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NOV 21 2022

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

SC Court of Appeals

Robert William Wazney, #363679, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )

Docket No. 22-ALJ-04-0200-AP

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

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by Robert William Wazney (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). After the Appellant's Step 1 and Step 2 grievances were filed and denied, the Appellant filed a Notice of Appeal with this court on July 12, 2022. The Appellant is appealing his conviction of Smuggling and/or Conspiracy to Smuggle in Contraband (855) because he was denied the right to due process of law by not notifying him that canteen purchased padlocks are contraband. The Appellant did not lose any good time credit as part of any punishment but failed to earn good time credit for the month in which the disciplinary infraction occurred. On September 29, 2022, the Department filed a Motion to Dismiss pursuant to *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2016) and S.C Code Ann. § 1-23-600(D).<sup>1</sup>

**DISCUSSION**

The court's jurisdiction to hear this matter 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). This court's appellate jurisdiction in inmate appeals is limited to cases involving denial of state created liberty interests<sup>2</sup> typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.*

When reviewing the Department's decisions in inmate grievance matters, the court sits in

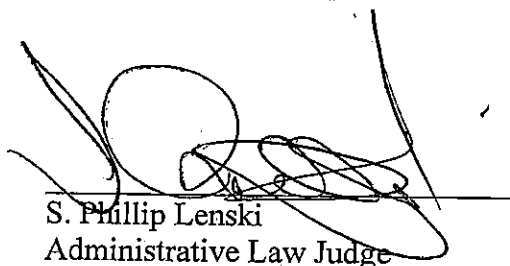
<sup>1</sup> As of the date of this Order, the Appellant has not responded to the Department's Motion to Dismiss.  
<sup>2</sup> The court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

State of South Carolina  
FILED  
OCT 12 2022  
Administrative Law Court

an appellate capacity. *SCDC v. Mitchell*, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008). Consequently, the review in these inmate grievance cases is limited to the record before the court. In this case, the Appellant did not lose any good time credit as part of his punishment but only failed to earn good time credit for the month in which the disciplinary incident occurred, therefore his punishment does not affect a state-created liberty or property interest. *See also Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 626-27, 733 S.E.2d 211, 216 (2012) (holding that "the plain terms of section 1-23-600(D) precludes [*sic*] the ALC from hearing *all* inmate appeals involving the loss of the opportunity to earn sentence-related credits" and that "the Legislature definitively limited the parameters of the ALC's subject matter jurisdiction" regarding this specific type of inmate appeal) (emphasis in original). As such, this is a case in which this court must adhere to the traditional "hands off" doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters. *See Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) and *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, based on the foregoing,

**IT IS HEREBY ORDERED** that the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

**AND IT IS SO ORDERED.**

  
S. Phillip Lenski  
Administrative Law Judge

October 12, 2022  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States Mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12<sup>th</sup> day of October 2022

Judicial Law Clerk

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

MAY 02 2022

Office Use Only

INMATE NAME: ROBERT WILLIAM WAZINSKY  
SCDC NUMBER: 303079  
Kershaw  
INSTITUTION: Kershaw  
HOUSING UNIT: HCL13  
WORK ASSIGNMENT: Dorm

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MAY 05 2022

INMATE GRIEVANCE

Grievance No. KRCI-0226-22  
Code: General  
Policy  
Disc. Hear. 855 # 5  
Class 4/11/22  
PREA  
Date Received: 5/2/22  
IGC Initials: JPH  
Date Received:  
IGA Initials:

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

unwritten and uncommunicated. SCDC negligent failure to warn has unlawfully injured me, where, on 4/11/22 I was brought before a board hearing (DHO). I was told at DHO that when my boxes were searched upon my transfer arrival at Kershaw Inst. (level 2) from Lee Inst. (level 3), on March 3, 2022, that a padlock was found in one of my boxes. The DHO informed me that padlocks are contraband. I informed the DHO that I purchased the padlock on canteen and that I was never informed at any time during my incarceration about any policy or canteen-purchased-padlocks being contraband. DHO found me guilty of Smuggling and/or Conspiracy to smuggle in Contraband (855). SCDC not notifying me of canteen-purchased-padlocks being contraband provides no genuine fault of my own. SCDC owes me a duty of care to notify me that canteen-purchased-padlocks are contraband, SCDC committed a breach of that duty by not notifying me that canteen-purchased-padlocks are contraband, SCDC breach of duty by not notifying me that canteen-purchased-padlocks are contraband is the actual and proximate cause of my injury by SCDC.

