

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 12 2022

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 22-ALJ-04-0130
Appellate Case No. 2022-000871

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S COMPLAINT THAT HIS INSTITUTION PROHIBITED HARDCOVER BOOKS DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Gregory Pencille, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One Grievance on March 4, 2021, disputing the institution's policy of not allowing hardcover books for security and safety reasons. Following the denial of his Step One Grievance, Appellant submitted a Step Two Grievance on March 24, 2022, which was also denied. Appellant appealed to the Administrative Law Court on April 27, 2022, and on May 25, 2022, Administrative Law Judge Deborah Brooks Durden issued an Order of Dismissal. In this Order, Judge Durden found that Appellant's grievance did not implicate a state-created liberty or property interest. This appeal follows.

STANDARD OF REVIEW

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

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

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

S.C. Code Ann. § 1-23-380(5).

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

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S COMPLAINT THAT HIS INSTITUTION PROHIBITED HARDCOVER BOOKS DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

In his Brief, Appellant argues, in essence, that he should be permitted to have hardcover books in his possession at his institution. (See Brief of Appellant, p. 11-14). However, the Administrative Law Court (ALC) properly dismissed Appellant's appeal because Appellant does not have a state-created liberty or property interest in having hardcover books in prison.

The jurisdiction of the ALC to hear this matter was 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). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). The Sullivan court held that the ALC's jurisdiction was limited to cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; cases in which SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing; and cases in which an inmate's confinement implicates a state-created liberty or property interest. See Sullivan at 443-44, 586 S.E.2d at 127. In Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 332 605 S.E.2d 506, 508 (2004), the Supreme Court stated that the ALC must provide minimal due process for state-created liberty or property interests. However, the Slezak court also indicated that summary dismissal is appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. Slezak at 333, 605 S.E.2d at 509.

In Slezak, the inmate complained about the Department's seizure of certain educational cassette tapes pursuant to its policy prohibiting possession of those types of cassette tapes. Id. at

331-32, 605 S.E.2d at 508. The Supreme Court found that there was no protected liberty or property interest implicated in the Department's decision to declare the cassette tapes contraband and to seize the inmate's cassette tapes pursuant to its policy. Id.; see also Bell v. Wolfish, 441 U.S. 520, 547, (1979) (holding that prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and to maintain institutional security).


Here, the Department's ban on hardcover books is clearly reasonable considering hardcover books could be used to assault other inmates or to more easily conceal contraband inside. Appellant was given the opportunity to surrender his hardcover books without penalty and the opportunity to send his hardcover books home. (See Step 1 and 2 Grievance Responses). He was not charged with having contraband and he did not lose any good time credits. He also does not contend that the same content is not available in softcover books or other formats. Accordingly, Appellant's claim does not implicate a state-created liberty or property interest, and the ALC properly dismissed the case on that ground.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Gregory Pencille, # 312332, Evans Correctional Institution, F4A-275, 610 Highway 9 West, Bennettsville, South Carolina, 29512.**


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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

August 12, 2022

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
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RE: Gregory Pencille, # 312332, v. South Carolina Department of Corrections
Appellate Case No. 2022-000871

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** in the above captioned appeal, along with **Proof of Service**.

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

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Gregory Pencille, # 312332
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