

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Administrative
Law Court,

Hon. Deborah Brooks Durden, presiding

Docket: 13-ALJ-04-0732-AP
Grievance No. BRCI-0848-12

Perry Watford -- Appellant

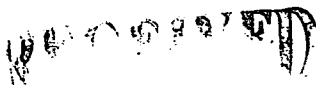
-vs-

South Carolina Department of Corrections -- Appellee,

RECORD ON APPEAL

Inmate to Staff Request -1
Step 1 Grievance -2
Step 2 Grievance -3
ALJ Order of Dismissal -4

Perry Watford
SCDC# 289215
PCI (2A-115)
430 Oaklawn Rd.
Pelzer, SC. 29669



MAY 23 2014

SC Court of Appeals

sent copy out 4-11-11 TMM

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Perry Watford	Head of Classification Headquarters	March 15, 2011
INMATE'S NAME:	SCDC #:	
Perry Watford	289215	
INSTITUTION:	LIVING QUARTERS:	
B.R.C.I	Murray 143	
<p>Dear Sir or Madam, I'm writing to find out How Can <u>SCDC</u> classification Purpose Classify me as a violent offender. I was sentenced 25 years for leaving a accident with Death, and 10 years for reckless Homicide Both are non-violent charges. so is SCDC changing statutorily changing non-violent charges to violent. is that legal By law?</p> <p style="text-align: right;">Thanks for your Time Perry Watford # 289215</p>		
DISPOSITION BY STAFF MEMBER:		
<p>Hit and Run-Death results is a non-violent offense by state statute. It's SCDC Classification is consider violent because the statute has been change to a violent offense. At the time you committed your offense it was non-violent.</p>		
DATE:	SIGNATURE:	
03/18/11	Michael R. Mathis Branch Chief	

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(9)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Perry Watford
 SCDC NUMBER: #289215
 INSTITUTION: BRCI
 HOUSING UNIT: Murray 266
 WORK ASSIGNMENT: dorm

JUL 12 2012
GDR

Office Use Only
 Grievance No. BRCI-084
 Code: General _____
 Policy _____
 Disc. Hear.
 Class.
 Date Received 7-18-12
 IGC Initials TM

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was sentenced in December 2002 for the offense of leaving the scene resulting in death; wreckless homicide and a probation violation. At the time I committed the above referenced offenses by statute the offense are non-violent. After entering SCDC I have been advised that I am being classified as violent 85%. I wrote head of classification concerning this matter, see attached inmate to staff request and Michael Matthews informed that at the time my crime was committed by statute they are considered non-violent, but SCDC's classification is treating them as violent and has me serving 85%.

Under the U.S. Constitutional Full Faith and Credit Clause I am entitled to have the law apply to me as it was at the time the offense was committed.

~~At this time I request to be reclassified as non-violent.~~

ACTION REQUESTED:

At this time I request to be reclassified as non-violent as the statute I was convicted under at that time was non-violent

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

see attached inmate to staff request to Head of Classification

Perry Lee Watford 7-9-12
 Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response →

[Signature]
 IGC Signature Date

[Signature]
 Grievant Signature Date

- I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.

Exhibit (B)

10 copy

10/2/13

WARDEN'S DECISION AND REASON:

Inmate Watford;

This is in response to BRCI-0848-12. In this grievance you asked to be reclassified as non-violent. All pertinent information and documentation has been reviewed. While your crime might have been classified as non-violent at the time it was committed, by the time you came under the custody of SCDC the statutes had changed. Unless the laws change, you will remain classified as a violent offender.

Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

HM A 4-3-13
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Ray Watford April 9, 2013
Grievant Signature Date

1-2/ontgomery 4-9-13
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Perry Watford
 SCDC NUMBER: SCDC# 289215
 INSTITUTION: BRCI
 HOUSING UNIT: Murray #266
 WORK ASSIGNMENT: Dorm

APR 13 2013
 LB

Office Use Only
 Grievance No. BRCI-0848-12
 Code: General _____
 Policy _____
 Disc. Hear.
 Class.
 Date Received 4-25-13
 IGC Initials JM

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am appealing the Warden's decision in grievance no. BRCI-0848-12. The Warden agreed that while my crime was classified as "non-violent" at the time the crime was committed, but by the time I entered SCDC the statute had change to violent and therefore I will remain classified as a violent offender. The Warden's decision is in error based on law. Under the Full Faith and Credit Clause the law must apply to me as it was when it was committed. Any departure from that as in the instant matter has resulted in an ex post facto violation. Ex post facto prohibits the application of a new law that increases punishment to an old sentence. I respectfully ask to be reclassified as non-violent.

