

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 17-ALJ-04-0560-AP
Appellate Case No. 2018-000550

RECEIVED
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SC Court of Appeals

ALARIC WAYNE HUNT, # 151418,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
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South Carolina Dept. 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 DID NOT LOSE ANY ACCRUED GOOD TIME AS A RESULT OF HIS DISCIPLINARY CONVICTION.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Alaric Wayne Hunt, an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of SCDC disciplinary offense number 903, “Use or Possession of Narcotics,” on May 15, 2017. Sanctions did not include any loss of accrued good time.

Appellant submitted a Step One Grievance on May 17, 2017, arguing that his conviction was wrongfully obtained because he was not given sufficient time to produce a specimen for the drug test; because the hearing officer refused to consider allegedly relevant evidence; because the officer administering the drug test allegedly mismanaged the test and violated policy. (See Step 1 Grievance Form). The Step One was denied on June 8, 2017. Appellant submitted a Step Two Grievance on June 19, 2017, which was denied on September 20, 2017. (See Step 2 Grievance Form). Appellant appealed to the Administrative Law Court on October 13, 2017. On March 12, 2018, Administrative Law Judge S. Phillip Lenski issued an Order of Dismissal. In this Order, Judge Lenski summarily dismissed the appeal because the sanctions for Appellant’s offense did not include a loss of accrued good time credits. (See Order of Dismissal). 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 DID NOT LOSE ANY ACCRUED GOOD TIME AS A RESULT OF HIS DISCIPLINARY CONVICTION.

The Administrative Law Court's ("ALC's") authority over inmate appeals is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and subsequent opinions related thereto. In Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003), the South Carolina Supreme Court held that 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. The liberty or property interest implicated must be one that is state created. See Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's authority 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."). Summary dismissal of an inmate appeal is appropriate where the appeal does not implicate a state-created liberty or property interest. Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

In this case, Appellant asserts that his May 15, 2017 disciplinary conviction should be overturned. However, Appellant lost no accrued good time as a result of this infraction. (See Disciplinary Hearing Report and Record). No state-created liberty interest is implicated in this

matter. Accordingly, pursuant to Slezak, it was proper for the ALC to summarily dismiss the appeal.¹ Slezak, 361 S.C. at 331, 605 S.E.2d at 508; see also Al-Shabazz v. State, 338 S.C. 354, 382, 527 S.E.2d 742, 757 (2000) (“Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions.”).

¹ As to Appellant’s argument that the ALC’s dismissal of his appeal on the ground that he failed to timely file a brief was improper (see Brief of Appellant, p. 6-8), this argument is unavailing where the ALC **also** dismissed his appeal because no state-created liberty interest was implicated. (See Order of Dismissal, p. 2-3). Appellant’s other arguments are conclusory, without relevant supporting authority, and/or are not preserved for review because they were not raised in the Step 1 or Step 2 Grievances below. Accordingly, these arguments should be summarily dismissed. See, e.g., Rule 208(b)(1)(B), SCACR (providing broad general statements of issues made by an appellant may be disregarded by this court); R & G Constr., Inc. v. Lowcountry Reg’l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) (holding an issue is abandoned if the appellant’s brief treats it in a conclusory manner); State v. Colf, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned), *aff’d as modified on other grounds*, 337 S.C. 622, 525 S.E.2d 246 (2000); Carolina Water Serv., Inc. v. Lexington County Joint Mun. Water & Sewer Comm’n, 367 S.C. 141, 149, 625 S.E.2d 227, 231 (Ct. App. 2006) (“A reference to supporting authority without any discussion of [its] applicability is conclusory and constitutes an abandonment of the party’s reliance on those cases.”), *rev’d on other grounds*, 373 S.C. 96, 644 S.E.2d 681 (2007); State v. King, 349 S.C. 142, 157, 561 S.E.2d 640, 648 (Ct. App. 2002) (finding an argument conclusory and the issue abandoned when appellant merely argued the trial court’s ruling was erroneous and prejudicial and cited an evidentiary rule); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].”); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (a party must object at his first opportunity to preserve an issue for appellate review).

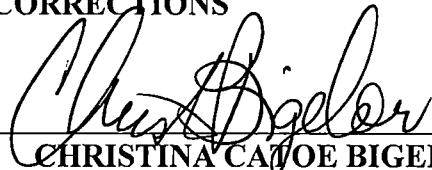
CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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BY:



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July 2, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

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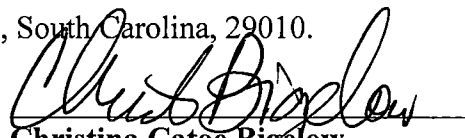
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

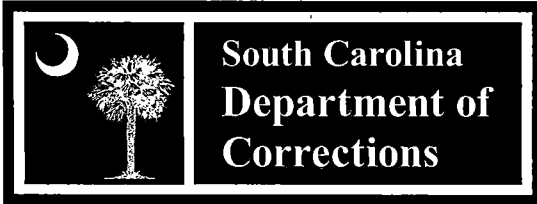
RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this 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: Alaric Wayne Hunt, # 151418, Lee Correctional Institution, F6-1212-T, 990 Wisacky Highway, Bishopville, South Carolina, 29010.


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July 2, 2018



HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

July 2, 2018

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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SC Court of Appeals

RE: Alaric Wayne Hunt, # 151418, v. South Carolina Department of Corrections
Appellate Case No. 2018-000550

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** 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
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South Carolina Department of Corrections

cc: Alaric Wayne Hunt, # 151418
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