

Hazel Stoudemire, #220501
Appellant,

v.
South Carolina Department of Corrections,
Respondent.

Docket No.: 23-ALJ-04-0386-AP
Grievance No.: LEECI 432-23

RECEIVED
Brief
FEB 02 2024
SC Court of Appeals

The Appellant in this matter ask the Court of Appeals to reverse the Administrative Law Court's order of dismissal pursuant to S.C. Code Ann. § 1-23-610 (B). The ALJ's findings that Appellant's failure to exhaust, failed to file an appeal in thirty (30) days and Appellant had no state-created liberty interest in the grievance confidentially in SCDC's policy/procedure paragraph 4. through 4.1 of Policy GA-01.12, should be reverse because of the substantive right of the Appellant was prejudiced because the ALJ's findings was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

First, Appellant takes issue with the ALJ's findings that he failed to file an appeal in thirty (30) days pursuant to Rule 59. Here, Appellant rely on Woodford v. Ngo, 548 U.S. 91, 95, 126 S.Ct 2378, 165 L.Ed. 2d 368 (2006), that SCDC's action taken by the (IGC) in the grievance

number 0432-23 devised A procedural system (including the blind Alleys and quagmires in order to trip this Appellant up. The ALC's erred in binding Appellant to thirty (30) days to file AN Appeal to grievance number 0432-23 AN the (IGC) schema to processed, other AND Direct Appellant to refile A grievance. (See Attached grievance number 0456-23). That schema was so opaque that it became so confusing that no reasonable prisoner can be held responsible under Rule 59. Under the Appellant's Action requested in the refiled grievance number 0456-23 SCPC should not benefit in their hide-and-seek position under Rule 59.

Appellant asks this Court of Appeals to reverse the ALC's order pursuant to section 1-23-610(B). Secondly, Appellant takes issue with the ALC's findings that Appellant failed to exhaust his administrative remedies. Here, Appellant rely on the exhaustion requirement under *GIANO v. Good*, 380 F.3d 670, 676 (C.A. 2 2009) (the prisoner's failure to comply with administrative procedural requirements may nevertheless have been justified. After Appellant refiled the grievance. (See Attached grievance number 0456-23). Despite what regulations or guidance materials may have promise, it (administrative procedure) operated AS A simple lead and-with (IGC) unable or consistently unwilling to provide ANY relief to Appellant. *Booth v. Churnas*, 532 U.S. 731, 121 S.Ct. 1919, 149 L.Ed. 2d 958 (2001). The ALC's

erred in finding Appellant failed to exhaust after Appellant refiled grievance number 0956-23.

Appellant asks this Court of Appeals to reverse the ALC's order pursuant to section 1-23-610 (B).

Finally, Appellant takes issue with the ALC's findings that Appellant had no state-created liberty interest in SCDC's policy/procedures of paragraph 4. through 4.1 of Policy GA-01.12. Therefore, SCDC did not create a dangerous communication by authorizing the publishing of grievance related materials on a website under state law. Here, rules governing the grievance process include provisions on confidentiality and against reprisals. The matter before the Court of Appeals is that SCDC created the dangerous communication in retaliation for this Appellant to exercise his First Amendment's right to file an grievance. Appellant asserts that state law created enforceable liberty interests in the grievance process. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 461, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983).

In paragraph 4. through 4.1 of Policy GA-01.12 the state created protected liberty interest by placing substantive limitations on official discretion in the grievance confidentiality. *Olin v. Wakinokana*, 461 U.S. 238, 249, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). The state

created a liberty interests protected by the Due Process Clause. IN *Pell v. Procunier*, supra, at 822, 94 S.Ct., at 2804:

(A) prison inmates retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objective of the corrections system. Thus, challenges to prison regulation to publish grievance related material under confidentiality that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.

SCDC violation of this Appellant's First Amendment right in such a way that imposes atypical and significant hardship on Appellant in relation to the ordinary incidents of prison life under *Sandin v. Connor*, 515 U.S. 472, 485, 115 S.Ct. 2293, 132 L.Ed. 2d 418 (1995). Paragraph 4, through 4.1 GA-01.12, impose a duty on SCDC's officials in the grievance process regarding the confidentiality and the ALC error in finding Appellant had no state-created liberty interest were SCDC publish the grievance material on a website. Pursuant to S.C. Const. Art. XII, § 2.

Appellant asks this Court of Appeals to reverse the ALC's order pursuant to section 1-23-610 (B).

CONCLUSION

For the Above reasons, the Court of Appeals should reverse the ALC's order of dismissal pursuant to S.C. Code Ann. § 1-23-610(B).

