

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 16-ALJ-04-0709-AP
Appellate Case No. 2016-002347

RECEIVED

JAN 13 2017

SC Court of Appeals

NATHANIEL WILLIAMS, # 143329,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES2

STATEMENT OF THE ISSUE ON APPEAL3

STATEMENT OF THE CASE 4

STANDARD OF REVIEW5

ARGUMENT6

CONCLUSION.....7

TABLE OF AUTHORITIES

CASES

Altizer v. Paderick, 569 F. 2d 812 (4th Cir. 1978) 6

Hendley v. Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996)..5

Skipper v. S.C. Dep’t of Corr., 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) 6

Slezak v. S.C. Dep’t. of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004) 6

Sullivan v. S.C. Dep’t of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003) 6

Wicker v. S.C. Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) 6

Wolff v. McDonnell, 418 U.S. 539 (1974) 6

STATUTES

S.C. Code § 1-23-380 5

S.C. Code § 1-23-610..... 5

STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S COMPLAINT DID NOT INVOLVE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Nathaniel Williams, an inmate in the custody of the South Carolina Department of Corrections. On July 12, 2016, Appellant submitted a Step One Grievance requesting back pay and reinstatement of his state inmate pay. The Step One was denied on July 19, 2016 by the Warden on the ground that there was no evidence substantiating Appellant's claim that he was entitled to back pay or reinstatement of pay where the plant where Appellant had been working was closed on January 15, 2016 and Appellant did not obtain a new job within fifteen days as required by policy. Appellant submitted a Step Two Grievance on July 22, 2016, complaining that he did not obtain a new job within fifteen days of January 15, 2016 because he was informed by his Prison Industries plant supervisor that work would be resuming soon. The Step Two was denied on August 26, 2016, on the ground that the plant's closing on January 15, 2016, constituted a job termination and that SCDC Policy ADM 15.13 required that Appellant complete a reassignment to a new job within fifteen days of January 15, 2016, which he failed to do. Appellant filed a notice of appeal in the Administrative Law Court on September 23, 2016. On October 19, 2016, Administrative Law Judge Deborah Brooks Durden filed an Order of Dismissal. The order dismissed Appellant's appeal because it did not implicate a state-created liberty or property interest. 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 COMPLAINT DID NOT INVOLVE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

Procedural due process is only required when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004); see also Wolff v. McDonnell, 418 U.S. 539 (1974). Summary dismissal by the Administrative Law Court is appropriate where the inmate's grievance does not implicate a state-created liberty or property interest. Slezak v. South Carolina Dept. of Corrections, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

There are no statutes or constitutional provisions entitling Appellant to the inmate pay he seeks. The SCDC policy upon which Appellant relies – which can be changed or deleted at SCDC's pleasure – does not give rise to a "state-created liberty or property interest." Compare Wicker, 360 S.C. at 424, 602 S.E.2d at 58 (finding a state-created property interest in payment of a prevailing wage based upon state statute) with Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003) (finding no state-created liberty or property interest where the Department denied the inmate access to the second phase of sex offender treatment based upon SCDC policy). Furthermore, Appellant has no right to participate in prison employment in the first place. See, e.g., Skipper v. South Carolina Department of Corrections, 370 S.C. 267, 275, 633 S.E.2d 910, 915 (Ct. App. 2006) (participation in prison employment "is not a right, but a privilege"); Altizer v. Paderick, 569 F. 2d 812, 813 (4th Cir. 1978) (classifications and work assignments are discretionary matters


for prison administration and are not within the reach of the procedural protections of the Due Process Clause). Accordingly, the Administrative Law Court correctly dismissed Appellant's appeal because his claim did not involve a state-created liberty or property interest.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

January 13, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

RECEIVED

JAN 13 2017

SC Court of Appeals

ALC Case No. 16-ALJ-04-0709-AP
Appellate Case No. 2016-002347

NATHANIEL WILLIAMS, # 143329,

APPELLANT,

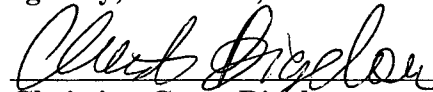
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

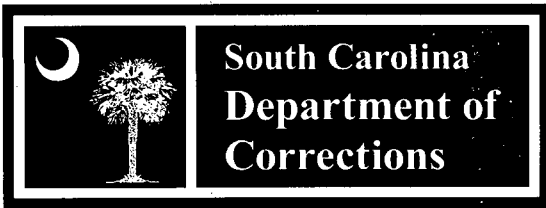
CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Nathaniel Williams, # 143329, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina 29067.**



Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

January 13, 2017



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

OFFICE OF GENERAL COUNSEL

January 13, 2017

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

RECEIVED

JAN 13 2017

SC Court of Appeals

RE: Nathaniel Williams, # 143329, v. South Carolina Department of Corrections
Appellate Case No. 2016-002347

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

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: Nathaniel Williams, # 143329
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067