

State of South Carolina

In The Supreme Court

Appeal From The Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

RECEIVED

JAN 29 2015

S.C. Supreme Court

Appellate Case No. : 2014-001098

ALC Case No. : 2013-AJT-04-0044-AP

Angelo Ham, #315014,

Petitioner,

vs.

S.C. Dept. of Corrections,

Respondent.

APPENDIX

Angelo Ham #315014
L.C.I./SMU # 02
990 Wisocky Highway
Bishopville, S.C. 29010
(Pro Se Petitioner)

Daniel J. Crooks, III
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221
(Attorney for Respondent)

INDEX

SEDC 19-29A "INCIDENT REPORT"	1
SEDC 19-69 "DISCIPLINARY REPORT AND HEARING RECORD"	2
SEDC 10-5 "STEP 1 GRIEVANCE"	3
SEDC 10-5 "STEP 1 GRIEVANCE"	4
SEDC 10-5A "STEP 2 GRIEVANCE"	5
SEDC 19-11 "REQUEST TO STAFF MEMBER"	6
NOTICE OF APPEAL	7
Appellants' Original Brief	8-11
Respondents Brief and Motion to Dismiss	11-12
Order of Dismissal	13-14
Order	15
Order	16
Appellants Petition for Rehearing	17-19
Order	20-21

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Angelo Ham #315014,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALJ-04- -
GRIEVANCE NO.: LEE CI #1800-13

Notice is hereby given that Angelo Ham #315014 does hereby appeal the final decision of the South Carolina Department of Corrections dated 8/20/13 and received on 8/23/13, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Appellant, Angelo Ham, alleges that the Respondent is and has violated his Fifth and Fourteenth Amendment by failing to follow their own rules and regulations outlined in SCDC Policy/Procedure, OP-22.14, "Inmate Disciplinary System", paragraph 21.

Angelo Ham

Appellant's Name

990 Wiscoy Highway

Mailing Address

Bishopville, S.C. 29010

City, State, Zip Code

[Signature]

Signed

August 26, 2013

Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Angelo Ham (your name), on the 26 day of August, 20 13, in Bishopville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: S.C.D.C.

Address: 444 Broad River Road

City, State, Zip Code: Columbia, S.C. 29221

Angelo Ham

Print your name

[Signature]

Sign your name

(See reverse side for instructions)

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) **In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due 7/21/13

STEP 1

INMATE NAME: ANGELO HOIM
SCDC NUMBER: 315014
INSTITUTION: LEECE
HOUSING UNIT: SMU # 62
WORK ASSIGNMENT: N/A

JUN 12 2013
DP

Office Use Only
Grievance No. LeeCE 1800-13
Code: General _____
Policy _____
Disc. Hear. 1854 6/11/13
Class. _____
Date Received 6/13/13 / 6/17/13
IGC Initials _____

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) *This grievance is in regards to the disciplinary hearing which was held on 6/11/13 which is case # 41. Pursuant to SCDC Policy / Procedure, OP-22.14 "Special Management Unit" paragraph a1, this offense was suppose to beal closed / informally resolved.*

ACTION REQUESTED: *that this disciplinary hearing be reversed and closed / informally resolved.*

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: *Automatic ~~at~~ right to appeal.*

[Signature] 6/12/13
Grievant Signature Date

ACTION TAKEN BY IGC:
Reviewed all pertinent information and disciplinary documentation.
See Warden's Response for decision.

[Signature] 6/28/13
IGC 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.

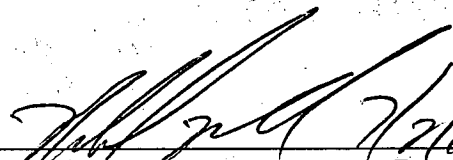
N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

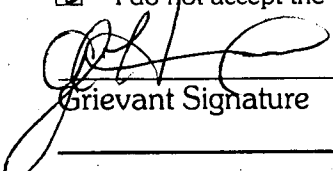
Inmate Ham:

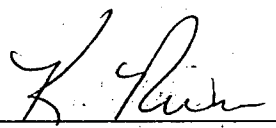
This is in response to LEECI-1800-13. You have appealed the results of your 6/11/13 Disciplinary Hearing where you were found guilty on the charge of 854 Exhibitionism and Public Masturbation, Case No. 41. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. Based on this information, your appeal is without merit and therefore denied.

