

FILED

SEP 05 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Stephen A. Beckham, 236548,)
)
Appellant,)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No.: 14-ALJ-04-0376-AP
Grievance No.: MCCI 1046-13

ORDER OF DISMISSAL RECEIVED

SEP 2 9 2014

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed April 17, 2014, by Stephen Beckham (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“the Department” or “SCDC”). Appellant appeals the decision of the Department denying his grievance in which Appellant complains the Department has failed to apply a court-ordered expungement for an external charge to his internal disciplinary conviction for the same offense. The internal conviction against which Appellant seeks to enforce the expungement order did not result in the loss of any accrued good time credits. However, Appellant contends the internal record of his disciplinary conviction violates 17-1-40 of the South Carolina Code and negatively impacts the parole board’s consideration of his parole.

The facts of this case are unique and require some discussion. A warrant was originally issued for Appellant in 2006 for Escape/Aiding Escapes From Prison. A sealed indictment was thereafter issued. An internal memorandum from the SCDC Inspector General dated February 8, 2007, discussed the internal disciplinary action to be taken against Appellant as a result of the indictment. The memorandum explained that disciplinary action against Appellant for aiding and abetting an escape could not take place in a timely manner because “any disciplinary action taken against him would have relied solely on the contents of the sealed SLED Investigative report which was a principal factor in the grand jury returning a true bill of indictment against him for aiding and abetting.” The memorandum further commented that the seal on the indictment had been lifted and the disciplinary action could commence.

Subsequently, the Department held a hearing on March 19, 2007, and Appellant was convicted of Aiding and Abetting an Escape from a Level II or Level III Institution. The

Disciplinary Report and Hearing Record indicates the conviction was based on the report of Lieutenant Brice, attached evidence, and Appellant's own statement.¹ However, the external charge was dismissed on September 10, 2009, and, on July 11, 2013, Appellant received a court-ordered expungement of the charge.

In his Step 1 and Step 2 grievances, Appellant complained the expungement should be extended to his internal disciplinary conviction. He also argued his classification should be lowered. The Department denied both grievances, arguing the expungement order did not require the Class 1 Escape conviction or classification to be removed from Appellant's record.

Appellant alleges SCDC's record of his internal conviction for aiding and abetting escape violates the court-ordered expungement pursuant to section 17-1-40 of the South Carolina Code and Compton v. South Carolina Department of Corrections, 392 S.C. 361, 709 S.E.2d 639 (2011). Appellant also alleges this internal record could negatively impact his ability to receive parole. The Department contends section 17-1-40 does not affect internal disciplinary convictions and also cites to Compton in support of its position.

This case presents an interesting factual issue as there is no evidence to support Appellant's internal conviction without the indictment from the external charge, which has been expunged. Unfortunately, because the expungement occurred years after the internal disciplinary conviction, Appellant could not attack the sufficiency of the evidence on which the conviction relied at the time. However, once the expungement was issued, it undermined Appellant's internal conviction because, according to the Department's own internal memorandum, the conviction relied solely on the indictment for the external charge. Whether Appellant's internal conviction should stand under these facts is a novel issue. However, while the Court has sympathy for Appellant's situation, I ultimately determine the Court does not have jurisdiction to reach Appellant's issues.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep't of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004), provided further clarification

¹ A transcript of the hearing, the attached evidence, and statements were not included in the Record.

that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. S.C. Dep't of Corrs., 374 S.C. 334, 649 S.E.2d 35 (2007).

As applied to parole decisions, an inmate “has a right of review by the [ALC] after a *final* decision that he is *ineligible* for parole, [but] a parole-eligible inmate does not have the same right of review after a decision denying parole; the parole board is, however, required to review an inmate's case every twelve months after a negative parole determination.” Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 497-98, 661 S.E.2d 106, 111 (2008) (citing S.C. Code Ann. § 24–21–620 (Supp.2002)); see also Sullivan v. S.C. Dep't of Corrs., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (“Although the Court found S.C. Code Ann. § 24-21-620 created a liberty interest in the one-time determination of parole *eligibility*, it was quick to note that the statute did not create a liberty interest in parole.”). “This distinction stems from the fact that parole is a privilege, not a right.” Cooper, 377 S.C. at 498, 661 S.E.2d at 111. However, in Cooper the court qualified its statement, stating a permanent denial of parole eligibility is not required before a sufficient liberty interest is involved for review; rather, “[i]t is merely one of the ways that a sufficient liberty interest may be involved.” Id.

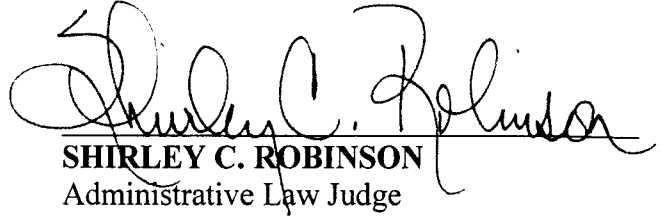
The record shows Appellant did not lose any accrued good time credits as a result of his conviction; therefore, he cannot show a liberty interest in the loss of good time. Instead, Appellant loosely contends in his brief that the record of his internal conviction could negatively impact future DPPPS’s decisions regarding parole. While the permanent denial of parole eligibility implicates a liberty interest, it is less clear whether a one-time denial of parole under certain circumstances could implicate a liberty interest. See Cooper, 377 S.C. at 497-98, 661 S.E.2d at 111. Regardless, the record does not show Appellant was actually denied parole because of his conviction for aiding and abetting escape. Therefore, any possible impact on Appellant’s parole is purely hypothetical at this point. Accordingly, I find Appellant has failed to show the Department’s actions have deprived him of a liberty or property interest such that this Court has jurisdiction.

Because Appellant has not alleged deprivation of a state-created liberty or property interest in this matter, the Court finds Furtick to be controlling. 374 S.C. at 334, 649 S.E.2d at 35 (holding when the grievance appeal does not implicate a state-created liberty or property

interest, the ALC may summarily dismiss the appeal at its discretion).

IT IS HEREBY ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

September 5th, 2014
Columbia, South Carolina

5 September 2014
