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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Robert L. Reibold

ALC Case No. 24-ALJ-04-0618-AP
Appellate Case No. 2025-001423

JAMES EDWARD JOHNSON, JR., # 353643,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S CASE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of James Edward Johnson, Jr., an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted grievances in 2024 complaining about the Department's grooming policy. After both grievances were denied, he filed a Notice of Appeal in the ALC on September 11, 2024. On May 29, 2025, Judge Robert L. Reibold issued an Order granting the Respondent's Motion to Dismiss. In that Order, Judge Reibold found that (1) submissions signed by Appellant's Power of Attorney could not be considered, and (2) Appellant's complaints about the Department's grooming policy did not implicate a state-created liberty or property interest. 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.

S.C. Code Ann. § 1-23-380(5).

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'S CASE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

The jurisdiction of the ALC to hear this matter was 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 Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). The Sullivan court held that the ALC's jurisdiction was limited to cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; cases in which SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing; and cases in which an inmate's confinement implicates a state-created liberty or property interest. See Sullivan at 443-44, 586 S.E.2d at 127. In Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 332 605 S.E.2d 506, 508 (2004), the Supreme Court stated that the ALC must provide minimal due process for state-created liberty or property interests. However, the Slezak court also indicated that summary dismissal is appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. Slezak at 333, 605 S.E.2d at 509.

Here, the ALC properly concluded that no state-created liberty or property interest was implicated. A state-created property interest must be grounded in state law. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982). To have a property interest subject to procedural due process protection, a person must be entitled to the benefit created and defined by a source independent of the Constitution, such as state law. Huang v. Bd. of Governors of Univ. of N.C., 902 F.2d 1134, 1141 (4th Cir. 1990). An inmate claiming a protected interest must have a legitimate claim of entitlement to it. Allen v. S.C. Dep't of Corr., 434 S.C. 114, 118-19, 862 S.E.2d 268, 270

(Ct. App. 2021), *reh'g denied* (Sept. 8, 2021), *cert. granted* (Apr. 5, 2023), *aff'd as modified*, 439 S.C. 164, 886 S.E.2d 671 (2023).

In this case, Appellant alleges that the Department's grooming policy is unlawful sexual discrimination and should be revised to treat male and female inmates the same. If this complaint is viewed as a request to compel the Department to change its policy, the grievance does not implicate a state-created liberty or property interest. Appellant can present no state statute, regulation, or mandatory Department policy which would entitle him to demand the requested relief. In fact, SCDC policy expressly provides that only employees can submit requests for policy changes, and even then, those requests are merely recommendations. See SCDC Policy GA-01.01, Section 8.3, available at <https://doc.sc.gov/sites/doc/files/Documents/policy/GA-01-01.pdf>. If Appellant's complaint is viewed as a request to declare the Department's policy unconstitutional, the ALC properly concluded that it lacked power to grant the request because the ALC does not have the authority to rule on facial challenges to constitutionality. See, e.g., Video Gaming Consultants, Inc., S.C. Dep't of Rev., 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) & Dorman v. Dep't of Health and Env'tl. Control, 350 S.C. 159, 171 565 S.E.2d 119, 126 (Ct. App. 2002). (See Order of Dismissal, p. 5).

For the foregoing reasons, Appellant's claim does not implicate a state-created liberty or property interest, and the ALC properly dismissed the appeal.¹

¹ The ALC also correctly concluded that it could not consider the submissions of Appellant's Power of Attorney. (See Order, p. 2-3). As the ALC properly found, although a Power of Attorney authorizes an attorney-in-fact to take certain actions on behalf of the principal, it does not authorize a Power of Attorney to act as a lawyer – i.e., to prepare and sign the legal documents of a person who is acting *pro se*. See S.C. Code 40-5-310 (“No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina.”). Regardless, even assuming, for argument's sake, that the ALC erred in not considering the submissions of the

CONCLUSION

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

Respectfully submitted,

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Power of Attorney, this would not change the fact that the ALC correctly ruled that the case does not involve a state-created liberty or property interest and that it had no authority to consider facial challenges to constitutionality.