UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6264

MICHAEL T. BRAXTON,

Petitioner - Appellant,

v.

WARDEN OF KERSHAW CORRECTIONAL INSTITUTION,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry M. Herlong, Jr., Senior District Judge. (8:20-cv-03168-HMH)

Submitted: August 30, 2021 Decided: October 21, 2021

Before QUATTLEBAUM and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Michael T. Braxton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael T. Braxton seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Braxton's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Braxton has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: October 21, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6264
(8:20-cv-03168-HMH)

MICHAEL T. BRAXTON

Petitioner - Appellant

v.

WARDEN OF KERSHAW CORRECTIONAL INSTITUTION

Respondent - Appellee

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appx - A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Michael T. Braxton, Petitioner, vs. Warden of Kershaw Correctional Institution, Respondent.	)	C.A. No. 8:20-3168-HMH-JDA **OPINION & ORDER**

This matter is before the court following the receipt of Michael T. Braxton's ("Braxton") pro se motion addressed to the court, which appears to be a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

Braxton filed a 28 U.S.C. § 2254 petition alleging that the South Carolina Department of Corrections miscalculated his sentence. (§ 2254 Pet., ECF No. 1.) On January 4, 2021, United States Magistrate Judge Jacquelyn D. Austin recommended granting the Respondent's motion for summary judgment and denying Braxton's motion for summary judgment. (R&R, ECF No. 21.) Objections to the Report and Recommendation were due by January 19, 2021. Braxton did not file objections to the Report and Recommendation by the filing deadline. After receiving no objections, the court adopted the Report and Recommendation, granted Respondent's motion for summary judgment, and denied Braxton's motion for summary judgment in an order dated January 26, 2021. (Order, ECF No. 23.) On January 27, 2021,[1] Braxton filed untimely objections, which the court construed as a motion to alter or amend the judgment pursuant to

[1] Houston v. Lack, 487 U.S. 266 (1988).

Appx ~B

Rule 59(e) of the Federal Rules of Civil Procedure. (Mot. Alter or Amend, ECF No. 26.) The court denied the motion in an order dated February 3, 2021. (Order, ECF No. 27.) Braxton filed the instant motion on the same day.[2] (Rule 60(b) Mot., ECF No. 30.) This matter is now ripe for consideration.

Rule 60(b) "invest[s] federal courts with the power in certain restricted circumstances to vacate judgments whenever such action is appropriate to accomplish justice." Compton v. Alton S.S. Co., 608 F.2d 96, 101-02 (4th Cir. 1979) (internal quotation marks omitted). "The remedy provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances." Id. at 102. Rule 60(b) "does not authorize a motion merely for reconsideration of a legal issue." United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). "Where the motion is nothing more than a request that the district court change its mind . . . it is not authorized by Rule 60(b)." Id. at 313.

Braxton argues that the court's January 26, 2021 order adopting the Report and Recommendation was "premature" because his objections were timely. (Rule 60(b) Mot., generally, ECF No. 30.) Specifically, Braxton argues that he had 14 days from the receipt of the Report to file objections and alleges he received the Report on January 19, 2021. (Id., ECF No. 30.) In other words, Braxton argues that when a person is served by mail, service is not complete until the mail is received by the person. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Braxton has misconstrued the law. Rule 72(b) of the Federal Rules of Civil Procedure requires that objections to a Report and Recommendation must be filed "[w]ithin 14 days after being served with a copy of the recommendation." Rule 5(b)(2)(c) provides that when a person

[2] Houston v. Lack, 487 U.S. 266 (1988).

Appx- B

is served by mail, "service is complete upon mailing." Rule 6(d) further provides that when a party must act within a specified time after being served, and service is made by mail, the party has an additional three days to act. Therefore, service was completed when the Report was mailed on January 5, 2021, and because the Report was mailed, Braxton had 17 days from January 5, 2021, to file objections. (See Mailing Note, ECF No. 22.) That deadline fell on Friday, January 22, 2021. Because Braxton filed objections on January 27, 2021,[3] his objections were untimely, and the court's order granting Respondents' summary judgment motion was not premature. See Baccus v. S.C. Dep't of Corr., 793 F. App'x 193 (4th Cir. 2020) (unpublished).

However, out of an abundance of caution and in light of the mail delays due to COVID-19, the court will consider Braxton's objections as timely. Therefore, the court vacates its January 26, 2021 order adopting the Report and Recommendation and its February 3, 2021 order denying Braxton's motion to alter or amend the judgment, ECF Nos. 23 and 27.

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Braxton's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. Accordingly, after review, the court finds that Braxton's objections are without merit.

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[3] Houston v. Lack, 487 U.S. 266 (1988).

Appx - B

Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Austin's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that the court's order dated January 26, 2021, docket number 23, is vacated. It is further

ORDERED that the court's order dated February 3, 2021, docket number 27, is vacated. It is further

ORDERED that Braxton's Rule 60(b) motion, docket number 30, is granted as set out in this order. It is further

ORDERED that Respondent's motion for summary judgment, docket number 15, is granted; Braxton's motion for summary judgment, docket number 18, is denied; and the Petition, docket number 1, is dismissed with prejudice. It is further

ORDERED that a certificate of appealability is denied because Petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).[4]

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
February 10, 2021

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[4] District courts must issue certificates of appealability when entering "a final order adverse to the applicant." Rule 11(a), Rules Governing § 2254 Cases. These rules may be applied to other types of habeas corpus petitions. Rule 1(b), Rules Governing § 2254 Cases.

Appx - B

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

Appx-B

U.S. District Court

District of South Carolina
Notice of Electronic Filing

The following transaction was entered on 2/11/2021 at 4:01 PM EST and filed on 2/11/2021
Case Name: Braxton v. South Carolina Department of Corr.
Case Number: 8:20-cv-03168-HMH
Filer:
WARNING: CASE CLOSED on 01/26/2021
Document Number: 31

Docket Text:
ORDERED that the court's order dated January 26, 2021, [23], is vacated. It is further ORDERED that the court's order dated February 3, 2021, [27], is vacated. It is further ORDERED that Braxton's Rule 60(b) motion, [30], is granted as set out in this order. It is further ORDERED that Respondent's motion for summary judgment, [15], is granted; Braxton's motion for summary judgment, [18], is denied; and the Petition, [1], is dismissed with prejudice. It is further ORDERED that a certificate of appealability is denied because Petitioner has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. 2253(c)(2) Signed by Honorable Henry M. Herlong, Jr. on 2/11/2021. (sgri)

8:20-cv-03168-HMH Notice has been electronically mailed to:

Melody Jane Brown mbrown@scag.gov, abennett@scag.gov

Christina June Catoe Bigelow bigelow.christina@doc.sc.gov

8:20-cv-03168-HMH Notice will not be electronically mailed to:

Michael T Braxton
119081
PB-62
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

The following document(s) are associated with this transaction:
Document description:Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=2/11/2021] [FileNumber=10048882-0] [a499ef431b007d531eb3017bc5ab8da2723c02382aec31b5e21448ca9d36ce0bf4edfea9eee7a182cfa7cf9419f4317524abed35a17c8397bc32840e17a4331e]]

Appx - B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Michael T. Braxton, Petitioner, v. Warden of Kershaw Correctional Institution, Respondent.	C/A No. 8:20-cv-03168-HMH-JDA **REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

This matter is before the Court on cross motions for summary judgment. [Docs. 15; 18.] Petitioner is a state prisoner who seeks relief under 28 U.S.C. § 2254. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(c), D.S.C., this magistrate judge is authorized to review post-trial petitions for relief and submit findings and recommendations to the District Court.

