

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Billy Lee Lisenby, Jr., #200278

Petitioner,

v.

South Carolina Department of
Corrections Director,

Respondent.

Civil Action No. 2015 CP 42-3863

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GENERAL COUNSEL SC Court of Appeals
ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

This matter comes before the Court pursuant to a "Writ of Habeas Corpus" filed by Billy Lee Lisenby, Jr., an inmate in the South Carolina Department of Corrections, on September 16, 2015. In his petition, Mr. Lisenby asserted he was being held in custody unlawfully because the Department of Corrections was improperly calculating his good time credits and his max-out date. On November 2, 2015, Respondent filed a Motion to Dismiss requesting dismissal of the action under Rule 12(b) of the South Carolina Rules of Civil Procedure.¹ On February 22, 2016, this Court heard Respondent's Motion to Dismiss in the Spartanburg County Courthouse. Petitioner was present at the hearing and represented himself *pro se*. Christina Bigelow, Deputy General Counsel for the South Carolina Department of Corrections, was present and represented the Respondent. After hearing arguments from both parties, this Court took the matter under advisement. On February 23, 2016, this Court issued a Form 4 Order notifying the

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¹ Although the Department's written motion to dismiss included a request for sanctions against Mr. Lisenby pursuant to S.C. Code § 24-27-200, counsel for the Department withdrew this request on the record at the hearing.

parties that Respondent's Motion to Dismiss would be granted. This formal order follows. This Court finds and concludes that the Motion to Dismiss should be granted for the reasons set forth below.

First, the Motion to Dismiss should be granted pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure because this Court lacks jurisdiction over the subject matter of Petitioner's claim. The Al-Shabazz process is the exclusive avenue through which an inmate can appeal an issue decided by the Department and which implicates a constitutionally recognized liberty or property interest. See Steele v. Benjamin, 362 S.C. 66, 70, 606 S.E.2d 499, 502 (Ct. App. 2004) ("The question of whether an inmate may seek review of . . . the Department of Corrections' final decisions under the South Carolina Administrative Procedures Act (APA) was answered by our supreme court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)."). Here, Petitioner has improperly raised an Al-Shabazz claim in the circuit court - instead of in the Administrative Law Court where it belongs - by styling the action as a habeas corpus petition.² Accordingly, dismissal of the petition is appropriate under Rule 12(b)(1), SCRPC.

Secondly, the Petition should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because Petitioner has failed to set forth a legal cause of action for habeas corpus relief in the circuit court. A habeas corpus petition must support the requested relief. Hunter v. State, 316 S.C. 105, 447 S.E.2d 903 (1994).

² Notably, as the three exhibits presented by the Department at the February 22, 2016 hearing demonstrate, Petitioner has three currently-pending Al-Shabazz matters pertaining to good time credits and calculation of his max-out date. See Defendant's Exhibits # 1, 2, and 3 (referencing ALC case number 16-ALJ-04-0065-AP; Court of Appeals appellate case number 2015-002343, and Court of Appeals appellate case number 2015-002344).

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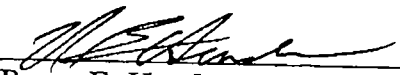

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Although the allegations in the petition are to be treated as true, Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962), the petition must make out a *prima facie* case showing petitioner is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); see also Hayes v. State, 242 S.C. 328, 130 S.E.2d 906 (1963). The petition must allege that the petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, *cert. denied*, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). If the petition, on its face, meets these requirements, petitioner is entitled to a hearing. Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427-28 (1998).

Here, Petitioner has failed to meet his burden to show that he has exhausted all of his administrative remedies. As mentioned above, the exhibits presented by the Department at the February 22, 2016 hearing reflect that Petitioner currently has three pending Al-Shabazz matters on appeal – a fact Petitioner did not contest. Clearly, under these circumstances, Petitioner has not shown he has exhausted all other remedies; therefore, dismissal of the petition is appropriate under Rule 12(b)(6), SCRCP.

For all the reasons discussed above, Respondent's Motion to Dismiss is **GRANTED** and Petitioner's request for a writ of habeas corpus is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Roger E. Henderson
Circuit Judge, Fourth Judicial Circuit

March 3, 2016

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527 FARMWOOD COURT
COLUMBIA, SC 29204