THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

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

Perry Watford, # 289215,.....Appellant,

v.

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

AMENDED FINAL BRIEF OF RESPONDENT

September 12, 2014

South Carolina Department of Corrections

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS THIS APPEAL BECAUSE IT DOES NOT IMPLICATE A STATE-CREATED LIBERTY INTEREST?

STATEMENT OF CASE

Perry Watford (appellant) is an inmate in the custody of the South Carolina Department of Corrections (SCDC). In this appeal, he challenges an Administrative Law Court (ALC) summarily dismissing his appeal from the denial of his inmate grievance.

On December 3, 2002, appellant pled guilty to hit and run resulting in death. He was sentenced to twenty-five years' incarceration. (R.p.2).

On July 9, 2012, appellant filed a Step One Inmate Grievance, complaining that he was classified as a violent offender and was subject to the requirement that he serve 85% of his sentence before he was eligible for release. The warden denied the Step One Grievance in a response dated April 3, 2013. (R.p.2).

Appellant filed a Step Two Inmate Grievance on April 18, 2013. On September 4, 2013, the responsible official issued the following decision:

> Your grievance has been reviewed. Offenses are considered statutorily violent if they were violent under S.C. Code Ann. 16-1-60 at the time of the conviction. In contrast, offenses are considered violent for classification purposes if they are listed in SC Code Ann. 16-1-60 regardless of the date of conviction. Therefore, your offense is statutorily non-violent but you are classified violent. This classification has no bearing on your 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 offenses, not your violent status for classification purposes.

(R.p.3).

On September 24, 2013, appellant filed a Notice of Appeal in the ALC. On March 11, 2014, the ALC summarily dismissed the appeal because appellant had failed to demonstrate there was a state-created liberty interest in his security classification. The ALC found:

> While [appellant] 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 1 response makes it clear that the violent classification relates only to [appellant's] custody/security matters and has no bearing on his projected release date.

(R.pp.14-16).

Appellant now appeals the ALC's decision. For the reasons that follow, the ALC's decision should be upheld.

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 is 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 THIS APPEAL BECAUSE IT DOES NOT IMPLICATE A STATE-CREATED LIBERTY INTEREST.

The ALC correctly dismissed the appeal based upon the fact that no state-created liberty interest was implicated by SCDC's final agency decision

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).

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 does not otherwise violate the Constitution. See Slezak v. Evatt, 21 F.3d 590, 594 (4th Cir. 1994). Neither the state statutes which create and define the powers of the SCDC nor SCDC's operational classification policies create a constitutional liberty interest in a particular security classification. See Brown v. Evatt, 322 S.C. 189, 195, 470 S.E.2d 848, 851 (1996).

In the case at hand, appellant incorrectly asserts that SCDC's treatment of his criminal offense as "violent" for its internal classification purposes is affecting the length of his incarceration. In fact, appellant must serve 85% of his twenty-five year sentence pursuant to S.C. Code Ann. § 24-13-150(A), which provides: "Notwithstanding any other provision of law . . . an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed." Appellant's conviction for hit and run resulting in death is within the definition of a "no parole" offense. See S.C. Code Ann. § 24-13-100 ("For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more."); S.C. Code Ann. § 16-1-30 (stating that criminal offenses created by statute must be classified according to the maximum term of imprisonment provided by statute); S.C. Code Ann. § 16-1-20(A)(2) (providing the maximum penalty for a class B felony is twenty-five years); S.C. Code Ann. § 56-5-1210(A)(3) (listing the maximum penalty for hit and run resulting in death as twenty-five years' incarceration).

The response to appellant's Step Two Grievance explains that the treatment of appellant's offense as "violent" for SCDC's internal classification purposes did not have the same consequences as if his offense had been violent pursuant to S.C. Code Ann. § 16-1-60 at the time of the offense:

> Your grievance has been reviewed. Offenses are considered statutorily violent if they were violent under S.C. Code Ann. 16-1-60 at the time of the conviction.[1] In contrast, offenses are considered violent for classification purposes if they are listed in SC Code Ann. 16-1-60 regardless of the date of conviction. Therefore, your offense is statutorily non-vilent but you are classified violent. This classification has no bearing on your 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 offenses, not your violent status for classification purposes.

(R.p.3).

The ALC dismissed appellant's challenge to SCDC's final agency decision because no state-created liberty interest was implicated in the appeal. The ALC noted that appellant had provided no evidence his classification within SCDC imposes an atypical and significant hardship. In addition, the ALC rejected appellant's argument that his security classification resulted in a requirement that he would serve a greater percentage of his sentence before he could be released, finding it was clear that the violent classification relates only to appellant's custody and security classification; it does not relate to appellant's release date. (R.pp.14-16).

The ALC correctly dismissed this appeal. Regardless of his classification within

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[1] The reference to the date of conviction is incorrect in that the relevant law for determining if an offense is statutorily violent pursuant to S.C. Code Ann. § 16-1-60 is the law in effect on the date the offense occurred. See State v. Varner, 310 S.C. 264, 423 S.E.2d 133 (1992). However, this error has no effect on the outcome of this case because appellant's offense is not violent for statutory purposes. Instead, it is considered violent

SCDC, appellant is required to serve 85% of his sentence before release pursuant to 24-13-150(A). His security classification has no bearing on the 85% requirement.

Appellant's only remaining contention relates to the fact that appellant's offense is treated by SCDC as violent for internal classification purposes. No state-created liberty interest is implicated by appellant's security classification. See Slezak v. Evatt, 21 F.3d 590, 594 (4th Cir. 1994); Brown v. Evatt, 322 S.C. 189, 195, 470 S.E.2d 848, 851 (1996). Moreover, inmate classification is a prime example of the type of issue for which courts defer to the professional judgment of correctional authorities. See Sullivan v. SCDC, 355 S.C. 437, 444, 586 S.E.2d 124, 127-28 (2004) (noting the traditional "hands-off approach" the Court has taken toward internal prison matters). Therefore, the ALC properly dismissed the appeal.

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only for SCDC's internal classification purposes.

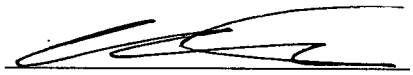
CONCLUSION

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Attorney for Respondent



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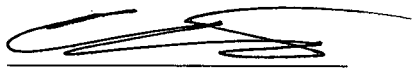
CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Amended Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on September 12, 2014, addressed as follows:

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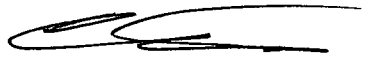

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