Proceeding pro se and in forma pauperis, Petitioner filed this Petition for writ of habeas corpus on August 31, 2020.[1] [Doc. 1.] On November 17, 2020, Respondent filed a motion for summary judgment. [Doc. 15.] On the same day, the Court filed an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the summary judgment procedure and of the possible consequences if he failed to adequately respond to the motion. [Doc. 16.] On November 30, 2020, the Clerk docketed a motion for summary judgment from Petitioner, which this Court also construes as a response to Respondent's summary judgment motion. [Doc. 18.] On December 14, 2020, Respondent

[1]A prisoner's pleading is considered filed at the moment it is delivered to prison authorities for forwarding to the court. *See Houston v. Lack*, 487 U.S. 266, 270 (1988). Accordingly, this action was filed on August 31, 2020. [Doc. 1-2 at 1 (envelope stamped as received by prison mailroom on August 31, 2020).]

filed a response to Petitioner's summary judgment motion. [Doc. 19.] Both summary judgment motions are now ripe for review.

BACKGROUND

Petitioner is confined in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Anderson County Clerk of Court. [Docs. 1 at 1.] Much of the factual background relevant to this case is described by the Court of Appeals of South Carolina in *Braxton v. South Carolina Department of Corrections*:

> On November 17, 1983, [Petitioner] was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). [Petitioner] served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, [Petitioner] was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on [Petitioner]. [Petitioner] was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC), and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on [Petitioner]. [Petitioner] completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, [Petitioner] served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, [Petitioner] was incarcerated in Anderson County, South Carolina. Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, [Petitioner] was transferred back into the custody of SCDC with a release date of June 22, 2022.
>
> [Petitioner] timely filed a Step 1 grievance with SCDC, claiming SCDC failed to give him credit towards his remaining CSC sentence for the time he spent on successful parole supervision and for the time he spent incarcerated in Tennessee. [Petitioner's] Step 1 grievance was denied.

> [Petitioner] then filed a Step 2 grievance with SCDC, restating the allegations set forth in his Step 1 grievance and also arguing he should be credited for time served "incarcerated in Tennessee . . . (which includes the time served during the extradition process)." His Step 2 grievance was subsequently denied.
>
> [Petitioner] then appealed SCDC's denial of his grievances to the [Administrative Law Court ("ALC")]. He argued SCDC erred in refusing to give him credit (1) for the time he spent on parole, (2) for the time he spent in pretrial detention and incarcerated for unrelated charges in Tennessee while there were parole violation warrants from South Carolina in place, and (3) for the time he served for the period he was held in Anderson County before returning to the custody of SCDC. By order dated August 24, 2017, the ALC affirmed SCDC's final decision regarding the calculation of [Petitioner's] sentence.

Braxton, 846 S.E.2d 383, 385 (S.C. Ct. App. 2020) (footnotes omitted).

Addressing Petitioner's claims, the South Carolina Court of Appeals held that "the ALC erred in affirming SCDC's refusal to grant him credit for time served while he was successfully on parole prior to his Tennessee arrest" and therefore remanded that "issue to the ALC to recalculate [Petitioner's] sentences such that he receives credit for the time he served while on parole." *Id.* at 386. Regarding Petitioner's arguments that the ALC erred in refusing to give him credit for time served before and after he was sentenced on charges in Tennessee and in refusing to give him credit for the time he was held in Anderson County, the South Carolina Court of Appeals affirmed.[2] *Id.* at 387–88.

[2]Petitioner filed a notice of appeal and a petition for a writ of certiorari in the Supreme Court of South Carolina, attempting to challenge the portion of the decision in which the appellate court had affirmed, but the Supreme Court of South Carolina struck the notice of appeal and petition, holding that the decision appealed from was not final insofar as no petition for rehearing or reinstatement had been acted on by the South Carolina Court of Appeals. [Doc. 15-4.]

APPX - C

On remand, Administrative Law Judge H. W. Funderburk, Jr. determined that the time Petitioner was on parole prior to his Tennessee arrest was two years and 16 days and therefore ordered that Petitioner be credited with that amount toward his sentence. [Doc. 15-2 at 10–11.] In response to that order, SCDC wrote a letter to Judge Funderburk dated September 1, 2020, notifying him that Petitioner "ha[d] already been given credit for the time he successfully served on parole prior to his Tennessee arrest," although SCDC acknowledged that its prior court filings had "caused confusion" regarding this issue. [Doc. 18-2 at 1.] In the letter, SCDC explained in detail how Petitioner's release date had been calculated and informed Judge Funderburk that "once [he had] had an opportunity to review th[e] letter, SCDC w[ould] adjust [Petitioner's] credits according to any further instruction." [*Id.* at 1–2.]

Judge Funderburk responded to the letter in his own letter dated September 9, 2020. [*Id.* at 3.] In it, he noted that he understood from the letter and attached printouts that SCDC "had this information before the case came to [the ALC] or to the Court of Appeals." [*Id.* at 3.] He sated that he could "only follow the directions given [to him] by the Court of Appeals," and thus, he suggested that SCDC "forward [its] explanation to the Court of Appeals and ask for its guidance." [*Id.*] SCDC subsequently sent Petitioner a letter dated September 28, 2020, stating its position that "SCDC [wa]s in compliance with" Judge Funderburk's order on remand because Petitioner's March 25, 2021, release date already gave Petitioner credit for the two years and 16 days in question, as well as additional days. [Doc. 15-2 at 1.] On that basis, SCDC noted that it "consider[ed] the matter closed," that "no further action will be taken," and that Petitioner had "already been

Appx ~ C

given more parole time than" Judge Funderburk had ordered in his decision on remand. [*Id.*]

Petition for Writ of Habeas Corpus

Petitioner filed this Petition for writ of habeas corpus on August 31, 2020. [Doc. 1.] Petitioner raises the following grounds/facts for relief, quoted substantially verbatim, in his Petition pursuant to 28 U.S.C. § 2254:

GROUND ONE: Is the State of South Carolina in violation of the 5th, 8th and 14th Amendments of the United States Constitution by confining the Petitioner to an expired sentence?

Supporting facts: After being remanded back to the South Carolina Department of Corrections after 22 years due to a parole violation, in which no probable cause or revocation hearing was rendered prior to, the agency erroneously miscalculated the Petitioner's remaining sentence, and has refused to recognize the expiration status of the sentence, in spite of his numerous appeals both formal and informal. The Petitioner's sentence has been invalidated by the South Carolina Court of Appeals, on July 1, 2020. SCDC still refuses to recognize status.

GROUND TWO: Is the State of South Carolina in violation of Ex Post Facto provisions in the case of the Petitioner.

Supporting facts: The South Carolina Court of Appeals ordered on July 1, 2020, that the Petitioner be awarded his time on Parole, the South Carolina Administrative Law court in its Order on Remand deemed the Petitioner's parole time to be from March 31, 1994, to April 16, 1996, 2 years, 16 days. Case No. 20-ALJ-04-0325-A-AP. In response to this order the South Carolina Department of Corrections has implemented a potential punishment without probable cause, that was NOT present at the time of the Petitioner's sentence, or his initial release before revocation of his parole. See State of S.C., County of Anderson, SENTENCE HAS EXPIRED!!.

Appx-C

[Doc. 1 at 5, 8.]

