

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S. PHILLIP LENSKE, ADMINISTRATIVE LAW JUDGE  
CASE NO 2018-001307

SANYIKA ASKARI #236679

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

RESPONDENT,

FINAL BRIEF OF APPELLANT

**RECEIVED**

NOV 26 2018

SC Court of Appeals

SANYIKA ASKARI #236679  
ALLENDALE C.I., F2B-43  
1057 REVOLUTIONARY TRAIL  
FAIRFAX, S.C. 29827-1151

# TABLE OF CONTENTS

|                                     |     |
|-------------------------------------|-----|
| TABLE OF CONTENTS .....             | I.  |
| TABLE OF AUTHORITIES .....          | II. |
| STATEMENT OF ISSUES ON APPEAL ..... | 1   |
| STATEMENT OF THE CASE .....         | 2   |
| STANDARD OF REVIEW .....            | 4   |
| FACTS .....                         | 5   |
| ARGUMENT .....                      | 6   |
| CONCLUSION .....                    | 14  |

## TABLE OF AUTHORITIES

|                                                                                                                                                            |        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| AL-SHABAZZ V. STATE, 338 S.C. 354-377, 527 S.E. 2d 742 (2002)                                                                                              | pg. 6  |
| BAXTER V. PALMIGIANO, 1125 U.S. 308, 96 S.Ct. 1551, 47 L.Ed 2d 810 (1976)                                                                                  | pg. 12 |
| HENDLEY V. S.C. BUDGET & CONTROL BD., 333 S.C. 455, 518 S.E. 2d 421 (1999)                                                                                 | pg. 4  |
| MCDONALD V. PINCHAK, 652 A.2d 700 N.J. (1995)                                                                                                              | pg. 13 |
| SANDIN V. CONNER, 515 U.S. 472-486, 115 S.Ct. 2293,<br>132 L.Ed. 2d 418—431 (1995)                                                                         | pg. 11 |
| SLEZAK V. SCDC, 361 S.C. 327, 605 S.E. 2d 506 (2004)                                                                                                       | pg. 9  |
| SULLIVAN V. S.C. DEPT. OF CORR., 355 S.C. 437, 586 S.E. 2d 124 (2003)                                                                                      | pg. 9  |
| TANT V. SCDC, 408 S.C. 334, 759 S.E. 2d 398 (2014)                                                                                                         | pg. 11 |
| VITEK, 445 U.S. 493, 100 S.Ct. 1263—1264                                                                                                                   | pg. 12 |
| WASHINGTON, 494 U.S. 221-222, 110 S.Ct. 1036—1037                                                                                                          | pg. 12 |
| WOLF V. McDONNELL, 418 U.S. 539-572, 94 S.Ct. 2963-2982,<br>41 L.Ed. 2d 935-960 (1974)                                                                     | pg. 12 |
| SCDC POLICY OP-21.04 CLASSIFICATION PLAN,<br>SECTION 8. SECURITY CRITERIA CHART 10/23/2013                                                                 | pg. 7  |
| SECTION 46. CUSTODY CRITERIA CHART 3/30/2015                                                                                                               | pg. 7  |
| SCDC POLICY <a href="https://sword.doc.state.sc.us/policy/search/html/OP-21.04.htm">https://sword.doc.state.sc.us</a><br>POLICY SEARCH html / OP-21.04.htm | pg. 8  |

## STATUTES

|                                 |        |
|---------------------------------|--------|
| S.C. CODE ANN § 1-23-280 (5)    | pg. 4  |
| S.C. CODE ANN § 1-23-380 (6)(E) | pg. 11 |
| S.C. CODE ANN § 1-23-610 (B)(E) | pg. 4  |

## STATEMENT OF ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE  
ERR IN HIS DISMISSAL BY NOT EXERCISING  
AL-SHABAZZ STANDARD WHILE IN  
APPELLATE JURISDICTION ?

DID THE ADMINISTRATIVE LAW JUDGE  
ERR IN DISMISSING APPELLANT'S  
APPEAL WITHOUT REVIEWING THE  
WHOLE OF THE RECORD ?