If not satisfied with my response, see Step 5 below.


Warden Signature 7/26/13
Date

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


Grievant Signature 7/15/13
Date


IGC Signature 7/15/13
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

RECEIVED

Due 7/21/13

INMATE NAME: Angel Hernandez
 SCDC NUMBER: 315014
 INSTITUTION: Lee Ct
 HOUSING UNIT: Cell 62A
 WORK ASSIGNMENT: _____

Office Use Only
 Grievance No. Lee Ct 1800-13
 Code: General _____
 Policy _____
 Disc. Hear. 854 6/11/13 #41
 Class. _____
 Date Received 7/18/13
 IGC Initials HRK

JUL 26 2013
 INMATE GRIEVANCE
 JUL 17 2013
 9B

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

I do not accept the parole decision because I have due process state liberty interest right to minimum protections of the law. Per SCDC Policy / PROCEDURE, OP-22.14, "Inmate Disciplinary System", paragraph 21 clearly states that this offense was to had been informally resolved and entered into the OMS as such. Grievant does not earn good time! This offense is not an assault offense! The above cited policy was approved by congress in this state per S.C. Code ANN §§ 24-1-130 and 24-13-310.

[Signature]
 Grievant Signature 7/16/13
 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction(s) of Exhibitionism and Public Masturbation (854), on June 11, 2013, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -0- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner. Also, it has been found that you have repeatedly committed the offense of (854) Exhibitionism and Public Masturbation this makes your 10th infraction.

Therefore, your grievance is denied.

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

[Signature]
 Signature 8/20/13
 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.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

#41

Page | of |

SMU 62
NMH

13-05-314

Institution/Center: Lee CI	
Date of Report: Monday 5-20-13	Time of Report: App 3:10 pm
Reporting Official: OFC C Lighty	Date of Incident: 5-20-13
Location of Incident: Sm Computer Room	Time of Incident: App 2 ^o Clock pm
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. Ham Angelo #315014 Bkr M	1. OFC Lighty
2.	2.
3.	3.
4.	4.
5. DD3	5.

On the above date and approximate time: while in C-Control I ofc Lighty was doing a visual security check. When I saw I/m Ham Angelo #315014 in the computer room standing up with his penis in his hand stroking it in a back and forth motion I ofc Lighty is charging I/m Angelo Ham #315014 with #854 Exhibitionism and Public Masturbation

RECEIVED

MAY 21 2013

LEECI MAJOR'S OFFICE

Signature: ofc C Lighty

5/28/13

Evidence:

Witness(es):

Supervisor's Comments: Refer to DHU

STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Signature: [Signature] Title: [Signature] Date/Time: 5/21/13 3:32pm

Major / Responsible Authority:

854

Action Taken
 Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

Signature: A. [Signature] Title: Capt. Date: 5-21-13

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD**

Case#: 41 Inmate Name: Angelo Ilac SCDC#: 315014
 Living Area: SE3 - 62 Job: N/A Custody: DD3
 Offense Date: 05/20/13 Offense Time: 2:00PM AM/PM Offense Location: LEE CT

Offense Description:

854 "Exhibitionist and Public Masturbation": (1) Engaging in acts of indecent and/or unnecessary exposure of genitals or other private body parts to a staff member or other person; or (2) Engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting or in the view of a staff member or other person.

Charging Officer/Employee: C. Lighty, Ofc

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS: CS: M. Williams

I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING

I DO NOT WANT TO BE PRESENT AT MY HEARING

I DO WANT MY ACCUSER PRESENT AT THE HEARING

I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING Co. 2

I WAIVE MY RIGHT TO A HEARING

I WANT A COUNSEL SUBSTITUTE

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 5/29/13 11:05 AM/PM By (Print): LT L. ROBERTS 021721

Inmate Signature: [Signature] Date: 5/29/13

HEARING INFORMATION:

Hearing Date: <u>6/11/13</u>	Hearing Time: <u>10³⁰</u> am/pm	Tape: _____	Side: _____	Start: _____	End: _____
------------------------------	--	-------------	-------------	--------------	------------

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS THE HEARING.