APPLICABLE LAW

Liberal Construction of Pro Se Petition

Petitioner brought this action pro se, which requires the Court to liberally construe his pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. *Haines*, 404 U.S. at 520. Even under this less stringent standard, however, the pro se petition is still subject to summary dismissal. *Id.* at 520–21. The mandated liberal construction means only that if the court can reasonably read the pleadings to state a valid claim on which the petitioner could prevail, it should do so. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). A court may not construct the petitioner's legal arguments for him. *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court "conjure up questions never squarely presented." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477

APPX-C

U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Id.* at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* Further, Rule 56 provides in pertinent part:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> > (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only),

APPX-C

> admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits.

Habeas Corpus

Generally

Because Petitioner filed the Petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), review of his claims is governed by 28 U.S.C. § 2254(d), as amended. *Lindh v. Murphy*, 521 U.S. 320 (1997); *Breard v. Pruett,* 134 F.3d 615 (4th Cir. 1998); *see also In re Wright*, 826 F.3d 774, 783 (4th Cir. 2016) (holding that "when a prisoner being held 'pursuant to the judgment of a State court' files a habeas petition claiming the execution of his sentence is in violation of the Constitution, laws, or treaties of the United States," § 2254 governs). Under the AEDPA, federal courts may not grant habeas corpus relief unless the underlying state adjudication

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Williams v. Taylor*, 529 U.S. 362, 411 (2000). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision," and "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 101–02 (2011). Moreover, state court factual determinations are presumed to be correct, and the petitioner has the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Procedural Bar

Federal law establishes this Court's jurisdiction over habeas corpus petitions. 28 U.S.C. § 2254. This statute permits relief when a person "is in custody in violation of the Constitution or laws or treaties of the United States" and requires that a petitioner present his claim to the state's highest court with authority to decide the issue before the federal court will consider the claim. *Id.* The separate but related theories of exhaustion and procedural bypass operate to require a habeas petitioner to first submit his claims for relief to the state courts. A habeas corpus petition filed in this Court before the petitioner has appropriately exhausted available state-court remedies or has otherwise bypassed seeking relief in the state courts will be dismissed absent unusual circumstances detailed below.

SC. Court of Appeals
highest state Ct.

No Appeal Filed by SCDC at this time

Exhaustion

Section 2254 contains the requirement of exhausting state-court remedies and provides as follows:

> (b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
>
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B) (I) there is an absence of available State corrective process; or
>
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
>
> (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.
>
> (3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.
>
> (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

28 U.S.C. § 2254. The statute requires that, before seeking habeas corpus relief, the petitioner first must exhaust his state court remedies. *Id.* § 2254(b)(1)(A). "To satisfy the exhaustion requirement, a habeas petitioner must fairly present his claim to the state's highest court." *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997), *abrogated on other grounds by United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011).

The undersigned has previously summarized the applicable exhaustion requirements. *Odom v. Warden of Broad River Corr. Inst.*, No. 8:17-cv-02273-TMC-JDA, 2018 WL 2729168, at *3 (D.S.C. May 18, 2018), *Report and Recommendation adopted by* 2018 WL 2718044 (D.S.C. June 6, 2018). To exhaust state remedies when attacking the execution of a sentence, a petitioner must follow the procedure set out in *Al-Shabazz v. State*, 527 S.E.2d 742, 750 (S.C. 2000). *See Slezak v. S.C. Dep't of Corr.*, 605 S.E.2d 506, 507 (S.C. 2004). Generally, a state prisoner's sentence calculation claim will fall within the category of administrative issues that the Supreme Court of South Carolina has identified as properly being raised through the prison grievance process with appeal to the South Carolina ALC. *See Al-Shabazz*, 527 S.E.2d 742. Pursuant to the South Carolina Administrative Procedures Act ("SCAPA") and the South Carolina Appellate Court Rules, an inmate who is dissatisfied with the decision of the ALC may seek judicial review from the Court of Appeals of South Carolina, and, ultimately, the Supreme Court of South Carolina. S.C. Code Ann. § 1-23-610; Rule 242, SCACR. Therefore, a petitioner must first exhaust the administrative remedies available through the SCDC grievance process, and then he must fully exhaust his state court remedies as provided in the SCAPA before he brings his petition for federal habeas review. *See Al-Shabazz*, 527 S.E.2d at 752–57; 28 U.S.C. § 2254(b)(1)(A). The SCDC administrative decisions from which an inmate may seek review from the ALC "include inmate discipline and punishment, the calculation of an inmate's sentence or sentence-related credits, or an inmate's custody status." *Jones v. Williams*, No. 1:18-3320-JMC-SVH, 2019 WL 831120, at *2 (D.S.C. Jan. 8, 2019).

Procedural Bypass

Procedural bypass, sometimes referred to as procedural bar or procedural default, is the doctrine applied when a petitioner seeks habeas corpus relief based on an issue he failed to raise at the appropriate time in state court, removing any further means of bringing that issue before the state courts. In such a situation, the petitioner has bypassed his state remedies and, as such, is procedurally barred from raising the issue in his federal habeas petition. *See Smith v. Murray*, 477 U.S. 527, 533 (1986). The United States Supreme Court has stated that the procedural bypass of a constitutional claim in earlier state proceedings forecloses consideration by the federal courts. *See id.* Bypass can occur at any level of the state proceedings if a state has procedural rules that bar its courts from considering claims not raised in a timely fashion. *Id.*

However, if a federal habeas petitioner can show both (1) "'cause' for noncompliance with the state rule" and (2) "'actual prejudice resulting from the alleged constitutional violation[,]'" the federal court may consider the claim. *Smith*, 477 U.S. at 533 (quoting *Wainwright v. Sykes*, 433 U.S. 72, 84 (1977)). When a petitioner has failed to comply with state procedural requirements and cannot make the required showing of cause and prejudice, the federal courts generally decline to hear the claim. *Murray v. Carrier*, 477 U.S. 478, 496 (1986). Further, if the petitioner does not raise cause and prejudice, the court need not consider the defaulted claim. *See Kornahrens v. Evatt*, 66 F.3d 1350, 1363 (4th Cir. 1995).

If a federal habeas petitioner has failed to raise a claim in state court and is precluded by state rules from returning to state court to raise the issue, he has procedurally

bypassed his opportunity for relief in the state courts and in federal court. *Coleman v. Thompson*, 501 U.S. 722, 731–32 (1991). Absent a showing of cause and actual prejudice, a federal court is barred from considering the claim. *Wainwright*, 433 U.S. at 87. In such an instance, the exhaustion requirement is technically met, and the rules of procedural bar apply. *Teague v. Lane*, 489 U.S. 288, 297–98 (1989); *Matthews*, 105 F.3d at 915.

Cause and Actual Prejudice

Because the requirement of exhaustion is not jurisdictional, this Court may consider claims that have not been presented to the Supreme Court of South Carolina in limited circumstances—where a petitioner shows sufficient cause for failure to raise the claim and actual prejudice resulting from the failure, *Coleman*, 501 U.S. at 750, or where a "fundamental miscarriage of justice" has occurred, *Carrier*, 477 U.S. at 495–96. A petitioner may prove cause if he can demonstrate ineffective assistance of counsel relating to the default, show an external factor hindered compliance with the state procedural rule, or demonstrate the novelty of a particular claim, where the novelty of the constitutional claim is such that its legal basis is not reasonably available to the petitioner's counsel. *Id.* at 487–89; *Reed*, 468 U.S. at 16. Absent a showing of "cause," the court is not required to consider "actual prejudice." *Turner v. Jabe*, 58 F.3d 924, 931 (4th Cir. 1995). However, if a petitioner demonstrates sufficient cause, he must also show actual prejudice to excuse a default. *Carrier*, 477 U.S. at 492. To show actual prejudice, the petitioner must demonstrate more than plain error. *Engle v. Isaac*, 456 U.S. 107, 134–35 (1982).

