

2-c

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael J. Ferola, #291941,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0585-AP

Grievance No. TCI 07698-12

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the denial of his Step 2 Grievance which sought the return of personal property that Inmate alleges SCDC failed to safeguard. There was no loss of good time credits, nor was Inmate's custody status or the length of his sentence or sentence calculation affected. Nor was there any assertion of the loss of any liberty interest.

DISCUSSION

The jurisdiction of the Administrative Law Court in inmate appeals springs from Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, (2000):

We next address the procedure an inmate must use when seeking review of Department's decision in a non-collateral or administrative matter, i.e., one in which an inmate does not challenge the validity of a conviction or sentence. ... Today we add credits related issues and other conditions of imprisonment to the list of administrative matters. ... These administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits or custody status. Al-Shabazz, *id.* (internal citations omitted).

RECEIVED

AUG 20 2013

SC Court of Appeals

FILED

AUG 29 2013

SC ADMIN. LAW COURT

2-c
Following Al-Shabazz is Sullivan v. SCDC, 355 S.C.437, 586 S.E.2d 124 (2003). The only way for the ALJ Division to obtain subject matter jurisdiction over an inmate's claim is if it implicates a **state created liberty interest**.¹ (emphasis supplied) Sullivan, id.

Then follows Wicker v. SCDC, 360 S.C. 421, 602 S.E.2d 56 (2004):

We find that where, as here, the state has created a **statutory right** (emphasis supplied) to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.... We are not unmindful of our opinion in Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E. 2d 124 (2003) in which we held the ALJ has jurisdiction to review DOC grievance proceedings only if they involve the denial of "**state created liberty interests**." (emphasis supplied)... The Al-Shabazz Court explained that procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. ... We find the state's statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without due process.... Accordingly, in this very limited circumstance, (FN1) we hold that DOC's failure to pay in accordance with the statute is reviewable by the ALJ. Wicker, id.

FN1. We note that our holding today is extremely limited and is not to be viewed as expanding the jurisdiction of the ALJ in any other circumstance. (emphasis supplied).

Lastly is the per curiam decision Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004) which was decided after Wicker:

We hold that the ALJD has jurisdiction over all properly perfected inmate appeals, but clarify that it may summarily dismiss those appeals that do not implicate an inmate's **state created** (emphasis supplied) liberty or property interest.

Slezak, at 361 S.C. at 333.

Given the strongly worded caution in the footnote to Wicker included in bold type above, it cannot be said that Slezak was intended to overrule Wicker and Sullivan, (when it included a reference to "property interest") thereby extending the jurisdiction of the ALC to appeals involving **all** inmate property interests. It must be supposed that inmate property issues, **other than those like that arise from state action as in Wicker, id.**, must be commenced and completed in some forum other than the ALC.

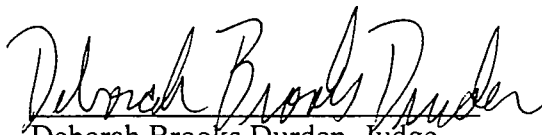
¹ It is important to keep in mind that liberty interest and property interests are separate and distinct.

2.c

CONCLUSION

In this instance, absent a statute or clear and unequivocal ruling of a higher court cloaking the ALC with power to hear appeals of cases involving inmate property rights **beyond that allowed by Wicker, id.**, I must dismiss this appeal.

THEREFORE, IT IS ORDERED that this appeal be and hereby is **DISMISSED, WITH PREJUDICE.**


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

August 29, 2013
Columbia, South Carolina

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 heretofore, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 29th day of August 2013
By: R. E. L.
Judicial Law Clerk