see attached Request to Staff and Step 1 grievance

Perry Watford April 12, 2013
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Grievance has been reviewed. Offenses are considered statutorily violent if they were violent under SC Code Ann. 16-1-60 at the time of conviction. In contrast, offenses are considered violent for classification purposes if they are listed in SC Code Ann. 16-1-60 regardless of date of the conviction. Therefore, your offense is statutorily non-violent but you are classified violent. This classification has no bearing on projected release date or sentence-related credits. You are required to serve a mandatory minimum of 85% of your 25 year sentence based on your offense, not your violent status for classification purposes.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act. In order to appeal, you must fill out the attached Notice of Appeal Form and file it as instructed on the form within 30 days of receipt.

[Signature] 9-4-13
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Perry Watford 9-11-13
 Grievant Signature Date

[Signature] 9-11-13
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Exhibit (C)

sent with Administrative Law Court
 S.C. D.C. General Counsel
 Copy's out 9-25-13

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Perry Watford, #289215,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0732-AP

Grievance No. BRCI 0848-12

ORDER OF DISMISSAL

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Perry Watford (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant filed a grievance with the Department objecting to his security classification. On September 11, 2013, Appellant received the Department's final decision, which denied Appellant the relief he requested in his grievance. On September 25, 2013, Appellant filed this appeal with the ALC.

STANDARD OF REVIEW

The Court'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). The Court is authorized to dismiss inmate grievance appeals that do not implicate a state-created liberty or property interest. Skipper v. S.C. Dept. of Corr., 370 S.C. 267, 279 n.5, 633 S.E.2d 910, 917 n.5 (Ct. App. 2006).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377; 527 S.E.2d at 754. Consequently, the review in inmate grievance cases is limited to the record presented. See, S.C. Code Ann. § 1-23-380(4) (Supp. 2013) ("The review must be conducted by the court and must be confined to the record..."); see also, S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision

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unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law. See, Section 1-23-380(5); see also, Marietta Garage, Inc. v. S.C. Dept. of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); S.C. Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998).

DISCUSSION

“The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. Id.; Hewitt v. Helms, 459 U.S. 460, 466 (1983), overruled on other grounds by Sandin v. Conner, 515 U.S. 472 (1995).

Courts have held that the 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 are within the sentence imposed and are not otherwise violative of the Constitution.” Brown v. Evatt, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996); Slezak v. Evatt, 21 F.3d 590, 594 (4th Cir. 1994); see also, Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976). Rather, within these limits, so far as the Constitution itself is concerned, “the security and custody classification of state prison inmates is a matter for state prison official discretion.” Brown, 322 S.C. at 194, 470 S.E.2d at 851; Slezak, 21 F.3d at 594.

Here, Appellant has failed to demonstrate that he has a state-created liberty interest in his security classification. An inmate’s mere assertion that he has been given a certain security classification, without evidence that the classification imposes an atypical and significant hardship, does not establish a liberty interest. See, Harbin-Bey v. Rutter, 420 F.3d 571, 577 (6th Cir. 2005); Miller v. Campbell, 108 F. Supp. 2d 960, 965 (W.D. Tenn. 2000); James v. Reno, 39 F. Supp. 2d 37, 40 (D.D.C. 1999); Collins v. Hannigan, 14 F. Supp. 2d 1239, 1243 (D. Kan. 1998). In this case, Appellant has not explained how his security classification affects the conditions of his incarceration. See, Wilkinson, 545 U.S. at 223-24 (determining that prisoners had a liberty interest in avoiding transfer to “Supermax” prison facility, court considered conditions at facility); Sandin, 515 U.S. at 485 (finding no liberty interest protection against a 30-day assignment to segregated confinement, court noted that case did not present “a dramatic

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departure from the basic conditions of Conner's indeterminate sentence"). Moreover, Appellant has not shown that his security classification will "inevitably affect" the overall duration of his imprisonment. See, Sandin 515 U.S. at 487 (finding that State's action would not "inevitably affect" the duration of the prisoner's sentence). While Inmate complains that his security classification as "violent" will result in a requirement that he serve a greater percentage of his sentence before he can be paroled, this is not the case. SCDC's Step 2 response makes it clear that the violent classification relates only to Inmate's custody/security matters and has no bearing on his projected release date.

ORDER

IT IS THEREFORE ORDERED that Appellant's appeal is **DISMISSED, WITH PREJUDICE.**

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 11, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereto, in the United States mail, postage paid, or in the interagency mail Service addressed to the party(ies) or their attorney(s).

This 11th day of March 2014

Judicial Law Clerk