DISCUSSION

Respondent argues that Petitioner failed to exhaust his administrative remedies as to both claims to the extent that they challenge SCDC's determination that decisions of the South Carolina Court of Appeals and Judge Funderburk on remand did not alter the release date for Petitioner that SCDC had previously calculated. [Doc. 15-1 at 4–6.] The Court agrees.

As Respondent argues, if Petitioner believed that SCDC erred in determining that the state court decisions did not alter Petitioner's release date, he was free to appeal SCDC's determination and to appeal any unfavorable ALC decision to the state appellate courts. Because he did not do so, the Court concludes as a matter of law that Petitioner has failed to exhaust his state court remedies with respect to his challenges to SCDC's determination. The Court notes that Petitioner appears to argue that he was unaware that he needed to take these steps to exhaust his state remedies. [Doc. 18-1 at 4.] However, "ignorance of the law cannot constitute cause," *Taylor v. Warden*, No. 0:14-2032-TMC, 2015 WL 5603296, at *5 (D.S.C. Sept. 23, 2015), and Petitioner does not otherwise raise cause or prejudice for his failure to appeal SCDC's determination on remand or assert actual innocence.[3] The Court therefore recommends that Respondent's summary

[3]Petitioner does argue that, his failure to take the proper steps to challenge the portion of the South Carolina Court of Appeals decision that was unfavorable to him was due to his being denied access to legal research materials from May to August 2020. [Docs. 18-1 at 4–5; 18-2 at 4.] However, Petitioner's failure to properly challenge the South Carolina Court of Appeals' decision is immaterial to his procedural default of his claims alleging that the SCDC failed in September 2020 to correctly apply the state courts' decisions on remand.

Petitioner also points out that he has recently petitioned the Supreme Court of South Carolina partially on the basis that SCDC has not properly applied the state court

judgment motion be granted as to both grounds, that Petitioner's summary judgment motion be denied, and that his Petition be dismissed with prejudice.[4]

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, the Court recommends that Respondent's motion for summary judgment [Doc. 15] be GRANTED; Petitioner's motion for summary judgment [Doc. 18] be DENIED; and the Petition [Doc. 1] be DISMISSED WITH PREJUDICE.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

January 4, 2021
Greenville, South Carolina

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decisions. [Doc. 18-1 at 5–6; Doc. 15-5.] However, the filing of such a petition does not constitute the exhaustion of administrative remedies. *See Durkin v. Davis*, 538 F.3d 1037, 1042 (4th Cir. 1976) (holding that § 2254 petition concerning state sentence credit should have been dismissed because the petitioner's presentation of his claim in a mandamus petition to the state's highest court could not satisfy the exhaustion requirement when petitioner had a state-court habeas remedy available and state's highest court may have denied mandamus petition on jurisdictional grounds); *Melton v. Taylor*, No. 6:15-cv-1400-RBH, 2015 WL 2345305, at *4 (D.S.C. May 14, 2015) ("[A] petition filed in the original jurisdiction of a State's highest court does not satisfy the exhaustion requirement of § 2254."); *see also Anderson v. Harless*, 459 U.S. 4, 6 (1982) (holding that a habeas petitioner must fairly present the substance of his habeas claim in state court prior to federal review).

[4]Under the procedure rules of the ALC, Petitioner's request for a contested case hearing before the ALC was required to "be filed and served within thirty (30) days after actual or constructive notice of the agency's decision." SCALCR 11(C); *see South Carolina Dep't of Consumer Affairs v. Entera Holdings, LLC*, No. 2015-UP-102, 2015 WL 918496, at *1 (S.C. Ct. App. Mar. 4, 2015). SCDC informed Petitioner of its final decision via letter dated September 28, 2020, which he acknowledges receiving in mid-October. [Doc. 18-1 at 4.] Accordingly, his time for appealing SCDC's decision has expired.

APPX-C

Step # 2 was Final Agency decision!

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

APPX-C

FILED: January 19, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6264
(8:20-cv-03168-HMH)

MICHAEL T. BRAXTON

Petitioner - Appellant

v.

WARDEN OF KERSHAW CORRECTIONAL INSTITUTION

Respondent - Appellee

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Quattlebaum, Judge Rushing, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

Appx - D

Exhibit #10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Michael Braxton, #119081, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001964

Appeal From The Administrative Law Court
The Honorable Harold W. Funderburk, Jr.,
Administrative Law Judge

Opinion No. 5737
Submitted December 2, 2019 – Filed July 1, 2020

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Michael Braxton, pro se.

Christina Catoe Bigelow, Salley W. Elliott, and Annie Laurie Rumler, all of the South Carolina Department of Corrections, of Columbia, for Respondent.

WILLIAMS, J.: Michael Todd Braxton appeals the order of the administrative law court (ALC) affirming the South Carolina Department of Corrections's (SCDC) final decision regarding his sentence. On appeal, Braxton argues the ALC erred in affirming SCDC's calculation of his sentence because SCDC did not award him credit for time served while he was (1) on parole, (2) incarcerated in Tennessee, and (3) awaiting extradition to South Carolina. We affirm in part and

reverse and remand in part.

FACTS/PROCEDURAL HISTORY

On November 17, 1983, Braxton was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). Braxton served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, Braxton was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina issued a parole violation warrant, and a parole violation hold was placed on Braxton. Braxton was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC),[1] and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on Braxton. Braxton completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, Braxton served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, Braxton was incarcerated in Anderson County, South Carolina.[2] Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, Braxton was transferred back into the custody of SCDC with a release date of June 22, 2022.

Braxton timely filed a Step 1 grievance with SCDC, claiming SCDC failed to give him credit towards his remaining CSC sentence for the time he spent on successful parole supervision and for the time he spent incarcerated in Tennessee. Braxton's Step 1 grievance was denied. Braxton then filed a Step 2 grievance with SCDC, restating the allegations set forth in his Step 1 grievance and also arguing he should be credited for time served "incarcerated in Tennessee . . . (which includes the time served during the extradition process)." His Step 2 grievance was subsequently denied.

Braxton then appealed SCDC's denial of his grievances to the ALC. He argued SCDC erred in refusing to give him credit (1) for the time he spent on parole, (2)

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[1] Braxton was sentenced on May 1, 1998.

[2] It is not clear from our review of the record where Braxton was housed between the completion of his sentence in Tennessee on November 2, 2015, and his transfer to Anderson County.

for the time he spent in pretrial detention and incarcerated for unrelated charges in Tennessee while there were parole violation warrants from South Carolina in place, and (3) for the time he served for the period he was held in Anderson County before returning to the custody of SCDC. By order dated August 24, 2017, the ALC affirmed SCDC's final decision regarding the calculation of Braxton's sentence. This appeal followed.

ISSUE ON APPEAL

Did the ALC err in affirming SCDC's final decision regarding the calculation of Braxton's sentence as to the time he served while he was (1) on parole, (2) incarcerated in Tennessee, and (3) awaiting extradition to South Carolina?

