

22262

The State of South Carolina
In The Court of Appeals

RECEIVED

NOV 20 2015

SC Court of Appeals

Appeal From Administrative Law Court
The Honorable S. Philip Lenski, Presiding 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.

Record on Appeal

Stephen H. Lunsford
Bar No.: 101550
Staff Attorney
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221
(803) 896-1940
Respondent's Attorney

Jamie Leamon
Jamie Leamon, #244584
Evans C.F. 14-B-1261
Pro Se Appellant
610 Highway 9 West
Bennettsville, S.C. 29512
Appellant, Pro Se

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The State of South Carolina

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Appeal From Administrative Law Court

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ALC Case No.: 15-ALJ-04-0143-AP

Appellate Case No.: 2015-001674

Jamie Leamon, #244584

v.

South Carolina Department of Corrections

Certificate of Service

I hereby certify that I have served a copy of the foregoing Appellant's Record on Appeal upon Respondent by depositing a copy of same in the United States Mail on Nov. 11, 2015, addressed to: Stephen H. Lunsford, SC Bar # 101550, Staff Attorney, S.C. Dept of Corrections, P.O. Box 21787, Columbia, SC 29221.

Jamie Leamon, #244584

Evans C.I. 4-B/cell # 126

610 Highway 9 West

Bennettsville, SC 29512

Jamie Leamon
5/ pro se Appellant.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

1

006

Page 1 of 1

Institution/Center: <u>BRC1</u>					
Date of Report: <u>10/08/07</u>			Time of Report: <u>10:40 AM</u>		
Reporting Official: <u>J. BELUE #042784</u>			Date of Incident: <u>10/08/07</u>		
Location of Incident: <u>F1 RM. 122</u>			Time of Incident: <u>07:36 AM</u>		
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. LEAMON, JAMIE	#244584		B	m	1. J. BELUE
2. ELLIOTT, SANTANA	#222429		B	m	2. LT. SPANN
3.					3. LT. WILSON
4.					4. SGT. BRABHAM
5. <u>50126A</u>	<u>26</u>	<u>26</u>	<u>STB</u>		5. CPL. HARVIN

On the above date and approximate time: WHILE LOCKING DOWN FOR COUNT I WENT
PAST RM. 122 AND DID NOT LOCK IT 11M LEAMON AND 11M ELLIOTT STATED
HE WAS TO BE OUT FOR EXTRA DUTY ON THE SHOWERS. I CAME BACK TO
RM. 122 AND SAW 11M LEAMON USING A CELLPHONE DARK IN COLOR.
I DEMANDED HIM TO GIVE ME THE PHONE 11M LEAMON WOULD NOT
AND MOVED OUT OF RM 122 TOWARD THE SHOWERS AND 11M ELLIOTT.
11M ELLIOTT THEN MOVED AROUND BEHIND 11M LEAMON TOOK THE PHONE
AND PLACED IT IN HIS BACK POCKET AND RAN ALONG THE BOTTOM TIER
TOWARD MY DESK. I THEN CALLED FIRST RESPONDERS AND FOLLOWED
11M ELLIOTT AND WATCHED HIM RUN ONTO THE RACK AND TO THE TOP
TIER TOWARD THE DAY ROOM. FIRST RESPONDERS ARRIVED AND I HAD
TO OPEN DOOR AND LOST SIGHT OF 11M ELLIOTT. FIRST RESPONDERS
ENTERED AND 11M LEAMON EXCORTEED TO OPERATIONS. 11M ELLIOTT
AND ALL OTHER 11M WERE LOCKED DOWN. COMMON AREAS, RMS. 126,
129, 139, & 239 SHOOK DOWN - NO CELLPHONE FOUND.

Signature: J. Belue

Evidence:

Witness(es):

Supervisor's Comments: Off Belue saw 11m leamon using cell
phone and gave it to 11m Elliott who took off running. Phone not
found after shake down. Placing both 11ms in 126 pending
investigation.

Signature: [Signature] Title: Lt. Date/Time: 8 Oct 07 / 4:00 PM

Major/Responsible Authority: Reported DAO for
Charging of 895 / Poss of a cell phone

Signature: [Signature] Title: Major Date: 11 Oct 07

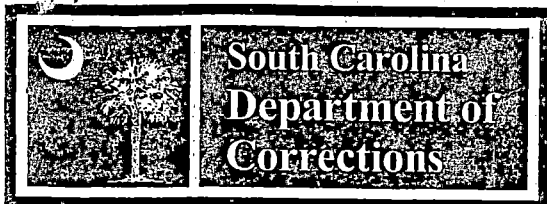
STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Action Taken

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

#2



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

May 13, 2015

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

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

Dear Judge S. Phillip Lenski:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance ECI 580-14, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,

A handwritten signature in black ink that reads "Cheron M. Hess". The signature is stylized and overlaps with the typed name below it.

Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Jamie Leamon, #244584
File

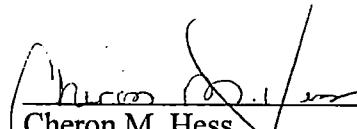
2

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Jamie Leamon
Inmate Number: 244584
Dorm-Room-Bunk: 4B-0126-A
Evans Correctional Institution

Columbia, South Carolina
May 13, 2015


Cheron M. Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

#3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

"SEE Attachment"

INMATE NAME: Jamie Deamon
SCDC NUMBER: 244584
INSTITUTION: EVANS
HOUSING UNIT: Waxhaw B/12011 16 2014
WORK ASSIGNMENT: _____
BY: [Signature]

Office Use Only
Grievance No. FC7-0580-14
Code: General 7
Policy OP-22.14
Disc. Hear. _____
Class. _____
Date Received 7-17-14
IGC Initials EDM

RECEIVED

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) This is a policy grievance. Namely, (OP-22.14, Section 898), (2007); Verses (OP-22.14, Section 898) (2012-2013). The (2007) OP-22.14, Section 898 was never constitutional and was misapplied which caused an adverse effect towards many inmates that violated inmates 8th Amendment, and 14th Amendment of the United States Constitution. In the year of 2007, the elements of audio/visual existed. However, in the year of 2012-2013, OP-22.14 had been revised and excluded the elements of audio/visual cause that section of OP-22.14, Sec. 898 was inconsistent with OP-22.14, Sec. 15, and 15.1 Therefore, unconstitutional. Additionally, policy grievances cannot be barred. (E.g. See, above typed statement, and SCDC Grievance policy GA-01.12...

ACTION REQUESTED: The issue herein investigated by adequate Personnel, and the reason why audio/visual was excluded after the year of (2007) From OP-22.14, section 898 cell phone offense.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
SEE SCDC policy/procedures GA-01.12, Sections 7, and 7.1 (Policy/procedures grievances can be filed anytime).

Jamie Deamon 7.15.14
Grievant Signature Date

ACTION TAKEN BY IGC:

Please See warden's
Decision

As Redfern-Miller 7/17/14
IGC Signature Date

NA
Grievant 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.

#3

WARDEN'S DECISION AND REASON:

Inmate Leamon:

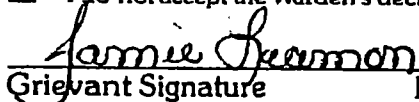
This is in response to grievance #0580-14.

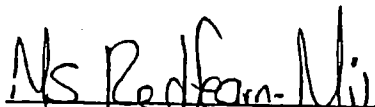
You have addressed an issue against policy, which cannot be changed at this level. Policies are neither developed nor changed by the institution. Policy revision can only be done at the headquarters level. Evans is in compliance with agency policy OP-22.14, Inmate Disciplinary System.

If you wish to pursue this matter, please contact your grievance coordinator for the appropriate forms. You have five days from receipt of response to submit a Step 2 grievance form.

 7-21-14
Warden Signature Date

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

 8/4/14
Grievant Signature Date

 8/4/14
IGC Signature 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.

#3

... Section 7, and 7.1 which states:

7. Grievable Issues: The following issues will be considered grievable:

7.1 "Department policies / procedures," directives, or Conditions which directly affect the inmate;

Wherefore, this is a Department policy / procedure grievance pursuant to SCDC policy / procedure GA-01.13, Sections 7, and 7.1

St. Jamie Beaman

cc: Ms. Anne Hallman

Ms. Redfearn-Miller

Jamie Beaman

4

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

DW
8-9-14
STEP 2

INMATE NAME: Timie Leman
SCDC NUMBER: 244584
INSTITUTION: Waxhaw B/126
HOUSING UNIT: Waxhaw B/126
WORK ASSIGNMENT: _____
AUG 11 2014
AUG 06 2014
BY: QB

Office Use Only
Grievance No. ECT058014
Code: General
Policy OP 22.14
Disc. Hear. _____
Class _____
Date Received 8/6/14
IGC Initials ELM

