THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 19-ALJ-04-0625-AP
Appellate Case No. 2020-000356

Thomas Thompson, #80681.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Thomas Thompson ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). On October 8, 2019, Appellant filed a Step 1 grievance about the requirement that inmates who work in the Prison Industries Program are required to wear a striped uniform during work. R. p. 4. On October 22, 2019, SCDC denied the Step 1 grievance. Id. Thereafter, on November 20, 2019 Appellant filed a Step 2 grievance appealing the disposition of his Step 1 grievance. R. p. 5. On October 24, 2019, SCDC considered the Step 2 grievance resolved after explaining that inmates who work in PI are required to wear the striped uniforms to keep the orange uniforms clean for other activities at the institution. Id. Appellant then appealed to the Administrative Law Court. On February 6, 2020, Administrative Law Judge Milton G. Kimpson dismissed Appellant's appeal. R. pp. 1-3. 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).

Here, Appellant alleges requiring inmates participating in the Prison Industries (PI) Program amounts to cruel and unusual punishment. Appellant Brief, p. 2. However, Appellant has failed to show how wearing a striped uniform while working in PI imposes an "atypical and significant hardship" as outlined in Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300 (1995) (explaining liberty interests protected by the Due Process Clause "are generally limited to freedom of restraint, which while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.") The requirement that Appellant wear a striped uniform while working in the PI program does not implicate the Due Process Clause of the Fourteenth Amendment nor is it related to a challenge against the calculation of his sentence, sentence-related credits, or custody status. Therefore, Judge Kimpson's February 6, 2020 Order of Dismissal of the appeal was proper. R. pp. 1-3.

CONCLUSION

Wherefore, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

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September 21, 2020

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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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