

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

SC Court of Appeals

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

BEN ROBERT STEWART, # 223006,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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ATTORNEY FOR RESPONDENT

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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 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 R. p. 26-27). 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: 

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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