

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

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ALC Case No. 18-ALJ-04-0016-AP  
Appellate Case No. 2018-001555

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Frank Mitchell Gaster, #153004.....Appellant,

v.

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

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INITIAL BRIEF OF RESPONDENT

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**RECEIVED**

JAN 23 2019

**SC Court of Appeals**

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Annie Laurie Rumler**

Staff Attorney

Office of General Counsel

South Carolina Dept. of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1355

**ATTORNEY FOR RESPONDENT**

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**STATEMENT OF THE ISSUE ON APPEAL**

**DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS 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 Frank Mitchell Gaster (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On September 1, 2017, Appellant filed a Step 1 grievance alleging that SCDC had improperly classified him and requesting to be reclassified. *See* Step 1 Grievance. On October 18, 2017, SCDC denied the Step 1 grievance. Thereafter, on October 22, 2017, Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance. *See* Step 2 Grievance. On December 7, 2017, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. *See* Appellant’s Notice of Appeal to the Administrative Law Court. On May 22, 2018, Administrative Law Judge S. Phillip Lenski dismissed Appellant’s appeal. *See* Judge Lenski’s May 22, 2018 Order. 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 by the ALC under *Slezak* and *Skipper*. Appellant asserts that SCDC classified him inappropriately. *See* Appellant’s Administrative Law Court Brief, p. 1. Specifically, he asserts that he should be classified as “MI-1” instead of “MI-2.” *See* Appellant’s Step 1 grievance. 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 MI-2, as opposed to MI-1, does not implicate a constitutional right or exceed the limits of his sentence. Therefore, no state-created liberty or property interest is implicated in this case and Judge Lenski’s May 22, 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**



---

**ANNIE LAURIE RUMLER**  
South Carolina Bar # 101851  
Staff Attorney  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-1355

January 18, 2019

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-04-0016-AP  
Appellate Case No. 2018-00155

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SC Court of Appeals

Frank Mitchell Gaster, #153004.....Appellant,

v.

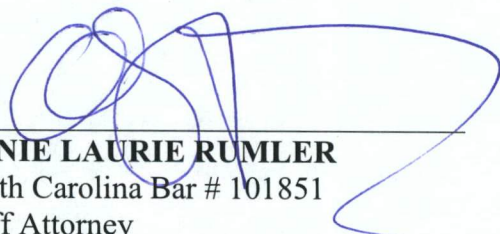
South Carolina Department of Corrections.....Respondent.

**RESPONDENT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent submits that the following should be included in the Record on Appeal:

- (1) Step 1 and Step 2 Grievance Forms;
- (2) ALC filings; and
- (3) Administrative Law Judge Lenski's Order of Dismissal dated May 22, 2018.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

  
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**ANNIE LAURIE RUMLER**  
South Carolina Bar # 101851  
Staff Attorney  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
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**CERTIFICATE OF SERVICE**

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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: Frank Mitchell Gaster, #153004, Dorm-Room-Bunk: 1A-0197-A, Evans Correctional Institution, Post Office Box 2951202, Bennettsville, South Carolina, 29512.



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Staff Attorney  
Office of General Counsel  
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Respectfully submitted,

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**ANNIE LAURIE RUMLER**  
South Carolina Bar # 101851  
Staff Attorney  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
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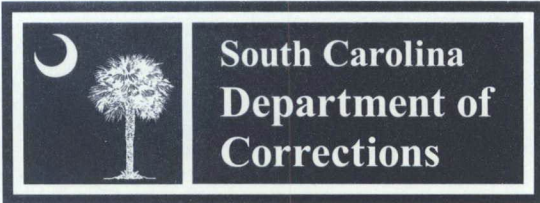
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Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Frank Mitchell Gaster, #153004, Dorm-Room-Bunk: 1A-0197-A, Evans Correctional Institution, Post Office Box 2951202, Bennettsville, South Carolina, 29512.



**Annie Laurie Rumler**  
Staff Attorney  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-1355

January 18, 2019



HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

**OFFICE OF GENERAL COUNSEL**

January 18, 2019

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SC Court of Appeals

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

Reference: App. Case No.: 2018-001555 (*Frank Mitchell Gaster, #153004*  
*v. South Carolina Department of Corrections*)

Dear Madam Clerk:

Enclosed, please find the original and one copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal. Please file the original and return a clocked-in copy to me in the enclosed self-addressed envelope. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Annie Laurie Rumler", is written over a horizontal line. The signature is stylized and cursive.

Annie Laurie Rumler, Esquire

Enclosure

cc: Frank Mitchell Gaster, #153004



**SOUTH CAROLINA**

DEPARTMENT OF CORRECTIONS

*Office of General Counsel*

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787

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