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): This is an Appeal of my Step 1 Policy Grievance. Namely, OP-22.14, Section 898, (2007); Verses (OP 22.14), Section 898 (2012-2013). The (2007) OP-22.14, section 898 was never constitutional and was misapplied which caused an "adverse effect" towards many inmates, that violated inmates 8th Amendment, and 14th Amendment of the United States Constitution. In the year of 2007, the elements of audio/visual existed. However, in the years of 2012-2013, OP-22.14; had "obviously" been revised and excluded the elements of audio/visual cause that section of OP-22.14, section 898 was inconsistent with OP-22.14, sec. 15, and 15.1; Therefore, unconstitutional; citing "Wolf v. McDonnell," 418 U.S. 539. Additionally, Policy Grievances cannot be barred. Timie Leman 8-4-14
(E.g. See, GA-01.13, sec. 7 and 7.1). More cogently, Timie Leman 8-4-14
Please state why the audio/visual was added and then deleted.

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your allegation that the disciplinary offense of 898, "The Possession of Any Cell Phone or Other Type of Communication Device: Possession of, receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, buys, sales of cellular phones or other communications equipment and /or any components thereof," from the October 1, 2007 version of OP-22.14, "Inmate Disciplinary System," violated inmates 8th and 14th amendment of the United States Constitution, and determined that there was no violations. You failed to state how the 898 disciplinary offense was inconsistent with sections 15 and 15.1 of OP-22.14. The Office of Policy Development looked at the issue you raised, but could not find any inconsistencies. Since you stated in your grievance that the 2007 version of the 898 disciplinary offense was unconstitutional, and your action requested is to know the reason why "audio/visual" was excluded in the current version of OP-22.14, it appears that you are attempting again to appeal your October 2007 conviction of 898, and not submitting a "policy grievance."

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act. 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] 3/4/15
Signature _____ 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)

Dear Appellant:

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

#5

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
15C0143	244584	JAMIE	LEAMON	ECI 580-14	DOC	3/19/2015	4/2/2015	LENSKI

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

FILED

APR 02 2015

ADMIN. LAW COURT

11

State of South Carolina
Administrative Law Court

#6
In The ALC
Docket No: _____

Jamie Leamon, #244584

Appellant, Pro Se.

VS.

S.C. Dept. of Corrections
Respondent.

Appellant's Brief

Statement of The Case

This matter is before the Administrative Law Court pursuant to the appeal of Jamie Leamon, SCDC No.: 244584, ("Appellant"), an inmate within "(SCDC)." Appellant filed a STEP-ONE GRIEVANCE on July 15, 2014, Complaining of SCDC Policy / Procedures OP-22.14, Section 898, (Possession of Any Cell Phone or other Type of Communication Device) (2007 Policy) Verses OP-22.14, Section (898) 2012-2013, SCDC Policy / Procedures.

The (IGC) E. Redfearn-Miller returned Appellant's Step-one grievance on August 4, 2014 and the...

#6

... Warden's response of same is dated July 21, 2014. Appellant loss (2,680) days of Good Time, Under the (2007) 898 offense, misinterpretation of what Audio/visual really means.

Statement OF Issues

Did the respondent misinterpret the (2007) concept of Audio/visual that was located as an element in SCDC Policy / Procedure OP-22.14, Section (898)(2007)?

Did the SCDC agency remove Audio/visual from OP-22.14, Section 898, cause of the misapplication by SCDC officers / Employees and /or cause the same was unconstitutional?

Standard OF Review #6

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court case in Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 749 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmates appeals in Sullivan v. SCDC, 355 S.C. 437, 526 S.E. 2d 124 (S.C. 2003); In affirming as modified, the ALC's en banc decision of McNeil v. SCDC, 09-ALJ-04-00336-AP (Sept. 5, 2001);

The Supreme Court held that the ALC's jurisdiction was limited to cases in which inmates contend that prison officials have erroneously calculated their sentences, sentence related credits, or custody status; cases in which SCDC has taken inmates state created liberty interest as punishment in major disciplinary hearings; or cases in which inmates confinement implicates a state-created-liberty-interest. See, Sullivan at 127. Normally, a reviewing court will not disturb findings of an administrative agency...

#6

... if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Ind. Corp., 307 S.C. 393, 489 S.E. 2d 219 (S.C. App. 1997).

For the purpose of judicial review to determine whether an agency's findings of fact are supported by substantial evidence, "substantial evidence" is not a mere scintilla of evidence; nor the evidence viewed blindly from one side of the case, but the evidence which would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its acts. See, Houston v. Deloach & Deloach, (SC App. 2008) 378 S.C. 543, 663 S.E. 2d 85.

