

From: [Dwayne Garvin](#)
To: [Court Of Appeals Filings](#); jshely@scal.net; shakibanasab.joseph@doc.sc.gov
Subject: Emailing Notice of Appeal.pdf to be filed in The South Carolina Court of Appeals
Date: Tuesday, August 15, 2023 10:01:45 AM
Attachments: [Notice of Appeal 1.pdf](#)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Hon. Clerk Kitching:

Attached to this e-mail is John Garvin's Notice of Appeal from an Order granting the South Carolina Department of Corrections Motion to Dismiss in the South Carolina Administrative Law Court. My brother, John Garvin is trying to file his Notice of Appeal in the South Carolina Court of Appeals.

Out of an abundance of caution, I am e-mailing to this Court my brother's Notice of Appeal to make sure that it is being filed, in which it was supposed to have been mailed out to this Court from Ridgeland Correctional Institution on August 9, 2023.

Respectfully,
Bernard Garvin assisting John Garvin

RECEIVED

Aug 15 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Garvin, #355509,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 23-ALJ-04-0126-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 on April 4, 2023 by John Garvin (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Department). The Appellant is appealing the denial of his grievance in which he alleges that the Department's denial of his grandchildren's visitation forms for failing to provide their social security numbers is arbitrary and capricious. The Appellant is not appealing a disciplinary hearing, nor did he lose any good time credit as part of any punishment.

On June 29, 2023, the Department filed a Motion to Dismiss pursuant to *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E. 2d 506 (2004) and *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) requesting the court dismiss the Appellant's appeal because it does not involve a state-created liberty or property interest. On July 7, 2023, the Appellant filed Appellant's Objections to Respondent's Motion to Dismiss arguing that he has a state-created liberty interest to visit with family members pursuant to Department policy, therefore the court should deny the Department's Motion to Dismiss.

DISCUSSION

This 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 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

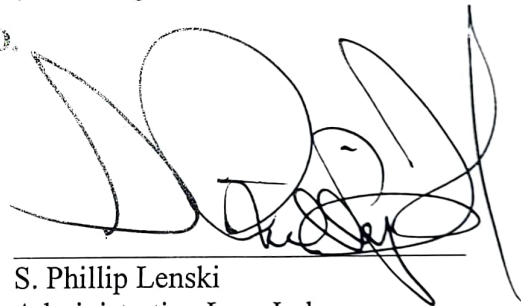
The State of South Carolina
FILED
JUL 17 2023
Administrative Law Court

rule violation. *Id.*

When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. *Id.* at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented. Pursuant to *Slezak v. S.C. Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), the court is to have jurisdiction of all properly perfected inmate appeals but “[s]ummary dismissal may be appropriate where the inmate’s grievance does not implicate a state created liberty or property interest.” Further, the Court in *Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge “should” dismiss the appeal. Per Department policy, visitation is a privilege, not a right. Therefore, there is no state created liberty or property interest implicated here. Consequently, the court is without jurisdiction to hear this matter. As such, this is a case in which this court must adhere to the traditional “hands off” doctrine regarding judicial involvement in prison disciplinary procedure 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) (emphasis supplied).

THEREFORE, for the foregoing reasons, the Department’s Motion to Dismiss is **GRANTED** and this appeal is hereby **DISMISSED**.

IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

July 17, 2023
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 17th day of July 2023

Judicial Law Clerk

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Aug 15 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Hon. Sebastian P. Lenski, Admin. Law Judge

Case No. 23-ALJ-04-0126-AP

John Garvin Appellant,

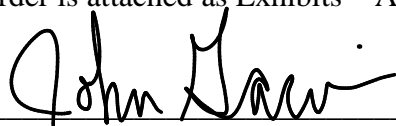
v.

South Carolina Department of CorrectionsRespondent.

NOTICE OF APPEAL

This Notice is hereby given that Appellant, John Garvin, in the above-name case, hereby appeals the Order of Dismissal of the Honorable Sebastian P. Lenski, Admin. Law Judge, granting Respondent’s Motion to Dismiss that was entered on July 17, 2023, (see Exhibit – A). Appellant received written notice of the entry of the Order on July 21, 2023, from the Administrative Law Court via Ridgeland Correctional Institutional internal mail staff. This appeal is taken from the Order of Judge Lenski filed on July 17, 2023. A copy of the Order is attached as Exhibits – A.

**DATED: August 15, 2023
Ridgeland South Carolina.**



**John Garvin, # 355509, Pro-se.
Ridgeland Correctional Institution
P.O. Box # 2039
Ridgeland, S.C. 29936**

EXHIBIT

A

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Aug 15 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Hon. Sebastian P. Lenski, Admin. Law Judge

Case No. 23-ALJ-04-0126-AP

John Garvin Appellant,

v.

South Carolina Department of Corrections Respondent.

PROOF OF SERVICE

I, John Garvin, certify that I have served **A NOTICE OF APPEAL** on the Court to be delivered by via e-mail on August 15, 2023, addressed to the Hon. Jenny A. Kitchings, Clerk of Court of Appeals, at e-mail ctappfilings@sccourts.org; and to the Hon. Jana Shealy, Clerk of Administrative Law Court, at e-mail: jshealy@scalc.net; and to Mr. Joseph R. Shakibanasab, of SCDC Office of General Counsel, at e-mail: shakibanasab.joseph@doc.sc.gov.

DATED: August 15, 2023



**John Garvin # 355509 Pro-se.
Ridgeland Correctional Institution
P.O. Box # 2039
Ridgeland S.C. 29936**