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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Administrative Law Court
Robert L. Reibold, Administrative Law Judge
Docket No. 23-ALJ-04-0209-AP

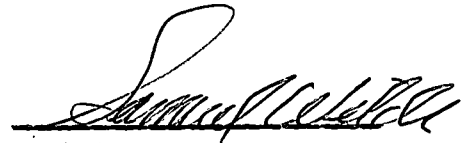
South Carolina Department of Correction.....Respondent,

v.

Samuel Wilder, #258295.....Appellate

NOTICE OF APPEAL

I, Samuel Wilder HEREBY APPEAL THE Order Granting the Department Motion to Dismiss that was signed on October 6, 2023 and was received by me on October 11, 2023.



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Samuel Wilder, #258295,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0209-AP

ORDER GRANTING DEPARTMENT'S
MOTION TO DISMISS

STATEMENT OF 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). On March 8, 2023, Appellant submitted a Step 1 grievance, alleging he suffered from heart disease and has a state created liberty interest in being able to continue to drink orange juice as part of a heart smart diet. On March 17, 2023, the warden denied the grievance, claiming Appellant did not follow SCDC Policy ADM -16.05, which permits a food service nutritionist or designee to approve changes in diet. Appellant filed a Step 2 grievance on March 27, 2023, restating his allegations and asking for information on how to contact the food service nutritionist. On April 28, 2023, the responsible official denied the grievance, stating that Appellant cannot introduce new matters in a Step 2 grievance and did not provide Appellant with the contact information for the food service nutritionist.

On May 30, 2023, Appellant filed a notice of appeal with the Court, alleging substantially the same allegations as his Step 2 grievance and seeks the Court to compel the Department to name the Food Service Nutritionist or designee. Appellant filed his initial brief on July 11, 2023. Appellant raised the following four issues in his statement of issues on appeal: (1) whether Appellant has a state created liberty interest in being served a heart healthy meal for serious medical needs; (2) whether the Department served a meal that is less in nutrition and cost less which put Appellant at higher risk for heart failure; (3) whether the Department is treating food service as a means of punishment; and (4) whether 16 billion dollars is remedy to overhaul the



food service preparation in this case. Appellant concludes his brief by praying only for “orange juice for my heart healthy meals.” The thrust of Appellant’s argument is that the Department has been willfully indifferent to his medical needs by failing to provide him with orange juice in violation of the Eighth Amendment.

On August 22, 2023, the Department filed a motion to dismiss, arguing the Court should dismiss Appellant's appeal pursuant to *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), because neither a state-created liberty interest nor property interest is implicated in this case.

Appellant, on August 30, 2023, filed a response to the motion to dismiss, in which he admitted the Department served orange juice at times but objected to the conditions under which it was served.¹ Further, Appellant argues that SCDC serves beef as an example of the Department serving less nutritious meat that costs less.

For the reasons stated herein, the Court grants the Department’s motion.

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2022); *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 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"

¹ Inmates ladled orange juice from a vat and the server’s hands often made contact with the orange juice being served. Additionally, Appellant complained that the orange juice was served warm rather than cold.

(citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *Skipper*, 370 S.C. at 272-74, 633 S.E.2d at 913-14. "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 Department argues that this case is one in which no protected liberty interest is present. As the United States Supreme Court has explained:

[t]he Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word "liberty," see, e.g., *Vitek v. Jones*, 445 U.S. 480, 493-494, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) (liberty interest in avoiding involuntary psychiatric treatment and transfer to mental institution), or it may arise from an expectation or interest created by state laws or policies, see, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 556-558, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) (liberty interest in avoiding withdrawal of state-created system of good-time credits).

Wilkinson v. Austin, 545 U.S. 209, 221 (2005).² Furthermore, state created interests:

will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

Sandin v. Connor, 515 U.S. 472, 483-84 (1995).

The Court concludes that Appellant has not demonstrated that he possesses a protected liberty interest stemming from the Fourteenth Amendment. As noted above, Appellant bases his claim not on the Fourteenth Amendment, but on the Eighth Amendment's requirement that prisoners receive adequate medical care. The Court fails to see how the removal of Appellant's preferred dinner beverage affects Appellant's "liberty" in any way. The removal of the beverage neither involves physical restraint in any way nor impinges upon any other constitutionally protected freedom, such as the freedom of religion.

² Appellant does not contend that he had a state-created property interest in receiving orange juice with his meals.

The Court also concludes that Appellant has failed to establish that he possesses a state-created liberty interest in continuing to receive orange juice with each meal. In order to demonstrate a state-created liberty interest, a prisoner must show that “state statutes or regulations require, in language of an unmistakably mandatory character, that a prisoner may not suffer a particular deprivation absent specified predicates.” *Burgos Vega v. Lantz*, 596 F.3d 77, 83 (2d Cir.2010) (quoting *Welch v. Bartlett*, 196 F.3d 389, 392 (2d Cir.1999)).

SCDC Policy ADM-16.05 governs food services. The policy statement for section ADM-16.05 reads:

POLICY STATEMENT: The SCDC recognizes the importance of proper nutrition to maintain the health and well-being of inmates. The Agency will, therefore, ensure that the food served to inmates is in keeping with all applicable state and federal statutes, DHEC Regulations, and the "Recommended Dietary Allowances" as defined by the National Academy of Sciences, National Research Council.

While the Department has committed to providing nutritionally adequate meals, nothing in this policy statement guarantees an inmate the right to receive the beverage of his choice with each meal.

Subsection 7.2.5 of ADM-16.05 addresses special diets.³ It provides that:

The SCDC will not be responsible for special diet meals for employees without prior coordination and a current (within one (1) year) therapeutic prescription from an outside doctor or dentist. A copy of the prescription must be available to appropriate SCDC staff.

While this policy addresses special diets, it makes clear that the Department is not responsible for special diets unless an inmate has prescription for such a diet from a medical provider that is less than one year old. Appellant in this case has no such prescription and instead relies on internet printouts extolling the health benefits of orange juice.

The Court concludes under the fact pattern present here neither the policy directive nor subsection 7.2.5 establishes a state created liberty interest allowing Appellant to insist that he be served orange juice with every meal. Moreover, even if such a statute, regulation or policy governing food service were phrased in mandatory terms, no liberty interest would exist.

³ The Court may take judicial notice of the Department's published policies.

Depriving an inmate of the beverage of his choice with meals is not a significant hardship atypical in the incidents or ordinary prison life. *See Sandin*, 515 U.S. at 483-84.

Because the Court concludes that no state created liberty or property interest is implicated by this appeal, summary dismissal is appropriate.⁴

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.



The Honorable Robert L. Reibold
Administrative Law Judge

October 6, 2023
Columbia, South Carolina

⁴ The Court's ruling herein is not intended to be a comment of any kind on the viability of claim under 42 U.S.C. § 1983.

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on 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).



Van Whitehead
Judicial Law Clerk

October 6, 2023
Columbia, South Carolina