Argument

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. As in the case of Wolf v. McDonnell, 418 U.S. 539 (1974).

Thus, SCDC officials have framed written regulations...

#6

... dealing with procedures that mandates those officials in charge to apply them to ensure objectively and subjectively due process and equal protection.

Wherefore, in Appellant's present case; the (DHO) abused his discretionary review / responsibilities in failing to implement the due process and equal protection safeguards that is required in Wolf v. McDonnell, 418 U.S. 539 (1974); as they relate to the hearing phase of the disciplinary process, as follows:

1. Misconduct Report
2. Notice
3. Evidence
4. Confidential Informants
5. Disposition of Evidence

Hence, in Appellant's case, the SCDC report fails to alledge any evidence and/or disposition of any evidence. Nor does the 19-29A Misconduct report support the charge for (898) Possession of a cell...

#6

... phone cause (Reporting Official J. Belue) stated in the narrative that no cell phone was found. Therefore, Appellant was denied due process in violation of SCDC Policy / Procedures OP-22.14, Section (15). Presentation of Evidence At The Hearing:

(15.1) States in part; At the start of the hearing, the hearing officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the items of contraband, a sample of the contraband, or a picture of the item should be produced at the hearing.

Hence, OFC. J. Belue's 19-29A misconduct report clearly states at the closing of his (OFC. J. Belue's) narrative; "NO CELL PHONE FOUND." Thus, violating Appellant's procedural due process and equal protection safeguards, pursuant to Wolf v. McDonnell, 418 U.S. 539 (1974), and SCDC policy / procedures OP-22.14, Section (15), and (15.1).

#6
Appellant's foundation in regards of this appeal derived from Appellant's challenging SCDC's policy division when he (Appellant) discovered that Audio/Visual had been deleted from the SCDC policy/procedure for (898) Possession of a cell phone.

Appellant was found guilty under the audio/visual standard on October 23, 2007, at Broad River Correctional Institution. There was no cell phone found and no recording audio or visual produced at Appellant's disciplinary hearing. Neither ever existed; but Appellant was found guilty cause OFC. J. Belue, thought he saw Appellant using a cell phone.

OFC. J. Belue, called back up and Lt. Spann, Lt. Wilson, Sgt. Brabham, and CPL. Harvin all conducted a search and no cell phone was found. However, the Appellant was still found guilty cause SCDC employees were misinterpreting the audio/visual standard to mean; if an employee assumed an inmate had a cell phone or if it appeared that an inmate was in possession then that satisfy audio/visual...

#6

... But that does not. Audio/Visual is a video or Tape recording, simply put.

Appellant learned on or about July 2014, that audio/visual has been deleted from the policy infraction (898) Possession of a cell phone. Appellant became suspicious as to why the (2012-2013 SCDC policy) does not have audio/visual listed as element(s); as said policy (OP-22.14, Section 898, 2012-2013) did in the year of our Lord 2007.

Thus, Appellant filed a policy grievance pursuant to SCDC policy / GA-01-12, Section (7) and (7.1). Cause Audio/visual had been deleted and Appellant believes that SCDC employees were misapplying the elements of Audio/visual as was done to many inmates who were convicted under the (2007) misapplication of Audio/visual where no video or Tape recordings were being produced at inmates disciplinary hearings showing the inmates use and/or possession of cell phones, etc. (See, OP-22.14, section (15), and (15.1).)

Conclusion #6

The Due Process Clauses protect persons from being "deprived" of life, liberty, or property without due process. The word "deprived" in due process cases generally has its commonsense meaning, with one major exception. Negligence—i.e., lack of ordinary care—does not constitute a "deprivation" of liberty or property. See, Daniels v. Williams, 474 U.S. 327, 328, 106 S.Ct. 668 (1986); Davidson v. Cannon, 474 U.S. 344, 349, 106 S.Ct. 668 (1986).

However, if the deprivation of liberty or property is intentional, it is a deprivation for due process purposes, and it is no defense that officials were only negligent in denying you due process for that deprivation. Thus, if prison officials intentionally take away your good time (deprive you of liberty), but claim that they negligently failed to afford you the proper procedures, they are still liable for denying a prisoner due process. Citing, Daniels v. Williams, 474 U.S. at 333-34; Franklin v. Aycock, 795 F.2d 1253, 1261-62 (6th Cir. (1986)); Sourbeer v. Robinson, 791 F.2d 1094, 1105 (3d Cir. 1986); ...

