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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

John D. McLeod, *Administrative Law Judge*

Case No. 13-ALJ-04-0456-AP

David Bentley, # 337750,.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

FINAL BRIEF OF APPELLANT

February 27, 2015

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT ERR BY ORDERING THE DEPARTMENT OF CORRECTIONS TO PROVIDE APPELLANT WITH ACCESS TO OKLAHOMA LEGAL REFERENCE MATERIALS?**

- II. DID THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINE THE DECISION OF THE STATE OF OKLAHOMA TO HOUSE APPELLANT WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS WAS NOT SUBJECT TO REVIEW?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to cross-appeals filed by the Department of Corrections (“SCDC”) and David Bentley (“Bentley”), an inmate serving sentences for Oklahoma convictions within the South Carolina Department of Corrections (“SCDC”) pursuant to the Interstate Corrections Compact (“ICC”). See S.C. Code Ann. § 24-11-10 to -30.

On July 12, 2010, Bentley filed a Step One grievance alleging he should be returned to Oklahoma because SCDC does not maintain copies of Oklahoma law books within its law library holdings. The grievance was initially misplaced, and appellant was permitted to re-file it. (R. 11). On January 15, 2013, Bentley filed a replacement Step One grievance. The sole action he requested in the grievance was “Immediate return to the State of Oklahoma.” (R. 12). The Step One grievance was promoted to the Step Two level due to the time frame involved. SCDC denied the Step Two grievance, stating the decision whether Bentley could return to Oklahoma must be made by the State of Oklahoma. (R. 13).

Bentley appealed to the Administrative Law Court (ALC) pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Administrative Law Judge Deborah Brooks Durden reversed in part and affirmed in part. Judge Durden affirmed the final agency decision denying a review of Oklahoma’s decision to transfer Bentley to SCDC. However, Judge Durden found SCDC had improperly refused to provide out-of-state legal research materials to Bentley. (R. 16-17).

Both SCDC and Bentley filed notices of appeal challenging the ALC’s order. For

the reasons that follow, the ALC's decision directing SCDC to provide appellant with out-of-state legal research materials should be reversed, and the ALC's decision denying review of Bentley's transfer to SCDC should 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

I. THE ADMINISTRATIVE LAW COURT ERRED BY ORDERING THE DEPARTMENT OF CORRECTIONS TO PROVIDE BENTLEY WITH ACCESS TO OKLAHOMA LEGAL REFERENCE MATERIALS.

The ALC erred in its decision by requiring the Department of Corrections to provide Bentley with access to Oklahoma legal research materials. In reaching its decision, the ALC erroneously granted Bentley relief he had not sought during the inmate grievance process. Moreover, the ALC should not have required SCDC to provide Bentley with copies of Oklahoma legal reference materials because the State of Oklahoma, not SCDC, is responsible for providing Bentley appropriate access to Oklahoma courts.

A. *The ALC erred by providing Bentley with he had not sought in his inmate grievance.*

The ALC incorrectly granted Bentley access to out-of-state reference materials because he did not request such access as relief in his inmate grievance.

Before seeking review by the ALC, an inmate must obtain a final agency decision through SCDC's inmate grievance process. See Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000). The ALC sits in an appellate capacity to review SCDC's decisions. Id., 338 S.C. at 377, 527 S.E.2d 754.

As in other appellate matters, issue preservation is required in administrative appeals. Home Medical Systems, Inc. v. SCDOR, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009). Consequently, issues not raised to and ruled on by the agency are not preserved for judicial consideration. Brown v. SCDHEC, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002). On appeal, a party cannot predicate error on the failure to award relief the party did not request. See Ro-Lo Enterprises v. Hicks Enterprises, 294 S.C. 111, 113, 362 S.E.2d 888, 889 (Ct. App. 1987).

In his Step One Grievance, Bentley requested only “Immediate return to the State of Oklahoma.” Although Bentley referenced the fact that Oklahoma legal reference materials are unavailable in SCDC prison law libraries, he argued this point only in the context of his request to return to Oklahoma. (R. 12). Consequently, after promoting the grievance to the Step Two level, SCDC addressed only Bentley’s request to return to Oklahoma.¹ (R. 13).

Nonetheless, on appeal, the ALC separately addressed the issue of Bentley’s access to Oklahoma legal reference materials, concluding that even though Bentley could not challenge his transfer to South Carolina in the ALC, SCDC was required to provide him with access to Oklahoma legal reference materials. (R. 17).

The ALC erred by granting Bentley relief he did not seek in his inmate grievance. Bentley’s grievance focused on his request to be transferred to Oklahoma, not provision of access to out-of-state legal reference materials. Therefore, as an appellate court, the

¹ SCDC’s inmate grievance system policy, GA 01.12 § 7 mandates that only one issue can be raised per grievance. Therefore, appellant could not have raised multiple issues in a single grievance.

ALC improperly exceeded its scope of review by addressing the matter as a separate issue and granting relief Bentley did not seek at the agency level. Consequently, the portion of the ALC's decision requiring SCDC to provide access to Oklahoma legal reference materials should be vacated.

B. The State of Oklahoma, not SCDC, is responsible for ensuring Bentley has constitutionally mandated access to Oklahoma courts.

Even if the issue of access to Oklahoma legal reference materials was properly before the ALC, the ALC erred because the State of Oklahoma, not SCDC, is responsible for ensuring Bentley has appropriate access to Oklahoma courts.

