

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 18-ALJ-04-0224-AP
Appellate Case No. 2018-001307

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SEP 19 2018

SC Court of Appeals

Sanyika Askari, #236679.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST?

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Henry Fuller a.k.a. Sankyika Askari (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On December 16, 2017, Appellant filed a Step 1 grievance alleging that SCDC had improperly classified him based on an old overturned escape charge and requesting to be reclassified. On February 13, 2018, SCDC denied the Step 1 grievance. Thereafter, on February 13, 2018, Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance. On April 11, 2018, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. On July 2, 2018, Administrative Law Judge S. Phillip Lenski dismissed Appellant’s appeal. 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 the 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 APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST.

The ALC's jurisdiction to hear inmate appeals of final decisions by the South Carolina Department of Corrections 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. Additionally, 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).

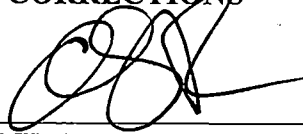
This case is a prime example of a case that should be dismissed under *Slezak* and *Skipper*. Appellant argues that SCDC has improperly considered an old escape charge in order to “justify housing [him] in a supermaxium [*sic*] facility for 6 yrs and has deprived [him] of an opportunity to work in the P.I. Program...[.]” See Appellant’s Notice of Appeal. Appellant has no liberty interest in having a particular security or custody status as long as the security or custody status does not implicate a constitutional right or exceed the limits of his sentence. *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). Appellant’s classification as an offender who should be housed in a “supermax” institution or one who is not appropriate for participation in the Prison Industries program does neither. Thus, this classification is a matter best left to the discretion of prison officials. *Id* at 194, 470 S.E. 2d at 851. Therefore, no state-created liberty or property interest is implicated in this case and Judge Lenski’s July 2, 2018 dismissal of this appeal was proper.

CONCLUSION

The Administrative Law Court's decision below is supported by substantial evidence and is neither effected by legal error nor clearly erroneous in view of the whole record. Thus it should be upheld.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



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September 17, 2018

THE STATE OF SOUTH CAROLINA
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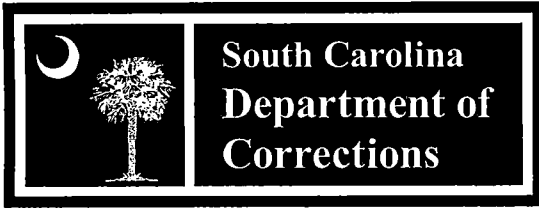
South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I 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: Sanyika Askari a.k.a. Henry Fuller, #236679, Allendale Correctional Institution, P.O. Box 1151, Fairfax, South Carolina, 29827.

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OFFICE OF GENERAL COUNSEL

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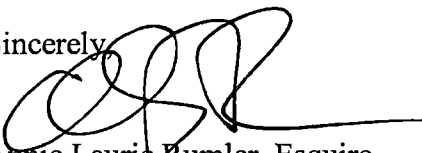
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Reference: App. Case No.: 2017-001484 (*Sanyika Askari*, #236679
v. South Carolina Department of Corrections)

Dear Madam Clerk:

Enclosed, please find of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal. Thank you.

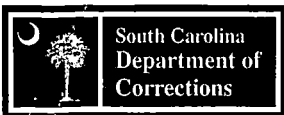
Sincerely,



Annie Laurie Rumler, Esquire

Enclosure

cc: Sanyika Askari, #236679



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