

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 2012-UP-295 (S.C. Ct. App. filed May 16, 2012)

RECEIVED

Larry Hendricks, # 254256,.....Petitioner,

APR 19 2013

v.

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

S.C. SUPREME COURT

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals correctly uphold the dismissal of petitioner's appeal from his inmate disciplinary conviction?

STATEMENT OF THE CASE

On August 5, 2004, petitioner, an inmate incarcerated in the Department of Corrections (SCDC),¹ was convicted of an inmate disciplinary offense for use or possession of narcotics, marijuana, or unauthorized drugs. Petitioner did not lose any accrued good time credit as a result of the disciplinary conviction, but he failed to earn good time credit during that month. (R.p.5).

Petitioner filed a Step One Inmate Grievance challenging the disciplinary conviction on August 23, 2004. It was denied following an investigation. Petitioner then filed a Step Two Grievance on September 27, 2004, and it was also denied. (R.p.5).

Petitioner filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). By way of an order filed July 21, 2005, the ALC summarily dismissed the appeal, finding petitioner had not been deprived of a state-created liberty or property interest in this matter. (R.p.7).

Petitioner challenged the ALC's decision in an appeal to the circuit court. The circuit court initially upheld the ALC's decision on appeal. However, following petitioner's motion pursuant to Rule 60(b), SCRPC, the court issued an Order remanding the case based upon Furtick v. SCDC, 374 S.C. 334, 649 S.E.2d 35 (2007). (R.p.4).

On remand, the ALC again dismissed petitioner's appeal. In dismissing the appeal, the ALC relied upon S.C. Code Ann. § 1-23-600(D) ("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 pursuant

to Section 24-14-210(A) or Section 24-13-230(A)”). (R.p.1).

Petitioner appealed the ALC’s decision to the Court of Appeals. The Court of Appeals affirmed in an unpublished decision pursuant to Rule 220(b)(1), SCACR. In support of its decision, the Court of Appeals cited S.C. Code Ann. § 1-23-610(B) and S.C. Code Ann. § 1-23-600(D).

Petitioner has now filed this petition for a writ of certiorari. For the reasons discussed below, SCDC respectfully requests the petition be denied.

¹ As of the date of this return, petitioner’s projected release date is May 1, 2013.

ARGUMENT

THE COURT OF APPEALS CORRECTLY UPHELD THE DISMISSAL OF PETITIONER'S APPEAL FROM HIS INMATE DISCIPLINARY CONVICTION.

The Court of Appeals correctly upheld the ALC's decision to dismiss petitioner's appeal based upon S.C. Code Ann. § 1-23-600(D).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

S.C. Code Ann. § 1-23-600(D) provides, in relevant part, "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 pursuant to Section 24-13-210(A) or Section 24-13-230(A)."

An inmate does not acquire an interest in sentence-related credits until he or she

earns them. See Howard v. SCDC, 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012). Consequently, the ALC may summarily dismiss an appeal based upon section 1-23-600(D) provided that the appeal involves only the loss of the opportunity to earn sentence-related credits. Id.

In the case at hand, the record reflects that petitioner did not forfeit accrued good time credit as a result of his disciplinary conviction. Instead he lost only the opportunity to earn good time credit for that month. (R.p.5). Moreover, there is nothing in the record to indicate that he was otherwise deprived of a state-created liberty interest. Therefore, the ALC correctly summarily dismissed petitioner's appeal based upon S.C. Code Ann. 1-23-600(D).

In his petition for a writ of certiorari, petitioner argues that the ALC was incorrect in dismissing his appeal because the circuit court previously remanded the case based upon Furtick v. SCDC, 374 S.C. 334, 649 S.E.2d 35 (2007). However, petitioner's argument fails to acknowledge that the circuit court's order did not address the applicability of S.C. Code Ann. § 1-23-600(D) to the appeal. Therefore, because the issue of the applicability of S.C. Code Ann. § 1-23-600(D) was not decided by the circuit court, the ALC properly considered the issue and dismissed the appeal on remand. See Bickerstaff v. Prevost, 398 S.C. 231, 235-36, 727 S.E.2d 769, 772 (Ct. App. 2012).

Because the Court of Appeals properly upheld the ALC's decision dismissing the appeal, SCDC respectfully asks that the petition for a writ of certiorari be denied.

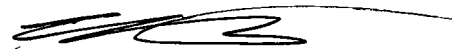
CONCLUSION

WHEREFORE, for all the reasons stated above, SCDC respectfully requests the petition for a writ of certiorari be denied.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



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April 18, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 2012-UP-295 (S.C. Ct. App. filed May 16, 2012)

Larry Hendricks, # 254256,.....Petitioner,

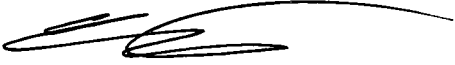
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served petitioner a copy of the Return to the Petition for a Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid, on April 18, 2013, addressed to petitioner as follows:

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