

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 17-ALJ-04-0591-IJ
Appellate Case No. 2018-000035

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SEP 30 2019
SC Court of Appeals

ISIAH JAMES, JR.,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

NONE OF THE ISSUES RAISED BY APPELLANT ARE PRESERVED FOR APPELLATE REVIEW BECAUSE THE ADMINISTRATIVE LAW COURT DISMISSED THE MATTER ON PROCEDURAL GROUNDS AND DID NOT RULE UPON THE MERITS OF ANY OF APPELLANT'S ISSUES.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Isiah James, Jr., a former inmate of the South Carolina Department of Corrections (“SCDC”).¹ Appellant submitted a Step One Grievance on February 21, 2017, arguing that his release date had been improperly calculated. (See Step 1 Grievance). Following the denial of his Step One, Appellant submitted a Step Two Grievance on April 10, 2017, which was denied on May 15, 2017. (See Step 2 Grievance). Appellant submitted an appeal to the Administrative Law Court on November 21, 2017. On December 29, 2017, Administrative Law Judge Shirley C. Robinson issued an Order of Dismissal dismissing the appeal on procedural grounds. (See 12/29/17 Order of Dismissal). Subsequently, on January 12, 2018, Judge Robinson issued a second Order dismissing the appeal on different procedural grounds; specifically, that Appellant was raising issues that were already decided in a previous appeal which resulted in an Order of Remand issued June 15, 2017. (See 1/12/18 Order and 6/15/17 Order of Remand).

Appellant filed a Notice of Appeal in this Court dated January 7, 2018, along with a Motion to Proceed in Forma Pauperis. The Motion to Proceed in Forma Pauperis was denied on February 2, 2018. The appeal was dismissed on March 27, 2018, after Appellant failed to pay the appropriate filing fee. After his Motion to Reinstate was denied, Appellant filed a Petition for a Writ of Certiorari and Motion to Proceed in Forma Pauperis in the South Carolina Supreme Court. On May 13, 2019, the Supreme Court granted Appellant’s Motion to Proceed in Forma Pauperis and remanded the case to the Court of Appeals. Respondent filed a Motion to Remand to the Administrative Law Court on July 1, 2019. This motion was denied by Order dated August 30, 2019.

¹ Appellant was released on parole in December of 2017, and his parole was transferred to the state of Georgia, where Appellant is currently residing. However, issues regarding his sentence calculation are arguably not moot because they could affect the end date of his parole and because these concerns would be reactivated if he were to violate the terms of his parole and return to the Department of Corrections.

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

NONE OF THE ISSUES RAISED BY APPELLANT ARE PRESERVED FOR APPELLATE REVIEW BECAUSE THE ADMINISTRATIVE LAW COURT DISMISSED THE MATTER ON PROCEDURAL GROUNDS AND DID NOT RULE UPON THE MERITS OF ANY OF APPELLANT'S ISSUES.

It is well-settled that an issue cannot be raised for the first time on appeal; instead, it must have been raised to and ruled upon by the lower court to be preserved for appellate review. See, e.g., Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 576 (1997). Error preservation requirements are intended “to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also State v. Nelson, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998) (“[T]he ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court.”). Without an initial ruling by the lower court, a reviewing court is simply not able to evaluate whether the lower court committed error. Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

In the case at bar, none of the issues being raised by Appellant on appeal were addressed by the Administrative Law Court below. Instead, the Administrative Law Court dismissed the matter on procedural grounds without reaching the merits. Accordingly, Appellant's issues cannot be reviewed on appeal by this Court.

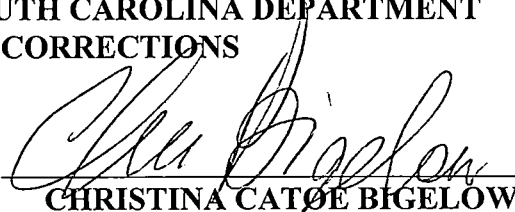
CONCLUSION

For the foregoing reasons, this Court cannot rule on the merits of Appellant's case. Therefore, this Court should either affirm on error preservation grounds or remand the matter to the Administrative Law Court so that the lower court can rule upon the merits of Appellant's issues.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



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September 30, 2019

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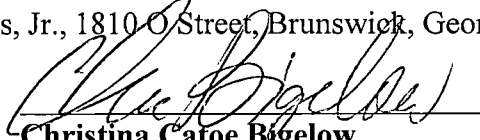
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

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: Isiah James, Jr., 1810 O Street, Brunswick, Georgia 31520-5445.



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September 30, 2019



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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

RE: Isiah James, Jr. v. South Carolina Department of Corrections
Appellate Case No. 2018-000035

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 there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: Mr. Isiah James, Jr.
1810 O Street
Brunswick, Georgia 31520-5445