

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

JAN 17 2017

Administrative Law Judge Ralph King Anderson, III

SC Court of Appeals

ALC Case No. 16-ALJ-04-0055-AP
Appellate Case No. 2016-001600

ALONZO BRINKLEY, # 271143,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUE ON APPEAL	1
STATEMENT OF THE CASE	2
STANDARD OF REVIEW	3
ARGUMENT	4
CONCLUSION.....	7

TABLE OF AUTHORITIES

CASES

<u>Brown v. James</u> , 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010)	4
<u>Hendley v. Budget & Control Bd.</u> , 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996)..	3
<u>S.C. Baptist Hosp. v. SCDHEC</u> , 291 S.C. 267, 353 S.E.2d 277 (1987)	5
<u>Sloan Const. Co. v. Southco Grassing</u> , 395 S.C. 164, 717 S.E.2d 603 (2011)	4

STATUTES

S.C. Code § 1-23-380	3
S.C. Code § 1-23-610.....	3
S.C. Code § 24-13-150	6
S.C. Code § 24-13-210	6
S.C. Code § 24-13-230	6

STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S COMPLAINTS WERE NOT PROPERLY BEFORE THE COURT DUE TO FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, THE LAW OF THE CASE DOCTRINE, AND LACK OF RIPENESS FOR REVIEW.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Alonzo Brinkley, an inmate in the custody of the South Carolina Department of Corrections. On August 7, 2015, Appellant submitted a Step One Grievance disputing his loss of good time as a result of several previous disciplinary convictions. The Step One was denied on September 10, 2015. On September 23, 2015, Appellant submitted a Step Two Grievance on the same grounds, and the Step Two was denied on January 4, 2016. Appellant submitted a notice of appeal in the Administrative Law Court, and, on June 30, 2016, Administrative Law Judge Ralph King Anderson, III, issued an order denying and dismissing the appeal. Judge Anderson's order concluded that dismissal was appropriate because Appellant's challenge to his loss of good time was barred by his failure to exhaust his administrative remedies, the "law of the case" doctrine, and lack of ripeness for review. 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 BECAUSE APPELLANT'S COMPLAINTS WERE NOT PROPERLY BEFORE THE COURT DUE TO FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, THE LAW OF THE CASE DOCTRINE, AND LACK OF RIPENESS FOR REVIEW.

In this case, the Administrative Law Court correctly dismissed Appellant's appeal because Appellant's complaints regarding his disciplinary convictions were not properly before the court. As to Appellant's complaints regarding offenses 817 (conviction date of 7/21/10), 903 (conviction date of 6/2/14), and 825 (conviction date of 10/14/15), Appellant failed to exhaust his administrative remedies by failing to appeal the results of these disciplinary convictions. (See R. p. 65-66). Therefore, he cannot challenge the results of those convictions now. See Brown v. James, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) (exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before a court will act). As to offenses 834 (conviction date of 10/26/09), 807 (conviction date of 2/23/10), 853 (conviction date of 5/24/10), and 825 (conviction date of 3/30/11), Appellant previously appealed and his appeals were rejected and dismissed. (See R. p. 65). Therefore, the results of those appeals are now the law of the case and cannot be re-litigated. See Sloan Const. Co., Inc. v. Southco Grassing, Inc., 395 S.C. 164, 169, 717 S.E.2d 603, 606 (2011) (holding that a party is precluded from relitigating, after an appeal, matters that were either rejected by the appellate court or not raised on appeal when they should have been). As to offense 825 (conviction date of 10/14/15 - second count), the result of this disciplinary conviction is still under review in the Department's grievance process and therefore must be

appealed separately upon completion of that process. Accordingly, the matter is not yet ripe for review by this Court. See S.C. Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) (holding it would be premature to decide the merits of an appeal when the agency responsible for making the decision has not yet had the opportunity).

Appellant admits in his Brief that “a number of disciplinaries have been previously ruled upon by the Court and/or that Step 1 and Step 2 grievances were not filed.” (See Brief of Appellant, p. 7). He further admits that “there may be a valid argument that the offenses were fully adjudicated and that [for] certain offenses the Appellant had failed to exhaust his administrative remedies.” (Brief of Appellant, p. 9). Nevertheless, Appellant contends that his case is distinguishable because he received “after discovered evidence” in the form of Sgt. Poole’s opinion that Disciplinary Hearing Officer Turner took “too much” good time credit at his November 4, 2015 disciplinary hearing. (See R. p. 36). This contention is wholly without merit and Appellant cites no authority for the prospect that Sgt. Poole’s opinion regarding one of the eight cases being challenged constitutes “after discovered evidence” or affects in any way the Administrative Law Court’s proper rulings regarding failure to exhaust, law of the case doctrine, and lack of ripeness for review.¹

¹ Although this Court need not reach the merits for the reasons discussed above, as to Appellant’s claim that SCDC is “inconsistent” in its application of loss of good time because other inmates received less good time for similar disciplinary convictions, thus violating its disciplinary policy, this argument is without any factual support. As Appellant acknowledges in his Brief, a disciplinary hearing officer has many different factors to consider when determining what sanctions are appropriate punishment for a particular inmate’s misconduct. (See Brief of Appellant, p. 8). The fact that other inmates did not lose good time for similar disciplinary convictions, standing alone, proves nothing.

Furthermore, for the record, Appellant's assertion that there is an "unwritten policy and procedure" that inmates serving 85% sentences never serve more than 85% of their sentences is completely incorrect. (See Brief of Appellant, p. 8). It frequently happens that 85% inmates who either lose good time credits through disciplinary convictions or who fail to work a steady job serve between 85% and 100% of their sentences. 85% is merely the minimum amount of time a "no parole" inmate has to serve, but if he or she fails to earn all of the credits allowed by law for 85% offenders, he or she could serve up to 100% of the sentence. See S.C. Code § 24-13-150 (A) ("Notwithstanding any other provision of law. . . , an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.") (emphasis added); see also S.C. Code § 24-13-210 (B) (providing that 85% inmates "whose record of conduct shows that [they] have faithfully observed all the rules of the institution where [they are] confined and [have] not been subjected to punishment for misbehavior" are entitled to three days per month of good time credit); S.C. Code § 24-13-230 (B) (providing that 85% inmates who are "assigned to a productive duty assignment" are entitled to six days per month of work credit).

In sum, since all of Appellant's contentions are without merit, and the Administrative Law Judge correctly dismissed Appellant's appeal, Respondent respectfully requests that the order of the lower court be upheld.

CONCLUSION

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

Respectfully submitted,

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January 17, 2017

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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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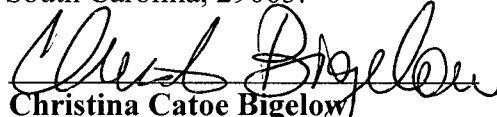
v.

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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's attorney, addressed as follows: Tommy A.
Thomas, Esquire, Post Office Box 88, Irmo, South Carolina, 29063.


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