

RECEIVED

Nov 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 21-ALJ-04-0164-AP
Appellate Case No. 2021-000879

James Primus, #252315.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Imani Diane Byas
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUE ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....5

TABLE OF AUTHORITIES

CASES

Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).....4

Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996)
.....3

Wicker v. S.C. Dep’t of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004).....5

Slezak v. S.C. Dep’t of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004).....5

Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003).....4

Mathis v. South Carolina State Highway Dept., 260 S.C. 344 195 S.E.2d 713, (1973)...5

STATUTES

S.C. Code Ann. § 1-23-610(B).....3

ADMINISTRATIVE MATERIALS

Administrative Law Court Judge S. Phillip Lenski’s Order of Dismissal November 19, 2021
.....5

STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED 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 South Carolina Court of Appeals (Court) pursuant to the appeal of James Primus (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On January 22, 2021, Appellant filed a Step 1 grievance alleging SCDC admitted to miscalculating Appellant’s sentence and therefore, Appellant did not have to pay restitution. R. p. __. The grievance was denied. Thereafter, on March 5, 2021, Appellant filed a Step 2 grievance alleging various errors in Appellant’s record that should be corrected by the Dorchester County Sheriff Office. R. p. __. On March 24, 2021, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. R.p. __. On August 3rd, 2021, Administrative Law Judge S. Phillip Lenski dismissed the appeal. R. p. __ 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).

The case was properly dismissed by the Administrative Law Judge. Appellant argues he should not have to pay restitution because he was unlawfully sent to the custody of SCDC in 1998. Appellant Brief, p. 6. Appellant also alleges his name is spelled incorrectly on the sentencing sheets. Appellant Brief, p. 7. Appellant’s claims do not involve a state created liberty or property interest. Therefore, the dismissal of the case by the ALJ was proper. R. p. __.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Imani Diane Byas
South Carolina Bar #103715
Deputy General Counsel
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

November 19, 2021
Columbia, SC

RECEIVED

Nov 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 21-ALJ-04-0164-AP
Appellate Case No. 2021-000879

James Primus, #252315.....Appellant,

v.

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

PROOF OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter** to Appellant, addressed as follows:

James Primus, #252315
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472



Imani Diane Byas
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

November 19, 2021



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

RECEIVED

Nov 19 2021

SC Court of Appeals

November 19, 2021

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: James Primus, #252315, v. South Carolina Department of Corrections
Appellate Case No. 2021-000879

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Imani Diane Byas
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 103715

cc: James Primus, #252315
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472