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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jomo Rashad Bailey, #272470,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
)

Docket No. 21-ALJ-04-0196-AP

**ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by Jomo Rashad Bailey (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). After the Appellant's Step 1 and Step 2 grievances were filed and denied, the Appellant filed a Notice of Appeal with this court on May 13, 2021. The Appellant is appealing his conviction of Trafficking, Us, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics (903) because his previous charge using the same evidence was dismissed and Department policy does not allow the use of evidence from a dismissed case to find him guilty in another case. To clarify, the Appellant did not lose any good time credit as part of any punishment but failed to earn good time credit for the month in which the disciplinary infraction occurred. On July 26, 2021, the Department filed a Motion to Dismiss pursuant to *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2016) and S.C Code Ann. § 1-23-600(D). On August 2, 2021, the Appellant filed a response to the Department's motion to dismiss arguing that pursuant to *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 649 S.E.2d 35 (2007), the court must hear state created liberty interest cases such as his where an inmate lost good time for the month the disciplinary incident took place.¹

DISCUSSION

The court's jurisdiction to hear this matter 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). This court's appellate jurisdiction in inmate appeals is limited to cases involving denial of state created liberty

¹ *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2016) abrogated the Court's decision in *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 649 S.E.2d 35 (2007).

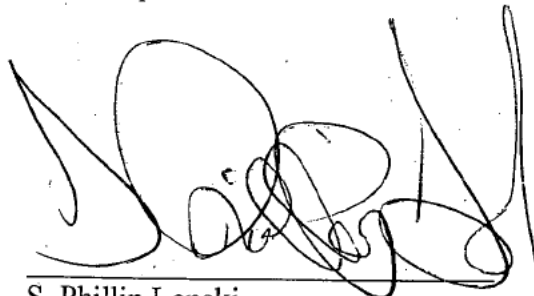
The State of South Carolina
FILED
AUG 12 2021
Administrative Law Court

interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation.² *Id.*

When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. *SCDC v. Mitchell*, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008). Consequently, the review in these inmate grievance cases is limited to the record before the court. In this case, the Appellant did not lose any good time credit as part of his punishment but only failed to earn good time credit for the month in which the disciplinary incident occurred, therefore his punishment does not affect a state-created liberty or property interest. *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 appeal) (emphasis in original). As such, this is a case in which this court must adhere to the traditional "hands off" doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters. *See Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) and *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).

THEREFORE, based on the foregoing, the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.

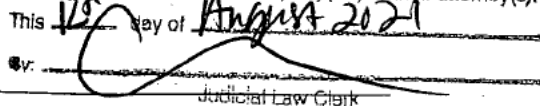


S. Phillip Lenski
Administrative Law Judge

August 12, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12 day of August 2021
by: 
Judicial Law Clerk

² The court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

MAR

Office Use Only

INMATE NAME: Jono L Bailey
 SCDC NUMBER: 222470
 INSTITUTION: Kershaw
 HOUSING UNIT: Mag B-63
 WORK ASSIGNMENT: N/A

Grievance No: MRWRC-0 629-21
 Code: General _____
 Policy _____
 Disc. Hear. 903 #27 3/5/21
 Class _____
 PREA _____
 Date Received: 3/25/21
 IGC Initial: JFB
 Date Received: 3/29/21
 IGA Initials: BW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): DHD Hough violated procedure and OP-22.14 of the Disciplinary Policy by not dismissing the 903 charge based on evidence that was used in case #26 that was dismissed on 2-11-21. My investigation started on the 2nd ending on the 22nd with nothing in the investigative report to warrant a charge. OP-22.14 clearly states that a re-hearing on a charge that was dismissed should have been submitted in writing by Warden Dennis to Division of Operations for approval which clearly wasn't done. Sgt. Jeffcoat went into the contraband box, got the contraband out that I've already been formally charged with on 2-8-21 and case #26 was dismissed on 2-11-21. I was recharged for the same contraband as a new case not a requested re-hearing. DHD Hough clearly should have dismissed case #27 based on the same evidence used in case #26. This is clear double jeopardy and this case should have been dismissed due to procedural errors this case should be overturned by policy.

Grievant Signature Jono L Bailey Date 3-23-21

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the (903) Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics in case #27 conducted on March 5, 2021 under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of 90- days accrued good time, were appropriate for the rules violation. There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Willie Na Date 4-1-21

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____

IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)