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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

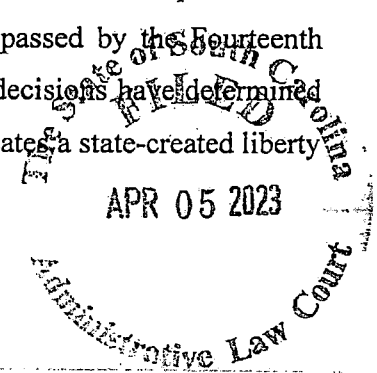
Robert William Wazney, #363679, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of )  
 Corrections, )  
 )  
 Respondent. )

Docket No. 23-ALJ-04-0097-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Notice of Appeal filed by Robert William Wazney ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant complains that his television, its box, and all its associated cables were stolen when he was transferred to Evans Correctional Institution. In the Notice of Appeal that was filed with the ALC, Appellant contends that the theft of his personal property is a taking under Article I § 13 of the U.S. Constitution and that the taking of his property has imposed an atypical and significant hardship beyond the ordinary incidents of prison life.

Unfortunately, this Court is without the authority to resolve this dispute such that Appellant's appeal must be dismissed. The Court's jurisdiction to review Department final decisions in non-collateral or administrative matters stems from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court recognized that these administrative matters entitled to review "typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* at 369, 527 S.E.2d at 750. The Court explained further that procedural due process was guaranteed only when an inmate was deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. *Id.* Post *Al-Shabazz* decisions have determined that a matter is reviewable by the ALC where an inmate's appeal implicates a state-created liberty



or property interest. See *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); See also *Wicker v. S.C. Dep't. of Corr.*, 360 S.C. 421, 424, 602 S.E.2d 56, 57-58 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as the state's mandate that inmates be paid the prevailing wage). Finally, under certain circumstances, states may create liberty interests which are protected by the Due Process Clause, but "these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995); see *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443-45, 586 S.E.2d 124, 127-28 (applying *Sandin* to resolve a "condition of confinement claim").

The South Carolina Supreme Court has since clarified that the ALC has subject matter jurisdiction under the Administrative Procedures Act to hear properly perfected appeals from the Department's final orders in administrative or non-collateral matters. *Howard*, 399 S.C. at 625, 733 S.E.2d at 215. However, while the ALC has jurisdiction over properly perfected appeals from the Department's final orders, summary dismissal may be appropriate where the inmate's grievance does not implicate a state created liberty or property interest. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507-08 (2004).

Here, Appellant is not challenging whether he received minimal due process involving a state-created liberty or property interest. Instead, he complains about the loss of his personal property, which he contends is missing due to the negligence of Department personnel.<sup>1</sup> However, in *Daniels v. Williams*, 474 U.S. 372 (1986), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment is not implicated when an inmate loses personal property as a result of the negligent actions of a state employee. Earlier, in *Hudson v. Palmer*, 468 U.S. 517, 533 (1984), the Supreme Court held that "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful post deprivation remedy for the loss is available." (emphasis added). Additionally, in the case of intentional deprivation, a due process claim does not arise unless or until the state fails or refuses to provide a suitable post deprivation remedy. *Id.* While it is unclear from Appellant's Notice of Appeal whether he alleges

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<sup>1</sup> Even if, as Appellant suggests, the Department failed to follow its policies, such a failure would not amount to a constitutional violation. See *Joyner v. Ozmint*, No. 3:09-CV-02524-DCN, 2010 WL 3783167, at \*5 (D.S.C. Sept. 22, 2010), *aff'd*, 425 F. App'x 223 (4th Cir. 2011).

his loss of personal property is because of negligent or intentional actions, the result is the same under either scenario – his allegation of a due process violation cannot survive.

The Inmate Grievance Procedure provided by the Department provides an adequate post deprivation remedy in the event of an intentional deprivation of property. *See Al-Shabazz*, 338 S.C. at 373, 527 S.E.2d at 752 (holding that SCDC's Inmate Grievance procedure provides an adequate remedy available to address inmate claims and complies with due process standards set forth by the United States Supreme Court in *Wolff v. McDonnell*, 418 U.S. 563, 94 S.Ct. 2963 (1974)). Moreover, this appeal does not arise from punishment administered for a disciplinary conviction, nor does it relate to Appellant's sentence, sentence-related credits, or custody. Furthermore, this appeal does not involve an "atypical" condition of restraint.<sup>2</sup>

While the Court sympathizes with inmates who have allegedly lost property as a result of lack of due care by those who are their caretakers, this type of alleged inmate property loss does not implicate a state created liberty or property interest.<sup>3</sup> Therefore, the Court finds *Slezack* to be controlling, and the case is dismissed for lack of jurisdiction. *See, Id.* at 331, 605 S.E.2d at 508 (“[s]ummary dismissal may be appropriate where the inmate’s grievance does not implicate a state created liberty or property interest.”)<sup>4</sup> Therefore,

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<sup>2</sup> Appellant’s claim that his loss of personal property constitutes a “taking” under the Fifth Amendment to the United States Constitution and under the South Carolina Constitution must also fail. “The Takings Clause of the Fifth Amendment provides, “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. “The Fifth Amendment, which requires just compensation where private property is taken for public use, undertakes to redistribute certain economic losses inflicted by public improvements so that they will fall upon the public rather than wholly upon those who happen to lie in the path of the project.” *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 312, 737 S.E.2d 601, 618 (2013). Similarly, the South Carolina Constitution states, “Except where otherwise provided in this Constitution, private property shall not be taken for public use without just compensation being first made therefor.” S.C. Const. art. I, §13. Significantly, a “[t]akings analysis under South Carolina law is the same as the analysis under federal law. *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76, n.6 (2005). There is no suggestion that a state actor took Appellant’s property for a public use.

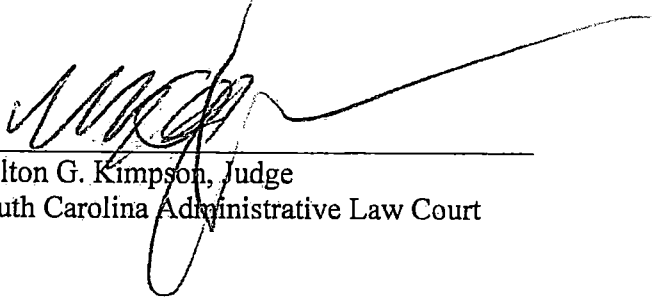
<sup>3</sup> The range of state created property interests that may be addressed by this Court is narrow. *See Wicker*, 360 at 424, 602 S.E.2d at 58 (finding that in the very limited circumstance where the state's statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without due process, the Department’s failure to pay in accordance with the statutes is reviewable by the ALC).

<sup>4</sup> Moreover, SCDC Policy requires Appellant to obtain a final resolution through the SCDC grievance process before seeking the review of this Court. *See* SCDC Policy GA-01.12, Section 13.1 to 13.9, “Inmate Grievance System” Included with Appellant’s Notice of Appeal is a copy of a Step 1 Grievance, which indicates that it was not processed. Even if Appellant’s appeal had implicated a violation of a state created liberty interest, the failure to exhaust his administrative remedies by obtaining a final decision at the Department level would have been grounds for the Court to dismiss his appeal.

**IT IS HEREBY ORDERED** that the above-referenced appeal is **DISMISSED WITH PREJUDICE.**

**AND IT IS SO ORDERED.**

April 5, 2023  
Columbia, SC

  
Milton G. Kimpson, Judge  
South Carolina Administrative Law Court

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**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 5 day of April, 2023

By:   
Judicial Law Clerk