

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

Case No. 13-ALJ-04-0965-AP

Michael Jones, # 237769,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

March 26, 2014

South Carolina Department of Corrections

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SC Court of Appeals

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST?

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Michael Jones (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed an SCDC grievance objecting to his security classification. On December 12, 2013, appellant received SCDC’s final agency decision denying his grievance. (ALC Notice of Appeal).

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (ALC Notice of Appeal). Before SCDC filed the record, Administrative Law Judge Deborah Brooks Durden summarily dismissed the appeal sua sponte because no state created liberty or property interest was implicated by the appeal.

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision in be affirmed.

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

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST.

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, 361 S.C. 327, 605 S.E.2d 506 (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. 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 ALC "should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006).

In Slezak v. Evatt, 21 F.3d 590 (4th Cir. 1994), the Fourth Circuit Court of Appeals addressed the issue of an inmate's constitutional interest in his classification level. Slezak brought suit claiming SCDC subjected him to "punitive, high security" classification without notice or hearing. The Slezak court ruled, "The logical first.

question in assessing such a claim is, therefore, whether the inmate has a protectible liberty interest in the classification he seeks either to retain (against a “demotion”) or to receive (by a “promotion”). . . . The federal constitution itself vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the [challenged] conditions or degree of confinement . . . is within the sentence imposed . . . and is not otherwise violative of the Constitution.” Slezak, 21 F.3d at 594 (citations omitted).

In dismissing appellant’s appeal to the ALC, Administrative Law Judge Deborah Brooks Durden ruled appellant had not been deprived of a state-created liberty interest. Judge Durden specifically found appellant had failed to show he had a state-created liberty interest in his security classification. Therefore, Judge Durden dismissed the appeal with prejudice. (ALC Order).

In the case at hand, appellant incorrectly claims that his security classification implicates a state-created liberty interest. Appellant has offered no evidence that the conditions of his confinement due to his security classification impose an atypical and significant hardship in comparison to the ordinary incidents of prison life. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (explaining that interests protected by the due process clause are generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the due process clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life). Instead, appellant incorrectly asserts his security classification implicates a protected liberty interest because of alleged

impact on his accrual of earned work and good time credits.

Appellant's classification has no impact whatsoever on his ability to accrue good time credits. Appellant continues to earn good time credits in his current classification so long as his conduct during a given month shows he has observed institutional rules and has not been subject to punishment for misbehavior. See S.C. Code Ann. § 24-13-210(A). Therefore, the accrual of good time credits cannot be used as a basis for concluding a liberty interest is implicated by appellant's security classification.

For different reasons, appellant's failure to accrue work credits while in security detention also does not implicate a liberty interest. As an initial matter, it is true that appellant does not earn work credits while not assigned to a productive duty assignment. See S.C. Code Ann. § 24-13-230(A). However, an award of work credits is given at the discretion of the Director of the Department of Corrections and is contingent upon an inmate's completed days of employment. The withholding of such credits when they are unearned does not implicate a state-created liberty interest. See Howard v. SCDC, 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012). Importantly, appellant did not forfeit credits he has already accrued simply by virtue of his placement in security detention; instead, he simply does not earn additional work credits while in that classification.

No liberty interest is implicated by appellant's appeal. Therefore, the ALC correctly dismissed the appeal.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, on March 26, 2014, addressed to the appellant as follows:

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