

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
APPEAL FROM ADMINISTRATIVE LAW COURT

CASE NO: 2021-001044

Willie Young <sup>285487</sup>  
Appellant

v

South Carolina Department  
of Corrections  
Respondent

MOTION TO AMEND  
SUPPLEMENT PLEADINGS  
S.C.R.C.P. RULE 15  
(A)(B) **RECEIVED**

MAY 20 2022

SC Court of Appeals

Comes now before the court the above named appellant in the above referenced matter motioning the court Pursuant to South Carolina rules of civil procedure Rule 15 to amend this pleading, As appellant is challenging the denial of his state-created liberty right(s) to the application of his earned work credits to reduce his sentence, Which is essentially a challenge to the statutory provisions of S.C. Code 16-11-330, 24-13-100, 24-13-150(A)

Procedural History

On June 28, 2002 appellant was convicted and sentenced to thirty years for Armed Robbery. November 22, 2020 appellant filed a step 1 grievance raising his sentence was incorrectly calculated and that he did not receive all of his work credits. Prior to the step one grievance, appellant raised to respondent the application of S.C. Code 24-13-125(A) and its denial. R.O.A pg. 13 Also within appellants step one grievance S.C. Code 24-13-210(A)(B); 16-11-330 and their provisions were also raised, this grievance was denied. R.O.A pg. 9 Appellant then filed his step 2 grievance on December 17, 2020 again asserting agencies new classification afforded him credits to reduce his current sentence according to state law. R.O.A. pg. 8 In response, respondent stated appellant had a mandatory sentence requirement of 25 years and 6 months and denied this grievance.

as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections [ . . . ] is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served **at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits**, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

(Emphasis added). Appellant's conviction for armed robbery meets the definition of S.C. Code Ann. § 24-13-100; therefore, he must serve at least 85% of his sentence pursuant to S.C. Code 24-13-150(A). Mathematically, this means that Appellant must serve no less than twenty-five years and six months of his thirty-year sentence. This is what Appellant is projected to serve based upon his sentence start date of September 12, 2001, and his maxout date of March 7, 2027. (See SCDC Printouts). Although Appellant has earned both good time and work credits at the reduced rate at which 85% inmates can earn such credits<sup>1</sup> (see SCDC Printouts), neither good time or work credits can be used to reduce his term of imprisonment below 85% because the statute specifically states that 85% no-parole inmates must serve "**at least eighty-five percent** of the actual term of imprisonment imposed," to be calculated without the application of work credits or good time credits. S.C. Code 24-13-150(A) (emphasis added). Therefore, Appellant's arguments are without merit, and the Order of the ALC must be affirmed.

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<sup>1</sup> Under S.C. Code 24-13-210(B), 85% offenders may earn 3 days of good time credit per month. Under S.C. Code 24-13-230(B), 85% inmates may earn 6 days of work credit per month. Contrary to Appellant's apparent belief, good time and work credits are applied to reduce the total sentence (here, 30 years) and are not applied to 85% of the 30 years. This same principle applies to non-85% offenders, although non-85% offenders are able to earn a much greater amount of good time and work credit under S.C. Code 24-13-210(A)

Appellant, after filing his notice of appeal April 1, 2021 again essentially asserting denial of S.C. state law and statutory provisions filed his brief July 12, 2021. In appellants brief he raised he was being denied his state created liberty rights, 1) Denial of his work credits, 2) Eligibility for parole. R.D.A pg. 25-29 Respondents reply was that appellant was convicted of a no parole offense and therefore must serve 25 years and 6 months of his 30 year sentence, also asserting that appellant failed to raise he was not required to serve 85% because he could participate in work release. R.D.A pg. 30-35 Appellant filed his reply brief on August 30, 2021 the ALC affirmed SCDC decision and appellant filed his notice of appeal. R.D.A. pg. 3-6; pg. 40 On Jan 4, 2022 this court entered an order to reinstate appellants <sup>wy</sup> appellate appeal directing respondent to file a brief. On April 18, 2022 after various orders from this court to place the proceeding in proper form, appellant was directed to inform the court of which final brief he would submit. and after proper reply to the court, this pleading is now ready to be submitted. This motion to amend follows.

### STANDARD OF REVIEW

Rule 15 provides that when a party asks to amend his pleading, "leave shall be freely given when justice so requires and does not prejudice any other party and has been held/observed that this rule strongly favors amendment and the court is encouraged to freely grant leave to amend." Parker v Spartanburg Sanitary Sewer Dist. 362 S.C. 276, 286; 607 S.E.2d 711, 717 (Ct.App. 2005) (citing Jarrell v. Seaboard Systems R.R., Inc 294 S.C. 183, 186; 386 S.E.2d 398, 399 (Ct.App. 1987))

### AMENDMENT SUPPORT

Appellant motions this court to amend this pleading to include, 1) Eligibility for parole and 2) Unconstitutional application of 24-13-100. In support of this amendment appellant requests this pleading conform to the evidence presented in the record of appeal, as the record as a whole would not prejudice the respondent. 2 S.C. Litig. Forms & Analysis § 22:13 SCRPC Rule 15(B)

The initial filing of this pleading appellant raised to the respondent he was entitled to a sentence reduction accorded by agencies new classification system as well as statutory provisions passed by state legislation. R.D.A. pg. 8, 9, 13, 28

## 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.

Appellant further notes before the court the raising of the claim of the application of his earned work credits, is a right, that would in fact, relieve him of the 85% rule. R.O.A pg. 28 Appellant asserted in his initial brief his issues on appeal were both the denial of his Work credits and eligibility for parole, issues of which evidence had been submitted to the respondent throughout the record of appeal! R.O.A. pg. 25-29 The respondent noted in its order that after completion of seven (7) years, the statutory provisions of 16-11-330 made the appellant eligible for parole, however, it also asserted that appellant was convicted of a no parole offense requiring a 85% sentence requirement, though S.C. code 24-13-100 has been recognized as repealed by implication, and appellant therefore strongly request that with these provisions acknowledgments both by the respondent and this court that the above amendments be granted as they are supported by SCRCp rule 15(c), Bolin v SCDC 415 S.C. 276 (Ct. App. 2016)

Date May 16, 2022

/s/ Willie Young

Proof of Service

I Willie Young Attest that a copy of the attached was served on SCDC, at 4444 Broad River rd. Cola, S.C. 29221 and the S.C. court of appeal 1220 senate st. Cola S.C. 29201.

Date: May 16, 2022

/s Willie Young

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