

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE
LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 22-ALJ-04-0190-IJ

South Carolina Department of Corrections,

Respondent,

v.

Marcus ALLISON, #350669,

Appellant.

INITIAL BRIEF OF APPELLANT

Marcus D. ALLISON, 350669
Mag 1 A - B10 B
1516 Old Gilliard Rd.
Ridgeville, SC. 29472
PETITIONER PRO SE

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE ADMINISTRATIVE LAW COURT'S DATING ERROR BAR APPELLANT FROM RECEIVING A FINAL AGENCY DECISION?
2. DID THE ADMINISTRATIVE LAW COURT ERR IN RELYING ON HOWARD TO AVOID DECIDING APPELLANT'S CASE ON THE MERITS?

STATEMENT OF THE CASE

Appellant initiated this grievance on April, 04 2022, as a result of the South Carolina Department of Corrections (SCDC) Losing or destroying his hobbycraft Material during transportation from Tyger River Correctional Institution (TYRCI) to McCormick Correctional Institution (McCI) on or about November 09, 2021.

Appellant filed an appeal to the grievance branch chief on June 03, 2022, when the grievance was denied on June 02, 2022. Then filed an appeal with the Administrative Law Court (ALC) June 27, 2022, that was dismissed on July 19, 2022, analogous to those before it. A Notice of Appeal to this Court followed on August 08, 2022.

FACTS

On November 10, 2020, McCI Coach Hawkins initially approved and inventoried inmate Marcus D. Allison, #350669 (Appellant) hobbycraft materials for the annual institutional inventory, including his Helix 20" x 26" Drawing Board (the purpose of this appeal). On July 01, 2021, appellant was transferred to TYRCI, with all his hobbycraft material, but was not approved for hobbycraft while at the institution.

All hobbycraft material was stored by Property Control Ofc. Sgt. Windham. On November 09, 2021, appellant was transferred back to McCI and reapproved for hobbycraft March 15, 2022.

ARGUMENT

I. BECAUSE THE ADMINISTRATIVE LAW COURT ERRED IN APPLYING THE INCORRECT DATE WHEN CALCULATING THE TIME LIMITATIONS TO FILE A GRIEVANCE, APPELLANT IS BARRED FROM RECEIVING A FINAL AGENCY DECISION.

On March 17, 2022 appellant was provided his hobbycraft material and had his first opportunity to self-inventory said items. Mr. Allison was never provided an inventory of his hobbycraft material after transfer, per SCDC Policy PS-10.06, §5 (Inmate Hobbycraft Program - Institutional Transfers).

Once appellant noticed his drawing board was missing, he filed two (2) electronic Informal Resolutions with both Coach Hawkins (Request No. 22-02560751) and McCI Property Ofc. Norman (Request No. 22-02560756), on March 24, 2022. ^{FN1}

Coach Hawkins responded the next day informing appellant that she would contact Coach Fish at TYRCI Property Ofc. Norman's response was that she did not know. There were never any further responses by Coach Hawkins or Ofc. Norman. ^{FN2}

1. Appellant attempted to file paper requests but was told for (3) three days that there weren't any.
2. Coach Hawkins had (45) days to respond, per SCDC Policy GA-01.12 (Inmate Grievance system) see, request No. 22-02753701.

As Coach Hawkins' initial response, that she would contact Coach Fish at TYRCI, gave her 44 days left to attempt to resolve the matter with Coach Fish, and appellant filed his informal resolution on March 24, 2022, and then his grievance only 11 days later on April 04, 2022, while waiting on Coach Hawkins to respond, and the Coach still had 34 days to respond after the grievance was filed, ^{FN3} appellant was not late in filing but actually 34 days early.

In any case, appellant was well within filing deadlines, and the SCDC and the ALC are simply in error asserting appellant "exceeded the established time frame for filing a grievance on this issue." ^{FN4}

^{3.} see, SCDC Policy GA-01.12.

^{4.} see, Step 1 Grievance, at "Action Taken By IGC:", Line 1.

II. BECAUSE THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FAILED TO INSURE APPELLANT'S PROPERTY WAS TRANSFERRED WITH HIM DURING AN INSTITUTIONAL TRANSFER, THE DEPARTMENT OF CORRECTIONS IS LIABLE FOR ITS LOSS AND THE ADMINISTRATIVE LAW COURT HAS AUTHORITY TO PROVIDE APPELLANT RELIEF.