#6

... See also, Maldonado Santiago v. Velasquez Garcia, 821 F.2d 822, 828 (7th Cir. 1987); also, Sample v. Diecks, 885 F.2d 1099, 1114 (3d Cir. 1989) (if officials authorize a system to deprive persons of life, liberty, or property, it is irrelevant whether they intend that it violate due process); Williams v. Wilkinson, 122 F.Supp. 2d 894, 904 & n. 10 (S.D. Ohio 2000)

Appellant Due Process was violated intentionally, when OFC. J. Belue, intentionally wrote up Appellant for an (898) possession of cell phone and OFC. J. Belue never seized and/or found any cell phone. The DHO J.C. Brown arbitrarily, found Appellant guilty of the 898 offense; contrary, to prison officials authorized system to deprive persons of life, liberty, or property (see, SCDC Policy/Procedures OP-22.14, Section (15), and (15.1)) The item of alleged contraband was not produced during Appellant's October 23, 2007, disciplinary hearing. Appellant request that his good time days be reinstated in the amount of (2,680) Two-thousand, six-hundred and Eighty days.

"Appellant Hereby Moves" !!!

10 OF 10

21.

Certificate of Service #6

I Jamie Leamon, SCDC No.: 244584; Pro se hereby certify that I have served the attached Initial Brief Docket No.: 15-ALJ-04-0143-AP, upon the herein listed individuals at their last known addresses as listed via U.S. Mail/system with prepaid postage affixed to ensure proper delivery:

Clerk's Office

SC ALC

1205 Pendleton Street, Suite 204

Columbia, SC 29201

Cheron M. Hess

General Counsel

Po Box 21787

Columbia, SC 29221-1787

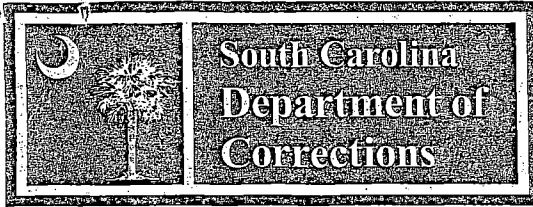
s/ Jamie Leamon
Jamie Leamon, # 244584

Sworn To Before Me This
16th Day of November 2014.

J. D. Miller

Notary Public For S.C.

My Commission Expires 2/2024



7

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

June 25, 2015

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,

E. Dee Dee Bowers
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Jamie Leamon, #244584
File

23.

7

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Jamie Leamon, # 244584,)	Docket No.: 15-ALJ-04-0143-AP
)	[Grievance No.: ECI 580-14]
Appellant,)	
)	Hon. S. Phillip Lenski
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT'S MOTION TO
)	DISMISS
Respondent.)	

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

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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.

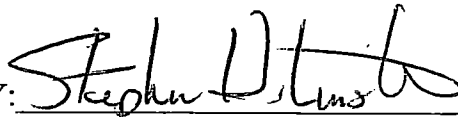
CONCLUSION

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

Staff Attorney

S.C. Department of Corrections

4444 Broad River Road,

Columbia, South Carolina 29221

(803) 896-1940

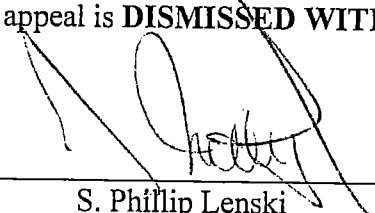
Columbia, South Carolina
June 25, 2015

#8

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.* at 382; 527 S.E.2d at 757. "The only way for the [ALC] to obtain subject matter jurisdiction over [an inmate's] claim is if it implicates a state-created liberty interest." *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127. Thus, in *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004), cert. denied, 544 U.S. 1033, 125 S.Ct. 2266, 161 L.E.2d 1060 (2005), our Supreme Court explained that while the ALC has jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate "where the inmate's grievance does not implicate a state-created liberty or property interest." See also *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) (finding dismissal of inmate's appeal appropriate because his grievance did not implicate a state-created liberty interest). Because the Appellant has not otherwise alleged a deprivation of a state-created liberty or property interest in this matter, the Court finds that summary dismissal is appropriate.

