

RECEIVED

Sep 19 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 24-ALJ-04-0610-IJ
Appellate Case No. 2024-002076

BEN ROBERT STEWART,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUE ON APPEAL1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....5

TABLE OF AUTHORITIES

CASES

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) 4

Bradley v. State Human Affairs, 293 S.C. 376, 360 S.E.2d 537 (Ct. App. 1987) ... 4

Garris v. S.C. Reinsurance Facility, 319 S.C. 388, 461 S.E.2d 819 (1995) 4

Hendley v. Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996)..3

STATUTES AND RULES

S.C. Code § 1-23-610..... 3

STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT SUBMITTED A NOTICE OF APPEAL PRIOR TO RECEIVING A FINAL AGENCY DECISION.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Ben Robert Stewart, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step 1 grievance on May 2024 claiming that he should not have been transferred from Pennsylvania to South Carolina because he was mentally ill. The Step 1 grievance was returned to Appellant for his failure to first submit a Request to Staff Member Form. Appellant then submitted a Notice of Appeal to the Administrative Law Court on August 27, 2024. On November 27, 2024, Administrative Law Judge S. Phillip Lenski issued an Order of Dismissal. In that Order, Judge Lenski dismissed the appeal because Appellant failed to exhaust his administrative remedies. 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.

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 SUBMITTED A NOTICE OF APPEAL PRIOR TO RECEIVING A FINAL AGENCY DECISION.

In his Initial Brief, Appellant asserts that he was not afforded the opportunity to participate in his ALC appeal and that he should have been permitted to file a brief within ninety days after the assignment of the case. (See Brief of Appellant, p. 8-9). However, Appellant's appeal was dismissed because he filed an appeal prior to receiving a final agency decision. (See Order of Dismissal dated November 27, 2024). Because there was no final agency decision to appeal, the ALC correctly dismissed the case. See Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000) (an inmate make seek review of the Department's *final decision* in an administrative matter)(emphasis in original); Bradley v. State Human Affairs Comm'n, 293 S.C. 376, 380, 360 S.E.2d 537, 539 (Ct. App. 1987) (relief in the courts is generally not available if administrative remedies have not been exhausted); Garris v. Governing Bd. of South Carolina Reinsurance Facility, 319 S.C. 388, 390, 461 S.E.2d 819, 821 (1995) (judicial review is unavailable where one has not exhausted administrative remedies).

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:


CHRISTINA CATOE BIGELOW

Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

September 19, 2025

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 24-ALJ-04-0610-IJ
Appellate Case No. 2024-002076

BEN ROBERT STEWART,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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

The Respondent submits that the following should be included in the Record on Appeal:

- (1) Documents properly before the ALC;
- (2) Order of Dismissal issued Nov. 27, 2024.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.


CHRISTINA CATOE BIGELOW

Deputy General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

September 19, 2025

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 24-ALJ-04-0610-IJ
Appellate Case No. 2024-002076

BEN ROBERT STEWART,

APPELLANT,

v.

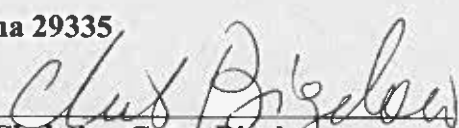
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Respondent's Initial Brief and Designation of Matter to be Included in the Record** to Appellant, addressed as follows:

**Ben Robert Stewart, # 223006
Tyger River Correctional Institution
5B-0226
200 Prison Road
Enoree, South Carolina 29335**


Christina Catoe Bigelow
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

September 19, 2025



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Office of General Counsel

HENRY McMASTER, Governor
JOEL E. ANDERSON, Interim Director

OFFICE OF GENERAL COUNSEL

September 19, 2025

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Ben Robert Stewart, # 223006, v. South Carolina Department of Corrections
Appellate Case No. 2025-002076

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Ben Robert Stewart, # 223006
Tyger River Correctional Institution
5B-0226
200 Prison Road
Enoree, South Carolina 29335