Ym removed due to his use of profanity during the DHO's hearing

OFFENSE CODES	<u>854</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: _____

Testimony

HEARING LENGTH: _____ (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): _____

Property (Days) _____ Extra Duty: _____ Restitution: \$ _____

Canteen (Days) 180 + 360 = 540 Contact Visit Suspension Thru 360 + 360 = 720

Other none (Days) 180 + 360 = 540 Cell Restriction (Days): DJS = 360 + 360 = 720!

Disciplinary Detention (Days): 360

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: Nature of Offense

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS: _____

DATE INMATE PLACED IN PHD 1/1/13 CS M Williams

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Ym removed from hearing DATE: 6-11-13

HEARING OFFICER (PRINT NAME) Sharon Patterson

APPROVED/REVERSE/MODIFY [Signature] REASON _____
 Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record, Canary - Inmate (Service of Disciplinary Report)
 Golden Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

** (Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: ANGELO HOM
SCDC NUMBER: 315014
INSTITUTION: L.C.I.
HOUSING UNIT: SMU # 02
WORK ASSIGNMENT: N/A

JUN 17 2013
CP

Office Use Only
Grievance No. LeeCI 1826-13
Code: General _____
Policy _____
Disc. Hear. _____
Class _____
Date Received 6/18/13
IGC Initials RHP

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) THIS GRIEVANCE IS IN REGARDS TO THE DISCIPLINARY HEARING THAT WAS HELD ON 6/11/13 WHICH IS CASE # 41. THIS APPEAL FOLLOWS BECAUSE OFC. ~~070~~ LIGHTY NEVER IDENTIFIED ME AND IS FALSELY ACCUSING ME OF SOMETHING THAT I NEVER ~~070~~ DID AND POSSIBLY NEVER HAPPENED.

ACTION REQUESTED: that the disciplinary hearing be reversed and closed.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Automatic right to appeal.

[Signature] 6/12/13
Grievant Signature Date

ACTION TAKEN BY IGC:

This grievance is being returned unprocessed as a duplicate to issues raised in LeeCI-1800-13. Per GA-01.12 Inmate Grievance System "...Inmates will only be allowed to submit one grievance per incident or circumstance."

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

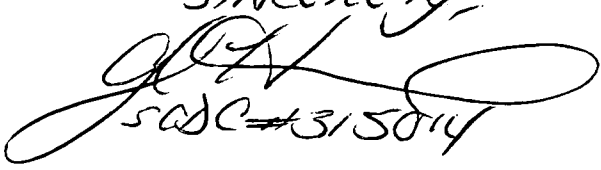
[Signature] 6/18/13
IGC Signature Date

N/A
Grievant Signature Date

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: <i>Ms. Smith</i>	TITLE:	DATE: <i>7/8/13</i>
INMATE'S NAME: <i>ANGELO HAM</i>		SCDC #: <i>315014</i>
INSTITUTION: <i>LEE C. I.</i>		LIVING QUARTERS: <i>SMU #602</i>

This request is in regards to me obtaining some information. If you would, can you please tell me did i go or was it documented that i went to the computer room on May 20, 2013.

*Thanking you in advance
Sincerely,

SCDC #315014*

DISPOSITION BY STAFF MEMBER:

Mr Ham:

Per the law computer log you were escorted into the computer room on 5/20/13 @ 2:55 pm.

Thank you!

DATE: <i>7-11-13</i>	SIGNATURE: <i>Mrs. A Smith</i>
-------------------------	-----------------------------------

State of South Carolina
Administrative Law Court

ANGELO HAM, #315041,
Appellant,
vs.
S.C. Dept. of Corrections,
Respondent.

} #A No.: 13-ALJ-04-0044

} APPELLANTS' ORIGINAL
BRIEF

Appellant, Angelo Ham, hereby states that on May 20, 2013, he was falsely accused by Officer Lighty of violating SDC rules and regulations charging him with "854- Exhibitionism and Public Masturbation." A hearing was held on June 11, 2013, at which, resulted in a guilty verdict. Appellant was represented by Counsel Substitute Mr. M. Williams.

Appellant filed two different grievances in this matter in accordance to SDC Policy/Procedure, GA-01.12, "Inmate Grievance System" that states, "only one issue will be allowed on each grievance." Those grievance numbers are "Lee CI #1826-13" and "Lee CI #1800-13."

Appellant filed grievance number Lee CI #1800-13, at which, was processed and denied both step(s) one and two. That final decision was given on August 20, 2013.

