

NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

June 25, 2015

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AUG 05 2015

SC Court of Appeals

The Honorable S. Phillip Lenski  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate Jamie Leamon, #244584 v. SCDC  
Docket No. 15-ALJ-04-0143-AP

Dear Judge Lenski:

Find enclosed an original and one copy of the *Respondent's Motion To Dismiss* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Dee Dee Bowers", is written above the typed name.

E. Dee Dee Bowers  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate Jamie Leamon, #244584  
File

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STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Jamie Leamon, # 244584,  
Appellant,  
v.  
South Carolina Department of Corrections,  
Respondent.

) Docket No.: 15-ALJ-04-0013  
) [Grievance No.: ECI 580-14]  
)  
) Hon. S. Phillip Lenski  
)

) **RESPONDENT'S MOTION TO**  
) **DISMISS**  
)

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC) pursuant to the appeal of Jamie Leamon (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). The matter is before the Court because Appellant has appealed the Department's final Step 2 decision. Specifically, Appellant is appealing the Department's Step 2 decision of March 4, 2015 that states that inmate Leamon is attempting to inappropriately appeal a 2007 prison policy conviction, not submit a new policy grievance as was claimed.

STANDARD OF REVIEW

The ALC'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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was

limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss 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, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

### **ARGUMENT IN SUPPORT OF MOTION TO DISMISS**

This case should be dismissed under *Slezak* and *Skipper*. Here, Appellant challenges the Department's application of prison policy as unconstitutional. Specifically, that inconsistent application of said policy rule led to loss of good time

credits in 2007. However, losing good time credits does not implicate a state-created liberty interest. Therefore, because no liberty or property interest is involved in this case, the Court should dismiss this case pursuant to *Slezak* and *Skipper*.

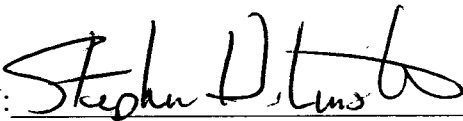
To the extent the Court does *not* dismiss this case, Respondent would respectfully request additional time to file a brief on the merits of the claims Appellant has raised.

### CONCLUSION

For the foregoing reasons, the Court should dismiss this appeal, with prejudice. Alternatively, if the Court declines to dismiss this appeal at this juncture in order to have Respondent address the merits, Respondent respectfully requests an additional twenty (20) days from the date of the Court's order to brief the issues.

Respectfully Submitted,

### SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: 

Stephen H. Lunsford  
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(803) 896-1940

Columbia, South Carolina  
June 25, 2015