## STATEMENT OF THE CASE

ON MAY 4, 2017 THE APPELLANT SANIYKA ASKARI SENT A KIOSK (RTS) REQUEST TO STAFF TO ONE MS. ARCHIE AN EMPLOYEE AT ALLENDALE CORRECTIONS ASSIGNED TO THE CLASSIFICATION DEPARTMENT. THE REQUEST CONCERNED A FEBRUARY 2017 EXPUNGEMENT OF RECORDS THAT HAD BEEN FINALIZED AND A CLASS-1 ESCAPE WAS REMOVED OFF OF HIS RECORDS.

THE (RTS) FURTHER INFORMED MS. ARCHIE THAT APPELLANTS CUSTODY STATUS WILL BE EFFECTED BY SCDC DURING HIS ANNUAL REVIEW IF THIS DEPARTMENT DOES NOT REMOVE THIS ESCAPE.

AT THE PARTICULAR TIME OF THE (RTS) THE DEPARTMENT OF INMATE RECORDS WITHIN SCDC REFUSED TO REMOVE THE CLASS-1 ESCAPE. WHILE WAITING FOR ITS REMOVAL THE APPELLANT DISCOVERED THAT THE OFFENDER MANAGEMENT SYSTEM OPERATED BY INMATE RECORDS CONTINUED TO DISPLAY AN ESCAPE WITHIN ITS RECORDS. THE APPELLANT WAS CHARGED WITH AN ESCAPE WITH FORCE IN 1997 WHILE IN SCDC. THIS CHARGE WAS TRIED AT THE DEPARTMENT'S ADJUSTMENT COMMITTEE AND APPELLANT WAS FOUND 'NOT GUILTY.' AND IN ESSENCE THIS ESCAPE IS THE ESCAPE SCDC CONTENDS THAT IS STILL A PART OF THE APPELLANT'S PRIOR HISTORY IN ORDER TO DENY HIM A LEVEL 1 CUSTODY STATUS REVIEW.

SO, ON DECEMBER 16, 2017 AFTER SEVERAL ATTEMPTS TO CLEAR THIS MATTER OF A NON-CONVICTION FOR AN ESCAPE OFF OF APPELLANT'S SCDL HISTORY, HE THEN FILED HIS STEP 1 GRIEVANCE. AFTER BEING DENIED ON THE SAME MATTER, THE APPELLANT FILED HIS STEP 2 GRIEVANCE AND THIS WAS DENIED ON THE SAME QUESTION FEBRUARY 13, 2018.

ON APRIL 28, 2018 APPELLANT FILED HIS APPEAL TO THE ADMINISTRATIVE LAW COURT CONTENDING THAT THE DEPARTMENT WAS DENYING HIM OF HIS CONSTITUTIONAL RIGHTS, THAT IS, BY HINDERING HIS CUSTODY STATUS REVIEW. THUS TO BE HOUSED AS A LEVEL 1 PRISONER IN AN INSTITUTION THAT PROVIDES BETTER OPPORTUNITIES FOR INMATES.

ON MAY 17, 2018 ADMINISTRATIVE LAW JUDGE S. PHILLIP LENSKI WAS ASSIGNED TO THIS CASE. S.C.D.C. FILED ITS MOTION TO DISMISS ON MAY 25, 2018. ON JULY 2, 2018 THE JUDGE ENTERED HIS ORDER TO DISMISS THE APPELLANT'S APPEAL BECAUSE IN HIS OPINION, THE APPELLANT'S GRIEVANCE DOES NOT IMPLICATE ANY STATE-CREATED LIBERTY OR PROPERTY INTEREST.

ON JULY 16, 2018 THE APPELLANT APPEALED THIS ORDER BY THE ADMINISTRATIVE LAW JUDGE TO THIS COURT OF APPEALS FOR REVIEW.

# STANDARD OF REVIEW

S.C. CODE ANN § 1-23-610 (B) PROVIDES 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 THE STATUTORY AUTHORITY OF THE AGENCY
- (C) MADE UP ON 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.