STANDARD OF REVIEW

"In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the AL[C]'s findings are supported by substantial evidence." *Sanders v. S.C. Dep't of Corr.*, 379 S.C. 411, 417, 665 S.E.2d 231, 234 (Ct. App. 2008). "Although [the appellate] court shall not substitute its judgment for that of the AL[C] as to findings of fact, [it] may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole." *Id.* "In determining whether the AL[C]'s decision was supported by substantial evidence, [the appellate] court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the AL[C] reached." *Id.* This court's review of the ALC's order must be confined to the record provided on appeal. S.C. Code Ann. § 1-23-610(B) (Supp. 2019). "Furthermore, the burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence." *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

LAW/ANALYSIS

Section 24-13-40 of the South Carolina Code (Supp. 2019) provides the following regarding the computation of time served:

> 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.

(emphasis added).

I. Time Spent on Parole

Braxton argues the ALC erred in affirming SCDC's refusal to grant him credit for time served while he was successfully on parole prior to his Tennessee arrest. We agree.

As an initial matter, we agree with the ALC that section 24-13-40 does not apply to time spent on parole. Based on a plain reading of the statutory language, we find section 24-13-40 applies to credit for time served while incarcerated *prior to trial or sentencing*, and it does not address whether credit should be granted for time spent on parole *after sentencing*. *See Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) ("Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction."). However, although section 24-13-40 does not address credit for time served while on parole, our supreme court addressed the status of a parolee in *Sanders v. MacDougall*, stating, "A prisoner upon release on parole *continues to serve his sentence* outside the prison walls. The word parole is used in contra-distinction to suspended sentence and means a

leave of absence from prison during which the prisoner *remains in legal custody* until the expiration of his sentence." 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964) (emphases added). The court further provided, "An order revoking parole simply restores a defendant to the status he would have occupied had this form of leniency never been extended to him." *Id.* at 164, 135 S.E.2d at 837.

Following his CSC conviction and imprisonment in South Carolina, Braxton was successfully paroled from March 31, 1994, until he was arrested in Tennessee on April 16, 1996. Because Braxton continued to serve his sentence outside the prison walls and remained in legal custody while he was on parole, we find he should receive credit towards the remainder of his CSC sentence for the time he was on parole. *See id.* at 163, 135 S.E.2d at 837 (providing that a prisoner on parole remains in the legal custody of the South Carolina Probation, Parole, and Pardon Services (DPPP) Board and continues to serve his sentence outside the prison walls). Accordingly, we reverse and remand this issue to the ALC to recalculate Braxton's sentence such that he receives credit for the time he served while on parole.[3]

II. Time Spent Incarcerated in Tennessee

Braxton argues the ALC erred in refusing to award him credit for time served before and after he was sentenced on charges in Tennessee because he was in the constructive custody of South Carolina during those periods as a result of the issued parole violation warrants. We disagree.

Initially, we note we disagree with the ALC's reliance on section 24-13-40 to affirm SCDC's refusal to award Braxton credit for the time he was imprisoned in Tennessee because that section applies to credit for time served prior to trial and sentencing and Braxton was imprisoned in Tennessee after his trial and sentencing for his conviction in South Carolina. *See* § 24-13-40 (providing for the computation of time served by prisoners so that full credit against the sentence is given *for time served prior to trial and sentencing*); *see also Blue Ribbon Taxi*, 380

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[3] On appeal, Braxton also argues the DPPP policies and SCDC policies mandate that he be given credit for the time he spent on parole. However, we decline to address this argument as our holding is dispositive of this claim. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues on appeal when resolution of a prior issue is dispositive).

S.C. at 608, 670 S.E.2d at 678 ("Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction.").

Nevertheless, we agree with the ALC that Braxton is not entitled to credit for the time he served following his arrest and conviction in Tennessee. "[A] foreign jurisdiction is without authority to modify or place conditions on a sentence imposed in South Carolina." *Robinson v. State*, 329 S.C. 65, 69, 495 S.E.2d 433, 435 (1998). "Therefore, if a second jurisdiction imposes on a [prisoner] a sentence to run concurrently with the previously imposed sentence from another jurisdiction, it is the responsibility of the second jurisdiction to effectuate its concurrent sentence and thus ensure the [prisoner] receives credit for time served in both jurisdictions." *Id.* "To achieve this result, the second jurisdiction must transfer custody of the [prisoner] to the first jurisdiction." *Id.* "A [prisoner] may also receive credit for time served in another jurisdiction by notifying [SCDC] that he is unable to personally submit to South Carolina custody to commence the service of his sentence." *Id.* at 71, 495 S.E.2d at 436. "Upon such notification, [SCDC] will place a detainer on the [prisoner]." *Id.* "While the [prisoner] is subject to a South Carolina detainer, he is constructively in South Carolina custody." *Id.* at 71, 495 S.E.2d 436–37. "As a result, a [prisoner] will receive credit for time spent in another jurisdiction while subject to a South Carolina detainer." *Id.* at 71, 495 S.E.2d at 437.

In *Robinson*, the prisoner was lawfully released on an appeal bond for a South Carolina conviction. 329 S.C. at 66, 495 S.E.2d at 434. While out on bond, he was convicted and concurrently sentenced for several unrelated federal charges in Illinois. *Id.* at 66–67, 495 S.E.2d at 434. The prisoner's South Carolina conviction was affirmed, and because the federal court imposed a sentence to run concurrently with his South Carolina sentence, he sought to obtain credit in South Carolina for the time he served in federal custody. *Id.* at 67, 70, 495 S.E.2d at 434, 436. Our supreme court found the federal court could not modify or place conditions on his previously imposed South Carolina sentence and indicated it should have delivered the prisoner into South Carolina custody for the concurrent sentence to be satisfied. *Id.* at 70–71, 495 S.E.2d at 436. In the instant case, there is no indication in the record that Braxton's Tennessee sentence was set to run concurrently with his South Carolina sentence, and Braxton was not transferred back to South Carolina in order to ensure he received credit for time served in both Tennessee and South Carolina. *See Robinson*, 329 S.C. at 69, 495 S.E.2d at 435 ("[A] foreign jurisdiction is without authority to modify or place conditions on a sentence imposed in South Carolina."); *id.* ("Therefore, if a second jurisdiction imposes on a [prisoner] a sentence to run concurrently with the previously imposed sentence

from another jurisdiction, it is the responsibility of the second jurisdiction to effectuate its concurrent sentence and thus ensure the [prisoner] receives credit for time served in both jurisdictions.").

Although *Robinson* additionally held that credit for time served may be received for time served in another jurisdiction while a prisoner is subject to a South Carolina detainer, we find *Robinson* distinguishable from Braxton's case even though Braxton was under a South Carolina parole violation warrant. *See id.* at 71, 495 S.E.2d at 436–37. Unlike in Braxton's case, the federal court in *Robinson* intentionally imposed a sentence that was to run concurrently with Robinson's South Carolina sentence. *Id.* at 66–67, 495 S.E.2d at 434. Further, in *Delahoussaye v. State*, our supreme court declined to use *Robinson* to credit a prisoner for time served in another jurisdiction while subject to a South Carolina detainer when the prisoner was an escapee from a South Carolina institution. 369 S.C. 522, 526–28, 633 S.E.2d 158, 160–62. Because a prisoner released on parole has an uncontested conviction, remains in legal custody, and continues to serve his sentence while outside the prison walls, we find a violation of parole places Braxton in a status more akin to an escapee, as in *Delahoussaye*, than a prisoner lawfully released on an appeal bond, as in *Robinson*. Moreover, the court in *Delahoussaye* also highlighted the fact that the prisoner could "not assert that his federal sentence was intended to run concurrently with his South Carolina sentence." *Id.* at 528, 633 S.E.2d at 161–62. Thus, we find it is also relevant for this determination that there is no indication in the record that Braxton's Tennessee sentence was intended to run concurrently with his South Carolina sentence.