JANUARY 24, 2024

~~Stouderman, Jr.~~
Hazel Stouderman, Jr.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Stoddemire, Hazel</u>	OFFICE USE ONLY
SCDC NUMBER: <u>230501</u>	Grievance No. <u>100 70432-23</u>
INSTITUTION: <u>Lee</u> JUL 11 2023 -almw	Code: General <u>JP JS</u>
HOUSING UNIT: <u>F-3 A 2113</u>	Policy _____
WORK ASSIGNMENT: <u>N/A</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>7.13.23</u>
	IGC Initials <u>RM</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) *See, kiosk reference number 23-03134727 and responses. I'm refiling my grievance. To be clear enough in this matter... (See, kiosk reference number 23-03134727) Can't have officers with inmates gossiping with each other about inmate(s) litigation. SCDC created this dangerous ~~communication~~ ^{communication} by authorizing publishing of grievance related material on website on inmate(s) tablet. Explain this paragraph 4.-4.1 of Policy GA-01.12 please. Because publishing the case I mention in the reference number above stem from grievance. I don't think its legal to authorizing publication of grievance material. That kind of communication led to my property ~~being~~ ^{being} looted and uprooted. Hazel Stoddemire 7/10/23
Grievant Signature Date*

Backlash on SCDC part, "Stoddemire v. Thomas!"

ACTION REQUESTED: *institution should replace all my property. I got one uniform. SCDC should restrict publishing grievance related material.*

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

This grievance has been reviewed but is being returned to you as Unprocessed for the following reason(s): unclear statement, and multiple issues.. However, consistent with SCDC GA-01.12 Inmate Grievance System, if you deem necessary you may refile a grievance on the same issue indicating the advised corrections/requirements and it must be placed in the designated Grievance box no later than 07/24/23. Failure to meet the deadline may result in the grievance being finalized without a Warden's Decision (decision).

Rwlm 7.17.23
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Warden Signature

Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Grievant Signature

Date

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE COPY

INMATE NAME: <u>Stardamir, Hazel</u>	OFFICE USE ONLY
SCDC NUMBER: <u>220501</u>	Grievance No. <u>Lee CT 0456-23</u>
INSTITUTION: <u>Lee</u> JUL 19 2023 - AMW	Code: General <u>SPIS</u>
HOUSING UNIT: <u>F-3 2003</u>	Policy _____
WORK ASSIGNMENT: <u>N/A</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>7/20/23</u>
	IGC Initials <u>pl</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) 23-03134727

and 23-03167975. This grievance is challenging Bryan Stirling and Shane Jackson failure to enforce SCDC's paragraph 4. and 4.1 of policy GA-01.12. In reference to grievance related material published via website without correction.

Dismissing the grievance related material is that chilling content is a Fourth and Eighth Amendment violation. The material issue.

As far as me stating my claim more clear. Publishing that content as it is the person was brutal. I cannot separate the content that was publish and my property being

looted. It goes together. I was asked about that chilling narrative ...

Hazel Stardamir 7/17/23
Grievant Signature Date

ACTION REQUESTED: to be provided a step 2 grievance this injury is irreparable. This is my 3rd step 1 grievance.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

This grievance has been reviewed, but returned to you for the following reason(s): unclear statement, did not follow refiling instructions

R. Williams 7.31.23
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

Dear Appellant:

10/6/2023

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Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case Type	Case Number	Filing Date	Date Assigned	Judge Last	Case Title (Appellant v. Respondent)	Grievance No.
DOC 04 Appeal	23C0386	9/21/2023	10/9/2023	Lenski	Hazel Stoudemire #220501 v. SC DOC	LCI 0432-23



You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Hazel Stoudemire, #220501)	Docket No.: 23-ALJ-04-0386-AP
Appellant,)	[Grievance No.: <u>LEECI 432-23</u>]
)	
v.)	<i>Hon. Sebastien Phillip ("Phil") Lenski</i>
)	
South Carolina Department of Corrections,)	RESPONDENT'S MOTION TO
)	DISMISS.
Respondent.)	
)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Hazel Stoudemire, ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department").

On July 10, 2023, Appellant filed a Step One Grievance alleging that SCDC created a dangerous communication by authorizing the publishing of grievance¹ related material on a website ("Westlaw") accessible to inmates.² Appellant alleged that "that kind of communication led to my property being looted." *See* Step One Grievance. Appellant requested all of his property be replaced and that SCDC restrict publishing of grievance related material. The Step One Grievance was returned unprocessed on or about July 17, 2023, because the grievance was unclear, and Appellant was attempting to grieve multiple issues.

Respondent now moves to dismiss this appeal because the underlying issue does not involve a state-created liberty or property interest.

¹ Appellant references Automated Request To Staff Member ("ARSTM") numbered 23-03134727, a copy of which is attached for the Court's and parties' convenience. In the ARSTM Appellant references *Stoudemire v. Thomas*, CA No.:2:21-01230-JFA-MGB (2022 WL 105789).

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Recently the South Carolina Supreme Court clarified the Administrative Law Court's jurisdiction as:

[t]hat the ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed. (*internal citations omitted*) . . . [h]owever, the ALC is not required to hold a hearing in every matter and may summarily dismiss an inmate's grievance if does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees. The ALC may not grant an inmate relief from an erroneous administrative decision by SCDC, however, unless the inmate demonstrates the error deprived him of due process... (*internal citations omitted*)

Allen vs. S.C. Dep't of Corr., 439 S.C. 164, 170-71, 886 S.E.2d 671, 674 (2023).