Appellant filed grievance number Lee CI #1826-13, at which, was erroneously denied without process on June 18, 2013.

This notice of appeal follows.

ARGUMENT 1

Whether the Respondent violated the Appellants' due process rights by failing to dispose of this incident?

Appellant contends that his constitutional right to due process of law under Wilkinson v. Austin, 545 U.S. 209 (2005), was violated when the respondent infringed his liberty interest without due process of law.

Appellant states that protected liberty interests can be created by: (1) the due process clause of its own force; (2) a court order; or (3) state statutes or regulations. Sandin v. Conner, 515 U.S. 472 (1995). Appellant state created liberty interest falls within the language of S.C. Code Ann. § 24-1-140 and § 24-13-210, et which, is the state statutes and regulations governing the SCDC Policy/Procedure, OP-22.14, "Inmate Disciplinary System."

The alleged state-created interest should be afforded due process protection only if its restriction or deprivation either (1) creates an "atypical and significant hardship" by subjecting the prisoner to conditions much different from those ordinarily experienced by large numbers of inmates serving their sentences in the customary fashion; or (2) inevitably affects the duration of the prisoner's sentence.

Appellant states that as a result of his guilty verdict, his visitation rights were sanctioned for 120 days, his canteen and telephone privileges were sanctioned for 540 days, he was given 300 days of disciplinary detention time, and pursuant to SCDC Policy/Procedure, OP-22.14, "Inmate Disciplinary System," paragraph 9.4, Appellant was automatically denied from earning his normal rate of good time for the date/month of the rule violation.

Appellant states that an atypical and significant hardship was created in this matter pursuant to the courts decision in Marion v. Columbia Corr. Inst., 559 F.3d 693, 698 (7th Cir. 2009) (atypical and significant hardship possible when inmate was placed in segregated confinement for 240 days).

To the extent that this court fail to agree with the above-cited facts, SCDC Policy/Procedure, OP-22.14, "Inmate Disciplinary System," paragraph 21 states as follows:

"Inmates housed in SMU and MSU, who habitually commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29H. The information will be entered into the OFFENDER MANAGEMENT SYSTEM DISC SCREEN USING TYPE ACTION "03" which will show as, "CLOSED - OTHER ACTION TAKEN / INFORMALLY RESOLVED."

Appellant states that this paragraph/language clearly made it mandatory, when it stated "will", to have the incident/charge informally resolved/closed. This language created a state-created liberty interest entitling the Appellant to minimum requirements of due process of law.

ARGUMENT 2

Whether the Respondent had sufficient evidence to convict Appellant of a rule violation?

Appellant contends that his due process rights were again violated under the SCDC Policy/Procedure, OP-22.14, "INMATE DISCIPLINARY SYSTEM," paragraph 8.2.6 that states, "The Counsel Substitute has the following responsibilities in preparing for the hearing: Obtain any documentation evidence relevant to the case that is not already in the possession of the accused inmates."

The accusers in this matter clearly stated that, "at approximately 2:00 p.m. that she observed the Appellant in the computer room standing up with his penis in his hand striking it in a back and forth motion."

Appellant states that how can this be when the Appellant did not enter the computer room until 2:55 p.m., at which, was almost an hour after the

falsely accusation. SEE REQUEST to STAFF from Mrs. A. Smith dated 7/11/13.

Had Counsel Substitute obtained the computer logbook and offered it into evidence, the Appellant would not have been found guilty of this charge and it would have been dismissed.

CONCLUSION

Wherefore, the Appellant respectfully request that this Honorable Court reverse the Respondents' judgment and ruling.

11/6/13

Respectfully Submitted,

Angelo Horn #315014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Angelo Ham, # 315014,)	Docket No.: 13-ALJ-04-0644-AP
)	
Appellant,)	
)	RESPONDENT'S BRIEF AND MOTION
v.)	TO DISMISS
)	Honorable S. Phillip Lenski
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	
)	
)	

STATEMENT OF FACTS

This matter is before the Administrative Law Court (“ALC”) pursuant to the appeal of Angelo Ham (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on June 12, 2013, complaining about his disciplinary conviction for exhibitionism and public masturbation, 854 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 17, 2013. The Step Two grievance was also investigated and denied. In his Notice of Appeal, appellant asks that the conviction be overturned. Loss of good-time is not an issue in the present case.

