

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Allen K. Agee, # 161869,)	Docket No.: 13-ALJ-04-0559-AP
)	
Appellant,)	
)	RESPONDENT'S BRIEF AND MOTION
v.)	TO DISMISS
)	Honorable Carolyn C. Matthews
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	
)	

STATEMENT OF FACTS

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Allen K. Agee ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on May 5, 2013, challenging his disciplinary conviction for Throwing of any substance or object on an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, 813, under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 16, 2013. This grievance was also investigated and denied. Appellant now appeals, claiming his conviction should be overturned. Loss of good-time is not an issue in the present case.

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER *SLEZAK V. SCDC*, 361 S.C. 327; 605 S.E.2D 506 (2004) AND *SKIPPER V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS*, 370 S.C. 267; 633 S.E.2D 910 (S.C. COURT OF APPEALS 2006).

The ALC's jurisdiction to hear this matter is 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 Slezak v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest. SCDC reads Slezak as encouraging, for the sake of judicial economy, the ALC to dismiss summarily inmate cases that do not involve a state created liberty or property interest.

Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state created liberty interest is not implicated in a prisoner appeal, the 'ALJ should' dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (S. C. Court of Appeals 2006).

In the instant case, Appellant was convicted of Throwing of any substance or object on an SCDC Employee or other Government Employee, Contract Employee, or Volunteer. Specifically, while Appellant was standing at the window to receive his medication, he received the liquid medication and threw it back inside the window, striking Licensed Practical Nurse Middleton. Appellant claims he threw his medication

through the window where LPN Middleton was, but he did not throw it on her. However,

as the record provides, not only did LPN Middleton report that the medication Appellant

threw hit her pants, another employee (Lieutenant Thompson) observed (some) of the

medication on the pill line window. Furthermore, the disciplinary report and hearing record also shows that Appellant's hearing was held in compliance with Due Process, and Appellant did not lose good time as a result of his conviction. SCDC has not taken Appellant's state-created liberty interest as punishment in a major disciplinary hearing.

Therefore, SCDC submits the ALC should dismiss this appeal.

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inclosed
step #1,
GRIEVANCE
FORM, PROVES
this to be
two (2) FALSE
STATEMENTS.

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that this matter be dismissed pursuant to Rule 12(b)(1) and Slezak v. South Carolina Department of Corrections, 361 S.C. 327; 605 S.E.2d 506 (2004).

Respectfully submitted,

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October 31, 2013
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