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JUL 23 2019

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Marquis Jarius Robinson, #266341,
Appellant,
v.
South Carolina Department of Corrections,
Respondent.

) Docket No.: [19-ALJ-04-0169-AP]
) [Grievance No.: [MCCI 161-19]]

) *Hon. Milton G. Kimpson*

) **RESPONDENT'S MOTION TO
DISMISS PURSUANT TO HOWARD
V. S.C. DEP'T OF CORR. AND S.C.
CODE ANN. § 1-23-600(D)**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Marquis Jarius Robinson ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing SCDC's final agency decision of February 28, 2019 that denied Appellant's Step 2 grievance.

On February 4, 2019, Appellant filed a Step 1 grievance requesting that his January 25, 2019 conviction for offense 904, Possession of Escape Tools and/or Paraphernalia, be overturned. On February 11, 2019, the agency denied the Step 1 grievance. Thereafter, on February 13, 2019, Appellant appealed the denial and filed a Step 2 grievance. On February 28, 2019, SCDC denied the Step 2 grievance, and this appeal followed.

To clarify, Appellant did not lose any good time as a result of his disciplinary conviction. Instead, Appellant failed to earn good time for the month in which the disciplinary infraction occurred. Pursuant to S.C. Code Ann. § 24-13-210, inmates convicted of crimes against the State may earn good-time credits; these credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior. S.C. Code Ann. §§ 24-13-210(A)-(B). Inmates convicted of offenses other

than “no-parole” offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month. *Id.* However, these same provisions—*i.e.*, §§ 24-13-210(A) and (B)—make the earning of good time for a particular month contingent upon an inmate’s good behavior. *See, e.g.*, § 24-13-210(A) (granting good time credits for a month of time served, *provided that* the inmate “has not been subjected to punishment for misbehavior”) (emphasis added). In concert with this statutory language, SCDC, through Policy OP-21.11, Loss of Statutory Good Time, provides for an inmate’s failure to earn good time for a given month upon the inmate’s violation of a rule.¹

STANDARD OF REVIEW

The ALC’s jurisdiction to hear this matter 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

¹ A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept the informal resolution, the incident may be referred to a disciplinary hearing, where the

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.

ARGUMENT IN SUPPORT OF MOTION TO DISMISS

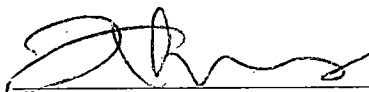
In the instant case, Appellant claims that his conviction for offense 904, Possession of Escape Tools and/or Paraphernalia, be overturned. However, Appellant lost no good time due to this conviction; he failed to earn good time for the month of January 2019. *See* Step Two Grievance. No other state-created liberty or property interest is implicated in this case. Therefore, pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D), the ALC should dismiss this appeal.

CONCLUSION

For the foregoing reasons, SCDC respectfully requests that the Court dismiss this appeal pursuant to *Howard* and S.C. Code Ann. § 1-23-600(D).

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Kensey Barrett Evans
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

June 10, 2019
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Marquis Jarius Robinson, #266341,

Appellant,

vs.

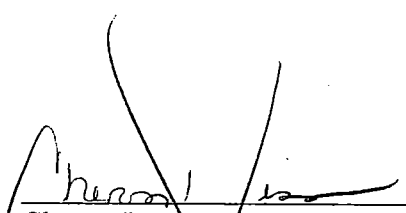
South Carolina Department of Corrections,

Respondent.

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) **Certificate of Service**
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) Docket# 19-ALJ-04-0169-AP
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I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Marquis Jarius Robinson
Inmate Number: 266341
McCormick Correctional Institution
Dorm-Room-Bunk: F4-0244-A


Cheron Hess
Administrative Assistant
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

June 10, 2019



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

June 10, 2019

The Honorable Milton G. Kimpson
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Marquis Jarius Robinson, #266341, vs. SCDC
Docket No. 19-ALJ-04-0169-AP

Dear Judge Kimpson:

Find enclosed an original and one copy of the *Respondent's Motion to Dismiss Pursuant to Howard v. South Carolina Department of Corrections and S.C. Code Ann. § 1-23-600(D)* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Marquis Jarius Robinson, #266341
File

RECEIVED
JUL 29 2019

RI The ADMIN LAW COURT

SC Court of Appeals

Marquis Roberson

Appellant

CASE#

MCCT

~~Motions for Reconsideration~~

v.

~~are prohibited.~~

SCAC

Respondent

Rule SCAC 65
SCAC 65

Judge Kimpson

MOTION to SET ASIDE

JUDGMENT

The Appellant Assents that the Rules of ALC were violated in SCAC did not provide Record on Appeal and TWO days after SCAC motion to dismiss was mailed

JUNE 10, 2019 AND CASE WAS DISMISSED

without the Appellant having time to submit

that his Custody AND 20 DAYS LOSS of

Goodtime for the month Implicate a

Liberty Interest, Appellant does not even

have benefit of R.O.A. OR opportunity

to Due Process

to Report

FILED LEGAL MAIL

JUN 26 2019

MAIL ROOM

SC ADMIN. LAW COURT

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Memorandum

TO: Appellant
From: Clerk's Office, Administrative Law Court
Re: Filing Fee

If you file more than 3 administrative appeals during a calendar year, you are required to pay a \$25 filing fee pursuant to S.C. Code Ann. §1-23-670, which states in part:

"No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee."

Our records indicate you have filed _____ appeals in this calendar year and therefore the appeal attached is being returned and will not be processed unless it is accompanied by the appropriate fee.

Dear Appellant:

4/11/2019

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Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

| Case number | Inmate number | Inmate first name | Inmate last name | Grievance No | Respondent | Filing date | Date Assigned | Judge last name |
|-------------|---------------|-------------------|------------------|--------------|------------|-------------|---------------|-----------------|
| 19C0169 | 266341 | MARQUIS | ROBINSON | MCCI 161-19 | DOC | 3/29/2019 | 4/11/2019 | KIMPSON |

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

FILED

APR 11 2019

SC ADMIN. LAW COURT