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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 21-ALJ-04-0373
Appellate Case No. 2022-000934

TRAVON SIMUEL, # 246568,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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ATTORNEY FOR RESPONDENT

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Travon Simuel, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One Grievance on July 21, 2021, disputing his classification as being gang affiliated without due process of law based upon a symbol on the back of his book. Following the denial of his Step One Grievance, Appellant submitted a Step Two Grievance on August 13, 2021, which was also denied. Appellant appealed to the Administrative Law Court on October 20, 2021, and on June 10, 2022, Administrative Law Judge Shirley C. Robinson issued an Order of Dismissal. In this Order, the judge 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 GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

In his Brief, Appellant makes three distinct arguments, two of which are not preserved for review. His first argument is that he has a liberty interest in not being labeled a validated STG group member without being afforded due process of law. (See Brief of Appellant, p. 2). Secondly, he argues that SCDC's actions in banning his book violated his rights to freedom of speech, due process, and equal protection. (See Brief of Appellant, p. 2). Thirdly, he argues that he should have been provided notice and an opportunity to be heard before being labeled a validated STG member and prior to his book being "censored." (See Brief of Appellant, p. 2).

The only argument that is preserved for review is Appellant's argument that he raised in his Step 1 and Step 2 grievances; that is, that the Department violated his due process rights by classifying him as a validated STG member without providing him notice and an opportunity to be heard based upon a symbol on his book. (See R. p. 4-7). The other arguments are not preserved where they were not made in the Step 1 and 2 Grievances. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, the issue must have been raised to and ruled upon below, raised by the appellant in a timely manner, raised with sufficient specificity); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) ("A defendant must object at his first opportunity to preserve an issue for appellate review."); Wierszewski v. Tokarick, 308 S.C. 441, 444 n. 2, 418 S.E.2d 557, 559 n. 2 (Ct.App.1992) ("An issue is not preserved for appeal merely because the trial court mentions it.").

Regarding his preserved argument, the ALC properly dismissed Appellant's appeal on the ground that Appellant does not have a state-created liberty or property interest in any particular

security or custody level. 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 Brown v. Evatt, the South Carolina Supreme Court pointed out that the "federal constitution vests no liberty interest in inmates retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution." 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). The Brown court further noted that "the security and custody classification of state prison inmates is a matter for state prison official discretion whose exercise is not subject to federal procedural due process constraints. Id. After acknowledging that a liberty interest in retaining or attaining a particular security or custody classification may be created by state law if it places substantive limits on official discretion, the Brown court found that no constitutionally protected liberty interest is created if under the state law regime either the primary decisionmaker or any other

reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria. Id. at 195, 470 S.E.2d at 851. Finally, the court held that neither South Carolina statute statutes nor SCDC's operational classification regulations create a protected liberty interest because base-line classification decisions are only recommendations which are subject to discretionary review and rejection by higher-level prison officials. Id.

Here, there is no state law which dictates any sort of procedural process or substantive guidelines for classification decisions made by SCDC. In fact, S.C. Code § 24-1-130 vests "exclusive management" of the state's prison system in SCDC's Director. One of the ways SCDC's Director goes about managing the state prison system is through SCDC policies. SCDC Policy OP-21.01 (Security Threat Groups) was the policy in effect when Appellant was classified as a validated member of a security threat group on May 11, 2021. (See Affidavit of Jeffrey Bowers, p. 1-2). This policy did give procedural and substantive guidelines for the STG validation process, but it did not mandate any particular outcome, even where the substantive criteria were met. (See Affidavit of Jeffrey Bowers, p. 1). It also did not require that the inmate being reviewed be given any type of notice or opportunity to be heard. (See Affidavit of Jeffrey Bowers, p. 1). This policy is not a state law and thus does not create a state-created liberty interest. However, even if it was a state law with the potential to create a state-created liberty interest, it would not do so under Slezak because reviewing officials had discretion regarding the decision to validate the reviewed inmate as a security threat group member. (See Affidavit of Jeffrey Bowers, p. 1).

Appellant has no state-created liberty interest in his classification as a validated STG member and did not have due process rights during the decision-making process. As such, his classification is a matter best left to the discretion of prison officials. Brown v. Evatt, 322 S.C. at 194, 470 S.E. 2d

at 851. Accordingly, because Appellant's grievance did not implicate a state-created liberty or property interest, the ALC properly dismissed the appeal 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 COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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