

RECEIVED

FEB 20 2014

SC Court of Appeals
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

David Dwight Smith, #245760,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 13-ALJ-04-0684-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal of David Dwight Smith (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant claims that the Department violated his constitution and civil rights, as well as federal and state labor laws, in the hiring practices used for the prison industry program.

Appellant filed his Step 1 grievance on February 15, 2012, seeking employment with prison industries. The Department denied the grievance, finding that Appellant did not meet the qualifications for the position. Appellant filed his Step 2 grievance, which was also denied on August 8, 2013. Appellant then filed his Notice of Appeal on September 6, 2013. The Notice of Assignment was filed September 11, 2013. The Brief of Appellant was due sixty-five (65) days after the Notice of Assignment was filed, or November 15, 2013. Appellant filed his brief on November 20, 2013.¹ The Department filed its brief and Motion to Dismiss on December 4, 2013. Appellant filed his response and objection on December 19, 2013.

¹ Appellant also filed a Motion for Discover and Appellant's First Request for Production of Documents on October 24, 2013. However, there is no provision for discovery in an appellant case. Furthermore, the filing of a motion in an appellate case does not stay the requirement to file a brief. Moreover, Rule 68 of the South Carolina Administrative Law Court Rules (SCALCR) provides that "the South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules." South Carolina Appellate Court Rule 240(b) sets forth:

Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

As there was no stay in the time period for the filing of the brief, the brief is late.

FILED

January 10, 2014
SC ADMIN. LAW COURT

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). 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. 2008) ("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. 2008) (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. 2008). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision 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. Dep't of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998).

DISCUSSION

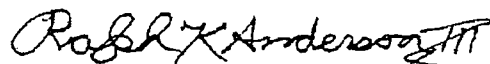
The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Nevertheless, "[c]ourts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. The Supreme Court further clarified this jurisdiction *Slezak v. S.C. Dep't of Corr.*, 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), explaining that although the ALC has jurisdiction over properly filed inmate grievance appeals, "[s]ummary dismissal [by the ALC] may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest."

In *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006), the Court of Appeals found that participation in the prison industries program does not implicate a

state-created liberty interest. In this case, Appellant has not been deprived of a state-created liberty or property interest in this matter,

IT IS THEREFORE ORDERED that this appeal is **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 10, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

January 10, 2014
Columbia, South Carolina