

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge, H. W. Funderburk Jr.

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ALC Case No. 19C0406

Appellate Case No. 2019 - 001582

Larrell Purvis #

APPELLANT,

v.

South Carolina Department of Corrections,

RESPONDENT.

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INITIAL BRIEF OF APPELLANT

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OCT 22 2019

SC Court of Appeals

Prose Appellant

Larrell Purvis

Allendale C.I.

Barnwell #38

P.O. Box 1151

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SCDC Policy OP.22-14, <https://www.doc.state.sc.us/PolicySearch/html/OP22-14.htm>.

## STATEMENT OF ISSUE ON APPEAL

Did the Administrative Law Court err in dismissing Appellant's appeal where the Court's order addresses a single ground not subject on Appeal before the ALC, where such order is not confined to the record?

## STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of appellant Larrell Purvis in the custody of South Carolina Department of Corrections. On April 5, 2019 Appellant filed a Step 1 Grievance to appeal a major disciplinary hearing conviction for the actual or constructive possession of 17 grams of meth. To wit: knowingly committing the offense of trafficking. On May 22, 2019 the Department of Corrections denied the Step 1 Grievance because it was determined that Appellant's conviction was founded sufficient evidence.

May 24, 2019 Thereafter, Appellant filed a Step 2 Grievance alleging again that his conviction was based without a showing of dominion and control of actual or constructive possession. On July 24, 2019 the Department of Corrections denied the Step 2 Grievance and Appellant again appealed to the Administrative Law Court.

Appellant again alleged no Substantial evidence existed at the SCDC disciplinary hearing to support his trafficking conviction. That his conviction was unconstitutional and contrary to the South Carolina state Law. And controlled by an error of law without his knowingly possession of drugs whether actual or constructive.

On August 23, 2019 Administrative Law Judge H. W. Funderburk Jr. dismissed Appellant's appeal without any findings except one. That (An 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. . .) citing Howard v. S.C. Dept of Corr. 394 S.C. 618, 733 S.E.2d 211 S.C. Code § 23-600(D). This appeal follows.

## STANDARD OF REVIEW

S.C. Code § 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) a violation of constitutional or statutory provisions;
- (b) in excess of 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 § 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 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 judgement for that of the ALC as to findings of fact, but may reverse or modify decisions 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 erred in dismissing Appellant's appeal where the Courts order addresses a single ground not subject on appeal before the ALC, where such order is not confined to the record.

On March 11, 2019 while asleep in his assigned cell the Appellant was awakened by a shakedown officer at Allendale C.I. and this officer directed the Appellant to get dressed. The officer escorted the Appellant from his cell and met with two more contraband officers who came from the top tier. The Appellant was led to Operations area of the prison, put into the holding tank and then addressed by an officer Riley. Appellant asked why was he in the holding tank? Officer Riley responded with "you will find out." Officer Riley showed the Appellant a medicine cup and asked the Appellant about the contents of this cup. The Appellant's response was that he did not know. Thereafter the Appellant was locked up in maximum security and charged with trafficking meth.

On March 21, 2019 Appellant was served with an incident report from the date of his apprehension and an accompanying charging form. (SCDC FORMS 19-29 A and 19-69). See both forms on (ROA) pg 3, 4.

The incident report narrative alleged that an informant told Major Larry Morris that the Appellant had meth in his possession. The shakedown officers recovered meth from an upstairs dayroom converted into a learning center Room #263.

On March 26, 2019 Appellant appeared before the Disciplinary Hearing Officer for trial. Appellant was found guilty of trafficking meth in a trial where he faced no accuser concerning the drugs found in Room #263.

On Appeal before the ALC the precedent authority is Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742 750 (2000). This Court examined Wolff v. McDonnell 418 U.S. 539, 94 S.Ct. 2963 (1974) and according to both precedents an inmate is entitled to appeal an agency decision. Due process is required in a major disciplinary proceeding and the internal procedures afforded to an inmate must be fair and impartial Id. at. 751

The ALC sits in Appellate capacity under S.C. Code § 1-23-380. Al-Shabazz does not restrict an inmate from appealing a major disciplinary proceeding because an inmate raises a question for work credits. According to Wolff and Al-Shabazz a major disciplinary proceeding is appealable and an inmate cannot be deprived of life, liberty, or property without due process of law. Judicial review is an essential part of due process.

Al-Shabazz outlined the the internal process in the Department of Corrections disciplinary hearings and how they are conducted Id. at 751-752 See also footnote 8 The Court encourages in the (DOC) to provide fair hearings to inmates.