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V. SCDC, 361 S.C. 327; 605 S.E.2D 506 (2004) AND SKIPPER V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S.C. 267; 633 S.E.2D 910 (S.C. COURT OF APPEALS 2006).

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, 355 S.C. 437, 586 S.E.2d 124 (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. SCDC reads Slezak as encouraging, for the sake of judicial economy, the ALC to dismiss summarily inmate cases that do not involve a state created liberty or property interest.

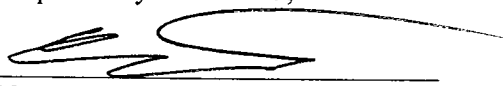
Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state created liberty interest is not implicated in a prisoner appeal, the 'ALJ should' dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (S. C. Court. of Appeals 2006).

In the instant case, appellant was convicted of exhibitionism and public masturbation. Appellant claims this disciplinary conviction should be overturned. However, appellant is serving a life sentence at SCDC and therefore is not entitled to earn good time. Therefore, neither the loss nor the failure to earn good time is an issue in the present case. SCDC has not taken Appellant's state-created liberty interest as punishment in a major disciplinary hearing. Therefore, SCDC submits the ALC should dismiss this appeal.

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that this matter be dismissed pursuant to Rule 12(b)(1) and Slezak v. South Carolina Department of Corrections, 361 S.C. 327; 605 S.E.2d 506 (2004).

Respectfully submitted,



CHRISTOPHER FLORIAN
Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

December 4, 2013
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Angelo Ham, 315014,)	Docket No. 13-ALJ-04-0644-AP
)	
Appellant,)	
)	
vs.)	
)	ORDER OF DISMISSAL
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	
)	
)	

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by the Appellant above named, who is incarcerated with the South Carolina Department of Corrections (Department). The Appellant appeals the denial of his grievance in which he complains he was unjustly disciplined for the offense of exhibitionism and public masturbation. The Appellant did not lose any good time as punishment.

DISCUSSION

The court's jurisdiction to hear this matter is derived entirely 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's appellate jurisdiction in inmate appeals is limited to cases involving denial of state created liberty interests¹ typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

The Supreme Court further explained the court's jurisdiction in Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004). Slezak emphasized that, while the court has jurisdiction over all properly filed inmate grievance appeals, the Court is not required to hold a hearing on every matter. Id. "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." Id. citing

¹ The Court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

FILED

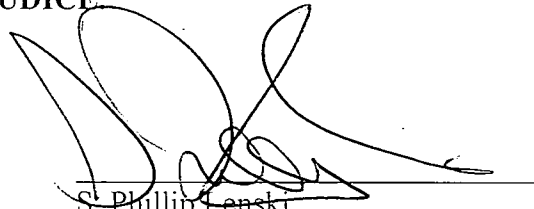
APR 24 2014

Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995).

When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. SCDC v. Mitchell, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008). Consequently, the review in these inmate grievance cases is limited to the Record presented.

In this case, the Appellant did not lose any good time as part of his punishment and therefore his punishment does not affect a state-created liberty or property interest. As such, this is a case in which this court must adhere to the traditional "hands off" doctrine regarding judicial involvement in prison disciplinary procedure and other internal prison matters. See Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) and Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

THEREFORE, for the foregoing reasons, the decision appealed from is **AFFIRMED** and this appeal is **DISMISSED WITH PREJUDICE**.



S. Phillip Lenski
Administrative Law Judge

April 24, 2014
Columbia, South Carolina



The South Carolina Court of Appeals

Angelo Ham, 315014, Appellant,

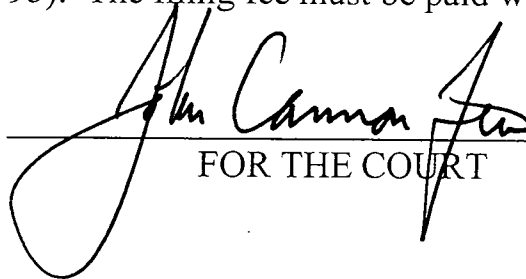
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001098

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.


