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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nathaniel Johnson, Jr., #211574,)
)
Appellant,)
)
v.)
)
South Carolina Department of)
Corrections,)
)
Respondent.)

Docket No. 22-ALJ-04-0326-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed by Nathaniel Johnson (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department” or “SCDC”). Appellant was convicted of Criminal Sexual Conduct, first degree, in violation of § 16-3-652. Appellant appeals from a denial of a Step 2 Grievance, in which he complains about being classified as a ‘Sexual Offender (pending)’ in the Department’s Offender Management System (OMS). This step is an administrative predicate to an inmate’s evaluation under the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10, et seq.

DISCUSSION

The Court’s jurisdiction to hear this matter is derived 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 held that the ALC’s jurisdiction in inmate appeals is 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 disciplinary hearing as a result of a serious rule violation. *Id.* at 382, 527 S.E.2d at 757. “The only way for the [ALC] to obtain subject matter jurisdiction over [an inmate’s] claim is if it implicates a state-created liberty interest.” *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003). Subsequently, in *Slezak v. S.C. Dep’t of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004), cert. denied, 544 U.S. 1033, 125 S.Ct. 2266, 161 L.E.2d 1060 (2005), our Supreme Court explained that while the ALC has

THE STATE OF SOUTH CAROLINA
FILED
SEP 14 2023
Administrative Law Court

jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate “where the inmate's grievance does not implicate a state-created liberty or property interest.”

The Record on Appeal was filed by the Department on March 17, 2023. Thereafter, Appellant filed his brief on April 12, 2023, and the Department filed its brief on May 1, 2023. Appellant argues that his 14th Amendment Due Process rights have been violated because the internal classification is a second punishment under the double jeopardy clause. Appellant contends that the Department is arbitrarily relitigating its case against him through its OMS and such actions should be barred by collateral estoppel.¹ However, the Department contends that Appellant was convicted of Criminal Sexual Conduct, first degree, in violation of § 16-3-652. Pursuant to § 44-48-40, the Department must give written notice to the multidisciplinary team at least two hundred and seventy days prior to Appellant’s anticipated release. The Department accomplishes its statutory mandate of providing written notice to the multidisciplinary team by using its OMS to flag Appellant as someone who must be screened prior to release. Consequently, the Court does not find that any of Appellant’s constitutional rights have been violated.² Furthermore, our Supreme Court has ruled that commitment under the Sexually Violent Predator Act does not violate Double Jeopardy. *In Re Allen*, 351 S.C. 153, 568 S.E. 354 (2002).

Moreover, despite Appellant’s contentions, he: (a) was not sanctioned with the loss of any good time credits; (b) made no claim for the loss of any other state created liberty or property interest; and, (c) made no contention that his sentence, sentence related credits or custody status

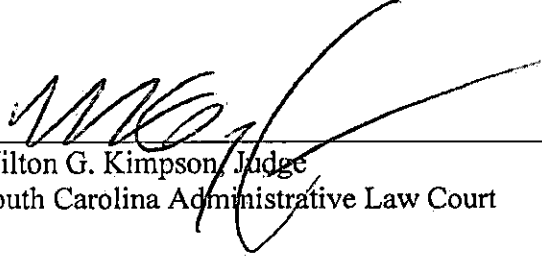
¹ “Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. (Internal citation omitted). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. (Internal citation omitted). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” (Internal citation omitted). The doctrine of collateral estoppel should not be rigidly or mechanically applied. (Internal citation omitted). Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it.” (Internal citation omitted). Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554–55, 684 S.E.2d 779, 782 (Ct. App. 2009). The doctrine of collateral estoppel is not applicable here inasmuch as Appellant’s proposed status as a Sexual Offender under § 44-48-40 – which necessarily occurs after conviction – could not have been litigated in his earlier criminal proceeding.

² See also, *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996) (finding inmates have no vested liberty interest in retaining or receiving any particular internal security classification).

has been erroneously calculated. There is clearly no state created liberty interest implicated here. Without such a liberty interest, Appellant's case is subject to summary dismissal. *See Slezak* 361 S.C. 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.”) The Court finds that dismissal is appropriate here. Therefore,

IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.

September 14, 2023
Columbia, SC


Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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 14 day of September, 2023
By: 
Judicial Law Clerk