

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No. 11-ALJ-04-0888-AP

Mekiel Mitchell, # 232904.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

July 12, 2012

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST?

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Mediel Mitchell (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on April 26, 2010, complaining he was not permitted to receive publications through the mail because he was housed in the special management unit (“SMU”). The grievance was investigated and denied. (R.p.18). Appellant filed a Step Two Grievance, which was denied because appellant was no longer confined in SMU. (R.p.19).

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R.p.22). In an order dated November 17, 2011, Administrative Law Judge Shirley C. Robinson dismissed the appeal because no state created liberty or property interest was implicated. (R.p.1).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision in be affirmed.

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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole,

evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id. at 420.

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT HAS NOT BEEN DEPRIVED OF A STATE-CREATED LIBERTY INTEREST.

The ALC's jurisdiction to hear this matter 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). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's 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, the ALC "should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006).

In the case at hand, appellant claimed in his grievance that he had been improperly denied the ability to receive publications through the mail while housed in SMU. (R.p.18). As the response to appellant's Step Two grievance explained, an inmate housed in SMU is allowed only one book or magazine, issued from Library Services, at any given

time. In addition, appellant was no longer housed in SMU, and therefore the policy in question no longer applied to him. Therefore, the grievance was denied. (R.p.20).

In dismissing appellant's appeal to the ALC, Administrative Law Judge Shirley C. Robinson ruled appellant had not been deprived of a state-created liberty interest. Judge Robinson noted that when a grievance appeal did not implicate a state-created liberty or property interest, the ALC may dismiss the appeal at its discretion. Therefore, Judge Robinson dismissed the appeal with prejudice. (R.p.1).

The ALC correctly dismissed appellant's appeal because appellant was not deprived of a liberty interest in this matter such that review by the ALC was merited. Typically, an appeal will merit review by the ALC, if it arises in one of two ways: (1) when an inmate is disciplined and sufficient punishment is imposed; or (2) when an inmate is challenging the calculation of his sentence. See Sullivan v. SCDC, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003) (citing Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750). Neither is the case in the present appeal since appellant did not challenge any disciplinary conviction or the calculation of his sentence. Instead, appellant simply alleged he was not permitted to receive publications through the mail pursuant to SCDC policy because he was housed in SMU. In view of the response to appellant's grievance, it is clear the policy in question no longer applied to him because since he was no longer housed in SMU. (R.p.20). Moreover, even while housed in SMU, appellant was permitted to receive one book or magazine from Library Services. (R.p.20). Therefore, the ALC correctly dismissed the appeal because it did not implicate a liberty interest sufficient to warrant review. See Sandin v. Conner, 515 U.S. 472 (1995) (recognizing

that inmates' liberty interests protected by the Due Process clause are generally limited to "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life").

In his brief, appellant argues it was a violation of procedural due process that the ALC refused to consider his petition for rehearing. Appellant's argument is without merit for two reasons. First, because the ALC correctly summarily dismissed the appeal, its refusal to consider appellant's petition for rehearing had no practical impact on the disposition of the case. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that a court need not reach remaining issues if one issue is dispositive of the appeal). Second, contrary to appellant's contention, procedural due process does not require a court to permit petitions for rehearing. See Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 756 ("[T]he process due an inmate – as well as the level of judicial scrutiny – in a custody status case or a minor disciplinary hearing in which an inmate does not face the loss of sentence-related credits is further limited by the fact that neither of those matters is a protected liberty interest within the scope of the Fourteenth Amendment."); Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.").

No liberty interest was implicated by appellant's appeal. Accordingly, the ALC correctly dismissed the appeal.

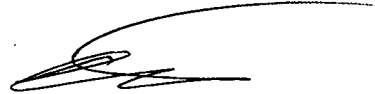
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the
ALC's decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
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July 12, 2012

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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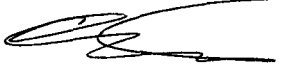
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South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on July 12, 2012, addressed to the Appellant as follows:

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