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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No. 23-ALJ-04-0312-AF

Kenneth Rivera, #318979,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed by Kenneth Rivera (Appellant) an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). After the Appellant's Step 1 and Step 2 grievances were filed and denied, he filed a Notice of Appeal with this court on August 11, 2023. The Appellant is appealing his Security Threat Group (STG) designation because he is not a gang member but a Rastafarian and wants to be removed from the Restrictive Housing Unit (RHU). The Appellant is not appealing a disciplinary hearing conviction, nor did he lose any good time credit as part of any punishment he received.

On December 15, 2023, the Department filed a Motion to Dismiss pursuant to *Slezak* and *Skipper* because the Appellant's appeal does not involve a state-created liberty or property interest.¹ On December 15, 2023, the Appellant filed a response to the Department's Motion to Dismiss asking the court to deny the Department's motion and grant the Appellant relief because he is a Rastafarian and no longer a leader within a STG. The Appellant argues that his STG designation limits his privileges to visits from immediate family only and his incoming mail is photocopied.

DISCUSSION

The court's jurisdiction to hear this matter is derived entirely from the decision of the Supreme Court of South Carolina in *Al-Shabazz*. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The court's appellate jurisdiction in inmate appeals is limited to cases involving the

¹ *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E. 2d 506 (2004); *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

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~~denial of a state-created liberty interest,² which typically arises in two ways: (1) when an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) when an inmate is disciplined and punishment is imposed in a major disciplinary hearing as a result of a serious rule violation. See *id.* at 369, 527 S.E.2d at 750.~~

When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 756. Consequently, the court's review in such cases is limited to the Record on Appeal. Pursuant to *Slezak*, the court is to have jurisdiction over 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." See *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. Further, in *Skipper*, the Court of Appeals of South Carolina interpreted *Slezak* as holding that a judge "should" dismiss a prisoner's appeal where it does not implicate a state-created liberty interest. See *Skipper*, 370 S.C. at 279, 633 S.E.2d at 917; see also *Brown v. Evatt*, 322 S.C. 189, 470 S.E.2d 848 (1996) (holding that an inmate has no liberty interest in a particular 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). Thus, there is no state-created liberty or property interest implicated in this matter and as such, the court must adhere to the traditional "hands off" doctrine regarding judicial involvement in internal prison matters. See *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757; *Pruitt v. State*, 274 S.C. 565, 567-68, 266 S.E.2d 779,780 (1980).

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

IT IS SO ORDERED.

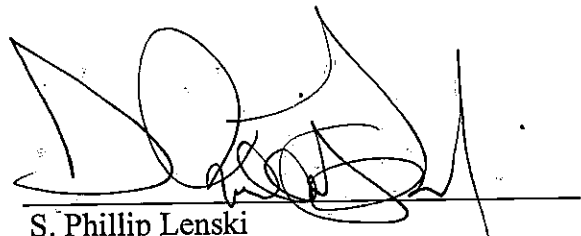
CERTIFICATE OF SERVICE

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 20th day of December 2020

at December 20, 2023

Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

² The court does have limited jurisdiction in some property matters, the authority for which need not be cited here.