Based on the foregoing, we find Braxton is not entitled to credit for time served in Tennessee even though he was under a South Carolina parole violation warrant.[4]

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[4] Braxton also argues his due process rights were violated because he did not receive a probable cause or revocation hearing while incarcerated in Tennessee. Based upon our review of the record, we find this issue is not preserved for our review as it was neither raised to nor ruled upon by the ALC. *See Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration."); *Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000) ("[The record] must include all that is necessary to enable the [appellate] court to decide whether the AL[C] made an erroneous or unsubstantiated ruling."); *see also* § 1-23-610(B) ("The review of the [ALC's] order must be confined to the record.").

III. Time Spent Awaiting Extradition to South Carolina

Braxton argues the ALC erred in finding unpreserved his argument that SCDC erred in refusing to give him credit for the time period he was held in Anderson County. We disagree.

Braxton argued in his Step 2 grievance that he should receive credit for the time he was incarcerated *in Tennessee*, and, in parenthesis, noted "this includes time served during the extradition process." We agree with the ALC that this language did not specifically bring the issue of the time Braxton was held in Anderson County, South Carolina before the ALC. *See Kiawah Resort Assocs. v. S.C. Tax Comm'n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (providing that the appellate court will not consider issues that were not raised to and ruled upon by the administrative agency). Furthermore, we find Braxton failed to produce a sufficient record for this court to review this issue as Braxton did not include his final brief to the ALC in the record. *See Al-Shabazz*, 338 S.C. at 379, 527 S.E.2d at 755 ("[The record] must include all that is necessary to enable the [appellate] court to decide whether the AL[C] made an erroneous or unsubstantiated ruling."); *see also* § 1-23-610(B) ("The review of the [ALC's] order must be confined to the record."). Thus, we affirm as to this issue.

CONCLUSION

Based on the foregoing, the ALC's order is

AFFIRMED in part and REVERSED and REMANDED in part.[5]

HUFF and MCDONALD, JJ., concur.

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[5] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Braxton, #119081, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No.: 17-ALJ-04-0154-AP Grievance No.: KRCI 1769-16 **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Notice of Appeal filed March 30, 2017, by Michael Braxton ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). In this appeal, Appellant argues the Department has miscalculated his prison sentence. After review of the record and briefs, the Court affirms.

ISSUE ON APPEAL

Whether the Department erred in calculating Appellant's sentence under the relevant statutes.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such as a liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Appellant argues that the Department has not correctly applied credit for time served prior to his sentencing. The calculation and application of mandatory credit for time served is the administrative duty of the Department. *See* S.C. Code Ann. § 24-13-40 (Supp. 2016). In the event an inmate disagrees with the Department's calculation and application, or lack thereof, he or she files a grievance and the actions of the Department are reviewed by the ALC. *See Cooper v. State*, 338 S.C. 202, 525 S.E.2d 886) (2000) (distinguishing non-collateral, administrative pre-trial credit matters heard by the ALC from collateral PCR cases heard by circuit court judges); *State v. McCord,* 349 S.C. 477, 487, 562 S.E.2d 689, 694 (Ct. App. 2002) (citing *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000)) (pre-trial credit is not discretionary with the sentencing court).

Section 24-13-40 requires that a prisoner receive credit for time served prior to trial and sentencing unless one of two exceptions exists: "(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." S.C. Code Ann. § 24-13-40 (Supp. 2016) (emphasis added). It therefore follows that credit for time served must be applied any time a prisoner spends time in jail during which he is neither already serving a sentence nor

currently an escapee. *See Allen*, 339 S.C. at 395, 529 S.E.2d at 542; *State v. Boggs*, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (citing *McCord*, 349 S.C. at 487, 562 S.E.2d at 694).

Appellant pled guilty to first degree criminal sexual conduct on October 24, 1983 and was sentenced to thirty (30) years on November 17, 1983. On March 31, 1994, after serving ten (10) years and four (4) months, Appellant was conditionally released to the state of Tennessee on parole. After approximately two years on parole, Appellant was arrested in Tennessee for two separate counts of rape and placed in the custody of the Davidson County Criminal Justice Center. While Appellant was in the custody of the Davidson County Criminal Justice Center, a parole violation hold was placed on Appellant for violating his South Carolina parole. When Appellant was transferred to the Tennessee Department of Corrections, the South Carolina parole violation hold was reestablished for Appellant. Appellant served nineteen (19) years and five (5) months in the custody of the Tennessee Department of Corrections for the two counts of second degree rape that he plead guilty to in Tennessee. After serving his time in Tennessee for the two rape counts, Appellant was transferred back to South Carolina, where he was returned to the custody of the Department pursuant to the direction of the full parole board on January 20, 2016.

Appellant now argues he must be credited with time he was on parole in Tennessee before being arrested and the time he served in Tennessee for the two, second degree rape convictions. Section 24-13-40 provides that, "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." S.C. Code Ann. § 24-13-40 (Supp. 2016). Appellant believes this statute entitles him to additional time served for the period he was on parole but still monitored. This Court disagrees. First, the statute refers to credits given for time spent to prior to trial or sentencing, not to time spent on parole. Secondly, the statute affords the Department deference by stating that credit "may" be given for time spent under house arrest and, thus, the Department is not obligated to credit Appellant for any time spent on house arrest, if Appellant was under house arrest at any point.

Further, the Court disagrees that Appellant is entitled to credit for time served on his parole revocation for any time served in Tennessee for the two rape convictions. The record supports the conclusion that Appellant was serving time for two separate and unrelated sentences. Appellant argues the hold placed on him for violating his South Carolina parole prevented him from having

the option to bond out in Tennessee and attributed to him having a higher security classification. Appellant believes that because there was a hold in place for violating his South Carolina probation while he was serving his time for the rape charges, he is currently entitled to credit for the nineteen (19) years and five (5) months he served in Tennessee. This Court disagrees. A hold for violating parole is merely a warrant issued upon reasonable cause to believe that a subject has violated parole and it is executed when the subject is returned to the custody of the original jurisdiction. *See. Sartain v. Pitchess*, 386 F.2d 806, (9th Cir. 1966); *Cook v. U.S. Atty. Gen.* 488 F.2d 667, 671 (5th Cir. 1974). As explained above, Section 24-13-40 explicitly states that a prisoner cannot receive credit for time served prior to sentencing while serving time for another offense. In this case, Appellant was serving time for another offense and is not entitled to credit for that time on his current sentence.

Appellant additionally argues that the Department failed to apply credit for time served for the period he was held in Anderson County before returning to the custody of the Department. However, Appellant did not specifically raise this issue in his Step One or Step Two[1] grievance, and therefore, this issue is not preserved for appellate review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

H. W. Funderburk, Jr.
Administrative Law Judge

August 24, 2017
Columbia, South Carolina

I served this order in the above entitled action on all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in an envelope addressed to the party(s) at their address(es) as their attorney(s)
24th day of August 2017

FILED
AUG 24 2017
SC ADMIN. LAW COURT

[1] Appellant's Step Two grievance contends he should receive credit for the time he was incarcerated in Tennessee, and states, in parenthesis, "this includes the time served during the extradition process." However, this reference does not bring the issue of the time Appellant was held in Anderson County, South Carolina, before this Court.

