STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Jones, #237769, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 13-ALJ-04-0965-AP Grievance No. PCI 1795-13 **ORDER OF DISMISSAL**

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Michael Jones (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant filed a grievance with the Department objecting to his security classification. On December 12, 2013, Appellant received the Department's final decision, which denied Appellant the relief he requested in his grievance. On December 17, 2013, Appellant filed this appeal with the ALC.

STANDARD OF REVIEW

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). The Court is authorized to dismiss inmate grievance appeals that do not implicate a state-created liberty or property interest. Skipper v. S.C. Dept. of Corr., 370 S.C. 267, 279 n.5, 633 S.E.2d 910, 917 n.5 (Ct. App. 2006).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377; 527 S.E.2d at 754. Consequently, the review in inmate grievance cases is limited to the record presented. See, S.C. Code Ann. § 1-23-380(4) (Supp. 2013) ("The review must be conducted by the court and must be confined to the record..."); see also, S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision

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unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law. See, Section 1-23-380(5); see also, Marietta Garage, Inc. v. S.C. Dept. of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); S.C. Dept. of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998).

DISCUSSION

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; Hewitt v. Helms, 459 U.S. 460, 466 (1983), overruled on other grounds by Sandin v. Conner, 515 U.S. 472 (1995).

Courts have held that the Constitution itself "vests no liberty interest in inmates in retaining or receiving any particular security or 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." Brown v. Evatt, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996); Slezak v. Evatt, 21 F.3d 590, 594 (4th Cir. 1994); see also, Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976). Rather, within these limits, so far as the Constitution itself is concerned, "the security and custody classification of state prison inmates is a matter for state prison official discretion." Brown, 322 S.C. at 194, 470 S.E.2d at 851; Slezak, 21 F.3d at 594.

Here, Appellant has failed to demonstrate that he has a state-created liberty interest in his security classification. An inmate's mere assertion that he has been given a certain security classification, without evidence that the classification imposes an atypical and significant hardship, does not establish a liberty interest. See, Harbin-Bey v. Rutter, 420 F.3d 571, 577 (6th Cir. 2005); Miller v. Campbell, 108 F. Supp. 2d 960, 965 (W.D. Tenn. 2000); James v. Reno, 39 F. Supp. 2d 37, 40 (D.D.C. 1999); Collins v. Hannigan, 14 F. Supp. 2d 1239, 1243 (D. Kan. 1998). In this case, Appellant has not explained how his security classification affects the conditions of his incarceration. See, Wilkinson, 545 U.S. at 223-24 (determining that prisoners had a liberty interest in avoiding transfer to "Supermax" prison facility, court considered conditions at facility); Sandin, 515 U.S. at 485 (finding no liberty interest protection against a 30-day assignment to segregated confinement, court noted that case did not present "a dramatic

departure from the basic conditions of Conner's indeterminate sentence"). Moreover, Appellant has not shown that his security classification will "inevitably affect" the overall duration of his imprisonment. See, Sandin 515 U.S. at 487 (finding that State's action would not "inevitably affect" the duration of the prisoner's sentence).

ORDER

IT IS THEREFORE ORDERED that Appellant's appeal is **DISMISSED, WITH PREJUDICE.**

AND IT IS SO ORDERED.

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

January 16, 2014
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 Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 16th day of January 2014
By: [signature]
Judicial Law Clerk