

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

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ALC Case No. 18-ALJ-04-0211-AP  
Appellate Case No. 2018-001896

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**RECEIVED**  
JAN 02 2019  
SC Court of Appeals

SHAWNDELL M. MCFARLIN, # 200701,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

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**INITIAL BRIEF OF RESPONDENT**

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**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Christina Catoe Bigelow**  
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**STATEMENT OF ISSUE ON APPEAL**

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S COMPLAINT THAT HE WAS WRONGFULLY TERMINATED FROM HIS PRISON INDUSTRY JOB DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.**

## **STATEMENT OF THE CASE**

This matter comes before this Court pursuant to the appeal of Shawndell M. McFarlin, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One Grievance on February 23, 2018, arguing that he was wrongfully terminated from his prison industries job. Following the denial of his Step One Grievance, Appellant submitted a Step Two Grievance on March 11, 2018, which was also denied. Appellant appealed to the Administrative Law Court on May 3, 2018, and on October 10, 2018, Administrative Law Judge H.W. Funderburk, Jr., issued an Order of Dismissal. In this Order, Judge Funderburk dismissed the appeal because Appellant's grievance 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 THAT HE WAS WRONGFULLY TERMINATED FROM HIS PRISON INDUSTRY JOB DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.**

Appellant argues that he was “wrongfully terminated” from his prison industries job in September of 2016 and states he is seeking back pay<sup>1</sup> and reinstatement<sup>2</sup>. The Administrative Law Court (ALC) properly dismissed Appellant’s appeal because Appellant did not have a state-created interest in his employment with the prison industries program.

The jurisdiction of the ALC to hear this matter was 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). 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). The Sullivan court held that the ALC's jurisdiction was limited to cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; cases in which SCDC has taken an inmate’s created liberty interest as punishment in a major disciplinary hearing; and cases in which an inmate’s confinement implicates a state-created liberty or property interest. See Sullivan at 443-44, 586 S.E.2d at 127. In Slezak v. S.C. Dep’t of Corr., 361 S.C. 327, 332 605 S.E.2d 506, 508 (2004), the Supreme Court stated that the ALC must provide minimal due process for state-created liberty or property interests. However, the Slezak court also indicated that summary

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<sup>1</sup> As the Order of Dismissal properly points out, the ALC does not have jurisdiction to hear civil tort claims or award money damages such as back pay. See, e.g., S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists, Inc., 390 S.C. 182, 187, 700 S.E.2d 468, 470 (Ct. App. 2010).

<sup>2</sup> Appellant’s claim regarding reinstatement is moot in any event as he was returned to the position on December 4, 2018. See <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000200701>.

dismissal is appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. Slezak at 333, 605 S.E.2d at 509.

In Skipper v. S.C. Dep't of Corr., 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006), this Court held that an inmate's participation in a prison industries work program is "not a right, but a privilege." Skipper at 275, 633 S.E.2d at 915. This Court further held that "because there is no statutorily-created right for an inmate to participate in the program or remain in the program indefinitely . . . there does not exist a state-created liberty interest." Id. at 277-78, 633 S.E.2d at 916.<sup>3</sup>

Here, Appellant's claim does not implicate a state-created liberty or property interest; therefore, the ALC properly dismissed the case.

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<sup>3</sup> Appellant's reliance on the Torrence/Ward case is misplaced because that case dealt with prevailing wage claims and claims related to escrowed funds. See Torrence & Ward v. S.C. Dep't of Corr., 373 S.C. 586, 646 S.E. 2d 866 (2007). Only pay-related types of prisoner employment claims can be adjudicated in the ALC. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) (holding that inmates working in the prison industry program have a state-created interest in being paid according to the statutory scheme governing the program; therefore, prevailing wage claims are appropriate for the internal grievance procedure with recourse to the ALC).

**CONCLUSION**

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:

  
**CHRISTINA CATOE BIGELOW**

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January 2, 2019

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

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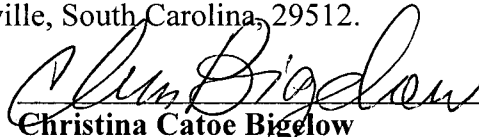
RESPONDENT.

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**CERTIFICATE OF SERVICE**

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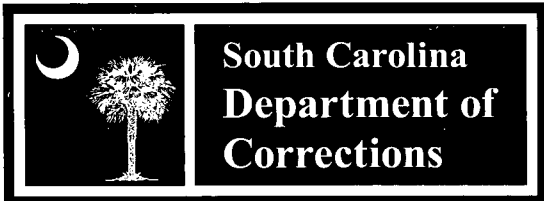
Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Shawndell M. McFarlin, # 200701, Evans Correctional Institution, 610 Highway 9 West, Bennettsville, South Carolina, 29512.



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South Carolina  
Department of  
Corrections

HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

January 2, 2019

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: Shawndell M. McFarlin, # 200701, v. South Carolina Department of Corrections**  
**Appellate Case No. 2018-001896**

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  
Deputy General Counsel  
South Carolina Department of Corrections

cc: Shawndell M. McFarlin, # 200701  
Evans Correctional Institution  
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Bennettsville, South Carolina 29512

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