

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

ALC Case No. 19-ALJ-04-0406-AP
Appellate Case No. 2019-001582

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SC Court of Appeals

Larrell Purvis, #306499.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Larrell Purvis (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On April 5, 2019, Appellant filed a Step 1 grievance regarding the outcome of a disciplinary hearing held on April 4, 2019, where Appellant was convicted of violating SCDC Policy OP-22.14 for 903, Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics. On May 21, 2019, SCDC denied the Step 1 grievance. Thereafter, on May 24, 2019, Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance. On July 15, 2019, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. On August 23, 2019, Administrative Law Judge H.W. Funderburk, Jr. dismissed Appellant’s appeal. 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 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.

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. 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

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

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).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Additionally, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. *Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

Furthermore, 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.

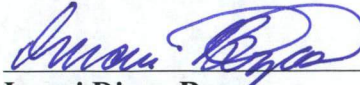
This case is a prime example of a case that should be dismissed under *Slezak*, *Howard*, and *Skipper*. Appellant argues that there was not substantial evidence to support his conviction resulting from the disciplinary hearing. However, neither this court nor the ALC should consider Appellant’s substantive arguments for there was no state-created liberty or property interest implicated as a result of Appellant’s disciplinary hearing conviction since he did not lose any good time. R. p. 2. Furthermore, Appellant’s appeal did not implicate any other state-created liberty or property interest “such as the loss of accrued sentence-related credits.” See *Howard v. S.C. Dep’t of Corr.*, 399 S.C. at 628, 733 S.E.2d at 218. Therefore, since no state-created liberty or property interest is implicated in this case, Judge Funderburk’s August 23, 2019 dismissal of this appeal was proper.

CONCLUSION

The Administrative Law Court’s decision below is supported by substantial evidence and is neither effected by legal error nor clearly erroneous in view of the whole record. Thus, it should be upheld.

Respectfully submitted,

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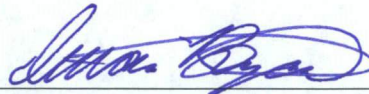
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South Carolina Department of Corrections,

RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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