"The requirement of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (*quoting Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705 (1972)). SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (*emphasis added*). SCDC interprets *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

² A copy of the Step One Grievance is attached for the Court's and parties' convenience.

ARGUMENTS

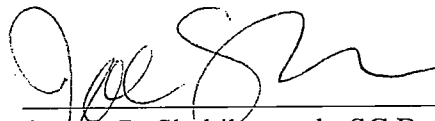
This case should be dismissed under *Slezak* and *Skipper*. Appellant alleges that because a case he filed appears on Westlaw, that SCDC created a dangerous communication that led to his property being looted. Appellant's allegation does not involve a state-created liberty or property interest. Appellant does not claim that Respondent erroneously calculated his sentence, sentence-related credits, or custody status, and Appellant's claim does not involve the loss of a state-created liberty interest in a major disciplinary hearing. Appellant's underlying allegations do not implicate a state-created liberty or property interest and do not trigger procedural due process guarantee's; thus this Court should dismiss this appeal, with prejudice.

CONCLUSION

No state-created liberty or property interest is implicated in this case. Thus, the Court should dismiss this appeal pursuant to *Slezak* and *Skipper*.

Respectfully Submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



Joseph R. Shakibanasab, SC Bar No. 102825
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508
Email: shakibanasab.joseph@doc.sc.gov

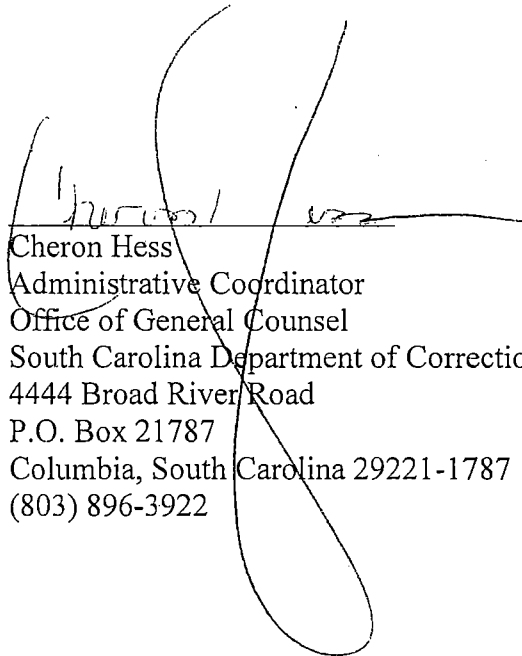
December 18, 2023
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hazel Stoudemire, Jr., #220501,)	
)	
Appellant,)	Certificate of Service
)	
vs.)	Docket# 23-ALJ-04-0386-AP
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	

I hereby certify that a copy of the foregoing *Respondent's Motion to Dismiss* was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Hazel Stoudemire, Jr.
Inmate Number: 220501
Lee Correctional Institution
Dorm-Room-Bunk: F5D-0230-B


Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

December 18, 2023

Inmate Request - General

Today's Date: 12/18/2023 12:11

Name: **STOUEMIRE, JR., HAZEL**
Booking #: **220501**
Permanent #: **220501**

Reference #: **23-03134727**
Date Requested: **06/05/23 21:53**
Request Type: **Security**
Requested By: **Kiosk**

Request Details: A/W Thomas I wish to keep this matter as confidential as can be. Hell, of a situation all around. Under OP-21.03 & HS- 18.15 is my request and notice. Thomas, South Caroline is not the place for someone in my condition. Read this case...Stoudemire v. Thomas, No.2:21-01230-JFA-MGB. The publishment and the wording in this case require me the benefits of OP-21.03 & HS-18.15... I'm filing a greivance Thomas in any case but as it is kirkland yard is the best spot until this is resolve. This is crazy man.

Disposition: Complete
Officer:
Disposition Date: 06/07/23 08:14

Request Responses		
Date	Author	Note
06/07/23 08:14	c047193	Your request will be sent to A/W Thomas.

Hazel Stoudemire, # 220501
Appellant

Docket No.: 23-ALJ-04-0386-AP
Grievance No.: LEECI 432-23

v.
South Carolina Department of Corrections,
Respondents.

Proof of Service

The undersigned (Appellant) Hazel Stoudemire, Jr., does hereby certify that service of the Attached Brief in the above referenced matter was made upon the Dept of General Counsel, S.C. Dept of Corrections, P.O. Box 21787, Columbia, S.C. 29221, by placing same in the United States mail box, and mailed to the below listed address clearly indicated on said envelope this 24 day of January 2024, address as follows:

Dept of General Counsel
S.C. Dept of Corrections
P.O. Box 21787
Columbia, S.C. 29221

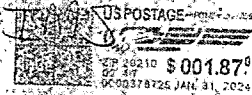
Hazel Stoudemire, Jr.
Hazel Stoudemire, Jr.

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SC Court of Appeals

Hazel Stoodemire #220501
990 Wiscoky HWY F-D230
Bishopville, SC 29010



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South Carolina Court of Appeals
Janny Abbott Pritchings, Clerk
POST OFFICE Box 11629
Columbia, South Carolina 29211

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