

OCT 23 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Curtis Richardson, 269166,)
)
Appellant,)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-04-0502-AP
Grievance No.: KRCI 0149-12

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed July 11, 2013 by Curtis Richardson (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the decision of the Department denying his grievance in which the Appellant complains the Department has incorrectly categorized him as “violent and not parole eligible”, and that this incorrect classification resulted in a delay of the Appellant’s parole hearing and a finding by the South Carolina Department of Probation, Parole and Pardon Services (“PPPS”) that the Appellant is ineligible for parole.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep’t of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004) provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).

Furthermore, in Slezak v. Evatt, 21 F.3d 590 (C.A.4) (1994) the Fourth Circuit Court of Appeals addressed the question of whether an inmate has a protected liberty interest in the classification he seeks to retain or to receive. In addressing the question, the Court stated that “...so far as the federal constitution is concerned, the security and custody classification of state

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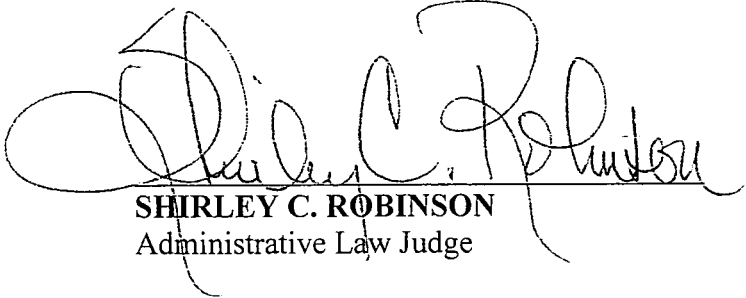
prison inmates is a matter for state prison-official discretion whose exercise is not subject to federal procedural due process constraints.” The South Carolina Supreme Court recited similar language in the Skipper case when the Court ruled that “an inmate’s complaint must encompass an infringement of a liberty interest that imposes an atypical and significant hardship on the inmate to trigger due process guarantees and judicial review.”

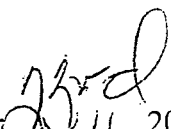
In this case, the Appellant asserts his disagreement with the classification status assigned to him by the Department. The Appellant correctly argues that his current sentence for Possession of Marijuana with the Intent to Distribute carries a statutory classification of “Non-Violent.” However, in response to the Appellant’s grievance, the Department explains that the Appellant has only been classified as “Violent” for Department purposes. Therefore, the Appellant’s conclusion that the Department’s internal classification of “Violent” has any bearing on the Appellant’s sentence or parole eligibility is incorrect. Moreover, for this Court to have jurisdiction, there must be a showing by the Appellant that the change in his classification or custody level imposes an atypical and significant hardship such that a liberty interest is implicated. The Appellant has not met that burden.

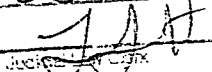
When the grievance being appealed does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).

THEREFORE, IT IS HEREBY ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge


October 23, 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 hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).
This 23 day of October 2013
By:  Clerk