

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn C. Matthews

Case No. 12-ALJ-04-0775-IJ

John Holloway, # 277261.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

June 28, 2013

South Carolina Department of Corrections

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STATEMENT OF THE ISSUE ON APPEAL

**DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS THE
APPEAL OF APPELLANT'S DISCIPLINARY CONVICTIONS?**

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of John Holloway (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of riot and damage, loss, destruction, or defacing of property valued at \$100.00 or more, respectively, offense numbers 803 and 820 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant filed a Step One Grievance on September 24, 2012, challenging his convictions. His grievance was returned unprocessed due to Appellant not following the proper grievance procedures, and Appellant was given the opportunity to re-file his grievance correctly. (R.p. ____). Appellant filed a second incorrect Step One Grievance on September 24, 2012. This grievance was also returned unprocessed. (R.p. ____).

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), claiming his convictions should be overturned because of due process violations. (R.p. ____). By way of an order dated April 10, 2013, the ALC dismissed the appeal. (R.p. ____).

Appellant now seeks review of the ALC’s decision. He argues the ALC should have considered his appeal based upon the merits. For the reasons that follow, SCDC respectfully requests the ALC’s decision in 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 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.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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.

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE APPEAL OF APPELLANT'S DISCIPLINARY CONVICTION.

The ALC's jurisdiction to hear inmate appeals from SCDC's final agency decisions 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). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003). In Sullivan, the Supreme Court held that the ALC's jurisdiction was limited to cases in which inmates contend that prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest. Id. at 443, 586 S.E.2d at 127.

In Slezak v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2004), the Supreme Court held that the ALC had jurisdiction over all properly perfected inmate appeals that implicate an inmate's state-created liberty or property interest. Appellant must exhaust the administrative remedies available to him prior to filing an appeal. Howard c. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993).

In the instant case, appellant was convicted of two different charges: riot and damage, loss, destruction, or defacing of property valued at \$100.00 or more. Appellant filed an initial Step One Grievance requesting both convictions be overturned.

(R.p. ____). This grievance was returned to him with directions to file a separate grievance for each conviction. (R.p. ____). Appellant subsequently filed a second Step One Grievance requesting that both convictions be dismissed. That grievance was also unprocessed due to Appellant's failure to comply with the grievance procedures.

(R.p. ____). Appellant then appealed to the ALC. Consequently, Appellant failed to properly exhaust his administrative remedies prior to his appeal. Accordingly, the ALC correctly ordered the dismissal of the appeal.

Therefore, because the ALC correctly dismissed appellant's appeal of his disciplinary convictions, SCDC respectfully requests that this Court affirm the ALC's decision.

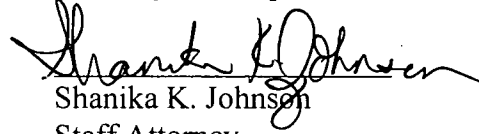
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent

A handwritten signature in black ink, appearing to read "Shanika K. Johnson", written over a horizontal line.

Shanika K. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, on June 28, 2013, addressed to the Appellant as follows:

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