THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, *Administrative Law Judge*

ALC Case No. 15-ALJ-04-0143-AP
Appellate Case No. 2015-001674

Jamie Leamon, #244584.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

December 15, 2015

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT AND CITATION OF AUTHORITY.....4

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST.....4

CONCLUSION.....5

CERTIFICATE OF SERVICE.....6

TABLE OF AUTHORITIES

I. STATUTES

S.C. Code Ann. § 1-23-610.....3

S.C. Code Ann. § 1-23-380.....3

II. CASES

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).....4

DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 604 S.E.2d 704 (Ct. App. 2004).....3-4

Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998).....3

Skipper v. S.C. Dep't of Corr., 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006).....4

Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004).....4

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 Jamie Leamon (Appellant), an inmate incarcerated at the South Carolina Department of Corrections (Department or Respondent).

Appellant filed a Step One Grievance on July 15, 2014, which stated that Appellant was filing a "policy grievance" due to a recent change in Department policy regarding the disciplinary offense of Possession of a Cell Phone or Other Type of Communication Device (offense number 898, SCDC Policy OP-22.14, *Inmate Disciplinary System*). The warden denied the grievance and advised Appellant that departmental policy could only be revised at the headquarters level, not the institutional level. (R.p. 8). The warden further advised Appellant to obtain the proper forms from the grievance coordinator. (R.p. 8). Thereafter, Appellant filed a Step Two Grievance on August 6, 2014, arguing that that exclusion of the phrase "audio/visual" in the revised policy violated certain rights guaranteed to him by the United States Constitution. (R.p.10). The Department, through its General Counsel, responded to the Step Two by denying the grievance. (R.p.10).

Subsequently, Appellant filed a notice of appeal to the ALC on March 16, 2015, contending, again, that the revision to the policy was unconstitutional. Respondent filed a motion to dismiss on June 26, 2015 on the ground that no state-created liberty or property interest was infringed upon by the Department. (R.p. 27). Appellant now seeks review of the ALC's decision. For the reasons that follow, the Department respectfully requests that this Court affirm the ALC's order of dismissal.

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 & Environ. 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 asserted jurisdiction over the appeal below pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). However, the ALC then dismissed the appeal pursuant to Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004) and Skipper v. SCDC, 370 S.C. 267, 279, 633 S.E.2d 910, 917 (Ct. App. 2006) due to the fact that the appeal did not implicate a state-created liberty or property interest. (R.p. 28).

Appellant argues that the ALC erred in dismissing his case because his appeal did involve a state-created liberty or property interest. (See Appellant's Brief p.18). Appellant is incorrect. As the Step One and Step Two make clear, the issue about which Appellant grieved concerned his own view that the 2012 amendments to the Department's disciplinary policy violated the Eighth and Fourteenth Amendments to the United States Constitution. (R.pp. 7, 8, 10). Specifically, Appellant argued that the deletion of the phrase "audio/visual" in post-2007 revisions to the policy amounts to a constitutional violation. (R.pp.7 and 10). The Step Two response from David M. Tatarsky, General Counsel for the Department, properly draws attention to the fact that, essentially, Appellant was attempting to re-argue his 2007 disciplinary conviction more so than truly raising an issue of policy. (R.p. 10). Recognizing that "Appellant has not otherwise alleged a deprivation of a state-created liberty

or property interest" in his appeal, the ALC dismissed the case. (R.p. 29). The ALC did not err in dismissing the appeal because the matter did not implicate a state-created liberty or property interest.

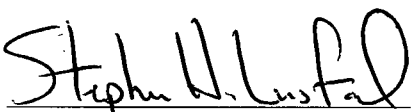
Accordingly, this Court should affirm the ALC's July 17, 2015 order, which dismissed Appellant's appeal.

CONCLUSION

For the foregoing reasons, this Court should affirm the ALC's order dismissing Appellant's appeal below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

By: 

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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CERTIFICATE OF SERVICE

I hereby certify that, on today's date, I served on Appellant a copy of the *Final Brief of Respondent* by depositing a copy of the same in the United States Mail, postage prepaid, addressed to Appellant as follows:

Jamie Leamon, #244584
Evans Correctional Institution
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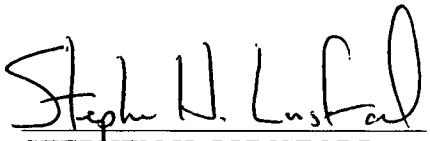
Bennettsville, South Carolina 29512



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