## S.C. CODE ANN § 1-23-280 (S)

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 THE ADMINISTRATIVE AGENCY REACHED. HENDLEY V. S.C. BUDGET & CONTROL BD., 333 S.C. 455, 518 S.E. 2d 421 (1999) SUBSTANTIAL EVIDENCE IS NOT A MERE SCINTILLA OF EVIDENCE, BUT EVIDENCE WHICH, CONSIDERING THE RECORDS AS A WHOLE, WOULD ALLOW REASONABLE MINDS TO REACH THE CONCLUSION THE AGENCY REACHED.

## FACTS

APPELLANT SANYIKA ASKARI #236679 WAS CHARGED WITH ESCAPE WHILE INCARCERATED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AT EVANS C.I. IN 1997.

HE WAS GIVEN NOTICE OF A HEARING, AND TRIED AT AN ADJUSTMENT COMMITTEE HEARING BY A HIGH RANKING STATE OFFICIAL, AND WAS FOUND NOT GUILTY. APPELLANT HAS DISCOVERED AFTER 20 PLUS YEARS OF BEING EXONERATED THAT SCDC INMATE RECORDS, THE DEPARTMENT OVER THE OFFENDER MANAGEMENT SYSTEM, CONTINUES TO MAINTAIN A NON-CONVICTION WITHIN ITS RECORDS. THIS MAINTAINING OF A NON-CONVICTION IS THE SUBJECT OF THE APPELLANT'S ENTIRE APPEAL BEFORE THIS COURT. IN THAT SUCH A NON-CONVICTION HINDERS HIS CUSTODY STATUS REVIEW.

## ARGUMENT

THE ADMINISTRATIVE LAW JUDGE ERRED BY NOT EXERCISING HIS APPELLANT JURISDICTION IN THE APPELLANT'S APPEAL AS DIRECTED BY THE APPELLATE COURT IN THE CASE OF AL-SHABAZZ V. STATE, 338 S.C. 354, 527 S.E. 2d 742 (2002).

THE JURISDICTION OF THE ADMINISTRATIVE LAW JUDGE IS LIMITED TO CASES INVOLVING DENIAL OF STATE CREATED LIBERTY INTERESTS, TYPICALLY INVOLVING: (1) CASES IN WHICH AN INMATE CONTENTS THAT PRISON OFFICIALS HAVE ERRONEOUSLY CALCULATED HIS SENTENCE, SENTENCE RELATED CREDITS, OR CUSTODY STATUS. Id.

SIMPLY PUT, THE GRIEVANCE BEFORE THE ADMINISTRATIVE LAW JUDGE ADDRESSED A CUSTODY STATUS CLAIM. THEREBY QUALIFYING THE APPELLANT'S GRIEVANCE AS ONE THAT FALLS WITHIN CATEGORY (1) ONE OF AL-SHABAZZ.

THE GRIEVANCE CLEARLY SAID THAT SCDC CONTINUED TO DISREGARD AN ORDER OF EXPUNGEMENT AND THE GRIEVANCE IDENTIFIED AN ESCAPE THAT 'NO' CONVICTION WAS OBTAINED BY THE SCDC ADJUSTMENT COMMITTEE.

THE APPELLANT'S CONCERN WAS THAT HIS ANNUAL REVIEW WOULD BE COMING UP FOR REVIEW OF HIS 'CUSTODY STATUS' IN JANUARY 2019. AS A MATTER OF FACT, APPELLANT IS NOW ELIGIBLE FOR A LEVEL 1 CUSTODY STATUS REVIEW, AS OF TO DATE. AND THAT THIS CLASS-ONE ESCAPE IS HINDERING HIS CUSTODY STATUS, TO WHICH IS PREVENTING HIM FROM RECEIVING A LEVEL 1 CUSTODY STATUS REVIEW NOW THAT HE HAS UNDER 8 YEARS LEFT TO SERVE ON HIS SENTENCE.

