

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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Case No. 13-ALJ-04-0174-AP

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T. Terrell Bryan, # 254638.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

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**INITIAL BRIEF OF RESPONDENT**

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May 24, 2013

South Carolina Department of Corrections

Shanika K. Johnson  
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SC Court of Appeals

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**STATEMENT OF THE ISSUES ON APPEAL**

- I. MAY THE ADMINISTRATIVE LAW COURT SUMMARILY DISMISS AN INMATE APPEAL THAT DOES NOT IMPLICATE A STATE CREATED OR PROPERT INTEREST?**
  
- II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

## STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Terell Bryan (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant had items confiscated from him and placed in the property control room during his transfer from Perry Correctional Institution (“Perry”) to McCormick Correctional Institution (“McCormick”). Appellant filed a Step One Grievance on February 7, 2012, requesting a property inventory form be completed. This grievance was investigated and denied, and appellant was informed a property form had been completed. (R.p. \_\_\_\_). Appellant filed a Step Two Grievance on October 22, 2012, which was also denied. (R.p. \_\_\_\_).

On February 28, 2013, appellant filed a notice of appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R.p. \_\_\_\_).

By way of an order dated March 8, 2013, the ALC dismissed the appeal with prejudice. (R.p. \_\_\_\_). The ALC specifically found that appellant had not alleged a deprivation of a state-created liberty or property interest in his appeal. (R.p. \_\_\_\_).

Appellant now seeks review of the ALC’s order, alleging it is not a final decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

## 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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but 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 ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

## **ARGUMENT AND CITATION OF AUTHORITY**

### **I. THE ADMINISTRATIVE LAW COURT MAY SUMMARILY DISMISS AN INMATE APPEAL THAT DOES NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST.**

The ALC properly dismissed appellant's appeal. In his grievances, appellant alleged that SCDC confiscated a t-shirt and a thermal set during a transfer from Perry to McCormick and failed to return said items to him. The response to appellant's Step 2 Grievance explained to appellant that he had possession of the amount of t-shirts and thermals reflected in his property inventory. (R.p. \_\_\_\_). In his appeal, appellant claims that the entire thermal set was not accounted for. Prior to SCDC submitting a brief or motion, the ALC properly dismissed the appeal acknowledging appellant's grievance appeal did not implicate a state-created or property interest. (R.p. \_\_\_\_). Accordingly, where a state-created liberty interest is not implicated in a prisoner appeal, the appeal should be dismissed by the ALC. Furtick v. S.C. Dep't of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007). The basis of appellant's entire complaint is he disagrees with SCDC's assertion that the items on the property form are consistent with the items in appellant's possession. As such, the grievance appeal did not involve a state-created liberty or property interest, and the ALC appropriately issued an Order of Dismissal for

the appeal. In his appeal to this Court, appellant argues that because the case was dismissed when “the order does not address the merits” and prior to both parties submitting briefs, the ALC’s Order does not amount to a final decision. However, the ALC properly considered the merits of the case to determine appellant’s claims did not implicate a state created property interest. Consequently, the ALC’s Order is a final decision of the court.

**II. RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 396, 489 S.E.2d 219, 220 (Ct. App. 1997). “Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to justify its action. Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm’n, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998).

In appellant’s final grievance, he alleged SCDC did not return all of his property to him during his transfer from Perry to McCormick. The record conclusively

establishes that the “substantial evidence on the whole record” supports respondent’s final agency decision. (R.p. \_\_\_\_). The property inventory done at both institutions reflect that appellant’s property consisted of the same items. (R.p. \_\_\_\_). Therefore, SCDC had no reason to further investigate appellant’s argument that some of his property was missing.

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm’n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC’s decision should be upheld.

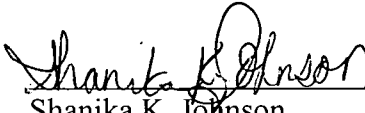
#### CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections’ decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

Attorney for Respondent



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**CERTIFICATE OF SERVICE**

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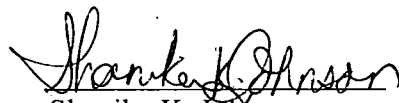
I hereby certify that I have served Appellant a copy of Respondent's Initial Brief  
by depositing a copy of same in the United States Mail, postage prepaid, on May 24,  
2013, addressed to the Appellant as follows:

Terance Bryan, # 254638  
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386 Redemption Way  
McCormick, SC. 29899

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MAY 28 2013

**SC Court of Appeals**



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