

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Thomas Pencille, #312332,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 19-ALJ-04-0277-AP

ORDER RECEIVED
DEC 27 2019
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Gregory Thomas Pencille (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department).

On February 7, 2019, Appellant filed a Step 1 Grievance asserting that the Department discriminated against the Wiccan religious community by denying his requests for religious oils for religious services. The Warden denied the Step 1 Grievance, noting that religious oils can be kept by the Chaplain for the Wiccan community for worship services but that these items must be approved. The Warden also disapproved the requested items for security reasons. Appellant then filed a Step 2 Grievance on March 6, 2019, which was denied on May 6, 2019. The denial explained that while the "Department is committed to upholding and facilitating the constitutional rights afforded to inmates to religious freedom, inmates will be given the opportunity to practice their religious faith to the extent that such practice does not interfere with the security and safety of the institution, staff or others." SCDC Policy P.S. 10.05 (August 6, 2015).

On May 22, 2019, Appellant filed a Notice of Appeal asserting that the Department substantially and exceedingly burdened his right to practice his religion by (1) denying him the use of religious oils and (2) transferring him to an institution where the Wiccan practice is almost non-existent and the chaplain is prejudiced against it. The case was assigned on June 13, 2019. The Record on Appeal was filed on August 9, 2019. Appellant filed his brief on September 23, 2019.

On October 23, 2019, the Department filed a Motion to Dismiss (Motion) asserting the Department has not deprived Appellant of a state-created liberty interest. On October 31, 2019.

FILED

November 27, 2019

SC ADMIN. LAW COURT

Appellant filed a Response to Respondent's Motion to Dismiss and argued "a constitutional violation caused by the actions of a state agency are clearly "state-created liberty interests."

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) (emphasis added). Thus, in *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004), our Supreme Court explained that while the ALC has 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." *See also Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) (finding dismissal of inmate's appeal appropriate because his grievance did not implicate a state-created liberty interest).

Appellant requests permission to use religious oils for Wiccan religious services; however, he has not demonstrated a state-created liberty or property interest to possess those oils. As the Supreme Court held in *Slezak*, an inmate's interest in "religious tapes" did not implicate a state-created liberty interest. 361 S.C. at 331-32, 605 S.E.2d at 508. Likewise, in this case, an inmate's desire to obtain religious oils does not implicate a state-created liberty interest.

Furthermore, Appellate alleges that his transfer to another institution burdened his right to practice his religions and that the "transfer was therefore in violation of a federal rule and vindictive which is in fact a state created liberty interest violation." Appellant also argues in his brief that his transfer violates the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Causes of action brought under RLUIPA implicate federal law involving claims under the Spending or Commerce Clause. Thus, RLUIPA claims do not involve a state-created liberty interest and are not proper in this Court. Furthermore, as the Supreme Court explained in *Skipper v. South Carolina Department of Corrections*: "Absent an atypical and significant hardship on the

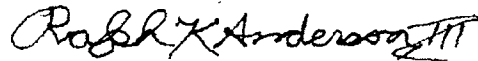
inmate, or an arbitrary, capricious, or biased decision by the prison, the court has no authority to interfere with inmate housing decisions.” 370 S.C. 267, 272, 633 S.E.2d 910, 913 (Ct. App. 2006).

In conclusion, because Appellant has not alleged a deprivation of a state-created liberty or property interest in this matter, the Court finds that summary dismissal is appropriate. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 508.

ORDER

IT IS THEREFORE ORDERED that the Department’s Motion to Dismiss is **GRANTED** and Appellant’s appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

November 27, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

November 27, 2019
Columbia, South Carolina