

THE SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

ADMINISTRATIVE JUDGE CAROLYN MATTHEWS

CASE NO. 2014-002487

ZACHARY SMITH, # 269134, APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RESPONDENT

INITIAL BRIEF OF APPELLANT

DEC 13, 2014

PRO SE

ZACHARY SMITH # 269134

PERRY C.I. (D-X-17)

430 OAKLAND RD.

PELZER, S.C. 29669

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STATEMENT OF THE ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS THE APPEAL PURSUANT TO
S.C. CODE ANN. § 1-23-600(D)?

STATEMENT OF CASE

THIS MATTER COMES BEFORE THIS HONORABLE COURT PURSUANT TO THE APPEAL OF ZACHARY SMITH (APPELLANT), AN INMATE INCARCERATED WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ("SCDC"). APPELLANT WAS CONVICTED OF THE INMATE DISCIPLINARY INFRACTION OF 901 CLASS 1 ESCAPE UNDER SCDC POLICY OP-22-14, INMATE DISCIPLINARY SYSTEM, FOLLOWING A DISCIPLINARY HEARING.

APPELLANT FILED A STEP 1 GRIEVANCE ON 5-19-2014, CHALLENGING HIS DISCIPLINARY CONVICTION. THE GRIEVANCE WAS ~~REMOVED~~ CLOSED/UNPROCESSED BECAUSE APPELLANT DIDN'T FILE WITHIN THE PROPER TIME FRAME DUE TO THE FACT THAT APPELLANT WAS ON CRISIS INTERVENTION. ON 7-2-14 APPELLANT FILED A STEP 2 GRIEVANCE, WHICH WAS DENIED.

APPELLANT FILED A NOTICE TO APPEAL IN THE ADMINISTRATIVE LAW COURT (ALC) PURSUANT TO AL-SHABAZZ V. STATE, 338 S.C. 354, 527 S.E.2d 742 (2000). BY WAY OF AN ORDER DATED OCTOBER 29, 2014, ADMINISTRATIVE LAW JUDGE CAROLYN MATTHEWS SUMMARILY DISMISSED THE APPEAL BECAUSE APPELLANT DID NOT LOSE ANY ALLOWED GOOD TIME CREDIT AS A RESULT OF HIS DISCIPLINARY CONVICTION.

APPELLANT NOW SEEKS REVIEW OF THE ALC'S DECISION. FOR THE REASONS THAT FOLLOW, APPELLANT RESPECTFULLY REQUESTS THAT THE ALC'S DECISION BE REVERSED AND REMANDED TO THE ALC FOR REVIEW.

STANDARD OF REVIEW

S.C. CODE ANN. § 1-23-610 (B) PROVIDES THE APPLICABLE STANDARD OF REVIEW:

THE REVIEW OF SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ORDER MUST BE CONFINED TO THE RECORD. THE COURT MAY NOT SUBSTITUTE ITS JUDGEMENT FOR THE JUDGEMENT OF THE ADMINISTRATIVE LAW JUDGE AS TO THE WEIGHT OF THE EVIDENCE OR QUESTION OF FACT. THE COURT OF APPEALS MAY AFFIRM THE DECISION OR REMAND OR MODIFY THE DECISION IF THE SUBSTANTIVE RIGHTS OF THE APPELLATE HAS 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 SUBSTANTIATED 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 JUDGEMENT 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. 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. DEPT 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 IMPROPERLY DISMISSED THE APPEAL PURSUANT TO S.C. CODE ANN. § 1-23-610 (E) AND AL-SHABAZZ V. STATE, 527 S.E.2d 742 (2000).

THE ALC'S JURISDICTION TO HEAR THIS MATTER IS DERIVED FROM THE DECISION OF THE SOUTH CAROLINA SUPREME COURT IN AL-SHABAZZ V. STATE, 336, 354, 527 S.E.2d 742 (2000). SUBSEQUENTLY, THE SUPREME COURT CLARIFIED THE ALC'S APPELLATE JURISDICTION OVER ADMATED APPEALS IN SIEZAK V. SCOT, 355, S.C. 437, 586 S.E.2d 124 (2004). THE SUPREME COURT HELD THAT, ALTHOUGH THE ALC HAD JURISDICTION OVER ALL PROPERLY PERFECTED APPEALS THAT DO NOT IMPLICATE AN INMATE'S STATE-CREATED LIBERTY OR PROPERTY INTEREST,

IN THIS CASE APPELLANT LIBERTY (PERSON) IS BEING SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT, NOT GETTING PROPER VENTILATION, FOOD, NO JOB PERFORMANCE, ATTENDING RELIGIOUS SERVICES, STATE-CREATED VISITATION, PHONE CALLS, CANTEEN ALL HAS BEEN TAKEN FOR SUCH IMPROPER INFRACTION OF DHO HEARING, APPELLANT DUE PROCESS WAS BLATANTLY VIOLATED, APPELLANT WAS ON CRISIS INTERVENTION C.I. ON 3-28-14 THROUGH 5-8-14, AND WAS FORCED TO GO TO THE DHO HEARING ON 4-17-14. APPELLANT HAD NO CHANCE TO READ HIS CHARGE PAPERS, NOR WAS HE ABLE TO PREPARE A DEFENSE OR CALL WITNESSES IN HIS FAVOR BECAUSE APPELLANT WAS NOT ABLE TO HAVE ANY CLOTHING ITEM OR ANYTHING IN HIS CELL AT THAT TIME HE WAS ON C.I. FURTHERMORE S.C.D.C. POLICY AND PROCEDURE OP 22.14 DISCIPLINARY SYSTEM SECTION 14.5 STATES THAT IF AN INMATE WITH A PENDING DISCIPLINARY CHARGE IS ON C.I. THE DISCIPLINARY HEARING SHOULD BE POSTPONED UNTIL INMATE GETS OFF C.I. WRIGHT V. ENOMOTO, 462 F. SUPP. 397 COURT HELD THAT PRINCIPLE OF DUE PROCESS REQUIRE THAT BEFORE AN INMATE IS PLACED IN ADMINISTRATIVE SEGREGATION, HE MUST BE AFFORDED PROMPT WRITTEN NOTICE OF THE REASON FOR HIS CONFINEMENT, AN OPPORTUNITY TO PREPARE A DEFENSE, A FAIR AND EXPEDITIOUS HEARING AT WHICH TO PRESENT EVIDENCE, REPRESENTATION BY A COUNSEL-SUBSTITUTE WHEN APPROPRIATE, AND A WRITTEN DECISION BY THE HEARING PANEL U.S. CONSTITUTION AND ARTICLE I. SEC 17.

THEREFORE THE FINDING OF THE ALC'S DECISION IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD UNDER S.C. CODE ANN. § 1-23-610 (B)(E)

The South Carolina Court of Appeals

APPEAL From ADMINISTRATIVE LAW Court
ADMINISTRATIVE JUDGE CAROLYN MATTHEWS

CASE No 2014-002987

ZACHARY SMITH 269134 - - - - - APPELLANT

V

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS - RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED RESPONDENT
A COPY OF APPELLANT'S INITIAL BRIEF BY DEPOSITING
A COPY OF SAME IN THE UNITED STATE MAIL
POSTAGE PREPAID ON DECEMBER 10 2014
ADDRESS TO THE FOLLOWING:

(1) THE SOUTH CAROLINA COURT
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