As the ALC has referenced Howard v. South Carolina Department of Corrections, 399 S.C. 618, 733 S.E.2d 211 (2012)^{FN5} implying that appellant's "grievance appeal doesn't implicate a state-created Liberty or property interest", appellant would argue that the SCDC has itself created a Liberty and property interest in its own policies authorizing qualified inmates the privilege of purchasing and possessing hobbycraft material^{FN6}, and even reimbursement for loss or damage of said property whereby the SCDC has established an itemized reimbursement compensation policy.^{FN7}

Moreover, appellant has a constitutionally protected Liberty and property interest established by the U.S. Constitution under Article 4, § 2, and Amendments 4, 5, and 14^{FN8}, and the S.C. Constitution under Article 1, § 10 and 13.^{FN9}

In the case of Allen v. South Carolina Department of Corrections, 434 S.C. 114, 862 S.E.2d 268

5. see, ALC ORDER OF DISMISSAL, at P.1, Line 21.

6. see, SCDC Policy PS-10.06.

7. see, SCDC Policy OP-22.03, § 6 and 7.

8. "Citizens entitled to privileges and immunities of citizens in every state";

it is established that a state creates a protected Liberty or property interest by (a) placing substantive limitations on official discretion; (b) explicitly regulating an outcome based on the existence of relevant criteria; and (c) by limiting a prison inmates freedom from restraint in such a way that imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

In the cases of Parrott v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) and Kimbrough v. D'Neil, 545 F.2d 1059, 1061 (CA7 1976) the inmates involved had their hobbycraft and other property taken by Correctional staff and the Court's found that inmates do have a Liberty and property interest in those materials.

And in Tort Law, "One who is required by law to take ... the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other." ^{FN10}

be secure in their persons, houses, papers and effects, against unreasonable searches and seizures'; 'be deprived of Life, Liberty, or property without due process of law'; 'nor shall private property be taken for public use without just compensation'; 'Life, Liberty or property; equal protection of the laws.', respectively.

9. 'to be secure in their persons, houses, papers and effects ...'; 'nor shall private property be taken ...', respectfully.

Lastly, the Howard, supra. case has to do with a Liberty interest in sentencing credits, whereas appellants case encompasses a Federal and State created Liberty and property interest in ones personal property and necessarily follows established property rights, as a matter of Law.

Further, Howard, is a case of the inmate violating CDC Policy and being disciplined for such. Here, the appellant did not violate any policy, nor was he being disciplined in any way. The CDC took actual and constructive possession of appellants personal property, and lost or destroyed it without cause or explanation, through transportation, and without conducting an inventory of its contents, per policy. ^{FN 11}

^{10.} Restatement (second) of Torts § 314 A (A).

^{11.} CDC Policy PS-10.06, § 5 (Institutional Transfers)

CONCLUSION

For the reasons and Laws as stated above, this Court should reverse the judgement of the Administrative Law Court, and grant appellant the relief he is entitled to, or instruct the Lower Court to do so.

Respectfully submitted,

September 07, 2022



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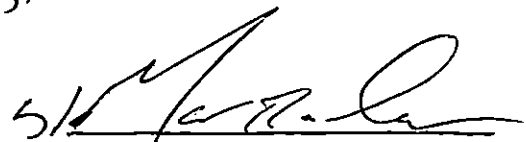
Marcus Allison, #350669,

Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief and the Designation of Matter to Be Included in The Record on Appeal, upon the following, via Institutional Mail on September 07, 2022.

- Administrative Law Court,
Clerk's Office
1205 Pendleton St., Ste 224
Columbia, SC. 29201
- S.C. Court of Appeals
P.O. Box 11629
Columbia, SC. 29211



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RE: SCDC v. Allison, #350669,
Case No. 22-ALJ-04-0190-IJ


To the Clerk:

Please find enclosed one copy each of the
Original Initial Brief, Designation of Matter to be included
in the Record on Appeal, and Proof of Service on the Same,
for filing in this case.

Thank you for your time and effort with
this matter.

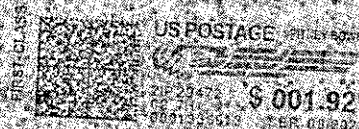
Sincerely,

MDA


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