

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

Case No. Docket No.: 14-ALJ-04-0003-IJ

T. Terrell Bryan, # 254638,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

March 27, 2014

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS THIS APPEAL BECAUSE APPELLANT HAS NOT EXHAUSTED ADMINISTRATIVE REMEDIES WITHIN THE AGENCY AND OBTAINED A FINAL AGENCY DECISION?

- II. SHOULD THE COURT DECLINE TO CONSIDER THE REMAINING ISSUES PRESENTED BY APPELLANT BECAUSE THOSE ISSUES ARE NOT PROPERLY PRESENTED FOR THE COURT'S REVIEW?

STATEMENT OF CASE

This matter comes before this Court pursuant to the appeal of T. Terrell Bryan, (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”).

On January 2, 2014, appellant filed a Notice of Appeal in the Administrative Law Court (ALC) purporting to challenge decisions in several inmate grievances, specifically, grievance numbers MCCI 263-13, 1129-13, 1123-13, 1109-13, and 1131-13. Appellant attached a copy of a Step One and Step Two grievance for grievance number MCCI 0263-13 and a Step One grievance for grievance number MCCI 1131-13. (ALC Notice of Appeal).

The ALC docketed separately docketed three of the appeals referenced in the Notice of Appeal. Grievance number MCCI 1139-13 was docketed in the present case on appeal. MCCI 1123-13 was assigned to docket number 14-ALJ-04-0004-IJ, which is now the subject of a separate appeal pending before this court. Finally, MCCI 263-13 was assigned a third docket number, which is not at issue in this appeal.¹ (ALC Letters Confirming Filing).

On January 22, 2014, Administrative Law Judge Deborah Brooks Durden issued an Order dismissing the appeal, noting that the S.C. Code Ann. § 1-23-380 provides, “A party who has **exhausted all administrative remedies within the agency** and who is aggrieved by a **final decision** in a contested case is entitled to judicial review.” Judge Durden found appellant had not provided a copy of a final agency decision and appellant

had not exhausted his administrative remedies. Therefore, the ALC dismissed the appeal.
(ALC Order 14-ALJ-04-0003-IJ).

Appellant has now appealed the ALC's decision. For the reasons that follow,
SCDC respectfully submits the ALC's decision should be affirmed.

¹ As of the date of this brief, the appeal of MCCI 263-13 remains pending in the ALC.

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

I. THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THIS APPEAL BECAUSE APPELLANT HAS NOT EXHAUSTED ADMINISTRATIVE REMEDIES WITHIN THE AGENCY AND OBTAINED A FINAL AGENCY DECISION.

The ALC correctly dismissed this appeal because appellant has not yet exhausted available administrative remedies by obtaining a final agency decision.

As an initial matter the ALC's determination that appellant had not exhausted his administrative remedies is the law of the case. 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). Appellant does not challenge the ALC's ruling that he had not exhausted available remedies in his Brief to this Court; therefore, that ruling cannot be overturned on appeal.

An inmate may seek review of SCDC's final decisions in an administrative matter under the Administrative Procedures Act (APA). Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). In order to obtain a final agency decision, an inmate must complete SCDC's two-step inmate grievance process. Id. at 373, 527 S.E.2d at 752. The inmate may then appeal the final agency decision pursuant to the APA by filing a notice

of appeal in the ALC. Id. at 376-77, 527 S.E.2d at 754. Appeal to the ALC pursuant to the APA is appropriate only if a party has exhausted all administrative remedies available within the agency and is aggrieved by a final decision. S.C. Code Ann. § 1-23-380.

A Notice of Appeal filed in the ALC shall include a copy of the final decision which is the subject of the appeal and the date received. SCALC Rule 59(C). The ALC may dismiss an appeal due to a party's failure to comply with its rules of procedure. See SCALC Rule 62.

In the case at hand, appellant filed a Notice of Appeal purporting to appeal multiple inmate grievances. However, appellant did not attach a final agency decision for many of the grievances he was attempting to appeal, including the grievance at issue in this case. (Notice of Appeal). Therefore, the ALC correctly dismissed the appeal because appellant failed to provide a copy of the final agency decision showing he had exhausted his remedies within SCDC.²

Because the ALC correctly dismissed this appeal, SCDC respectfully requests the Court uphold the ALC's decision in this matter.

II. THE REMAINING ISSUES PRESENTED BY APPELLANT ARE NOT PROPERLY BEFORE THE COURT

In his brief, appellant asserts that the ALC should not have docketed his appeals separately and that he should be permitted to receive allegedly "educational materials" through the mail. Neither of these arguments is properly before this Court because they were not raised to and ruled upon by the ALC.

² The ALC separately docketed the appeal of the only grievance appellant showed he had exhausted, grievance number MCCI 263-13. That grievance is not at issue in this appeal.

It is a well-settled principle of South Carolina law that, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. Brown v. S.C. Dep't of Health & Environmental Control, 348 S.C. 507, 560 S.E.2d 410 (2002) (“[I]ssues not raised to and ruled upon by the ALJ are not preserved for appellate consideration.”). An issue may not be raised for the first time on appeal, but must have been properly preserved for appellate review. See State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005); State v. Carlson, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005).

The only issues presented to the ALC prior to the dismissal of the appeal were those listed in appellant's Notice of Appeal filed in the ALC. Neither the issue of the separate docketing of the appeals nor the receipt of incoming correspondence was properly raised to the ALC. (ALC Notice of Appeal). Moreover, neither the separation of appellant's appeals nor the limitations on incoming inmate correspondence were ruled upon by the ALC. (ALC Order 14-ALJ-04-0003-IJ). Therefore, those issues are not properly presented for this Court's review.

Moreover, neither issue is necessary to resolution of this appeal in view of the fact appellant failed to exhaust available administrative remedies. See Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 612, 518 S.E.2d 591, 598 (1999) (restating the rule that an appellate court need not address remaining issues when disposition of prior issue is dispositive).

Therefore, this Court should decline to address the additional issues raised by appellant on appeal.

CONCLUSION

For the reasons stated above, SCDC respectfully requests that the ALC's decision be affirmed.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
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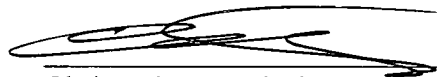
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Initial Brief
by depositing a copy of same in the United States Mail, postage prepaid, on March 27,
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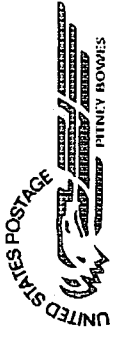
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SC Court of Appeals

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