The Interstate Corrections Compact provides a framework for the transfer of inmates between states, allocating responsibilities between the sending state and the receiving states. See S.C. Code Ann. § 24-11-20. Although it is an issue of first impression in South Carolina, a majority of courts have found that under the ICC, the sending state retains responsibility for providing appropriate access to the courts of the sending state. See Boyd v. Wood, 52 F.3d 820, 821 (9th Cir. 1995) (affirming dismissal of an action against receiving state authorities pursuant to 42 U.S.C. § 1983 because sending state authorities were responsible for providing sending state legal materials); Clayton v. Tansy, 26 F.3d 980, 982 (10th Cir. 1993) (“In the context of denial of access claims, the general rule imposes upon the sending state authorities the responsibility for ensuring their prisoners incarcerated in sister state facilities are afforded access to state courts.”).

In the case at hand, the ALC's decision improperly shifts responsibility to the

receiving state for providing out-of-state legal reference materials. In reaching its decision, the ALC concludes that providing such materials to Bentley would cost less than \$100. While the ALC's determination of the cost may or may not be accurate in this particular case, if extended to other ICC inmates, the cost would be considerably more substantial. In effect, if the ALC's decision were extended to all ICC inmates, SCDC would be required to maintain legal reference materials for potentially all fifty states, either in book or electronic form. Such a requirement would far exceed the holdings of prison law libraries found to be constitutionally sufficient. See, e.g., *Bounds v. Smith*, 430 U.S. 817, 819 n.4 (1977) (listing the holdings of the North Carolina Division of Prisons, which included only North Carolina and federal legal reference materials, found to be constitutionally sufficient).

The State of Oklahoma is also better situated to assure Bentley is provided access to Oklahoma courts. It is important to note that Oklahoma would not necessarily be required to provide out-of-state legal reference materials to Bentley in order to comply with constitutional requirements. Like South Carolina, Oklahoma law provides for representation of offenders who seek post-conviction relief. See 22 Okla.Stat. Ann. § 1082.² More to the point, although law libraries are one method to assure meaningful

² 22 Okla.Stat. Ann. § 1082 provides:

If the [post-conviction relief] applicant is unable to pay court costs and expenses of representation, he shall include an affidavit to that effect with the application, which shall then be filed without costs. Counsel necessary in representation shall be made available to the applicant after filing the application on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims. If an attorney is appointed to represent such an applicant then the fees and expenses of such attorney shall be paid from the court fund.

access to the courts, they are not the exclusive avenue to achieve that goal. See Bounds, 430 U.S. at 830. Because the State of Oklahoma would ultimately be responsible for adjudicating Bentley's request for post-conviction relief, the State of Oklahoma stands in the best position to ensure Bentley is afforded a constitutionally sufficient process for seeking post-conviction relief.

The ALC erred by shifting responsibility for assuring access to the courts for inmates housed in SCDC pursuant to the ICC. The ALC's order requiring SCDC to provide Bentley with out-of-state legal materials should therefore be reversed.

II. THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THE DECISION OF THE STATE OF OKLAHOMA TO HOUSE APPELLANT WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS WAS NOT SUBJECT TO REVIEW.

The ALC properly found Bentley could not challenge his transfer from Oklahoma to the South Carolina Department of Corrections through the Al-Shabazz process.

The ALC's jurisdiction to hear inmate appeals is derived from 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. This Court has 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, 916 (Ct. App. 2006).

The Interstate Corrections Compact provides, in relevant part:

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

.....

Article V. Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

S.C. Code § 24-11-20 (emphasis added).

In his grievance, Bentley attempted to challenge his transfer to South Carolina, asserting he should be immediately returned to Oklahoma. (R. 12). After the grievance was promoted to the Step Two level, the Responsible Official informed Bentley he could submit a request to return to Oklahoma through his classification caseworker, and SCDC would abide by Oklahoma's decision in response to the request. (R. 13).

On appeal, the ALC affirmed SCDC's decision denying a review of Bentley's transfer. The ALC found the decision of the State of Oklahoma to house Bentley in South Carolina was not reviewable by a South Carolina court pursuant to the ICC. In addition, the ALC ruled appellant's transfer did implicate a state-created liberty interest. (R. 17).

The ALC was correct in affirming SCDC's decision and denying review of Bentley's transfer for two reasons. First, the decision of the state of Oklahoma to house appellant within SCDC pursuant to the ICC is not reviewable by South Carolina courts under the plain language of the ICC. See S.C. Code § 24-11-20 Art. 5(a) ("Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]"). Second, appellant's appeal was subject to summary dismissal because his transfer to SCDC did not implicate a state-created liberty interest. See *Olim v. Wakinekona*, 461 U.S. 238, 248 (1983) ("[A]n interstate prison transfer, including one from Hawaii to California, does not deprive an inmate of any liberty interest protected by the Due Process Clause in and of itself.").

Therefore, the ALC correctly upheld SCDC's decision regarding Bentley's transfer pursuant to the ICC.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should reverse the ALC's decision directing SCDC to provide appellant with out-of-state legal research materials, but should affirm the ALC's decision denying review of Bentley's transfer to SCDC.

Respectfully submitted,

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February 27, 2015

CERTIFICATE OF COUNSEL

I, the undersigned, certify that to the best of my ability, this Final Brief of the Department complies with Rule 211(b), SCACR and the April 15, 2014 Order from this Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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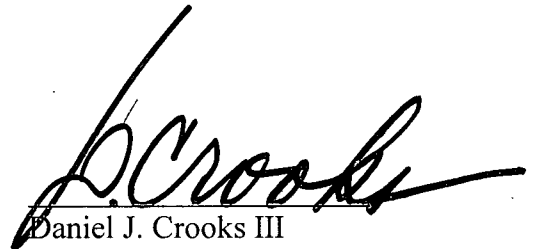
v.

South Carolina Department of Corrections.....Appellant.

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 States Mail, postage prepaid, February 27, 2015 addressed to the Appellant as follows:

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