

South Carolina Department of Corrections, Respondent,
 vs,
 Kenneth B. Evans II, #308918, Appellant,
 STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 Docket No. 21-ALS-04-0241-AP
 Brief

RECEIVED

NOV 19 2021

SC Court of Appeals

Rule 203(B) Explanation

Pursuant to Rule 203(B)(iv) the undersigned asserts that he does have a good faith basis that issues are properly before this Court of Appeals. On June 23, 2021 the Appellant appealed SCDC's final decision on his grievance that he is being search excessively and that the cell searches are not routine but are targeted in violation of policy and laws. On October 14, 2021, SCDC filed a Motion to Dismiss pursuant to Slezak v. S.C.D.C., 361 S.C. 327, 605 S.E.2d 506 (2004). On October 22, 2021, the Appellant filed his Opposition to Summary Dismissal/ Summary Judgement, a Motion to Strike Respondent's Motion to Dismiss, Appellant's Request for Discovery and Appellant's First Set of Admissions Request which were all dismissed. The Administrative Law Court has jurisdiction over all properly filed inmate grievances appeals, and an inmate may seek judicial review of the Department of Corrections final decision in an administrative matter under Provisions for contested cases contained in the Administrative Procedures Act. Code 1976 1-23-10 to 1-23-160, 1-23-310 to 1-23-400, 1-23-500 to 1-23-660.

STANDARD OF REVIEW

The Administrative Procedures Act establishes this Court's Standard of Review for cases decided by the Administrative Law Court and is set forth in section 1-23-610 (B) of the South

**LEGAL
MAIL
ONLY**

Carolina Code (Supp. 2009) which provides:

The review of the Administrative Law Judge's order must be confined to the record. The Court may not substitute its judgement for the judgement of the Administrative Law Judge ~~204~~ as to the weight of evidence on questions of fact. The Court of Appeals 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 of the findings, 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 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.

LAW AND ANALYSIS

A reviewing Court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence S.C. Code Ann § 1-23-380, (A)(6)(e) (2005)

"Substantial evidence is 'evidence which considering the record as a whole, would allow reasonable minds to reach the conclusion that the Administrative Agency reached.'"

Southeast Res. Recovery, Inc. v. S.C. Department of Health and Environmental Control, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (quoting Lark v Birlo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)), [The possibility of drawing two inconsistent conclusions from evidence does not prevent an Administrative Agency's findings from being supported by substantial evidence.] Palmetto Alliance, Inc. v. Pub. Serv. Comm'n., 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)

Under the Administrative Procedures Act requiring as prerequisite to judicial review that a final decision in a contested case has been rendered by Agency, both Legislature and Courts are specifically excluded from definition of Agency. Code 1976 §§ 1-23-310(1), 1-23-380(g)(4) Kores Nordic (USA) Corp. v. Sinkler, Gibbs, & Simons, Court of Appeals of South Carolina, February 25, 1985, 284 S.C. 513.

LEGAL
MAIL
ONLY

The Administrative Law Court is an Executive Branch. The Administrative Law Court resolves disputes from state agencies, which are, Executive Branch agencies.

Torrence v. SCDC, Op No. 2018-UP-432, 2018 WL 6199135 (S.C. Ct. App. filed November 28, 2018). The Administrative Law Court ruled as a matter of law on the dispositive issues and granted claimant relief sought, 433 S.C. 224-857 S.E.2d 549

Sung v. McGrath 339 U.S. 33 (1950), U.S. v. Morgan 307 U.S. 183 (1934)

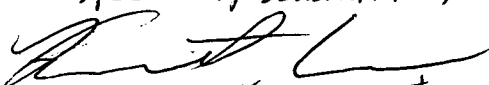
An inmate may seek judicial review of the Department of Corrections final decision in an Administrative Matter matter under provisions for contested cases contained in the Administrative Procedures Act Code 1976 1-23-10 to 1-23-160, 1-23-310 to 1-23-400, 1-23-500 to 1-23-660.

- (1) Did the Administrative Law Court err in not allowing Discovery to be Admitted?
- (2) Is the decision of the Administrative Law Court supported by reliable, probative, and substantial evidence in the record?
- (3) Did the Administrative Law Court err in stating the Court lacked jurisdiction to hear this matter?

CONCLUSION

This Court should reverse the Administrative Law Court's decision and grant Appellant relief

Columbia, South Carolina
November 11, 2021

Respectfully Submitted,

Kenneth B. Evans II, #308913
Appellant, Pro Se