Accordingly under S.C. Code § 1-23-380(5) the ALC while sitting in Appellate capacity can order and reverse the (DOC) ruling per statutory law. If The review of the ALC'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
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

According to Al-Shabazz the entire internal process is collected in disciplinary proceedings and made available for the ALC Court review upon an inmates Appeal after the Grievance process.  
Id at 751-752

Since Al-Shabazz does not place any restriction on the Appellant's challenge against the (DOC) trial Court as held by the Court:

(An inmate brings a contested case for purpose[s] of judicial review when he challenges a disciplinary outcome, calculation of sentence relate credits, custody status, or other condition of imprisonment. S.C. Code § 1-23-310 (3) (Supp. 1999) (Contested cases means a proceeding... in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing"). Id at 753

In this particular case the Appellant's case falls within the the first category. He was charged with a 'Major Disciplinary' infraction under SCDC OP-22.14 Inmate Disciplinary

system for a violation of Trafficking Meth which is a Level one disciplinary offense cited as 903, February 20, 2019 SCDC Policy at <https://www.doc.state.sc.us/PolicySearch/html/OP-22-14.htm>

The Appellant's Notice of Appeal Form is the SUBJECT of the ALC's concerning for dismissing Appellant's appeal without looking at the entire Record on the case. Citing an erroneous ruling. Appellant's grounds on the Appeal Form did not cite a ground about not earning work credits. Such an adverse ruling is unsupported by the very grounds raised on the Notice of Appeal Form. See ROA at Appellant's notice of Appeal at pg. 6

Specifically, the grounds raise on the Appellant's appeal are as cited (1) Substantial evidence is not found within this case to support Trafficking Meth in a Major disciplinary hearing and did not establish the offense charged.

(2) The conviction is unconstitutional and contrary to THIS STATE'S law of trafficking and possession of illegal drugs.

(3) The decision is controlled by an error of law. . . that one must knowingly possess a controlled substance, whether it is actual or constructive ROA. at pg. 6

Accordingly, the ALC sits in appellate capacity and has the power to reverse the (DOC's) decision under the S.C. Code 1-23-380 which is identical to this Court's standard of review under S.C. Code 1-23-610(B).

The Appellant believes that the ALC should have been able to review his case within the ambit of the Administrative Procedures Act.

In this case, Appellant "is not appealing the denial of earning future work credits, but rather, is challenging the procedure employed by the (DOC) in reaching it's decision for a conviction of possession and trafficking meth. See Cf Cooper v. s.c. Dept of Prob., Parole and Pardon Services, 377 s.c. 489 502, 661 s.e.2d 106, 113. Appellant did properly bring his Appeal before the ALC.

When acting in appellate capacity, the ALC must apply the criteria of s.c. Code 1-23-380 (5) Id at pg 5 of this brief

The first two provisions require a reviewing court to examine the scope of an agency's authority as revealed by it's actions in carrying out it's enabling legislation. The last four provisions require a reviewing court to examine the procedures used, how governing law was applied, and whether the agency's decision has a basis in fact. For the Court to carry out these duties there must be an adequate record to review.

Furthermore, s.c. Code 1-23-650 (B) and (C) requires the promulgation of rules "governing practice and procedure before the Court." Therefore, the ALC has promulgated the rules of the South Carolina Administrative Law Court. Among them are rules for Special Appeals arising from the South Carolina Supreme Court's decision in Al-Shabazz. See SCALC Rule 51. These cases pursuant to Furtick v. s.c. Dept of Prob., Parole and Pardon Services, 352, s.c. 594, 598-99, 576 s.e.2d 146, 149-50 (2003) see also Sullivan v. s.c. Dept of Corrections 355 s.c. 437, 443, 586 s.e.2d 124, 127 (2003) (explaining the nature of the right to ALC review.

SCALC Rule 58 requires that the record "shall consist of:"

- A. All documents filed;
- B. All evidence received or considered, including copies of all relevant sentencing sheets in sentence calculation matters, and copies of specific policies relied upon by the agency;
- C. A statement of matters judicially noticed;
- D. All proffers of proof of excluded evidence;
- E. The final order or decision which is subject to administrative review;
- F. Any transcript taken of the testimony during the proceeding.

As provided by S.C. Code 44-53-375(C) (Supp. 2018) Possession of 10 grams of Meth but less than 28 grams is a trafficking offense.

This Code provides that a person who is knowingly in active or constructive possession is guilty of trafficking.

The ALC does have the power to inquire whether or not SUBSTANTIAL EVIDENCE existed in this case as the Appellant did appeal. In Al-Shabazz such an inquiry is derived from the directed verdict rule of law. The ALC erred by not adhering to Al-Shabazz and this rule of law. The ALC determination about pursuing work credits is wholly erroneous and unsubstantiated as the ROA appeal shows.

Had the ALC reviewed the 'whole' record

from the (DOC) the ALC would have clearly noticed that the statutory governing law of South Carolina had not been considered at the (DOC) trial. See the (DOC) ROA and tapes of the (DOC) trial in this case. See also ROA Incident Report SCDC FORM 19-29A, ROA pg 4.

One Larry Morris a major at Allendale reported that on March 11, 2019 an informant was summoned to his office at Operations in Allendale Correction.

This informant said that the Appellant had Meth in a ROOM # 263 which is a dayroom converted into a learning center. The Major sent Contraband / Shake down officers to Hampton Unit to investigate. They found Meth in the dayroom then went to the Appellant's assigned cell and locked him up. He was charged and convicted on this incident report alone.