This is a challenge to SCDC Policy. Policy in question is

Grievant Signature [Signature] Date 4-28-22

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Smuggling/and or Conspiracy to Smuggle in Contraband (855) in case #5, conducted on April 11, 2022, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -00- days accrued good time, were appropriate for the rules violation. There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature [Signature] Date 5-24-22

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

6-16-22

IGC Signature

Date

[Signature] 6/10/22

(SEE REVERSE SIDE FOR INSTRUCTIONS)

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

MAY 02 2022

INMATE GRIEVANCE FORM

APR 22 2022

STEP 1


|   |  |
|---|--|
| <b>INMATE NAME:</b> ROBERT WILLIAM WAZNEY | <b>OFFICE USE ONLY</b><br>Grievance No. <u>Keri 0226-22</u><br>Code: <u>General</u><br>Policy _____<br>Disc. Hear. <input checked="" type="checkbox"/> <u>Case 5</u><br>Class. <u>855 4-11-22</u><br>PREA _____<br>Date Received <u>4/22/22</u><br>IGC Initials <u>[Signature]</u> |
| <b>SCDC NUMBER:</b> 363679                |  |
| <b>INSTITUTION:</b> Kershaw               |  |
| <b>HOUSING UNIT:</b> HC113                |  |
| <b>WORK ASSIGNMENT:</b> Dormworker        |  |

**STATEMENT OF GRIEVANCE** (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

This is a challenge to SCDC Policy. Policy in question is unwritten and uncommunicated. SCDC negligent failure to warn has unlawfully injured me, where, on 4/11/22 I was brought before a board hearing (DHO). I was told at DHO that when my boxers were searched upon my transfer arrival at Kershaw Inst. (level 2) from Lee Inst. (level 3), on March 3, 2022, that a padlock was found in one of my boxes. The DHO informed me that padlocks are contraband. I informed the DHO that I purchased the padlock on canteen and that I was never informed at any time during my incarceration about any policy of canteen-purchased-padlocks being contraband. DHO found me guilty of (A) Possession of a Weapon, and (B) Smuggling and/or Conspiracy to Smuggle in Contraband, and I was punished with sanctions for having the canteen-purchased-padlock by: Canteen restriction, Disciplinary Detention, Visit Suspension, Phone Suspension and Loss of Good time. This Grievance challenges (B) Smuggling and/or Conspiracy to Smuggle in Contraband. (855).

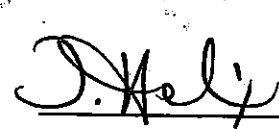
SCDC implementation of an unwritten and uncommunicated policy to obtain the determination of my guilt at DHO is a commission of Negligent Failure to Warn.

SCDC not notifying me of canteen-purchased-padlocks being contraband provides no genuine fault of my own. SCDC owes me a duty of care to notify me that canteen-purchased-padlocks are contraband, SCDC committed a breach of that duty by not notifying me that canteen-purchased-padlocks are contraband, SCDC breach of duty by not notifying me that canteen-purchased-padlocks are contraband is the actual and proximate cause of my injury by SCDC.

  
 Grievant Signature Date 4-21-22

**ACTION REQUESTED:**  
 I request the DHO determination of guilt be vacated and found as NOT GUILTY and I request monetary compensation for my canteen-purchased-padlock.

**ACTION TAKEN BY IGC:**  PROCESSED  UNPROCESSED  OTHER

  
 IGC Signature Date 4/25/22

(CONTINUE ON REVERSE SIDE)

**WARDEN'S DECISION AND REASON:**

**Inmate Wazney, Robert (363679)**

**KRCI-0226-22**

You have appealed the results of your 04/11/22 Disciplinary Hearing where you were found guilty on the charge of 855 Smuggling and/or Conspiracy to smuggle in contraband.

The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file a Step 2 Grievance Appeal by completing SCDC Inmate Grievance Form 10-5A, which is provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

 4/26/22  
Warden Signature Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

  
Grievant Signature

4-28-22  
Date

  
IGC Signature

4/28/22  
Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.