APPX - F

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Braxton, #119081,	)	Docket No. 20-ALJ-04-0325-A-AP
	)	Grievance No. KRCI 1759-16
Appellant,	)	
	)	
vs.	)	**AMENDED ORDER ON REMAND**
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals. The matter was initially before the ALC on appeal by Michael Braxton in which he argued the South Carolina Department of Corrections (Department) had miscalculated his sentence. An order was issued in the matter on August 24, 2017, in which the decision of the Department was affirmed. Appellant appealed the decision to the South Carolina Court of Appeals and a decision was issued by that court on July 1, 2020. The decision affirmed in part and reversed and remanded in part the order of the ALC. On remand, the ALC is now directed to recalculate the Appellant's sentence so that he receives credit for the time he served while on parole.

On November 17, 1983, the Appellant was sentenced to thirty years in the custody of the South Carolina Department of Corrections. On March 31, 1994, the Appellant was released on parole to the State of Tennessee. On April 16, 1996, the Appellant was arrested on other charges in Tennessee and served continuously there until his sentence, which resulted from convictions on the other charges, ended in 2015. He was then sent back to South Carolina and remains in custody with the Department. When he returned, the Department recalculated his sentence without crediting the Appellant with the time he served on parole. The Court of Appeals held that he should receive credit for the time he was on parole.

In reviewing the dates in the Record before the ALC and the Court of Appeals decision, the Appellant was on parole for two (2) years and sixteen (16) days. This is calculated with parole

Appx - G

beginning on March 31,1994, and ending on April 16, 1996. The Court issued an Order on Remand on August 10, 2020. The Court issues this Amended Order on Remand for the sole purpose of correcting the grievance number in the caption.

Therefore, **IT IS HEREBY ORDERED** that the Appellant be credited with two (2) years and sixteen (16) days towards his sentence for his time on parole.

AND IT IS SO ORDERED.

H.W. Funderburk, Jr.
Administrative Law Judge

August 26, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to the cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency mail Service addressed to the party(ies) or their attorney(s).
This 26th day of August, 2020
By: Elizabeth A. Patrick
Judicial Law Clerk

FILED
AUG 26 2020
SC ADMIN. LAW COURT

Appx- G

The Supreme Court of South Carolina

Michael Braxton, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2020-001015

ORDER

On July 1, 2020, the South Carolina Court of Appeals issued a decision in this matter. *Braxton v. South Carolina Department of Corrections*, Op. 5737 (S.C. Ct. App. filed July 1, 2020). When no petition for rehearing was received, the Court of Appeals sent the remittitur on July 23, 2020. By order dated July 29, 2020, petitioner's first attempt to seek review the decision of the Court of Appeals was dismissed.

Petitioner has now filed a petition for a writ of certiorari, a notice of appeal, and a motion to proceed *in forma pauperis*. These documents again seek review of the decision of the Court of Appeals.

Since there is not a final decision of the Court of Appeals for this Court to review in this matter,[1] and since the Court of Appeals has properly issued the remittitur ending appellate jurisdiction,[2] the petition, notice of appeal, and motion are hereby

---

[1] Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review under Rule 242.

[2] When no petition for rehearing or reinstatement was received by the Court of Appeals, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. The

stricken and dismissed.

C.J.
FOR THE COURT

Columbia, South Carolina
September 3, 2020

cc:
Salley W. Elliott, Esquire
Christina Catoe Bigelow, Esquire
Annie Laurie Rumler, Esquire
Jana E. Shealy
Jenny Abbott Kitchings, Esquire
Michael Braxton, #119081

---

sending of the remittitur ended appellate jurisdiction over this case. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

The Supreme Court of South Carolina

Michael Braxton, Petitioner,

v.

Warden Dunlap; South Carolina Department of Corrections; The State of South Carolina; Kershaw Correctional Institution; and Director Stirling, Respondents.

Appellate Case No. 2017-000062

ORDER

This matter is before the Court on a petition for writ of habeas corpus dated December 19, 2016. We find habeas relief is not proper in this instance. *See Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998) (noting a petitioner seeking habeas relief must allege a constitutional violation that constitutes a denial of fundamental fairness shocking to the universal sense of justice); *see also Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999) (holding an inmate may seek review of credits-related issues, conditions of imprisonment, inmate discipline and punishment, and other administrative matters through the administrative process).

C.J.

J.

J.

J.

APPX - L

Columbia, South Carolina

February 8, 2017

CC:

Salley W. Elliott, Esquire

Mr. Michael Braxton, #119081

Appx C

EX. F.

Due: 2-6-17 RECEIVED

MAR 0 3 2017

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

FEB 02 2017

RECEIVED

FEB 07 2017

INMATE GRIEVANCE

DIVISION OF CLASSIFICATION & INMATE RECORDS

Office Use Only
Grievance No. KRCI-1759-16
Code: General CL/CL
Policy
Disc. Hear.
Class.
Date Received 2/2/17
IGC Initials

INMATE NAME: Braxton, Mike
SCDC NUMBER: # 119081
INSTITUTION: KRCI ✓
HOUSING UNIT: MA-41
WORK ASSIGNMENT: Mess Hall

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I am dissatisfied w. the my (step 1) decision since it remains in conflict with the South Carolina Board of Paroles & Pardons Operation manual directive listed under "The Effect of Revocation", as well as the law in this matter. Anders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E. 2d 536. Both specifically state time on parole shall be applied towards the remainder of one's sentence! Therefore, my request remains that this time as well as the time I served in "Constructive Custody" in carcerated in Tennessee with the Parole violation warrent intact (which includes the time served during the Extradition process) be applied towards the remainder of my South Carolina sentence, since they are the sentencing State.

Mike Braxton 2/1/17
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you have met with SCDC Classification Staff and discussed your concern that jail time, pretrial time in Tennessee and house supervision time have not been included in your sentence at SCDC. You have requested that all such time be calculated for the remaining time that you must serve at SCDC. Specifically you have requested the period from March 31, 1994 to June 1, 1998 be credited. The Warden responded to your concern on SCDC Inmate Grievance Form Step 1 dated January 30, 2017. Your classification at SCDC is correct. SCDC Staff have reviewed documentation received from Tennessee Board of Paroles Division of Filed Services. There is nothing that has been received and/or reviewed that would support your allegations that your classification at SCDC is wrong.

Therefore, your grievance is denied.

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

Keith D. Giese 3/3/17
Signature Date

* 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.

Michael Braxton 3/20/17
Grievant Signature Date

[illegible] 3/20/17
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

OC 10-5A (November 1997)

APPX - M

South Carolina Department of Corrections

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

September 28, 2020

Mike Braxton – SCDC 119081
Kershaw Correctional Institution
PB-0062-T
4848 Gold Mine Highway
Kershaw, SC 29067

RE: Michael Braxton, #119081, vs. SCDC
Docket No.: 17-ALJ-04-0154-AP
20-ALJ-04-0325-A-AP
Grievance No.: KRCI 1759-16

Dear Mr. Braxton:

This correspondence is in response to the Administrative Law Court order signed by Judge Funderburk dated August 26, 2020, which was issued pursuant to the Court of Appeals order remanding the issue of time spent on parole to the Administrative Law Court. Judge Funderburk's order stated that you should be credited with 2 years and 16 days toward your sentence for the time you spent on parole. SCDC is in compliance with this order in that you have already received credit for 2 years and 59 days for the period of time you were on parole. Your credit for parole started on March 31, 1994, which is the day you were paroled. The credit for parole stopped on May 28, 1996, which is the date the warrant was issued for the parole violation. SCDC gave you credit for the entire time of March 31, 1994 to May 28, 1996, which is actually for a greater time period than that which Judge Funderburk ordered (March 31, 1994 to April 16, 1996). Your projected release date is March 25, 2021.

