

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT **SC Court of Appeals**

Carolyn C. Matthews, *Administrative Law Judge*

Lower Case No. 14-ALJ-04-0444-IJ  
Appellate Case No. 2014-002173

Anthony Erving, # 220446,.....Appellant,

v.

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

**INITIAL BRIEF OF RESPONDENT**

December 2, 2014

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

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**STATEMENT OF THE ISSUE ON APPEAL**

**WHETHER THE ADMINISTRATIVE LAW COURT ERRED BY DISMISSING APPELLANT'S CASE PURSUANT TO *SKIPPER V. S.C. DEPT OF CORR.* AND *SLEZAK V. S.C. DEPT OF CORR.***

## STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Anthony Erving, inmate number 220446 (Appellant), an inmate in the custody of the Department of Corrections (Department).

Appellant filed a Step One Grievance on December 19, 2013 alleging that his transfer from his Prison Industries (PI) job to a dormitory job was “illegal.” (R.p. \_\_\_\_). In response, Warden Reynolds replied that “[n]othing has been found to support [Appellant’s] allegation that [his] job transfer from PI to the dorm was outside the guidelines of policy.” (R.p. \_\_\_\_). Thereafter, Appellant filed a Step Two Grievance on January 8, 2014 alleging that he “was transferred [] unconstitutionally” because “[t]he transfer was done against [his] approval.” (R.p. \_\_\_\_). In response, Deputy Director Barrett replied:

There is no evidence policy was violated since inmates can be removed from job assignments to other job assignments to meet the needs of the institution. Since policy was not violated I would advise you to discuss your concerns with your classification caseworker about the procedures for applying for another job in PI.

(R.p. \_\_\_\_). Subsequently, Appellant took an appeal to the Administrative Law Court (ALC) pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), arguing that his transfer from the PI job to the dormitory job violated due process. (R.p. \_\_\_\_).

On September 10, 2014, the ALC dismissed Appellant’s appeal because his appeal did “not implicate a state created liberty or property interest.” (R.p. \_\_\_\_). In its opinion, the ALC reiterated that “[t]ypically, there is no entitlement to a job in prison and therefore there is no property interest in a job assignment” and, accordingly, dismissed the appeal pursuant

to *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004). Appellant then appealed to this Court. Respondent now submits its initial brief in support of affirmation.<sup>1</sup>

### **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 reviewing tribunal 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that 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, this

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<sup>1</sup> Respondent submits this brief even though Appellant's filings have six deficiencies as identified by the Clerk.

Court need only find, considering the record as a whole, evidence upon which reasonable minds could rely in reaching the same decision that the ALC reached. *DuRant v. S.C. Dep't of Health & Environ. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004).

### **ARGUMENT**

**THIS COURT SHOULD AFFIRM THE DECISION BELOW BECAUSE THE ADMINISTRATIVE LAW COURT DID NOT ERR BY DISMISSING APPELLANT'S CASE PURSUANT TO *SKIPPER V. S.C. DEP'T OF CORR.* AND *SLEZAK V. S.C. DEP'T OF CORR.***

The ALC properly dismissed Appellant's appeal because the ALC's jurisdiction is limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which the Department has taken an inmate's state-created liberty or property interest as punishment in major disciplinary hearings; or cases in which an inmate's confinement implicates a state-created liberty interest. *See Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). Under this Court's decision in *Skipper v. S.C. Dep't of Corr.*, an inmate's termination from prison employment does not implicate a state-created liberty interest because no "atypical, significant hardship" is present. 370 S.C. 267, 276, 633 S.E.2d 910, 915 (Ct. App. 2006). Therefore, under *Slezak v. S.C. Dep't of Corr.*, the ALC properly dismissed the appeal because Appellant's "grievance [did] not implicate a state created liberty or property interest." 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

Pursuant to Rule 208(b)(2), SCACR, Respondent respectfully submits that this case is one in which the Court can affirm on "any ground appearing on the record." *See* Rule 208(b)(2), SCACR (citing to Rule 220(c), SCACR ("The appellate court may affirm any

ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”)). The ALC’s opinion adequately outlines the reasons for dismissing the appeal, and Appellant has failed to carry his burden showing that the ALC erred in so doing.

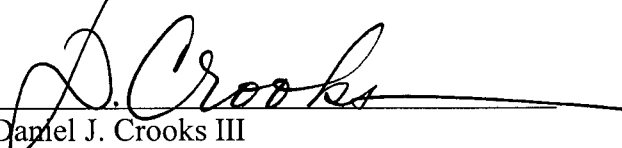
**CONCLUSION**

For the foregoing reasons, this Court should affirm the ALC’s decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:

  
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*Counsel for Respondent*

Signed at Columbia, South Carolina

on this 2<sup>nd</sup> day of December, 2014

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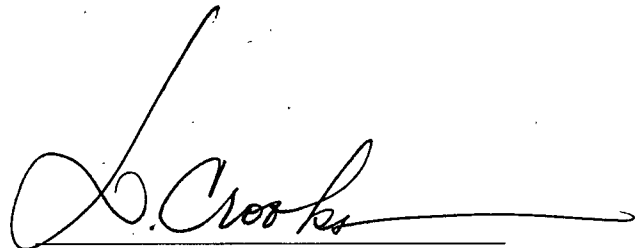
South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I, Daniel J. Crooks III, counsel for Respondent, hereby certify that on today's date I mailed a copy of the foregoing *Initial Brief of Respondent* to Appellant, addressed as follows:

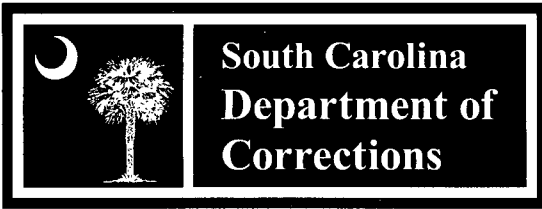
Anthony Erving, #220446  
Kershaw Correctional Institution  
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December 2, 2014



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NIKKI R. HALEY, Governor  
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Post Office Box 11629  
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Reference: App. Case No.: 2014-002173  
*Anthony Erving, # 220446 v. S.C. Department of Corrections*

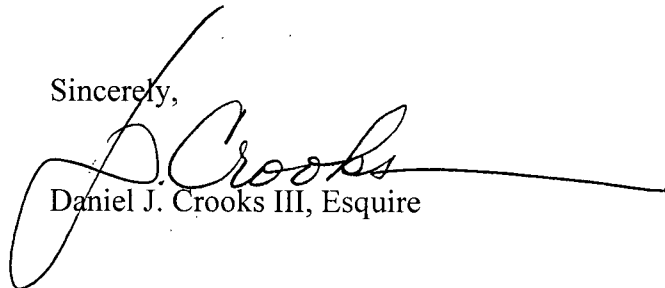
Dear Ms. Kitchings:

I am assigned counsel for Respondent in the above-referenced case. Enclosed herein, please find:

- (1) One (1) original and (1) copy of *Respondent's Designation of Matter*. Kindly file the original and return one copy to my attention in the enclosed self-addressed, stamped envelope.
- (2) One (1) original and (1) copy of *Respondent's Initial Brief*. Kindly file the original and return one copy to my attention in the enclosed self-addressed, stamped envelope.

If you would, please mail all of the return copies in the same enclosed manila envelope via inter-agency mail.

Sincerely,



Daniel J. Crooks III, Esquire

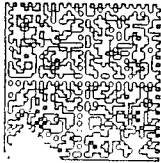
Enclosures


cc: Anthony Erving, # 220446  
Kershaw Correctional Institution

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