## POSSESSION LAW IN THE STATE OF SOUTH CAROLINA

Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of the drug's presence. Actual possession occurs when the drug are found to be in the actual physical custody of the person charged with possession.

State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). In order to prove constructive possession the State must show the defendant had dominion and control, or the right to exercise dominion and control, over the drug State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976). Such possession can be established by circumstantial evidence or a

combination of the two. Id " Possession requires more than mere presence. The State must show the defendant had dominion and control over the thing allegedly possessed or had the right to exercise dominion and control over it." State V. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 ( Ct. App. 1999). "Where contraband materials are found on premises under the control of the accused, this fact in of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." Hudson 277 at 203, 284 S.E.2d at 775.

Particularly in this case the (DOC) trial court records reveal that the 19-29 A Form Incident Report was the only inference needed to convict the Appellant. As the Appellant lie asleep in his cell he was charged for drugs totally out of his control. And in a place where 125 people frequent, deemed to be under the Appellant's control by the (DOC), then unrecognized by the ALC. Substantial evidence existed in this case and reversal is warranted see State V. Williams 346 S.C. 424, 552 S.E.2d 54 (2001).

This Court should reverse the order of the ALC for failing to adhere to the provisions of S.C. Code 1-23-380(5) accord S.C. code 1-23-610(B) (Supp 2018) (provides that when the issue on appeal raises questions of law, this court may reverse the decision of the ALC).

The Administrative Law Court erred in dismissing Appellant's Appeal where such a dismissal is unsubstantiated by the record.

Considering the ROA before this Court, it must be noticed that the filing date on the Appellant's Notice of Appeal is August 22, 2019 and the ALC dismissed the appeal pursuant to Howard v. S.C. Dep't of Corrections 399 S.C. 618, 733 S.E.2d 211 (2012) (precludes the ALC from hearing all inmate appeals involving the loss of the opportunity to earn sentence related credits); on August 23, 2019 such order was rendered.

Again nowhere in the Notice of Appeal grounds does any such claim of the opportunity to earn sentence related credits appear on the four corners of this Form. If the ALC's order immediately dismisses Appellant's appeal for such a ground, then at least FACIALLY it would appear on the RECORD.

However, it does not see, the ROA<sup>pg. 3</sup> SCDC Form 19-69 the (DOC) court findings show guilty (which is contrary to S.C. Code 44-53-375 CC) and South Carolina case law on possession and trafficking.

The Sanctions were (1) \$ 230.00 T.V. was taken and a Cooler that SCDC no longer sells. This is a PROPERTY INTEREST as shown by Al-Shabazz and Wolff. ROA Sanctions pg. 3 the fact of an opportunity to earn work credits is unfounded here as well.

Under this circumstance the Appellant would respectfully submit that per SCDC policy OP:22-14 when an inmate is charged with such a Major disciplinary offense and he is convicted, his

\$230.00 T.V. is seized from his personal housing cell. His privilege is no longer a SCDC privilege under this circumstance. He is not on the open bay area sharing the public bench with such items and possessions. These are PERSONAL possessions per SCDC that after 5 years an inmate would have to purchase another \$230.00 T.V. . Coolers are no longer sold.

Accordingly, the ALC erred in not fulfilling the Appellate review capacity that he was authorized to do so See S. C. Code 1-23-380 and 1-23-610(B)

### CONCLUSION

For the foregoing reasons this Court should reverse the Administrative Law Court and order with instructions for a full review of the merits of the Appellant's appeal.

Respectfully Submitted  
s/ Larrell Purvis

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October 17, 2019

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
H.W. Funderburk, Administrative Law Judge

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SC Court of Appeals

Case No. 2019-001582

Larrell Purvis . . . . . Appellant,

v.

South Carolina Department of Corrections . . . . Respondent,

PROOF OF SERVICE

Undersigned certifies that the Appellant's Initial Brief has been served on the Department of Corrections, General Counsel Office 4444 Broad River Road, Columbia South Carolina, 29221 by depositing such in the United States Mail Postage Prepaid also the same Initial Brief has been served on the Clerk of the Court of Appeals The Honorable Jenny Abbott Kitchings addressed at The Court of Appeals P.O. Box 11629, Columbia, South Carolina 29211 on this October 2019

October 17, 2019

s/ Larrell Purvis  
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Honorable Jenny Abbott-Kitchings, Clerk  
South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, S. C. 29211

October 17, 2019

RE: Larrell Purvis V. South Carolina Department of  
Corrections Case No 2019-001582

- ① Please find enclosed the Appellants Designation of Matter to be Included in the Record on Appeal and accompanying Certificate of Service and Proof of Service
- ② Please find enclosed the Appellant's Initial Brief and accompanying Proof of Service to be filed with this Court
- ③ There is the Original and There is one Copy ~~to be~~ enclosed. Please file the Original with this Court and Return to me the Copy of such Filing. Thank You Ma'am . . . .

Very Truly Yours

s/ Larrell Purvis  
APPELLANT  
Larrell Purvis

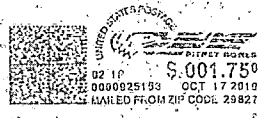
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OCT 22 2019

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