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DEC 20 2024

S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Bennie Lewis Montgomery, #240958, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )

Docket No. 24-ALJ-04-0602-AP

**ORDER OF DISMISSAL**

**RECEIVED**

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Bennie Lewis Montgomery (Appellant), an inmate housed with the South Carolina Department of Corrections (SCDC or Department).

Appellant filed a Step 1 Grievance alleging he has a limp due to surgery for spinal stenosis. Thereafter, Appellant filed a Step 2 grievance, which was also denied. On August 27, 2024, Appellant filed a Notice of Appeal. The case was assigned on September 12, 2024.

The Department filed a Motion to Dismiss (Motion) on November 12, 2024, asserting that Appellant’s claims do not implicate a state-created liberty or property interest. As of the date of this Order, Appellant has not filed a Response to the Motion.

**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. In *Slezak v. South Carolina Department of Corrections*, 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.” 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); *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).

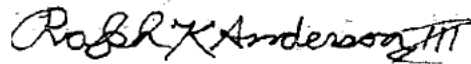
For the purpose of establishing jurisdiction, a state-created liberty or property interest generally exists when (1) an inmate is disciplined and punishment is imposed or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Sullivan*, 355 S.C. at 441, 586 S.E.2d at 126. Additionally, under certain circumstances, an inmate may have a state-created liberty interest in "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. Conner*, 515 U.S. 472, 483-84 (1995); see *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (applying *Sandin* to resolve a "condition of confinement claim").

Here, Appellant alleges he has a limp from surgery for spinal stenosis. However, Appellant's claim does not implicate a state-created liberty or property interest. See, e.g., *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 236 (Ct. App. 2008) (observing that a request for medically recommended support shoes "undeniably" implicated no state-created liberty interest). Because this appeal does not implicate a state-created liberty or property interest, summary dismissal is appropriate. See *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508; see also *Skipper*, 370 S.C. at 267, 633 S.E.2d at 910.

**ORDER**

**IT IS HEREBY ORDERED** that the Department's Motion is **GRANTED**, and that this appeal is, therefore, **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



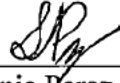
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Ralph King Anderson, III  
Chief Administrative Law Judge

November 22, 2024  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie 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).



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Stephanie Perez  
Judicial Law Clerk

November 22, 2024  
Columbia, South Carolina