FOR THE COURT

Columbia, South Carolina

cc:

Angelo Ham, 00315014

Christopher D. Florian, Esquire

8/19/14
FILED

The South Carolina Court of Appeals

Angelo Ham, 315014, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001098

The Honorable S. Phillip Lenski
Trial Court Case No. 2013ALJ040644AP

ORDER

Appellant has failed to timely submit the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, and the Court's order dated August 19, 2014. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

SF 10/16/14

cc:

Angelo Ham, 00315014

Christopher D. Florian, Esquire

State of South Carolina
In the Court of Appeals

Appeal From the Administrative
Law Court

S. Phillip Lenski, Administrative Law
Judge

Angelo Ham, #315014,

Appellant,

vs.

S.C. Dept. of Corrections,

Respondent.

Appellant Petition for Rehearing

Appellant, Angelo Ham, hereby submit this petition for rehearing in accordance with Rule 221 (c) of the S.C. Rules of Appellate Court alleging that this Honorable Court have clearly overlooked the law that was set out by the Supreme Court in Ex Parte Martin, 471 S.E.2d 134 (1995) and in Al-Shobazz v. State, 527 S.E.2d 742 (2000).

This Court issued an Order dated August 19, 2014 stating that "the motion to proceed in forma pauperis

is denied pursuant to Ex parte Martin, 301 S.C. 533, 471 S.E.2d 134 (1995). However, the S.C. Supreme Court specifically held that "Because of the increasing number of persons seeking to proceed in forma pauperis, we take this opportunity to give guidance as to when it is appropriate to waive filing fees. In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions."

The S.C. Supreme Court went to hold in Al-Strobaez v. State, 527 S.E.2d 742 (2000) that, "To obtain judicial review of the ALJ's final decision," a petition by an aggrieved party must be filed with the circuit court and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right." See S.C. Code Ann. § 1-23-610 (3) (Supp. 1999); ~~see~~ S.C. Code Ann. § 1-23-380 (A) (1) (Supp. 1999).

So, therefore, with both of the controlling cases cited above, this Honorable Court should not have denied the Appellants Motion to Proceed in forma pauperis and should not have dismissed the Appellants appeal in this matter.

Appellant therefore respectfully request and pray that this Honorable Court vacate both of its orders dated August 19, 2014 and October 6, 2014 and allow the Appellant to proceed in forma

pauperis.

10/9/14

Respectfully Submitted,
J.P.A. #315014
Angelo Horn #315014
L.C.I. / SMU # 62
990 Wisconsin Highway
Bishopville, S.C. 29010

The South Carolina Court of Appeals

Angelo Ham, 315014, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001098

ORDER

Following the denial of Appellant's first motion to proceed *in forma pauperis*, this appeal was dismissed for failure to pay the filing fee associated with the notice of appeal. Appellant has now filed a petition to rehear the dismissal and a second motion to proceed *in forma pauperis*. After careful consideration of the petition and motion, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. See *Martin v. State*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) ("In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions."); *Al-Shabazz v. State*, 338 S.C. 354, 372, 527 S.E.2d 742, 751 (2000) ("An inmate has no protected liberty interest in a 'minor' disciplinary proceeding in which he does not face the potential loss of sentence-related credits, but only lesser penalties such as extra duty, loss of television privileges, or cell restriction.").



C.J.

J.

James E. Crooks J.

Columbia, South Carolina

cc: Angelo Ham, 00315014
Daniel John Crooks, III, Esquire

FILED
1/8/15

State of South Carolina

IN THE SUPREME COURT

Appeal From the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No.: 2014-001098

ALC Case No.: 2013-AJT-04-0644-AD

Angelo Ham, #315041,

Petitioner,

vs.

S.C. Dept. of Collections,

Respondent.

PROOF OF SERVICE

I, Angelo Ham, hereby certify that an original copy of the Petitioner's "Petition for a writ of Certiorari", "Appendix", and "Motion and Affidavit to Proceed In Forma Pauperis", in the above-cited matter was this day served on the Respondent, Clerk of the Court of Appeals, and Clerk of the Supreme Court by depositing a copy of the same in the U.S.

1.

Mail, ~~and~~ postage prepaid, to the following addresses:

Daniel J. Crooks, III
S.C. Dept. of Collections
P.O. Box 21787
Columbia, S.C. 29221

Daniel E. Shearouse
S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Jenny Abbott Kitchings
S.C. Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, S.C. 29211

January 23, 2015

JPA/O #315014