IN OTHERWORDS EVERY YEAR AN INMATE RECEIVES REVIEW OF HIS CUSTODY STATUS. IF THE INMATE IS ELIGIBLE AND QUALIFIES TO DROP LEVELS IN HIS CUSTODY THEN HE WOULD BE ALLOWED TO GO TO A LEVEL 1. AS PREVIOUSLY MENTIONED, APPELLANT HAS NOW REACHED THE POSITION OF ELIGIBILITY AND IS QUALIFIED.

HOWEVER, AT THE TIME OF THIS GRIEVANCE ONE MS. ARCHIE WAS ASSIGNED AS THE CLASSIFICATION CASEWORKER OVER THE HOUSING UNIT HAMPTON WHERE THE APPELLANT WAS HOUSED.

THE APPELLANT PROMPTLY TRIED TO ASSIST MS. ARCHIE IN THE MATTER SURROUNDING THE SO-CALLED CLASS-1 ESCAPE HISTORY. TO WHICH HE WAS DISREGARDED WHEN MS. ARCHIE WAS PUT ON NOTICE ABOUT THE NON-ESCAPE HISTORY BY THE APPELLANT. SEE KIOSK REQUEST TO STAFF ROA pg. 4-9

OP-21.04 INMATE CLASSIFICATION PLAN 10/23/2013 SECTION 8. SECURITY CRITERIA HAS A CHART AVAILABLE FOR THE INMATE SECURITY STATUS. THE CONVICTION FOR WHICH THE APPELLANT IS SERVING HIS SENTENCE IS ACCEPTABLE BECAUSE HE HAS ONLY ONE VIOLENT OFFENSE AND NO PRIORS. FIRST TIME CATEGORY 5 AND FIRST TIME VIOLENT OFFENSE.

OP-21.04 SECTION 46 CUSTODY CRITERIA 3/30/2015 THE CUSTODY CRITERIA CHART SHOWN HERE IN THIS SECTION REVEALS THAT A CLASS-1 ESCAPE OR CLASS-2 ESCAPE CAN DISQUALIFY AN INMATE FROM A STATUS CHANGE IN SIMULATING LEVELS.

ALL OF THIS IS LEFT TO THE ASSIGNED CASEWORKER OVER THE HOUSING UNIT WHICH AT THAT TIME WAS MS. ARCHIE.

SEE SCDC POLICY <https://sword.doc.state.sc.us/policy/search.html/OP-21.04.htm>.  
VIEW CHARTS.

DURING THE ANNUAL REVIEW OF AN INMATE'S CUSTODY STATUS AN INMATE IS INFORMED ABOUT HIS STATUS OF SIMULATING TO A LOWER LEVEL OF CUSTODY. THE APPELLANT WAS PREVIOUSLY AWARE OF THE CLASS-1 ESCAPE HISTORY THAT WAS ON HIS RECORD IN THE OFFENDER MANAGEMENT SYSTEM OPERATED AND CONTROLLED BY SCDC. THE APPELLANT KNEW THAT HE HAD NOT BEEN CONVICTED AT HIS ADJUSTMENT COMMITTEE HEARING IN 1997. SO, WHEN THE APPELLANT KIOSK REQUEST MS. ARCHIE THIS REQUEST INFORMED HER THAT A NON-CONVICTION/CHARGE FROM GREENVILLE COUNTY OVER 20 YEARS OLD HAD BEEN EXPUNGED. THEN SCDC SAID THAT AN ESCAPE FROM EVANS C.I. EXISTED AND IT DOES NOT. SEE INMATE KIOSK REQUEST TO STAFF. ROA AT pg. 4-9

WHILE AT THE ADMINISTRATIVE LAW COURT, THE APPELLANT MOTIONED THE COURT FOR AN ABEYANCE OF HIS APPEAL IN ORDER TO OBTAIN THE ORIGINAL DOCUMENTS THAT WOULD PROVE IF SUCH A CONVICTION EXISTED. SEE MOTION/REQUEST ROA AT pg. 18-31

THE COURT'S DENIAL OF THIS MOTION WITH ITS ACCOMPANYING DISMISSAL ALLOWED S.C.D.C. NOT TO COMPLY WITH PROOF OF SUCH A CONVICTION. THIS WOULD PROVE TO BE FATAL HAD AN ESCAPE EXISTED IN THE RECORDS SCDC MAINTAINS. IT ALSO PROVES FATAL FOR SCDC IF IT DOES NOT EXIST, AND THE CONVICTION FOR ESCAPE DOES NOT EXIST.

