

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL OF FINAL DECISION
Administrative Law Court

APPELLATE CASE NO.: 2016-001600

RECEIVED

SEP 23 2016

SC Court of Appeals

Alonzo Brinkley #271143,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

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McNeil v. S.C. Department of Corrections 02-ALJ-04-00336-AP (September 5, 2001)

Slezak v. SC Department of Corrections 361, S.C. 327, 605 S.E. 2d 506 (2004)

Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003)

Wicker v. SC Department of Corrections, 360 S.C. 421, 602 S.E. 2d 56 (2004)

60 (B) South Carolina Rules of Civil Procedure

§1-23-380 South Carolina Code Ann.

SCDC Policy: OP 22.14 Section 16.2

OP 22.14 Section 17.2

STATEMENT OF THE ISSUES ON APPEAL

Did the Administrative Law Court err in the dismissal of the Appellant's Appeal?

STATEMENT OF THE CASE

This matter is before the Court pursuant to an Order of Dismissal from the Administrative Law Court signed by The Honorable Ralph King Anderson, III on June 30, 2016.

Alonzo Brinkley (Appellant), is an inmate incarcerated with the South Carolina Department of Corrections (SCDC). On August 7, 2015, Appellant filed a Step 1 grievance disputing his loss of good time as a result of disciplinary convictions. On September 10, 2015 the Warden denied the Step 1 grievance. Thereafter, on September 23, 2015, Appellant filed a Step 2 grievance again disputing his loss of good time as a result of disciplinary convictions. On January 4, 2016 SCDC denied the Step 2 grievance. A Notice of Appeal was timely filed the Administrative Law Court (ALC) and the Appeal was dismissed.

STATEMENT OF THE FACTS

Since October, 2009, the Appellant has lost a significant amount of good time for various disciplinary convictions. This loss of good time has affected his release date from the Department of Corrections. The Appellant is serving an 85% sentence and this loss of good time has increased his max out date beyond the 85%.

Prior to October, 2009, all disciplinarys received by the Appellant did not affect his max-out date. However, after this date, all disciplinary convictions increased his max- out date.

The offenses in question for which Appellant lost an excessive amount of good time are:

(834) False Statement to harm Another Person – 30 days loss of good time on October 7, 2009.

(807) Striking An Employee Without a Weapon – 15 days loss of good time on February 4, 2010.

(853) The Unauthorized Use of an Inmate's PIN – 6 days loss of good time on May 14, 2010.

(817) Possession of Contraband – 9 days loss of good time on July 1, 2010.

(825) Refusing or Failing to Obey Orders – 24 days loss of good time on March 16, 2011.

(903) The Use or Possession of Narcotics Including Marijuana or Any Unauthorized Drug or Inhalant – 60 days loss of good time on May 17, 2014.

(853) The Unauthorized Use of An Inmate's PIN – 30 days loss of good time on October 14, 2015.

(825) Refusing or Failing to Obey Orders – 30 days loss of good time on October 14, 2015.

Appellant submitted a Step 1 grievance on August 7, 2015 regarding the amount of good time lost. On September 22, 2015 Appellant received a response indicating that

“the disciplinary hearing office takes good time for any disciplinaries and classification has no control of how much and when he does it.”

While waiting for the response to the Step 2 grievance, Appellant questioned the amount of good time lost in a Request to Staff Member dated November 13, 2015. A written response from Sgt. Poole was received on November 16, 2015, which supported Appellant’s claim.

Appellant submitted his Step 2 grievance on September 23, 2015. This grievance was also denied on January 14, 2016 stating “due to your excessive amount of disciplinary infractions and subsequent loss of good time, your projected max-out date has changed.”

This appeal follows:

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, 525 S.E.2d 742 (S.C. 2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. The Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, the ALC's *en banc* decision of *McNeil v. S.C. Department of Corrections* 02-ALJ-04-00336-AP (September 5, 2001), the South Carolina Supreme Court held that the ALC's jurisdiction is 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.

The Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *Wicker v. SC Department of Corrections*, 360 S.C. 421, 602 S.E. 2d 56 (2004); *Slezak v. SC Department of Corrections* 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").

