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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Terry Davis, # 197349,)	Docket No.: 17-ALJ-04-0219-AP
Appellant,)	<u>Grievance No.: LIWC 17-17</u>
)	
v.)	Hon. H.W. Funderburk, Jr.
)	
South Carolina Department of Corrections,)	RESPONDENT'S MOTION TO
)	DISMISS
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Terry Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant is appealing SCDC's final agency decision of April 17, 2017 that denied Appellant's Step 2 grievance.

On February 17, 2017, Appellant filed a Step 1 grievance requesting immediate release from custody. On March 14, 2017, SCDC denied the Step 1 grievance. Thereafter, on March 17, 2017, Appellant filed a Step 2 grievance requesting that SCDC reconsider its decision. On April 17, 2017, SCDC denied the Step 2 grievance, and this appeal followed.

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, 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 affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), 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), *supra*, the South Carolina 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).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Recently, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

ARGUMENT

Appellant contends that he should be released from SCDC custody because the Omnibus Crime Reduction and Sentencing Reform Act of 2010 "repealed" S.C. Code § 16-3-620, Assault and Battery with Intent to Kill (ABWIK). However, the South Carolina Supreme Court held that such "collateral attacks challenging the validity of a conviction or sentence,"

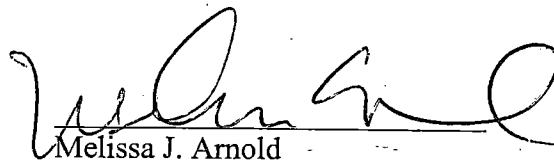
should be done through the PCR process. *Al-Shabazz v. State*, 338 S.C. 354, 383 (2000). Further, the Court held that the ALC's jurisdiction was limited to, *inter alia*, cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 449 (2003). Here, Appellant is not complaining that SCDC has erroneously calculated his sentence, sentence-related credits, or custody status. Appellant complains only that because of a change in the laws, that his conviction is no longer valid, thus, he should be released from state custody. This issue is not one that the South Carolina Supreme Court or the state legislature intended for inmates to bring in the ALC. Therefore, Appellant's case should be dismissed.

CONCLUSION

Because Appellant has not presented any evidence or facts to sustain that SCDC has erroneously calculated his sentence, sentence-related credits, or custody status, this Court should dismiss this appeal.

Respectfully Submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



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August 23, 2017

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Imputed appealed DOC determination of the AC