THE ADMINISTRATIVE LAW JUDGE FAILED TO EXERCISE HIS APPELLATE JURISDICTION POWERS. -Id.

SEE STEP 1 GRIEVANCE AND ITS ACCOMPANYING (RTS) REQUEST TO STAFF MEMBER ON REQUESTS ON THE MATTER OF NON-ESCAPE CONVICTION ON EXHIBIT FOR THIS COURT ON ROA. pg. 10 SEE ALSO MOTION TO HOLD APPEAL IN ABEYANCE AT THE ADMINISTRATIVE LAW COURT AND ACCOMPANYING REQUEST TO SCDC ON THE MATTER ON ROA. pg. 18-31

THIS MATTER CLEARLY FALLS WITHIN THE PARAMETERS OF AL-SHABAZZ, WHEN REVIEWING SCDC'S DECISIONS IN INMATE GRIEVANCE MATTERS, ALC HAS APPELLATE JURISDICTION AND ITS AUTHORITY CAPACITY IS GROUNDED BY THIS SUPREME COURT DECISION Id AT 377, 527 S.E. 2d AT 754. FURTHER CLARIFICATION IS FOUND IN SULLIVAN V. S.C. DEPT. OF CORR., 355 S.C. 437, 586 S.E. 2d 124 (2003). ALC EXERCISES JURISDICTION OVER INMATE GRIEVANCE APPEALS AND CATEGORY (1) CUSTODY STATUS WAS THE ISSUE BEFORE THE ALC.

THE ALC'S FINDING THAT THE APPELLANT DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST IS MISPLACED IN THE ALC'S ORDER. ON PAGE 2 UNDER SLEZAK V. SOUTH CAROLINA DEPT. OF CORRECTIONS, 361 S.C. 327, 605 S.E. 2d 506 (2004) (HOLDING) DISMISSAL MAY BE APPROPRIATE WHERE AN INMATE'S GRIEVANCE DOES NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST.

THE GRIEVANCE IN THIS CASE CLEARLY SAYS AND ADDRESSES THAT SCDC IS HOLDING A CLASS-1 ESCAPE CONVICTION ON THE APPELLANT'S DISCIPLINARY HISTORY THAT HE WAS NOT CONVICTED ON. HE WAS FOUND NOT GUILTY FOR AN INCIDENT THAT HAPPENED OVER 20 PLUS YEARS AGO.

IN THIS CASE IT IS CLEAR FROM THE VERY BEGINNING THAT THE APPELLANT CLEARLY FOLLOWED THE STATE CREATED PROCESS TO GRIEVE HIS AL-SHABAZZ CATEGORY (1) CLAIM WHICH IS WITHIN THE ALC'S JURISDICTION A CUSTODY STATUS CLAIM Id.

IN SLEZAK, THE INMATE COMPLAINED ABOUT SEVERAL CLAIMS LIKE HOUSING AND HIS P.I. JOB. THIS IS NOT THE ESSENCE OF APPELLANT'S GRIEVANCE. THE APPELLANT'S GRIEVANCE ADDRESSED THE BURDEN OF A CONVICTION THAT DOES NOT EXIST IN HIS INSTITUTIONAL RECORDS. A CONVICTION THAT HE WAS FOUND NOT GUILTY FOR. A CONVICTION THAT IS ONLY FOUND ON AN 'OUTDATED' AUTOMATED SYSTEM THAT HAS NO OVERSIGHT BY SCDC.

DISMISSAL SHOULD BE REVERSED BY THIS COURT ON THE CUSTODY STATUS CATEGORY (1) ISSUE AND REMANDED FOR REVIEW UNDER AL-SHABAZZ.

