

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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Case No. Docket No.: 12-ALJ-04-0853-IJ

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Curtis Richardson, # 269166,.....Appellant,

v.

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

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**INITIAL BRIEF OF RESPONDENT**

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April 26, 2013

South Carolina Department of Corrections

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**STATEMENT OF THE ISSUE ON APPEAL**

**DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS THIS APPEAL BECAUSE APPELLANT HAS NOT EXHAUSTED ADMINISTRATIVE REMEDIES WITHIN THE AGENCY AND OBTAINED A FINAL DECISION?**

## STATEMENT OF CASE

This matter comes before this Court pursuant to the appeal of Curtis Richardson, (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). In this appeal, appellant claims he is improperly being considered ineligible for parole.

On March 1, 2012, appellant filed a Step One grievance complaining SCDC records incorrectly reflected he was ineligible for parole. SCDC investigated and denied the grievance, explaining that there was no evidence supporting appellant’s allegations that his status as ineligible for parole was incorrect. (R.p.\_\_\_\_). Appellant filed a Step Two grievance on March 15, 2012. (R.p.\_\_\_\_). However, before SCDC issued a response to appellant’s Step Two grievance, appellant initiated an appeal in the Administrative Law Court (ALC). (R.p.\_\_\_\_).

On January 31, 2013, Administrative Law Judge Shirley C. Robinson issued an Order dismissing the appeal. (R.pp.\_\_\_\_). Judge Robinson noted that the S.C. Code Ann. § 1-23-380 provides, “A party who has **exhausted all administrative remedies within the agency** and who is aggrieved by a **final decision** in a contested case is entitled to judicial review.” (Emphasis added). In this instance, Judge Robinson found SCDC had not yet issued a final decision and appellant had not exhausted his administrative remedies. Therefore, the ALC dismissed the appeal, ruling it did not meet the requirements of the Administrative Procedures Act (APA) for review by the Court. (R.p.\_\_\_\_).

Appellant has now appealed the ALC's decision. For the reasons that follow, SCDC respectfully submits the ALC's decision should be affirmed.

## 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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the 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 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

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. at 420.

### ARGUMENT AND CITATION OF AUTHORITY

#### **THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THIS APPEAL BECAUSE APPELLANT HAS NOT EXHAUSTED ADMINISTRATIVE REMEDIES WITHIN THE AGENCY AND OBTAINED A FINAL DECISION.**

The ALC correctly dismissed this appeal because appellant has not yet exhausted available administrative remedies by obtaining a final agency decision.

An inmate may seek review of SCDC's final decisions in an administrative matter under the APA. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). In order to obtain a final agency decision, an inmate must complete the two-step inmate grievance process. Id. at 373, 527 S.E.2d at 752. The inmate may then appeal the final agency decision pursuant to the APA by filing a notice of appeal in the ALC. Id. at 376-77, 527 S.E.2d at 754. Appeal to the ALC pursuant to the APA is appropriate only if a party has exhausted all administrative remedies available within the agency and is aggrieved by a final decision. S.C. Code Ann. § 1-23-380.

In the case at hand, appellant filed a Step One grievance complaining that SCDC records reflected he was ineligible for parole. (R.p. \_\_). The Step One grievance was investigated and denied. Appellant then filed a Step Two grievance, but before the

agency issued a response to the Step Two grievance, appellant filed a Notice of Appeal in the ALC. Therefore, the ALC correctly dismissed this appeal because there was no final agency decision, and as a result, the appeal was not properly before the Court pursuant to Al-Shabazz and S.C. Code Ann. § 1-23-380.

In addition, the appeal to the ALC was improper because appellant was attempting to challenge his parole eligibility. Parole eligibility is determined not by SCDC, but by the Department of Probation, Pardon, and Parole Services (SCDPPPS). See S.C. Code Ann. § 24-21-610; Major v. SCDPPPS, 384 S.C. 457, 466, 682 S.E.2d 795, 800 (2009) (stating that SCDPPPS has “has the sole authority to look to the statutes to determine whether a defendant is eligible for parole separate and apart from the court's authority to sentence a defendant”). Therefore, appellant cannot properly challenge his parole eligibility through SCDC’s inmate grievance process.

Because the ALC correctly dismissed this appeal, SCDC respectfully requests the Court uphold the ALC’s decision in this matter.

### CONCLUSION

For the reasons stated above, SCDC respectfully requests that the ALC’s decision be affirmed.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served Appellant a copy of the foregoing Initial Brief  
by depositing a copy of same in the United States Mail, postage prepaid, on April 26,  
2013 addressed as follows:

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