Further, the State law from which the ALC's jurisdiction to review agency decisions is derived generally requires that those agency decisions be final. S.C. Code Ann. §1-23-380. The doctrine of exhaustion of administrative remedies generally

requires a person seeking relief from the action of the administrative agency to pursue all available administrative remedies before seeking such relief from the courts.

In *Al-Shabazz* an inmate may seek review of a final decision of the South Carolina Department of Corrections in administrative matters under the South Carolina Administrative Procedures Act. The Court noted that “administrative matters typically arise in two ways: 1) when an inmate is disciplined and punishment is imposed and 2) when an inmate believes prison officials have erroneously calculated his sentence, sentence related credits, or custody status.”

The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a) Made upon unlawful procedure,
- b) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- c) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted abuse of discretion.

Clearly the Administrative Law Court had the authority to review the Appellant’s disciplinary convictions and loss of earned good time. The Administrative Law Court in its Order of Dismissal found that a number of disciplinaries were already fully adjudicated and the amount of good time had become the law of case. That these offenses were (834) – October 26, 2009; (807) – February 23, 2010; (853) – May 24, 2010; (825) - March 30, 2011.

The Court further found that (817)- July 21, 2010; (903) June 2, 2014 and (825) – October 14, 2015 convictions and only one of the two counts of (825) could not be considered because the Appellant never filed a Step 1 or Step 2 grievance, therefore he failed to exhaust his Administrative remedies. The Court found that the second count of (825) was still being considered by the South Carolina Department of Corrections in its grievance process and was not ripe for consideration by the Court.

ARGUMENT

Did the Administrative Law Court err in the dismissal of the Appellant's Appeal?

The Appellant admits that a number of the disciplinaries have been previously ruled upon by the Court and/or that Step 1 and Step 2 grievances were not filed. The Distinction in this case is the fact that the Appellant received a response from an agent of the Respondent indicating that one of the Disciplinary Hearing Officer took too much good time for the Appellant's disciplinary conviction. This response was pursuant to a Request to Staff Member dated November 13, 2015 and the written response was sent by Sgt. Poole dated November 16, 2015.

The Appellant believes that the Respondent is inconsistent in application of loss of good time in his case. That other inmates as enumerated in the Lower Court Brief, all received less time as a result of their disciplinary convictions. The Appellant argued that this procedure is unfair and there is no uniformity. In violation of Section 16.2 of the Respondents Disciplinary Policy OP 22.14.

Section 16.2 of the SCDC sentencing guidelines states that if an Inmate is found guilty, the hearing officer will determine the sanctions to be imposed for the disciplinary offenses. When sanctioning an inmate, the hearing officer will take into consideration;

- 1) The inmates prior conduct and the period of time since the inmates last disciplinary offense.
- 2) Nature and Seriousness of the Offense.
- 3) Extent of injury to persons or destruction of property.
- 4) Penalties given to other inmates for the same or similar disciplinary offenses.
- 5) Specific programs and security needs of the inmate.

This policy goes further to say that the sanctions will be proportionate to the offense committed and hearing officers will be responsible for justifying any disciplinary actions imposed.

The Appellant further believes that there is an unwritten policy and procedure within the Department of Corrections regarding inmates who are serving an 85% sentence. That this Policy results in no additional loss of good time that would affect their sentence of 85% and that as a rule, due to disciplinaries, these inmates are not required to serve any additional time over and above the 85%.

On November 4, 2015, the Appellant questioned the Disciplinary Hearing Officer regarding his loss of good time. The DHO indicated to the Appellant that his record did not indicate that he was serving a straight adult 85% sentence and that this was the reason that so much good time was taken. The DHO stated that he can only revoke good time in addition to the three days for the month of the conviction in cases of level 1 Offense, when the accused is serving a straight adult 85% sentence.

At this point, the Appellant determined that this unwritten policy existed and that it was common practice for DHO Officers not to revoke any additional time over and

above what would be required to serve the 85% sentence. This suspicion was confirmed when he received the response from Sgt. Poole dated November 16, 2015 indicating that too much good time had been taken.