You have already been given credit for more parole time than was ordered in the above referenced case. As such, SCDC considers this matter closed and no further action will be taken. For your convenience, a copy of the orders from the Court of Appeals and from the Administrative Law Court are attached to this letter.

Sincerely,

Teresa S. Player
Staff Attorney

Enclosures

Daniel Shearhouse

May 18, 2019

Clerk of the Honorable Supreme Court
of South Carolina
1231 Gervais St,P.O. Box 11330
Columbia,SC 29211

Re: Assistance in obtaining relevant Policies,Procedures etc,as well as an accurate Sentence Computation from the South Carolina Department of Corrections.

Dear Honorable Clerk,

I am contacting you in the hope of gaining your assistance in obtaining the relevant Policies,Procedures,Protocals that in exsistance during the time of my sentencing which was October 24,1983 in Anderson County. Case No. 1983-GS-04-801

I am contacting you under the urgentcy of being held on an EXPIRED sentence since the revocation of my parole on January 20,2016. I have unsuccessfully presented this issue to every entity that I felt had the authority to rectify this curcumstance However, none of them have even bothered to recognize me, or the seriousness of my plight.

Sir, all that I am seeking is an accurate sentence COmputation and the relevant Policies, Procedures,Protocals etc in effect at the time of my sentencing within the South Carolina Department of Corrections, which spans from October 24,1983-March 31,1994.

The Sentence Computation will reveal the Goodtime at (20) days per month (which I have yet to receive after revocation), and the manner in which my Work Credits and Bonus Educational Credits (College Classes) were administered at that time.

I have to this point contacted The Director of Classification at SCDC Joette Scarborough,The Assistant Director of Inmate Records Office,The SOuth Carolina Department of Probation,Parole and Pardon sevices,The Office of the Attorney General and the Clerk of Court of Anderson County. I have received not even the courtesy of a response from ANY of these sources.

Sir, I desperately need your aid in obtaining this information, and I humbly apologize for having to burden your office with my request,however hopefully you can see from my diligence that I have NO other choice.

I Thank You for your time and anticipated assistance in this Urgent matter.

Respectfully,

MICHAEL BRAXTON 119081
4848 Goldmine Hwy
Kershaw,SC 29067

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

May 30, 2019

Director Bryan P. Stirling
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

RE: Michael Braxton, #119081

Dear Director Stirling:

Enclosed is a copy of a letter received by the Court from Mr. Michael Braxton, an inmate at Kershaw Correctional Institution. I am forwarding this correspondence to you for any assistance that you may be able to provide.

Sincerely,

Daniel E. Shearouse

cc: Michael Braxton

Appx - P

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

MICHAEL BRAXTON #119081	)	
	)	
PETITIONER	)	APPELLATE CASE No.
v.	)	
SOUTH CAROLINA DEPARTMENT OF	)	2017-001964
CORRECTIONS	)	

MOTION REQUESTING IMMEDIATE RELEASE FROM STATE CUSTODY. (HABEAS CORPUS)

Here comes the Petitioner Michael Braxton before this honorable court of Appeals who is still currently incarcerated unlawfully by the South Carolina Department of Corrections, at Kershaw Correctional Institution Kershaw, south Carolina.

This prolonged detention is apparently in contempt of this honorable court's order dated July 1, 2020, as well as the order rendered by the Administrative Law Court on August 26, 2020. ALJ-04-0325-A-AP

The South Carolina Department of Corrections are at present aware of these orders, as well as their intended directive; however, even after contacting Administrative Law judge H.W. Funderburk for guidance on September 1, 2020, inwhich he promptly directed them back to this honorable court, they still have NOT recalculated the Petitioner's sentence to reflect the (2) TWO years ... (16) Sixteen days that was ordered to be incorporated within it. This delinquent time EXPIRED the Petitioner's sentence on or around March of 2019!!

(See Attached Exhibits A & B)

Therefore, at this time the Petitioner humbly request that this honorable court assist while asserting to the South Carolina Department of Corrections the necessity of prompt compliance to court orders; Additionally, the Petitioner ask that the Court conveys to the South Carolina Department of Corrections that he should be immediately and unconditionally released from state custody.

Michael Braxton

Dated; 10\12\20

MICHAEL BRAXTON #119081
4848 Goldmine Hwy
Kershaw, SC 29067

Appx - Q

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MICHAEL BRAXTON #119081

PETITIONER

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

CERTIFICATE OF SERVICE

The Petitioner hereby certifies that on October 12, 2020 he placed a copy of his MOTION REQUESTING IMMEDIATE RELEASE FROM STATE CUSTODY. (HABEAS CORPUS) In the U.S. Mail to be forwarded to the address listed below:

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
P.O. Box 21787
Columbia, Sc 29221

Michael Braxton

MICHAEL BRAXTON 119081
4848 GOLDMINE HWY
KERSHAW, SC 29067

Appx - Q

September 17, 2020

The Honorable H.W. Funderburk jr.
Administrative Law Judge
Edgar A. Brown Building
#1205 Pendleton St, Suite 224
Columbia, SC 29201-3155

Re: MICHAEL BRAXTON #119081 v. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
17-ALJ-04-0164-AP; 20-ALJ-04-0326-A-AP

Dear Honorable Judge Funderburk:

First and foremost, I thank the court for it's prompt consideration in this current matter, and I am respectfully contacting the court concerning it's recent Order on remand, rendered on August 26, 2020 .

Your order mandated that TWO years, Sixteen days be incorporated into my original sentence, due to my delinquent Parole time, however, the good behavior time that accompanied this actual time on Parole was omitted.

The Honorable Supreme Court of South Carolina has established in State v. Ellis, 397 S.C. 576 Supreme Court of South Carolina No. 27127 Term "Parole" means a conditional release from imprisonment and does not suspend the running of a prisoner's sentence. Additionally, Crooks v. Sanders, 123 S.C 38, 115 S.E. 760, 28 ALR 990 held "A convict released from the bounds of prison on Parole, which did not suspend the running of his sentence, is entitled to credit for time on account of good behavior, allowed by act Feb 14, 1914 28 St at Large p. 617 as long as his conduct is good.

By the court's calculation of my Parole time, which was again (2) Two years (16) Sixteen days, I humbly request that the additional 480 days GOODTIME I accumulated at TWENTY days per month during this span, be applied to my delinquent Parole time as well.
Your Honor, I also appeal to you for assistance in the urgent matter of of seeking compliance from SCDC, regarding the court's recent order.
The arrogence of this agency is echoed within the recent correspondence it submitted to the court, as it continues to disregard the order of this honorable court, as well as the order of the honorable court of appeals.

Appx - R

This blatent disregard to these orders, that have rendered my sentence EXPIRED atleast TWO YEARS ago, continues to place me in peril; and one need only refelct on the recent tragic event at Lee county, as well as the consistantcy of the violent events here at Kershaw, to confirm how volitile this setting truly is on a whole.

I am pleding with the court if at all possible to empathsize to SCDC the importance of the prompt implementation of the order issued by this honorable court, and my appreciation cannot be measured for the court's time and attention in this cause.

Respectfully,

Michael Braxton

MICHAEL BRAXTON #119081 ProSe

cc. SCDC General Counsel

Appx-R