

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS 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. 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. On March 24, 2021, SCDC denied the Step 2 grievance, and Appellant appealed to the Administrative Law Court. On August 3rd, 2021, Administrative Law Judge S. Phillip Lenski dismissed the appeal. (See Order of Dismissal dated August 3, 2021.) 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. (See Order of Dismissal dated August 3, 2021.)

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court’s April 15, 2014, order entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”



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