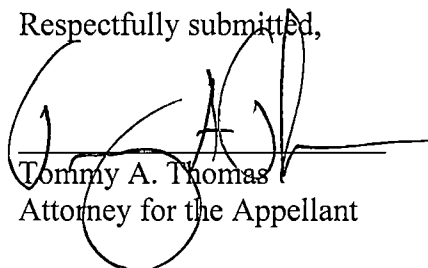
While there may be a valid argument that the offenses were fully adjudicated and that certain offenses the Appellant had failed to exhaust his Administrative remedies. The Appellant would argue that this discovery and admission by the Respondent is tantamount to after discovered evidence. The Appellant is left with no remedy to address this issue without being able to proceed with the Appeal that he filed in the Administrative Law Court. This after discovered evidence would not allow him to file a Post-Conviction Relief action, in that there is no ineffective assistance of counsel. Nor can he take advantage of a Rule 29 Motion, pursuant to the Rules of Criminal Procedure requesting a new trial.

Therefore, this issue opens the door to the novel question of whether an inmate in the Appellant's situation may be able to avail himself of a 60 (b) Motion to relieve a party from a final judgment Order or proceeding for the reason of Newly Discovered Evidence. In addition, is this appeal akin to such a Motion? The Appellant would argue that he is entitled to have these matters remanded either to the Department of Corrections to adjust the Loss of earned good time or remand back to the Administrative Law Court for a hearing on the merits.

CONCLUSION

The Appellant in this case would respectfully request that the Court of Appeals remand this case back to the South Carolina Department of Corrections to reconsider the Appellant's loss of good time in the above disciplinaries. In the alternative, set aside the Lower Court's Order of Summary Dismissal and allow the Appellant to proceed with a full evidentiary Appeal.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Appellant

September 22, 2016

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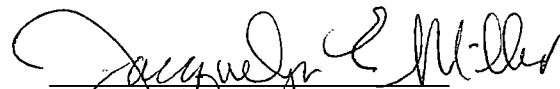
South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, hereby certify that I placed in the United States Mail, a copy of the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal, with postage prepaid and the return address clearly shown on said envelope to the following:

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September 22, 2016

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September 22, 2016

Court of Appeals
Attention: Tanya A. Gee
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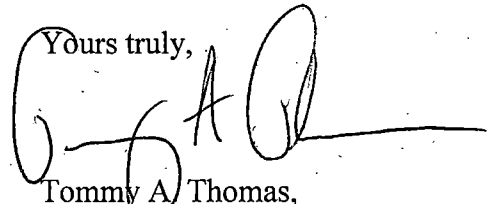
RE: Alonzo Brinkley #271143 v. SCDC
Appellate Case No.: 2016-001600

Dear Ms. Gee:

Enclosed please find an original and a copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record of Appeal along with an original and a copy of the Certificate of Service.

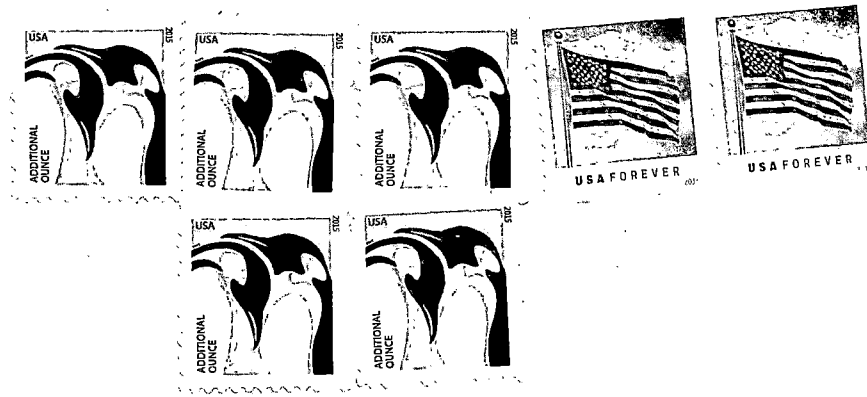
Kindly return the clocked copies to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Christina Bigelow, Esq.
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