(2) THE ADMINISTRATIVE LAW JUDGE ERRED IN DISMISSING THE APPELLANT'S APPEAL WITHOUT REVIEWING THE WHOLE RECORD BEFORE THE COURT.

WHILE REVIEWING AN INMATE'S APPEAL FROM A GRIEVANCE IN THE ALC, THE ALC SITS IN APPELLATE CAPACITY AND IS AUTHORIZED WITH JURISDICTION TO ENTER DECISIONS UNDER AL-SHABAZZ. SEE ALSO S.C. CODE ANN § 1-23-610 (B)(E) STANDARD OF

REVIEW AUTHORIZES THE ALC TO REVIEW THE SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

HERE THE RECORD AS A WHOLE DARES TO BE FILLED BY THE ALC. WITHOUT THE COURT ADDRESSING THE APPELLANT'S GRIEVANCE AND THE (RTS) THAT ACCOMPANY THE GRIEVANCE, THEN THE APPELLANT'S ISSUE IS COMPLETELY OVERLOOKED. THE SCDC OFFICIAL'S REFUSED TO GO INTO THE APPELLANT'S WARDEN JACKET. INMATE RECORDS WERE ALSO PROVIDED WITH CERTIFIED LEGAL DOCUMENTATION CONCERNING EXPUNGEMENT OF A GREENVILLE CHARGE. THIS WAS SUCCESSFULLY EXPUNGED. REVIEW OF APPELLANT'S CUSTODY STATUS SHOULD HAVE CLEARLY BEEN ENTERTAINED.

UNDER S.C. CODE ANN § 1-23-380 (6)(E) THE ALC MAY REVERSE OR MODIFY THE DECISION IF SUBSTANTIAL RIGHTS HAVE BEEN PREJUDICED BECAUSE OF ADMINISTRATIVE FINDINGS. THE GRIEVANCE PROCESS IS THE ONLY PROCESS BY WHICH AN INMATE RECEIVES DUE PROCESS AND JUDICIAL REVIEW OF ADMINISTRATIVE FINDINGS OF AN ENTITY. SEE TANT V. SCDC, 408 S.C. 334, 759 S.E.2d 398 (2014).

THE APPELLANT SEEKS JUDICIAL REVIEW OF A CATEGORY (1) AL-SHABAZZ CUSTODY STATUS CLAIM. THE PROCESS REQUIRED DURING THE APPELLANT'S ALC APPEAL DID NOT IMPLICATE THE ALC EXERCISED JURISDICTION OF AL-SHABAZZ. DISMISSAL SHOULD BE REVERSED FOR REVIEW OF CUSTODY STATUS ISSUE ON APPEAL BY THE LOWER COURT.

FINALLY, IN SANDIN V. CONNER, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) THE SUPREME COURT REEXAMINED THE CIRCUMSTANCES UNDER WHICH STATE PRISON REGULATIONS AFFORDED INMATES A LIBERTY INTEREST PROTECTED BY THE DUE PROCESS CLAUSE *Id.*

THE SANDIN COURT RECOGNIZED THAT THE STATES MAY CREATE LIBERTY INTERESTS WHICH ARE PROTECTED BY THE DUE PROCESS CLAUSE, BUT HELD THAT THESE INTERESTS WILL BE GENERALLY LIMITED TO FREEDOM FROM RESTRAINT WHICH IMPOSES ATYPICAL AND SIGNIFICANT HARDSHIP. *Id.* AT 486, 115 S.Ct. AT 2301, 132 L.Ed2d AT 431 (EMPHASIS ADDED).

BUT THESE INTEREST WILL BE 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, SEE, E.G. *VITEK*, 445 U.S. AT 493, 100 S.Ct. AT 1263-1264 (TRANSFER TO A MENTAL HOSPITAL), AND *WASHINGTON*, 494 U.S. AT 221-222, 110 S.Ct., AT 1036-1037 (INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC DRUGS), NONTHELESS IMPOSES ATYPICAL AND SIGNIFICANT HARDSHIP ON THE INMATE IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE.

