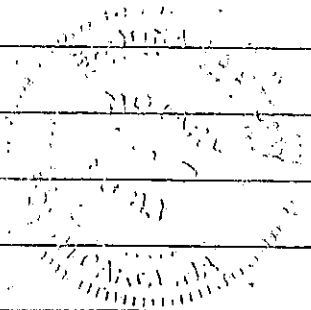
Jenny A. Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

Christina Laue Bagelow
General Counsel, SCDC
P.O. Box 21787
Columbia, SC 29221

Dated July 28, 2020


Gregory Penille 312332
Evans Ct. F4A 275
610 Hwy 9 west
Bennettsville, SC 29512
Appellant, Pro SE

Subscribed and sworn to before me on the 28th day of July, 2020 at South Carolina

(Notary Public of South Carolina)
My Commission Expires 2/17/24



STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Kensley Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Gregory Pencille, an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on August 15, 2018, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on August 30, 2018. This grievance was also investigated and denied. Appellant filed a Notice of Appeal in the Administrative Law Court on November 15, 2018. Thereafter, on July 24, 2019, the Honorable H. W. Funderburk, Jr. issued an order affirming the decision of the Department of Corrections. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections, and Appellant has failed to show that the Department of Corrections committed any error with respect to the calculation of his sentence. On August 9, 2010, Appellant was sentenced to thirty years for Criminal Sexual Conduct in the First Degree ("CSC").¹ *See* R. p. 7. Appellant was sentenced under S.C. Code Ann. § 16-3-652, which "is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court." 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."); § 24-13-150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses); § 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."). Therefore, Appellant must be incarcerated at least 85% of his sentence.

Appellant argues that his CSC conviction start date should be November 7, 2005, based on his Kidnapping conviction. However, this is not correct. Appellant was credited 677 days of jail time credit for his CSC sentence. *See* R. p. 21. S.C. Code Ann. § 24-13-40 states:

¹ Appellant also has a conviction from Kidnapping, for which he was sentenced to twelve years' incarceration on

The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. [. . .] In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. **Provided, however, that credit for time served prior to trial and sentencing shall not be given:** (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) **when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.**

(Emphasis added). Therefore, Appellant is not entitled to jail time beginning November 7, 2005, as he was serving his Kidnapping conviction. *See R.* pp. 3; 6; 19-20.

SCDC is “confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets.” *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014); *see also* ALC Order, p. 3. Appellant’s sentencing sheet, is in no way ambiguous. Appellant’s CSC sentencing sheet was clear that he should be credited with jail time “since October 2008”.² *See R.* pp. 3; 7. Therefore, 677 days were added to his conviction as there are 677 days between October 1, 2008 and August 9, 2010. Based on this jail time and his 85% sentence calculation, Appellant’s max-out date is March 26, 2034.

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

November 7, 2005. *See R.* p. 6. This sentence has already been completed.

² To be clear, this is the only jail time to which Appellant is entitled on this conviction due to his previous conviction of Kidnapping for which he was already serving. This was explained in more details in the foregoing paragraphs.

discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998).

Appellant has not met his burden to demonstrate SCDC is incorrectly calculating his sentence.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

September 1, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Final Brief of Respondent** to Appellant, addressed as follows: **Gregory Pencille, #312332**, Evans Correctional Institution, 4A-0275-A, 610 Highway 9 West, Bennettsville, SC 29512.



Kensey Evans
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

September 1, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0547-AP
Appellate Case No. 2019-001410

GREGORY PENCILLE, #312332;

APPELLANT,

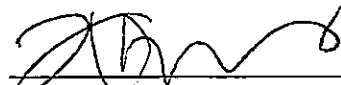
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Kensey Evans
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

September 1, 2020