

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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ALC Case No. 15-ALJ-04-0289-AP  
Appellate Case No. 2016-000431

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SC Court of Appeals

BERNARD MCFADDEN, # 199135,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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**FINAL BRIEF OF RESPONDENT**

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**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Christina Catoe Bigelow**  
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**ATTORNEY FOR RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S ISSUE IS MOOT AND THE ADMINISTRATIVE LAW COURT DID NOT HAVE JURISDICTION TO HEAR THE CLAIM.**

## STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Bernard McFadden, an inmate in the custody of the South Carolina Department of Corrections. In October of 2014, Appellant submitted a Step 1 grievance complaining that the Department of Corrections failed to properly calculate the max-out date of a previously-served sentence. The Step 1 was denied by the Warden on December 18, 2014. Appellant submitted a Step 2 grievance form on December 29, 2014, which was subsequently denied on March 21, 2015. Appellant submitted a notice of appeal to the Administrative Law Court on June 24, 2015. On January 27, 2016, Administrative Law Judge Shirley C. Robinson issued an Order of Dismissal, concluding that Appellant's claim was not appropriate for the Administrative Law Court and was instead an issue for the post-conviction relief court. The Order of Dismissal also concluded that, even if the Administrative Law Court did have jurisdiction over the claim, the issue was moot. This appeal follows.

## 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.

## ARGUMENT

### **THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S ISSUE IS MOOT AND THE ADMINISTRATIVE LAW COURT DID NOT HAVE JURISDICTION TO HEAR THE CLAIM.**

In his Brief, Appellant contends that the Administrative Law Court erred in dismissing his appeal. To the contrary, the Administrative Law Court correctly dismissed the appeal because the issue regarding Appellant's previously-served sentence was moot and because the Administrative Law Court did not have proper jurisdiction over Appellant's claim.

The ALC's jurisdiction to hear prison matters 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 this case, 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).

First, the Administrative Law Court properly found that Appellant’s issue was moot. As the lower court noted, it has been over ten years since Appellant completed the sentence he now challenges. (R. p. 49). An action generally becomes moot when rendering judgment would have no legal effect upon the controversy. See e.g., Collins Music Co. v. IGT, 365 S.C. 544, 549, 619 S.E.2d 1, 3 (Ct. App. 2005). Altering Appellant’s previously-served sentence’s completion date would have no practical legal effect upon any controversy. See Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006) (“A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract.”). Further, as discussed at length in the ALC order, none of the exceptions to the mootness doctrine apply here, where the sentence Appellant is attempting to contest has long since been served and he is currently in prison on totally separate offenses.<sup>1</sup> (R. p. 49-51). Accordingly, the issue is moot.

Second, the Administrative Law Court properly concluded that it did not have jurisdiction to rule upon Appellant’s claim because “this case is, at its heart, a piece of a collateral attack on [Appellant’s] 2010 conviction,” which our Supreme Court has held is a matter for the post-conviction relief court. (R. p. 51). See Al-Shabazz v. State, 338 S.C. 354, 367-68, 527 S.E.2d 742, 749 (2000) (stating that PCR is a proper avenue for relief when an

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<sup>1</sup> As the Administrative Law Court noted, Appellant could have challenged his max-out date at any time during the service of the 1995 burglary sentence, but he failed to do so until over ten years after completing it. (See R. p. 52).


applicant mounts a collateral attack challenging the validity of his conviction or sentence). As the Administrative Law Judge's order points out, the post-conviction relief court has the authority to address Appellant's ultimate issue, and contrary to Appellant's suggestion on appeal, the PCR judge would not be bound by the South Carolina Department of Corrections' max-out date calculations with regard to the 1995 burglary sentence. (R. p. 51). Accordingly, the Administrative Law Court properly concluded it did not have jurisdiction over Appellant's claim.

**CONCLUSION**

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:   
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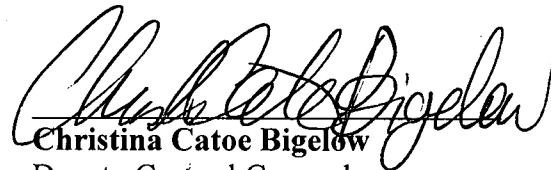
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF COUNSEL

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



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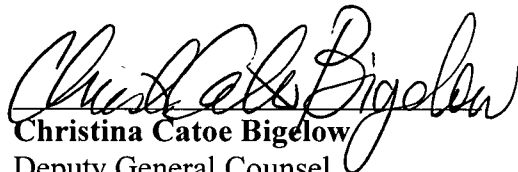
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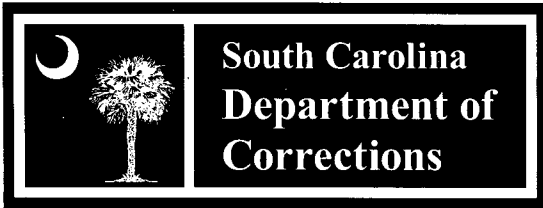
**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Final Brief of Respondent** to Appellant, addressed as follows: Bernard McFadden, # 199135, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina, 29067.



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May 4, 2016



South Carolina  
Department of  
Corrections

OFFICE OF GENERAL COUNSEL

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

May 4, 2016

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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**SC Court of Appeals**

**RE: Bernard McFadden # 199135, v. South Carolina Department of Corrections**  
**Appellate Case No. 2016-00431**

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of the **Final Brief of Respondent**, along with **Proof of Service** for the same.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow  
Deputy General Counsel  
South Carolina Department of Corrections

cc: Bernard McFadden, # 199135  
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