

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

Case No. 12-ALJ-04-0839-AP

Tracey Carter, # 247387,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

August 7, 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 Tracey Carter (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of the inmate disciplinary infraction of possession of any cell phone or other type of communication device, offense 898 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 August 9, 2012, challenging his disciplinary conviction. This grievance was investigated and denied. (R.p.____). On September 4, 2012, 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 3, 2013, Administrative Law Judge S. Phillip Lenski 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 challenge his disciplinary conviction for possession of any cell phone or other type of communication device. (R.p. ___). The ALC dismissed the appeal, finding it did not involve the loss of any

accrued good time credits. (R.p. __).

As an initial matter, appellant does not challenge the ALC decision to dismiss his appeal based on the fact he did not lose any accrued good time credit. Therefore, the ALC's ruling has become the law of the case, and the ALC's decision should be affirmed on that basis. See Lucas v. Rawl Family Ltd. Partnership, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004) (holding that an unappealed ruling, whether right or wrong, becomes the law of the case).

On the merits, 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
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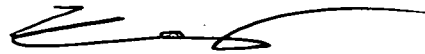
v.

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

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 August 7, 2013, addressed to the Appellant as follows:

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