

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 18-ALJ-04-0063-AP
Appellate Case No. 2018-000722

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SC Court of Appeals

Darrell Sturkey, # 182368.....Appellant,

v.

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

AMENDED INITIAL BRIEF OF RESPONDENT

May 2, 2019

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. THE ADMINISTRATIVE LAW COURT LACKED JURISDICTION OVER APPELLANT'S APPEAL BECAUSE HE DID NOT SERVE RESPONDENT WITH A NOTICE OF APPEAL.**

- II. DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS APPELLANT'S APPEAL BECAUSE THE APPEAL DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Darrell Sturkey (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On August 25, 2017, Appellant filed a Step One Grievance alleging that there was insufficient evidence to convict him of Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics, offense 901 of the SCDC disciplinary system. *See* Step 1 Grievance. On December 6, 2017, SCDC denied the Step 1 grievance. Thereafter, on December 15, 2017, Appellant filed a Step 2 Grievance appealing the disposition of his Step One Grievance. *See* Step 2 Grievance. On January 31, 2018, SCDC denied the Step 2 Grievance, and Appellant appealed to the Administrative Law Court. On March 21, 2018, Administrative Law Judge Shirley C. Robinson dismissed Appellant’s appeal. *See* Judge Robinson’s March 21, 2019 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 of 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(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the Administrative Law Court's (ALC) 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.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT LACKED JURISDICTION OVER APPELLANT'S APPEAL BECAUSE HE DID NOT SERVE RESPONDENT WITH A NOTICE OF APPEAL

Appellant failed to serve a notice of appeal on Respondent in compliance with SCALC Rule 59.¹ Even though Appellant served the ALC with his notice of appeal, Appellant was also required to serve the agency with a notice of appeal within thirty (30) days after receiving the final agency decision. Timely filing and service of a notice of appeal is a jurisdictional requirement and the ALC does not have the authority to extend or expand the time for filing a notice of appeal. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Appellant had an obligation to advance his position and had ample time to do so. Prior to the ALC dismissing Appellant's appeal, Appellant did not give the ALC or Respondent a reason for failing to serve his notice of appeal on the agency. Therefore, the Administrative Law Court lacked jurisdiction in this appeal. Because the ALC lacked jurisdiction over this appeal, this Court should dismiss it.

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

To the extent the Court declines to grant the above motion, Respondent requests

¹ The Administrative Law Court dismissed this case *sua sponte*, therefore Respondent did not have the opportunity to raise this argument.

that the Court affirm the ALC's decision to dismiss this appeal because no state created liberty or property interest is implicated in this appeal. 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).

The law governing this specific type of inmate appeal is clear. S.C. Code Ann. § 1-23-600(D) provides:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A).

By its plain meaning, § 1-23-600(D) precludes the ALC from hearing all inmate appeals involving the loss of the opportunity to earn sentence-related credits. See Howard v. S.C. Dep’t of Corr., 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012) (holding that “the plain terms of section 1–23–600(D) precludes [*sic*] the ALC from hearing *all* inmate appeals involving the loss of the opportunity to earn sentence-related credits” and that “the Legislature definitively limited the parameters of the ALC’s subject matter jurisdiction” regarding this specific type of inmate appeals) (emphasis in original). Although the ALC “may not summarily decline to hear an inmate appeal solely on the ground that it involves the loss of the opportunity to earn sentence-related credits[,]” this case does not involve a separate and distinct state-created liberty or property interest as contemplated by Howard. Id. at 629, 733 S.E.2d at 218.

Here, Appellant did not lose any good time because of a disciplinary conviction. Instead, Appellant failed to earn any good time for the month the disciplinary infraction occurred. *See* Step 2 Grievance. Therefore, Appellant’s appeal does not implicate a state-created liberty or property interest. Since Appellant did not lose any good time as a result of his disciplinary hearing, Judge Robinson’s March 21, 2019 dismissal was proper under Howard.

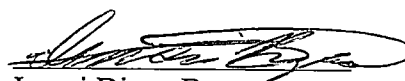
CONCLUSION

WHEREFORE, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Attorney for Respondent



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Columbia, South Carolina
May 2, 2019

THE STATE OF SOUTH CAROLINA
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Administrative Law Judge Shirley C. Robinson

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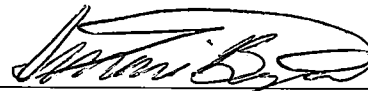
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Amended Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, May 2, 2019, addressed to the Appellant as follows:

Darrell Sturkey, # 182368
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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

May 2, 2019

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

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RE: Darrell Sturkey, #182368, v. South Carolina Department of Corrections
Appellate Case No. 2018-000722

Dear Ms. Kitchings:

Enclosed please find Respondent's **Motion to File an Amended Initial Brief and Amended Initial Brief of Respondent** 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,

Imani Diane Byas
Staff Attorney
South Carolina Department of Corrections

cc: Darrell Sturkey, # 182368
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