APPELLANT ASSERTS THAT AL-SHABAZZ FULLY GUIDES THE ALC'S IN CRUCIAL MOMENTS OF RECOGNIZING THAT DUE PROCESS MUST BE ENCOMPASSED IN PRISON DISCIPLINARY PROCEEDING *WOLFF V. McDONNELL*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed2d 935 (1974) SEE ALSO *BAXTER V. PALMIGIANO*, 1125 U.S. 308, 96 S.Ct. 1551, 47 L.Ed2d 810 (1976). THE MAXIMUM CONSTITUTIONAL REQUIREMENTS FOR SUCH HEARINGS WHILE IMPRISONED HAS BEEN ESTABLISHED.

YET IN THIS APPEAL THE DEPRIVATION OF DUE PROCESS IS CLEARLY SEEN WHEN AN INMATE HAS BEEN FOUND NOT GUILTY IN A DISCIPLINARY

PROCEEDING AND PRISON OFFICIALS REFUSE TO CORRECT THEIR OWN OUTDATED RECORDS. AL-SHABAZZ CITING MCDONALD V. PINCHAK 652 A.2d 700 N.J. (1995), WE HAVE CAREFULLY WEIGHED SUCH CONSIDERATIONS IN REACHING OUR DECISION TODAY.

AL-SHABAZZ, IN WOLFF, THE SUPREME COURT HELD THAT DUE PROCESS IN A PRISON DISCIPLINARY PROCEEDING INVOLVING SERIOUS MISCONDUCT REQUIRES IN NUMBER (5) THAT PERSONS HEARING THE MATTER, WHO MAY BE PRISON OFFICIALS OR EMPLOYEES, MUST BE IMPARTIAL. WOLFF, 418 U.S. 563-72, 94 S.Ct. 2978-82, 41 L.Ed.2d AT 954-60.

THIS CONTINUALLY HOLDING A CLASS-1 ESCAPE ON SCDC OFFENDER MANAGEMENT SYSTEM IS THE KIND OF ATYPICAL, SIGNIFICANT DEPRIVATION IN WHICH SOUTH CAROLINA MIGHT CONCEIVABLY CREATE A LIBERTY INTEREST. Id. AT 486, 115 S.Ct. AT 2301, 132 L.Ed 2d AT 431 (EMPHASIS ADDED).

TO BE IMPARTIAL IN THIS CASE DEMANDS REVIEW OF THE APPELLANT'S APPEAL. THE SUBSTANTIAL EVIDENCE THAT SUPPORTS HIS APPEAL HAS BEEN OVERLOOKED BY THE ALC. THE FUNDAMENTAL PRINCIPLES OF DUE PROCESS IS ALSO DENIED AND AN INMATE IS DEPRIVED WHEN HE IS FOUND NOT GUILTY OF AN OFFENSE BUT TREATED AS ONE CONVICTED.

## CONCLUSION

THE ORDER OF THE ALC SHOULD BE REVERSED AND REMANDED FOR REVIEW OF THE APPEAL ON THE WHOLE OF THE RECORD WHERE THE SUBSTANTIAL EVIDENCE SUPPORTING THIS APPEAL HAS BEEN DISREGARDED.

AND/OR FOR THE ABOVE REASONS STATED ; APPELLANT RESPECTFULLY ASKS THIS COURT TO GRANT THE APPELLANT'S BRIEF FOR REQUESTED RELIEF , BY ISSUING A SPECIAL ORDER TO HAVE S.C.D.C. REMOVE CLASS-1 ESCAPE HISTORY FROM THEIR S.C.D.C. OFFENDER MANAGEMENT SYSTEM AND ANY / ALL OTHER PUBLIC RECORDS .

RESPECTFULLY SUBMITTED,

NOVEMBER 18, 2018



SANYIKA ASKARI #230679  
ALLENDALE C.I., F2B-43  
1087 REVOLUTIONARY TRAIL  
FAIRFAX, S.C. 29827-1151