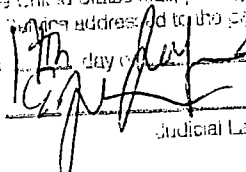
Accordingly,

IT IS HEREBY ORDERED that this appeal is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

July 17, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served the order in the above entitled action upon all parties to this cause by depositing a copy of said order in the United States Mail, postage paid, and by first-class mail addressed to the parties or their attorney(s).
This _____ day of _____ 2015
By:  _____
Judicial Law Clerk

DISI110D
OMDISCA

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM
OFFENSE INQUIRY

#9

SCDC#/CASE#: 244584 - 00006

LEAMON, JAMIE -

CURR LOC: EVANS

OFFENDER TYPE: ADULT-STRAIGHT

OFFENSE

CHARGED OFFENSE...: 898 POSS. OR/ATTEMPT TO POSS DATE: 10/08/07 TIME: 07:36 AM

OFFENSE LOCATION...: 0211 BROAD RIVER

OFFENSE CAT LVL.: 1

LOCATION IN INST.: 04 ALPHA/GAMMA AREA

ASSLT WITH WEAPON:

ASSLT STAFF/INMATE:

ACCUSING OFFICIAL.: J BELUE OFC.

TYPE ACTION.....: 01 MAJOR DISC. HEARING

CHARG. OFF CHAR:

HEARING LOC.....: 0211 BROAD RIVER

ACTUAL HEARING DATE: 10/23/07

WITNESS/OFFICIAL REQUIRED: Y COUNCIL SUBST. REQ.: Y SCHD HEAR DATE: 10/23/07

DHO HEARING DEC: C CONVICTED

PLEA.....: N NOT GUILTY

CONVICTED OFF...: 898 POSS. OR/ATTEMPT TO

CONVICT. OFF CHAR.:

DATE DROPPED...:

TOT GT LOST...: 02680 APPRV.:

APPEAL DEADLINE: 11/07/07

GT RESTORED...: 00000

CREATED BY.....: WIGGINS, BARBARA

10/11/07

LAST UPDATED BY: WIGGINS, BARBARA

10/23/07

PF4-MODIFY DISC. PF5-NARRATIVE INQUIRY PF8-NEXT DISCIP

-DISI150D
DISI150M

SCDC OFFENDER MANAGEMENT SYSTEMS
INMATE DISCIPLINARY SYSTEM
DISPLAY OFFENSE CODE TEXT

10

NARRATIVE...>

ON THE ABOVE DATE AND TIME, INMATE (NAME AND SCDC #) DID POSSESS A CELLULAR TELEPHONE AND/OR CELLULAR TELEPHONE EQUIPMENT (LIST TYPE OF EQUIPMENT) AND WHERE EQUIPMENT WAS FOUND.

MAJOR DISCIPLINARY HEARING OCTOBER 23, 2007. 898/GUILTY.
540 DAYS TELEPHONE, CANTEEN, PROPERTY (OPT B), VISITATION 04/15/09,
~~2680 DAYS GOOD TIME~~ **360 DAYS DD TIME**NO CREDIT FOR PHD TIME SERVED**
NATURE AND SEVERITY OF THE OFFENSE, COUPLED WITH INMATE'S DIS HISTORY WHICH INDICATED 2ND OFFENSE OF THIS NATURE. JC BROWN, DHO
B. WIGGINS, BRCI RECORDER

CREATED BY.....: WIGGINS, BARBARA
LAST UPDATED BY: WIGGINS, BARBARA

10/11/07
10/23/07

(END)

DISCIPLINARY TEXT DISPLAYED

PF4=MODIFY NARRATIVE PF7=PREV PG F8=NEXT PG

Court of Appeals
Clerk's Office
V. Claire Allen
Post Office BOX 11629
Columbia, SC 29211

Nov 16 2015

Date

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NOV 20 2015

SC Court of Appeals

RE: Jamie Leamon^(a) v. S.C. Dept of Corrections et al.
ALC Case No.: 15-ALJ-04-0143-AP
Appellant case No.: 2015-001674

Dear Ms. Allen:

Please find enclosed Appellant's Record on Appeal. Pursuant to the SCACR 210, and certificate of Service showing that all parties has been properly served via U.S. Postal Service.

cc: w/Encl.

Stephen H. Lunsford
Bar No.: 707550
Staff Attorney
Office of General Counsel
S.C. Dept of Corrections
Post Office Box 21787
Columbia, SC
Respondents Attorney

Sincerely,
Jamie Leamon, # 244584
Evans C.F. / 4-B / cell # 126
610 Highway 9 West
Bennettsville, SC 29512
Pro Se Appellant

Jamie Leamon, #244584

Evans C.I. / 4-B / Cell #126

1010 Highway 9 West

Bennettsville, SC 29512



Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals