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State of South Carolina
In the Court of Appeals

MAR 07 2016

SC Court of Appeals

Appeal From the Administrative Law Court
Administrative Law Judge S. Phillip Lenski

ALC Case No. 15-ALJ-04-0313-AP

Appellate Case No. 2015-002114

William Ford, # 232122, Appellant,
v.
South Carolina Department of Corrections Respondant.

Record on Appeal

Other Counsel of Record:
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William Ford, # 232122
Pro-se Appellant
MacDougall Correctional Inst.
1516 Old Gilliard Rd.
Ridgerville, S.C. 29472

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Appeal from Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2015-002114

William Ford, #232122 Appellant,

v.

South Carolina Department of Corrections Respondent.

Brief of Appellant

William Ford, #232122
MacDougall Correctional Inst.
1516 Old Gilliard Rd
Ridgeville, S.C. 29472
Pro-se Appellant

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Statement of Issues on Appeal

- (1) Was the ALC summary dismissal merited in this case?
- (2) Was SCDC staff/personnel in violation of not following Policy in conducting IEC hearing and preparing inmate for the transfer?
- (3) Was SCDC staff/personnel in violation in their search of Appellant's legal box?
- (4) Is SCDC liable for damages incurred by the Appellant because of staff/personnel's action pertaining to the entire ordeal?

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Statement of the Case

The Appellant was contacted on 10-8-14 by SCDC's Classification Personnel and told that he was to be present at an ICC hearing the following day. The ICC hearing was conducted the following day 10-9-14 where the Appellant was present. Several Correspondances were sent to SCDC officials understood to be authoritative issues left open from the ICC hearing. As a result of the decision rendered from the ICC hearing, the Appellant was contacted on 12-3-14 by SCDC staff/Personel and informed he was to be transported the next day. On 12-4-14 the Appellant with all his belongings was brought to the transportation area. After several hours of delay, the Appellant, without his belongings, was sent back to the dormitory to await further instructions. On 12-5-14 the Appellant was contacted by SCDC staff/Personel and was told everything was nullified, at which time he was then given back his belongings. On 12-9-14 the Appellant filed a step (1) Grievance attempting a resolution. SCDC staff/Personel gave back an unsatisfactory response on 12-29-14 in which the Appellant filed a step (2) Grievance on 12-30-14.

The agency (SCDC) responded to the step (2) Grievance with their final decision on 5-28-15. The Appellant filed a Notice of Appeal to the agency's decision on the Administrative Law Court and respondent on 6-23-15. The Administrative Law Court dismissed the appeal by order on September 25th 2015. The Appellant filed a Notice of Appeal on all parties on September 4th 2015. The arguments of that appeal follows:

Arguments

Was the ALC summary dismissal merited in this case?

No. The South Carolina Legislative Body Create the Administrative Law Court (ALC) to resolve issues concerning state agencies and the grieved party. As of concern to this case, the S.C. Supreme Court gave jurisdiction to hear grievance issues involving the South Carolina Dept. of Corrections (SCDC) in Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000).

The ALC's jurisdiction was limited to grievances that included state-created liberty or property interest. As concerning this appeal, the Appellant was grieved by being violated of several state-created liberty interests and also a state and federal created property interest. SCDC is a state-created agency which is empowered by statute § 24-1-20 and § 24-1-30 with the power to implement its own policies and regulations to sustain itself. By legislature granting the agency those exclusive powers, it is hereby understood that the policies and regulations implemented by the agency are state-created liberty interests as it pertains to regulating the inmates incarcerated rights granted to them by law. Also concerning the Appellant's legal property at the center of the dispute, it is understood that the Appellant has a privileged right to confidentiality between him and his attorney created by the 6th Amendment of the U.S. Constitution made applicable to the State by the 14th Amendment of the same Constitution. For the ALC to issue an order of dismissal to this instant appeal for the reason set forth in the order of the Appellant's complaints not of concern of a state-created liberty or property interest is unmerited. The issues argued in the appeal concern the agency itself violating their

own policies, which concern the Appellant's state-created liberty interests, and also the violation by the agency of the Appellant's state and federal protected property interest. Since the ALC passed on the chance to properly adjudicate the discrepancies involved in this appeal, the Appellant now is granted right to present those claims to this Court, which are contained in the following arguments.

was SCDC staff/personnel in violation of not following policy in conducting ICC hearing and preparing inmate for transfer?

Yes. SCDC has policies/procedures in place to insure that all persons (officials and inmates) are aware of what is expected of them as the department strives to be safe, orderly, and efficient, conducive to all involved. In particular to the case, the department has two (2) policies that govern the conduct of ICC Hearings, OP-21.04 and OP-21.03. OP-21.04 delineates a set of rules that is to govern the officials involved (emphasis on rules 24-32), OP-21.03 is a detailed memorandum that pertains to the ICC process, which emphasizes the particular procedures that are to be followed when the department is the sender in an Involuntary ICC transfer in section 4. The Respondent violated both of the mentioned policies in conducting the ICC Hearing in this instant case. It was the responsibility of the chairperson to be knowledgeable of the policies/procedures relating to this case (OP-21.04 rule 30.1). There was no 48 hour notice served to the Appellant prior to the hearing advising him of his rights (OP-21.04 rule 32 and OP-21.03 section 4.3). The Appellant never received a copy of the detailed memorandum outlining the reasons for the transfer, nor was such read to the Appellant at the hearing (OP-21.03 section 4.3.1 and hearing transcript).

The Appellant was never advised of his right to have a Counsel Substitute to investigate the reasons for the transfer or to assist him with the presentation at the Hearing (OP-21.03 section 4.3.2). Policy also states that the Appellant will be advised by memorandum of the Hearing Findings which did not take place (OP-21.03 section 4.3.7). Lastly it was the responsibility of an SCDC official to put the Appellant on notice prior to the date of the transfer as to what he would be able to take and what he would have to send home.

Policies/procedures are in place to regulate the conduct of inmates and also officials in SCDC. It is questionable the blatant disregard of policy/procedure in this instant case. (Note: The Appellant was in contact with the Federal Government pertaining possible illegal activities/crimes being committed by SCDC employees prior to the unexplained involuntary transfer that was to take place that led to this whole ordeal). It is reasonable to conclude the intention was to "leave no trail" of the actual motives for the transfer by the department and also for the Appellant to suffer actual loss. (The Respondant did not submit the Transcript of the ICC Hearing as part of the record in a continual attempt to cover their disregard of policy/procedure). The department has essentially conceded their officials disregard policy/procedure by not defending the adherence of policy/procedure in their grievance response (see also Exhibit (1) and (2)).

Was SCDC staff/personel in violation in their search of Appellants Legal Box?

Yes. SCDC officials answered the grievances back concerning the search of Appellants legal box outside of his presence by

identifying the two (2) officers present at the search of the legal box and stating it was justified pursuant to OP-22.19 section 8. The Appellant contends that the officers who conducted the search were in violation of SCDC Policy / procedures and the Appellant's Constitutional rights.

The Policy stated by SCDC officials in the case governs the search of inmates cell/cubes (OP-22.19 section 8). The incident in question was not a search of Appellant's cell/cube and notably it was the search of his legal box. The department does not specifically address the search of legal boxes in policy but they do have a policy in place that governs the inspection of legal mail (Ps. 10.08 section 7), which reasonably would be applicable to the search of a legal box. The department has memos out and has directed its officials at all their institutions to enforce that nothing except legal material is to be stored in any legal box of any inmate understandably for such reasons. The policy that governs the inspection of legal mail (Ps. 10.08 section 7) in all occasions states it is to be done in the presence of the inmate (section 7.2). Furthermore, the U.S. Constitution protects the rights involved in Attorney - Client relationship by the 6th Amendment, applied to the states through the 14th Amendment. The U.S. Supreme Court has ruled concerning the protection of Attorney - Client Privileges for inmates in the penal setting. see Wolff v. Mc Donnell, 418 U.S. 539, 94 S.Ct. 2963, 91 L.Ed. 2d 935 (1974).

All rulings have greatly protected those rights as long as they do not jeopardize or upset penalogical concerns.

The legal box in question contained only the Appellant's legal material, which was known to the department's officials. Nothing the department can say or conjure up will justify the search of the Appellant's legal box outside his presence. Again it is much in question the reason behind the planned transfer. Coinci-

dearly after the inexcusable, unjustifiable censorship of the Appellant's legal material outside of his presence it was found to be the Appellant was the "Wrong inmate" for the transfer, unchallenged in the step (1) Grievance, the department's officials had approximately five (5) hours to inspect/search the Appellant's legal box in his presence! Nothing Penalogically / security interest restricted the search/inspection from taking place in the presence of the Appellant. It is only reasonable to conclude the search was done outside the Appellant's presence to censor/pillage the Appellant's legal material in search of evidence damaging to SCDC's interest, to the extent of violating their own policy/procedures and the Appellant's Constitutional rights.

Is SCDC liable for damages incurred by the Appellant because of staff/personel's actions pertaining to the entire ordeal?

yes. The department disregarded policies/procedures in an attempt to violate the Appellant's protected rights and for him to suffer actual loss. The Appellant has suffered emotional anxiety/mental arguisk and also personal property loss because of SCDC officials disregard of policy/procedures.

The disregard of IEC hearings policy (OP-21.03 section 4) caused emotional anxieties to befall Appellant, not knowing "why" he was being transferred or if he was to ever see loved ones again, with him being transferred so far away. Had the department followed policy giving the Appellant the reason(s) for the transfer (OP-21.03 section 4.3.1) or to all^{ow} him to request a counsel substitute to investigate those reasons

(section 4.3.2), it could had quickly been resolved he was the wrong inmate, if that was the actual reason the transfer was cancelled. The anxiety from the ordeal caused the Appellant to call home much more often and request more visits. Inmate calls are billed to the recipient and travel cost for visits are upon the visitors. Also the Appellant had to give away personal items (Food, books, etc) in an attempt to reduce his "luggage" for travel, being he was told only at the time of transfer what he could or could not take, (see warden's response of the step (1) Grievance). Procedurely Appellant was to be told what he could carry prior to the date of transfer so he could have those items properly disposed. (Note: The personal items mentioned by the Appellant in step(1) grievance were "sentimental items" he disputed parting with in which he received back). The Appellant did make an attempt to recover the actual loss for damages with the departments attorney in a settlement but the offer was declined and he was told to further his attempt through this pending appeal. (see App. Exhibit 4).

Furthermore the Appellant is suffering from anguish by the department's pilfering of his legal material apparently in their attempt to recover possibly damaging evidence against them. It is shown they were in violation of their policy and government law in doing so. The Appellant is at a point now were he really does not trust the officials in the department. There needs to be correction brought forth in this ordeal.

Conclusion

For the reasons enclosed in the arguments presented, the Appellant prays this Court adjudicates the Claims within in his favor.

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Exhibit (1)

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: William E. Ford
SCDC NUMBER: 232122
INSTITUTION: MacDougall
HOUSING UNIT: Magnolia 1 B20-A
WORK ASSIGNMENT: Dorm

10/13/14
E.B. Ford

Office Use Only
Grievance No. Mac E. 0106-14
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 10/13/14
IGC Initials BF

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was given notice to report to classification on 10-8-2014. Ms. Boyd notified me that I would be having an ICC Transfer. When I ask her about it she said I had to talk to the State Coordinator for ICC Mr. Bellinger. I talk to Mr. Bellinger and he was unable or unwilling to tell me anything as to where, when, or why I was being transferred and accused me of "knowing what its about".

ACTION REQUESTED: I was not properly informed as to where, when, or why I was being transferred nor was I informed as to the cause of such transfer whether it is in retaliation of SCDC or a Federal Investigation. Thus I am requesting to know whats going on.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

On 10-9-2014 Ms. Boyd sent me to the Institution Classification Board and I further asked about my unanswered questions. We talked again with Mr. Bellinger and he still did not tell me why this is happening.

William E Ford 10-12-20
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Ford: I have reviewed your grievance and pertinent information. I have spoken with Ms. Boyd, Classification Case Manager, and was informed that this is an involuntary transfer (Interstate Corrections Compact) per the Division of Operations. SCDC's General Counsel and the US Attorney Office/SC.

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

William E Ford 10-16-14
IGC Signature Date
William E Ford 10-16-14
Grievant Signature Date

See Back ->

WARDEN'S DECISION AND REASON:

Inmate William Ford, #232122, Grievance MacD 106-14

I have reviewed your grievance and pertinent information.

You have been notified by State Classification that you are scheduled for an **INVOLUNTARY** transfer (Interstate Corrections Compact). I have spoken with Ms. Boyd, Classification Case Manager, and she told me that SCDC has been informed you are to be **involuntarily** transferred and that this transfer has been authorized by the Division of Operations, SCDC's General Counsel and the US Attorney (SC).

You were given notification of your appearance at the Classification Hearing and were informed by Mr. Bellinger of State Classification of the above. No additional information is available at this time. However, when SCDC is notified of when and where you are to be transferred you will be notified at that time in order that you can inform your family and make arrangements for any property that you cannot take with you to be mailed home.

Based on the above, I consider your grievance resolved. If you wish to appeal this decision, please see Ms. Ramey, Grievance Coordinator, to obtain a Step 2 form.

Edel T Tyle 10-16-14
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.

William Ford 10-17-14
Grievant Signature Date

Georgina Ramey 10-17-
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.

EXHIBIT (2)

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: William Ford RECEIVED
SCDC NUMBER: 232122
INSTITUTION: MacDougall OCT 21 2014
HOUSING UNIT: Mag 1 INMATE GRIEVANCE
WORK ASSIGNMENT: Docm

Office Use Only
Grievance No. 106-14
Code: General _____
Policy _____
Disc. Hear. _____
Class.
Date Received 10/17/14
IGC Initials GA

10-28-14

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

SCDC Failed to properly inform me of transfer. Policy states a 48 hour notice be given, and a detailed memorandum stating the reasons for transfer, and counsel, none of this was ~~be~~ given to me Per (OP-21.03 4.3 - 4.3.2) Because of this, I have fear, anxiety, depression, and I can't sleep. Transfer without due process implicates my state created liberties. Persons in step 1 failed to perform their duties i.e. protocol

William Ford 10-17-
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concern has been reviewed. This matter was explained to you by your Warden and an attorney in the General Counsel's Office. You have been informed that there will be no ICC transfer.

Therefore, I consider this matter resolved.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. 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] 12/10/14
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.

William Ford 12-17-14
Grievant Signature Date

[Signature] 12/17/14
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

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- 3.6 Upon review and approval of the submitted application, the *ICC coordinator or designee* will determine if South Carolina has a contract with the requested state. If a contract has been signed and is valid, the *ICC coordinator or designee* will forward a completed copy of the inmate's Central and medical records to the requested state for review and approval/disapproval. The inmate will be advised of this action.
- 3.7 Upon notification of disposition (approval/disapproval) from the requested state, the *ICC coordinator or designee* will advise the inmate and, if the request has been approved, will make transportation arrangements with the receiving state.
- 3.8 If an inmate is approved for an interstate transfer and the requested state is not a member, the inmate will be advised in writing by the *ICC coordinator or designee*.
- 3.9 If an inmate is approved for an interstate transfer and the requested state is a member of the Compact by an agreement with South Carolina, but is not active, the *ICC coordinator or designee* will make a reasonable effort to implement such an agreement.
- 3.10 The receiving state will submit an initial classification summary to South Carolina within ninety (90) days of the receipt of the inmate and thereafter will submit a classification progress report semi-annually. The *ICC coordinator or designee* will review the reports, make any necessary changes in the Earned Work Credit section of the inmate's automated record, and submit reports for file in the inmate's central record.
- 3.11 Transfer under the provisions of the Interstate Corrections Compact will not affect the release or parole dates determined by the State of South Carolina, except as applicable to any normal earned work credit changes or disciplinary actions. Inmates who serve South Carolina sentences in other states may be awarded earned work credits and/or earned educational credits as determined by the Division Director of Classification and Inmate Records, based upon information furnished by the other state's corrections department.
- 3.12 Pursuant to procedures regarding Interstate Corrections Compact (ICC) transfers, inmates who transfer under the ICC do so at their own request and are not eligible for inmate pay from SCDC while at the receiving state. If the inmate is returned to SCDC for administrative reasons, s/he may be assigned to a job and receive inmate pay provided such is allowed by policies/procedures governing inmate pay.
- 3.13 An SCDC inmate that was transferred to another state as a result of an Interstate Corrections Compact transfer may request to be returned to the SCDC. The inmate must clearly state his/her reasons for requesting their return to the SCDC. If this request is approved, the inmate will be responsible for all expenses incurred in facilitating this request. Once returned to the SCDC, the inmate will be ineligible for future ICC transfers, under his incarceration or future incarcerations.
- 3.14 If any inmate is disapproved by the SCDC or the requested state, for an Interstate Corrections Compact, s/he may reapply six (6) months after the date of disapproval if all other requirements cited in Procedure 3.1, above, are met.

~~By D. See change March 1, 2005?~~

4. SOUTH CAROLINA AS SENDING STATE - INVOLUNTARY TRANSFER: When an inmate is to be involuntarily transferred from the SCDC to another state, the procedures below will be followed:

- 4.1 The Warden may request that an inmate be considered for an involuntary transfer to another state. This request would normally be based upon a need by the inmate for protection beyond that which is available within this state, or based upon the inmate's being a management problem in SCDC, or in the interest of rehabilitation (i.e., to provide an inmate a fresh start in another prison system). The inmate should not have any post-conviction relief hearings pending or *detainers*.
- 4.2 The Classification Caseworker will forward the request for the involuntary transfer to the *ICC coordinator or designee*.
- 4.3 The Classification Caseworker will serve written notice (SCDC Form 18-34, "48 Hour Notice") upon the

(See Reverse Side) ROA pg. 14

inmate at least 48 hours prior to the *ICC* hearing, advising the inmate that s/he:

4.3.1 is being considered for an involuntary transfer to another state prison system under the Interstate Corrections Compact (NOTE: A detailed memorandum outlining the reasons for the transfer will be included in the written notice *with a copy to the inmate*, and will also be read to the inmate at the hearing.);

4.3.2 may request a counsel substitute to investigate the reasons for the involuntary transfer and assist in his/her presentation at the hearing;

4.3.3 has the right to be present at this hearing and that a taped recording of the hearing and State Classification Committee deliberations will be maintained for six (6) years;

4.3.4 may offer witnesses on his/her behalf as to why s/he should or should not be granted such a transfer (NOTE: The *ICC coordinator or designee* may limit the number of witnesses and rule on issues of relevancy. Reasons will be documented as to why certain evidence or witnesses were not admitted into the record.);

4.3.5 may cross-examine witnesses offered against him/her, if any;

4.3.6 will have an opportunity to be heard; and

4.3.7 will be advised by memorandum of the State Classification Committee's findings.

4.4 The *ICC Coordinator or designee* will, within *three (3) working days* after the hearing, submit a report to the Division Director of Classification and Inmate Records recommending approval or denial of the interstate transfer. This report will be in memorandum format and will contain explicit reasons why such transfer should or should not take place. The inmate will be provided a copy of this report.

4.5 *If approved, the report will then be submitted to the Division Director of Classification and Compliance.* The Division Director of Classification and *Compliance* will either approve or disapprove the report and submit it to the *Division Director of Operations*, with an information copy to the *ICC coordinator or designee* and to the Warden.

4.6 Upon receipt, the *Division Director of Operations* will either approve or disapprove the recommendation. If the *Division Director of Operations* recommends approval, s/he will provide a copy of the memorandum and approval to the Division Director of Classification and Inmate Records and instruct him/her that the procedures of the Interstate Corrections Compact are to be utilized and to arrange a transfer as expeditiously as possible.

4.7 The inmate will be advised in writing via a memorandum by the *ICC Coordinator or designee* of the decision.

4.8 The inmate may appeal any request denial to the Director of the South Carolina Department of Corrections.

4.9 The receiving state will provide a Classification Progress Report (available from the Division of Classification and Inmate Records every six (6) months to SCDC. The progress report will include any changes in Earned Work Credits, custody, disciplinary history, and/or security status.

4.10 Inmates who transfer under the ICC on an involuntary basis are not eligible for inmate pay from SCDC while at the receiving state. If an inmate is returned to SCDC for administrative reasons, s/he may be assigned to a job and receive inmate pay provided such is allowed by policies/procedures governing inmate pay.

5. SOUTH CAROLINA AS RECEIVING STATE: When an inmate voluntarily requests to be transferred to the SCDC or is being recommended for involuntary transfer, the interstate transfer procedures below will be followed:

5.1 Inmate requests for interstate transfer or referrals for involuntary transfer will be forwarded to the *ICC coordinator or designee* from the appropriate correctional officials of the sending state.

RECEIVED

JUN 03 2015

Dear Mr. Crooks: SCDC's General **GENERAL COUNSEL**

The Figure below is the out of pocket expenses that has accumulated since 10-8-14 until the present date. All that I want is the money that SCDC has cost me and my family and to be left alone for the remainder of my sentence. Upon the payment of \$476.22 * Four Hundred and Seventy six dollars and twenty two cent of this settlement I William Ford SCDC Number 232122 agrees to drop all pending litigation pertaining to an Involuntary ICC Transfer and Grievance Numbers 0106-14, • 106-14, 0127-14, and 127-14.

State of SC County of Berkley
The foregoing Instrument was acknowledged before me
this 07 day of JUN 2015
by William Ford
Lisa M. Cross Notary Public
My Commission Expires Jan 11, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/11/2024

Sign: William Ford
Date: June 2nd 2015

William Ford #232122
MacDougall Correctional Inst.
Magnolia 1 ASA
1516 Old Gilliard Rd
Ridgeville, SC 29472

→ Mr. Ford -

OFFICE OF
GENERAL COUNSEL

06/04/2015

The Department declines your offer to settle. Also, you will note that you will still have the opportunity to appeal the Department's final decision on Grievance 0127-14. Also, a letter such as this one does not need to be notarized. That is not a proper use of Notary services.

D. Crooks

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 15-ALJ-04-0313-AP
Appellate Case No. 2015-002114

WILLIAM FORD, # 232122,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S COMPLAINTS DO NOT INVOLVE A STATE-CREATED LIBERTY INTEREST OR PROPERTY INTEREST.

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of William Ford, an inmate in the custody of the South Carolina Department of Corrections. On December 9, 2014, Appellant filed a Step One Grievance complaining about certain actions of South Carolina Department of Corrections personnel in regard to a scheduled transfer which was subsequently canceled. The grievance was investigated and denied on December 28, 2014. Appellant then filed a Step Two Grievance which was denied on May 28, 2015. Appellant filed an appeal to the Administrative Law Court on July 1, 2015, and Administrative Law Judge S. Phillip Lenski issued an order denying and dismissing the appeal on September 25, 2015. Judge Lenski's order concluded that dismissal was appropriate because Appellant's complaints did not involve a state-created liberty or property interest. This appeal follows.

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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 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

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ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S COMPLAINTS DO NOT INVOLVE A STATE-CREATED LIBERTY INTEREST OR PROPERTY INTEREST.

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) above, the 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).

The ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Ind. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). Additionally, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See S.C. Code Ann. § 1-23-380(5) (e); see also Marietta Garage, Inc. v. S.C. Dep't. of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); S.C. Dep't. of Labor, Licensing & Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Pub. Svc. Comm'n of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In Al-Shabazz,

the Supreme Court underscored that since prison officials are in the best position to decide inmate disciplinary matters, the courts adhere to a “hands off” approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters”); see also Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

In this case, it was proper for the Administrative Law Court to summarily dismiss Appellant’s appeal because Appellant’s complaints regarding the conduct of prison staff plainly do not implicate any state-created liberty or property interests. See Slezak, 361 S.C. at 333, 605 S.E.2d at 509. Further, even assuming, for argument’s sake, that SCDC officials violated SCDC policy in some respect, this alone does not constitute a violation of Appellant’s constitutional rights. See Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996) (“[A] prison official’s failure to follow the prison’s own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met.”). Additionally, Appellant’s requests for money damages to compensate him for his emotional distress and anxiety are misplaced since the Administrative Law Court has no authority to grant monetary relief. See Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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February 3, 2016

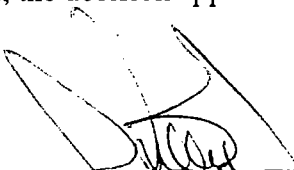
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erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.*

The Supreme Court further explained the court's jurisdiction in *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004). *Slezak* emphasized that, while the court has jurisdiction over all properly filed inmate grievance appeals, the court is not required to hold a hearing on every matter. *Id.* "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." *Id. citing Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293 (1995). Additionally, the South Carolina Court of Appeals has opined that where a state-created liberty interest is not implicated in a prisoner appeal, this court should dismiss the appeal. *Skipper v. S.C. Department of Corrections*, 370 S.C. 267, 633 S.E. 2d 910 (Ct. App. 2006). Though the South Carolina Supreme Court has held that the state's statutory mandate that inmates be paid the prevailing wage made receipt of the prevailing wage a state created liberty or property interest, the Court noted that its holding was *extremely limited* and was not to be viewed as expanding the jurisdiction of the ALJ in any other circumstances. *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004).

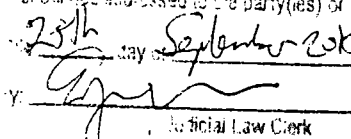
In this case, the Appellant's complaints do not concern a state created liberty or property interest. Under *Slezak v. S.C. Department of Corrections*, 361 S.C. 327, 605 S.E. 2d 506, (2004) the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state created liberty or property interest." Such is the case here.

THEREFORE, for the foregoing reasons, the decision appealed from is **AFFIRMED**.



S. Phillip Lenski
Administrative Law Judge

September 25, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the Interagency
Mail Service, addressed to the party(ies) or their attorney(s).
By: 25th day of September 2015


Judicial Law Clerk

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

12-10-14
S. Bryant

INMATE NAME: <u>William Ford</u>	OFFICE USE ONLY
SCDC NUMBER: <u>232122</u>	Grievance No. <u>MACC 0127-14</u>
INSTITUTION: <u>MacDougall</u>	Code: General <u>PR/IS</u>
HOUSING UNIT: <u>Magnolia 1 B-20 A</u>	Policy _____
WORK ASSIGNMENT: <u>Dorm</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>12/10/14</u>
	IGC Initials <u>CR</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) On 12-4-14 At 2 pm I was informed to report to Operations, to be transferred from SCDC to a New Jersey State Prison per the Division Director, SCDC's General Counsel, and U.S. Attorneys of S.C. When I arrived to the Transportation area I was informed by CPL. Rivera that I could not take some of my personal belongings which caused a verbal altercation. I told CPL. Rivera that per Warden Taylor and the State Coordinator for ICC Transfers that Ms. Boyd Case manager/classification was to inform me prior to the transfer so I could make arrangements to have it picked up. When I refused to leave my personal belongings behind and refused to sign anymore papers work pertaining to this transfer I was placed in the holding cell until 5 pm and at which time CPL. Rivera took my Legal Box and clothes to an unknown location. I was then taken up to operations holding cell where I sat for 2 more hours which was now 7 pm. I was informed by Sgt. Jones that I would be going back to the Dorm with him at which time I ask him for my Legal Box and clothes and was told that I could not have them. The next day I was informed by Mr. Crooks General Counsel that SCDC had made a mistake and that I was the wrong inmate for the transfer. When I got my Legal Box back it had been William Ford 12-9-14 plundered through without my consent or being present which is an illegal search and seizure. Grievant Signature Date

ACTION REQUESTED: I want to know who went through my Legal Box and why? ~~I also want my SCDC shorts that I purchased from the canteen replaced because their missing!~~ The shorts were found and returned to me by CPL. Rivera 12-7-14

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Inmate Ford: I have verified that Major Chang and Property Control Officer Rivera went through your box to determine what was in it. This was in view of the fact that you were being picked up by another agency. The agency picking you up would tell us at that time, what items you could take with you and what items you would have to mail home or have picked up at the institution. It has since been determined that you would not be transferred due to an ICC transfer and you have been given back all of your items. Based on this, your grievance is resolved.

[Signature] 12/17/14
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate William Ford, #232122, Grievance MacD 127-14:

I have reviewed your grievance and pertinent information.

On December 4th, you were instructed to report to Operations to be transferred from SCDC to a New Jersey State Prison. At this time, you were informed you would not be allowed to take some of your personal belongs with you. However, you had previously been informed that you would be allowed to mail home or have someone pick up the items you could not take with you. You were subsequently placed in the holding cell and returned to the dorm that night. When you asked for your belongings (legal box and clothing), you were told you could not have them. The next day, you were informed by Attorney Crooks of SCDC's General Counsel's office, that SCDC had determined you were the wrong Inmate Ford for the transfer. When you got your legal box back you state it had been "rifled through."

I have been informed by Major Chang that he and Property Control Officer Rivera went through your box to see what it contained. This was because SCDC would not know until you were picked up, what items you would be allowed to take with you. When it was determined you were the wrong Inmate Ford to be picked up, you were taken to Property Control and your property was returned to you. At this time, you handed Captain Myers a calculator that did not belong to you, but you were not charged.

You state you should have been present when your legal box was searched; however, SCDC Policy OP 22.19, section 8, states if the inmate is not present, then two (2) employees will be required to complete the search (one to complete the search and the other to assist and to serve as a witness). As a result, Major Chang and Corporal Rivera conducted the search in accordance with SCDC policy.

Based on the above, your grievance is denied. If you wish to appeal this decision, please see Ms. Ramey, Grievance Coordinator, to obtain a Step 2 form.

Warden Signature

Date

Paul T Tyla 12-28-14

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

William Ford 12-29-14

Grievant Signature

Date

Georgina Ramey 12/29/14

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: William Ford 12-31-14
E. Bryant
 SCDC NUMBER: 232122
 INSTITUTION: MacDougall 5
 HOUSING UNIT: Magnolia 1
 WORK ASSIGNMENT: Yard Detail

Office Use Only
 Grievance No. 127-14
 Code: General PR/IS
 Nelson _____
 Adj. Com. _____
 Class. _____
 Date Received 12/31/14
 IGC Initials ERZ

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Since 10-7-14 SCDC has refused to assist me with any information that pertained to this "Involuntary" ICC Transfer i.e. why, when, where, and what I could and could not take (see Grievance No: 106-14 Steps 1 and 2). when I arrived at Transportation on 12-4-14 Cpl. Rivera had a property approval sheet for ICC Transfers and I was told this is what SCDC uses for what items of property the inmate can take so SCDC knew what I could take and could not take prior to being transferred. Also while I sat in the holding cell my Legal Box and clothes remained in my view from 2 pm until 5 pm at which time Cpl. Rivera took them to an unknown location and returned to take me up to Operations holding cell because he was leaving the facility so it's not possible that Cpl. Rivera searched my Legal Box. Furthermore whoever searched my Legal Box had from 2 pm until 7 pm to do so in my presence (see O.P.-22.19 section 8; 8.1). This whole process has been unethical!

William Ford 12-30-14
 Grievant Signature Date

REGIONAL DIRECTOR'S DECISION AND REASON:

Your concern has been reviewed. The Warden has addressed your concerns appropriately. Once it was decided you were not going to be transferred, your property was returned to you. You have not provided any evidence to substantiate your allegations of staff negligence. Without verifiable evidence, further action is unwarranted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. 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.

Don A. Patten 5/28/15
 Regional Director Signature Date

I hereby acknowledge receipt of the Regional Director's response. My signature in no way indicates my acceptance of the decision.

William Ford 6-19-15
 Grievant Signature Date

[Signature] 6-19-15
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)