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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Travon Simuel, 246568,)
)
 Appellant,)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 21-ALJ-04-0373-AP
Grievance No.: TCI 183-21

**ORDER GRANTING
RESPONDENT'S
MOTION TO DISMISS**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Travon Simuel (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's decision denying his Step 2 Grievance in which he complains his due process rights were violated because he was not given a formal hearing notice or opportunity to be heard before he was classified as a security threat group (STG) member due to a symbol on the back of his book.

DISCUSSION

The Department now moves the ALC to supplement the record with an affidavit of Jeffrey Bowers, Chief of Intelligence Operations. Per his affidavit, Mr. Bowers reviews inmates for validations as members of a STG and approved the recommendation for Appellant to be validated as a member of a STG on May 11, 2021. Appellant did not file a response to this motion. After careful review, the court finds the affidavit is relevant and necessary to make an informed decision.

The Department additionally moves the ALC to dismiss this appeal with prejudice under *Slezak* and *Skipper* contending no state-created liberty or property interest has been implicated. Appellant filed a response in opposition to the Department's motion. In his response, Appellant states that he understands, pursuant to *Brown v. Evatt*, he has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. 322 S.C. 189, 194, 470 S.E.2d 848, 854 (1996). However, Appellant argues that Department policy requires the Department to give him an opportunity to respond before being validated as a STG member and that the Department's reason

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for his STG validation implicates his First Amendment Right to freedom of speech. Specifically, Appellant contends his book was flagged due to the symbol on the back and he is only being punished because the Department disagrees with his political beliefs.

The court carefully reviewed and considered the Department's motion and Appellant's response in opposition. The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). *Slezak v. South Carolina Department of Corrections* provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. 361 S.C. 327, 605 S.E.2d 506 (2004). However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Howard v. South Carolina Department of Corrections*. 399 S.C. 618, 733 S.E.2d 211 (2012).

For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when (1) an inmate is disciplined and punishment is imposed, or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003). Additionally, this Court has jurisdiction when an inmate contests the Department's decision to permanently deny the inmate's parole eligibility. *Id.* Finally, under certain circumstances, an inmate may have a state-created liberty interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); see *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (applying *Sandin* to resolve a condition of confinement claim).

In this appeal, both parties concede that Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. See *Brown*, 322 S.C. at 194, 470 S.E.2d at 851. Instead, Appellant argues his due process rights were violated when he was not given an opportunity to be heard or respond before being validated as a STG member. However, "...the security and custody classification of state prison inmates is a matter for state prison-official discretion whose exercise is not subject to federal procedural due process constraints." *Slezak v. Evatt*, 21 F.3d 590, 594 (4th Cir. 1994). Thus, there are no due process requirements on security or custody status

determinations by prison officials. Furthermore, there is no South Carolina state law creating a liberty interest in a particular security or custody status. *Id.* at 594. ("But such a liberty interest to retain or attain a particular security or custody classification may be created by state law having a very specific quality.").

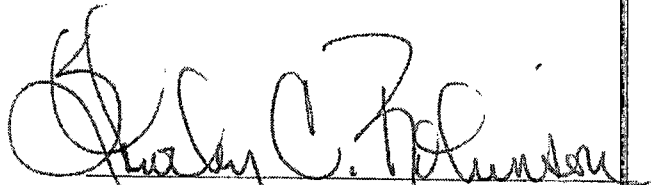
Additionally, Appellant argues his First Amendment Right to freedom of speech is implicated because the Department confiscated his book without notice, hearing, or justification. This court disagrees. The appellate courts of this State have recognized that the adoption and enforcement of policies and practices that are necessary to preserve order, discipline and security in prisons are within the province of correctional officials. *See State v. Blick*, 325 S.C. 636, 642, 481 S.E.2d 452, 455 (Ct. App. 1997).

ORDER

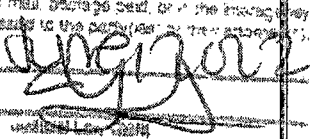
THEREFORE, IT IS HEREBY ORDERED that the Department's Motion to Supplement the Record is **GRANTED**.

IT IS FURTHER ORDERED that the Department's Motion to Dismiss is **GRANTED**, and this appeal is **DISMISSED, with prejudice**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

June 10th, 2022
Columbia, South Carolina

OPTIONAL SERVICE
This is a copy of the order in the above captioned case. It is being served to you by the undersigned in accordance with the provisions of the Rules of the South Carolina Judicial Branch. If you are unable to receive this copy by personal delivery, you may request that it be sent to you by first class mail, postage paid, or by overnight mail service addressed to the party or its attorney.
This is a copy of 10 June 2022
By: 
Administrative Law Judge