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STATE OF SOUTH CAROLINA  
In The Court of Appeals

MAR 02 2017

SC 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

NATHANIEL WILLIAMS, # 143329,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

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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 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 (4<sup>th</sup> 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.

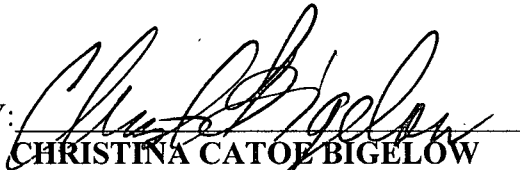
**CONCLUSION**

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:



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**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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**CERTIFICATE OF SERVICE**

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



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