

State of South Carolina

In the Supreme Court

Appeal From the Administrative Law Court

Robert L. Reibold, Administrative Law Judge

Docket NO. 22-ALJ-04-0230-AP

Samuel Wilder, #258295

Appellant

RECEIVED

v.

JAN 24 2023

S.C. SUPREME COURT

South Carolina Department
of Corrections

Respondent

Notice of Appeal

Samuel Wilder, #258295, appeals the Order of the
Honorable Robert L. Reibold, dated December 19, 2022.
Appellant received a copy of the order on December
29, 2022.

Samuel W Wilder, #258295

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Samuel Wilder, #258295,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 22-ALJ-04-0230-AP

**ORDER GRANTING MOTION TO
DISMISS**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Samuel Wilder (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). Appellant's notice of appeal was filed on August 12, 2022. In his notice of appeal, Appellant asserted that he has "a state protected liberty interest in being treated fairly when it come[s] to institutional programs." According to Appellant, the Department's personnel did not consider his state-created liberty interest when making the decision to remove him from the character based unit (CBU). Appellant attached his step 1 and step 2 grievances and a request to staff member dated June 12, 2022, to his notice of appeal. This matter was assigned to the undersigned on August 18, 2022.

On September 23, 2022, the Department filed the record on appeal. Appellant then filed his brief on October 5, 2022. In his brief, Appellant requested to be "move[d] back to [the] CBU." Appellant contends "he has a state-created to be treated fairly when it comes to institutional programs." According to Appellant, "he should have been warn[ed] or informed about removal by the coordinators" of the CBU, which does not comply with SCDC Policy 10.17.9.¹ Appellant

¹ SCDC Policy 10.17.9 provides the following:

When it is recognized that a participant is exhibiting behavior that violates the Social Contract, and mentoring and peer support fails to positively correct the behavior, the Inmate Program Liaison will present a recommendation to the CBU Administrative Committee as to the potential removal of the offending participant. After review, the Committee will make a determination. If the Committee decides to remove the participant, he/she will be informed and given terms



argues that his removal was a "pretext" without further explanation. Appellant asserts that he previously had "open heart surgery and a four way by-pass which leaves [him] with treatment for high-blood pressure and a special diet." Appellant states that since being removed from the CBU, he now has had difficulties walking to the yard for work, kitchen, and medical because there are no bathrooms along the way and he has had to cease taking his blood pressure medicine because of this. Appellant attached the following: (1) an associate's degree in occupational technology, (2) a certificate in industrial electricity/electronics, and (3) several certificates from SCDC.

On December 1, 2022, the Department filed a motion to dismiss, arguing "Appellant is grieving his removal from the CBU and is seeking to be placed back in the CBU." Citing *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), and *Skipper v. South Carolina Department of Corrections*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006), among other legal authorities, the Department contends "Appellant has no state-created liberty or property interest in being housed in the CBU" and thus, the Court should dismiss.

On December 13, 2022, Appellant filed "Objections to Respondent's Motion to Dismiss," which the Court construes as a response to the Department's motion to dismiss. *See* SCALC Rule 63. In his response, Appellant indicates SCDC Policy 10.17.9, which governs removal from the CBU, provides a state-created liberty interest, and he also asserts that he is facing hardships as stated in his brief because of his removal from the CBU. Appellant requests that the motion to dismiss be denied and this case to be scheduled for a hearing.

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See generally* S.C. Code Ann. § 1-23-600(D) (Supp. 2021); *see also Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 757 (2000) (stating the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests 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

for possible future reinstatement. If a participant recognizes that he/she is not living up to the social contract, he/she is expected to remove himself/herself from the program. An ex-participant will be required to wait a minimum of one (1) year to reapply for admission.

disciplinary hearing because of a serious rule violation); *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. However, the Court may summarily dismiss an inmate's appeal when the appeal does not implicate state-created liberty or property interests, or when the inmate is not subjected to atypical and significant hardships. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest"); *id.* (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life" (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper*, 370 S.C. at 272-74, 633 S.E.2d at 913-14.

"The federal constitution vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution." *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). "Within these limits, so far as the federal constitution is concerned, 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." *Id.* "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. "The Constitution does not require that the State have more than one prison for convicted felons; nor does it guarantee that the convicted prisoner will be placed in any particular prison, if, as is likely, the State has more than one correctional institution." *Meachum v. Fano*, 427 U.S. 215, 224 (1976). "[A]n inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State" *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983).

Appellant's arguments that he should be returned to the CBU are twofold. First, he contends that SCDC Policy 10.17.9 creates a liberty interest because he was not informed of why he was going to be removed from the CBU and was not permitted to answer. The language of the policy, however, does not support this position. It does not provide that an inmate must be warned *in advance* of the Department's decision and to protest the decision.

Rather, the policy simply provides: "If the Committee decides to remove the participant, he/she will be informed and given terms for possible future reinstatement." *Id.* Because the policy

does not mandate that an inmate be given notice and an opportunity to be heard before being removed from CBU, the policy itself does not create a state created liberty interest sufficient to support this appeal. Additionally, there is no generally recognized right for an inmate such as Appellant to be returned to the CBU. The case law cited above demonstrates that Appellant does not have a state-created liberty interest in a particular security or custody status, nor does Appellant have a guarantee that he will be placed in a particular prison or within a specific portion of a prison.

Second, Appellant indicates he is facing an atypical hardship based on having to walk further, wait in lines at security gates, and generally not living as easy as a life in general population as compared to life in the CBU. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life"). Although the Court is sympathetic to Appellant's physical situation, Appellant has not described a hardship which could be considered atypical and significant in relation to ordinary incidents of prison life.² Accordingly, the Court determines it is proper to dismiss this appeal.

ORDER

IT IS THEREFORE ORDERED that the Department's motion to dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



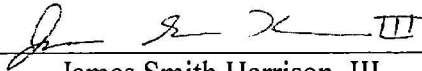
Robert L. Reibold
Administrative Law Judge

December 19, 2022
Columbia, South Carolina

² While it might be theoretically possible an inmate could face an atypical hardship in general population under the right circumstances, Appellant's grievance is based on his desire to be returned to the CBU, which he does not possess a state-created liberty interest in.

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

December 19, 2022
Columbia, South Carolina