THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No. 13-ALJ-04-0390-AP

Joshua Jeter, # 314407,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

July 8, 2013

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS THE APPEAL PURSUANT TO S.C. CODE ANN. § 1-23-600(D)?

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal Joshua Jeter ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of the inmate disciplinary infraction of exhibitionism and public masturbation, offense 854 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. (R.p.____) Appellant did not lose any accrued good time credit due to the disciplinary conviction. (R.p._____).

Appellant filed a Step One Grievance on February 20, 2013, challenging his disciplinary conviction. This grievance was investigated and denied. (R.p_____). On April 15, 2013, Appellant filed a Step Two Grievance, which was also denied. (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). (R.p.__). By way of an order dated May 31, 2013, Administrative Law Judge Shirley C. Robinson summarily dismissed the appeal because appellant did not lose any accrued good time credit as a result of his disciplinary conviction. (R.p.___).

Appellant now seeks review of the ALC's 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

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL PURSUANT TO S.C. CODE ANN. § 1-23-600(D).

The ALC appropriately dismissed the appeal because appellant did not lose any accrued good time credit. Instead, he lost only the opportunity to earn good time credit.

Pursuant to S.C. Code Ann. § 1-23-600(D), the ALC shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits. By its plain meaning, section 1-23-600(D) precludes the ALC from hearing all inmate appeals involving the loss of the opportunity to earn sentence-related credits. See Howard v. SCDC, 399 S.C. 618, 626, 733 S.E.2d 211, 215-16 (2012). Moreover, an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest. Id. Consequently, the ALC may summarily dismiss an inmate appeal that involves only the loss of the opportunity to earn sentence-related credits. Id.

In his appeal to the ALC, appellant attempted to challenged his disciplinary conviction for exhibitionism and public masturbation. (R.p.__). The ALC dismissed the appeal, finding it did not involve the loss of any accrued good time credits. (R.p.__).

The ALC appropriately dismissed the appeal pursuant to S.C. Code Ann. § 1-23-600(D). Appellant's disciplinary conviction involved did not involve the loss of accrued good time credits. (R.p.__). Therefore, it did not implicate a state-created liberty interest. See Howard, supra. Consequently, summary dismissal was appropriate. See also Skipper v. SCDC, 370 S.C. 267, 279, 633 S.E.2d 910, 917 (Ct. App. 2006) (holding the ALC "should have dismissed" an appeal because it did not implicate a state-created liberty interest). As a result, the ALC's decision should be upheld.

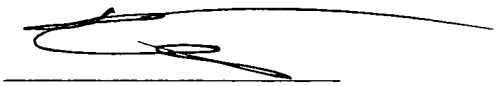
CONCLUSION

WHEREFORE, for all the reasons stated above, SCDC respectfully requests the Court affirm the decision of the ALC.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Attorney for Respondent



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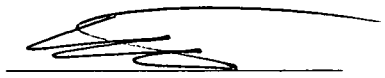
CERTIFICATE OF SERVICE

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 July 8, 2013, addressed to the Appellant as follows:

Mr. Joshua Jeter, # 314407
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669



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RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

COMES NOW, respondent, South Carolina Department of Corrections, and proposes the following be included in the Record on Appeal:

(1) Incident Report from Officer Rogers dated February 5, 2013 regarding appellant.

(2) Disciplinary Report and Hearing Record for appellant's February 14, 2013 disciplinary hearing.

(3) Step One Inmate Grievance Form for Grievance Number PCI 0412-13.

(4) Step Two Inmate Grievance Form for Grievance Number PCI 0412-13.

(5) May 31, 2013 Order of Dismissal by Administrative Law Judge Shirley C. Robinson.

I certify that this designation contains no matter that is irrelevant to this appeal.

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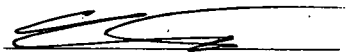
Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Attorney for Respondent



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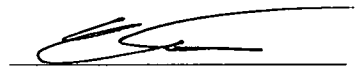

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