

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

OCT 16 2015

Administrative Law Judge Deborah Brooks Durden

SC Court of Appeals

Case No. 15-ALJ-04-0003-AP

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

v.

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

INITIAL BRIEF OF RESPONDENT

October 14, 2015

South Carolina Department of Corrections

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STATEMENT OF THE ISSUE ON APPEAL

**DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS
APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN
DEPRIVED OF A STATE-CREATED LIBERTY INTEREST?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Perry Watford (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant agreed to an informal resolution for a disciplinary violation (stealing) on October 30, 2012. (R.p. ____).

Appellant filed a Step One Grievance on November 15, 2012, claiming that Lt. Failey, an SCDC employee, altered the informal resolution form to include a restitution payment. This grievance was investigated and denied. (R.p. ____). Appellant filed a Step Two Grievance on January 2, 2013, which was also denied. (R.p. ____). SCDC made the final agency determination on December 2, 2014. (R.p. ____).

Before the parties filed briefs, the ALC affirmed SCDC’s final decision, finding that no state created liberty interest was infringed upon by SCDC. (R.p. ____). The ALC’s ruling provided that Appellant’s allegation of staff misconduct did not implicate a liberty interest nor was there a loss of good time credits.

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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 of 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(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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 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. 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.

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST.

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 subsequently 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, 279; 633 S.E.2d 910, 917 (Ct. App. 2006).

In the case at hand, Appellant claims a staff member engaged in misconduct by altering the administrative resolution form after he signed it. According to Appellant, Lt. Failey added a restitution amount to the form after Appellant agreed to sanctions that did not include restitution. (R.p.____). However, SCDC's response to Appellant's Step One and Step Two Grievance explained that Appellant consented to the restitution, and there

was no evidence to support Lt. Failey engaged in misconduct. (R.p. ___).

Administrative Law Judge Deborah Brooks Durden dismissed Appellant's appeal to the ALC pursuant to Slezak, ruling appellant had not been deprived of a state-created liberty interest. (R.p. ___).

The ALC correctly dismissed Appellant's appeal because Appellant was not deprived of a liberty interest in this matter such that review by the ALC was merited. Typically, an appeal will merit review by the ALC, if it arises one of two ways: (1) when an inmate is disciplined and sufficient punishment is imposed; or (2) when an inmate is challenging the calculation of his sentence. See Sullivan v. SCDC, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003) (citing Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750). Neither is the case in the present appeal since Appellant did not challenge any disciplinary conviction or the calculation of his sentence. Instead, Appellant is challenging the sanctions of an administrative resolution when those sanctions do not include the loss of good time credits. (R.p. ___). Therefore, the ALC correctly dismissed the appeal because it did not implicate a liberty interest sufficient to warrant review. See Sandin v. Conner, 515 U.S. 472 (1995) (recognizing that inmates' liberty interests protected by the Due Process clause are generally limited to "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life").

In sum, no liberty interest was implicated by Appellant's appeal. Accordingly, the ALC correctly dismissed the appeal.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



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

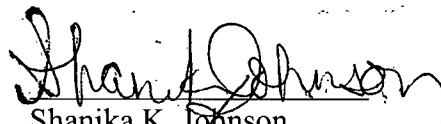
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief
by depositing a copy of same in the United States Mail, postage prepaid, October 14,
2015, addressed to the Appellant as follows:

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NIKKI R. HALEY, Governor
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SC Court of Appeals

Ms. Jenny Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

**Re: Perry Watford, #289215 v. SCDC
Appellate Case No. 2015-000379**

Ms. Kitchings,

Please find enclosed an original and a copy of the following:

- Entry of Appearance
- Initial Brief of Respondent
- Respondent's Designation of Matter

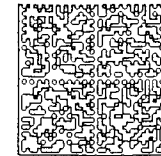
Please stamp the extra copies "filed," and return them in the enclosed self-addressed envelope. Please do not hesitate to contact me with any questions. I greatly appreciate your assistance in this matter.


Sincerely,

Shanika K. Johnson
Attorney for Respondent

cc: File

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