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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAN 19 2016

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

SC Court of Appeals

Curtis W. Waters, # 152625,

Plaintiff,

v.

South Carolina Department of Corrections,
Earnest Rowe, D.H.O., and Ms. Brown, I/M
Rep.

Defendants.

Case No.: 2015-CP-00869

ORDER OF DISMISSAL

FILED
RICHLAND COUNTY
2015 OCT 12 PM 12:25
JANE T. W. MORRIS
C. P. & G. S.

Hearing Date: October 1, 2015
Plaintiff pro se: Curtis W. Waters
Counsel for Defendants: Daniel J. Crooks III, Esquire

This matter is before the Court on Defendants' motion to dismiss the case. *Pro se* Plaintiff filed the action on May 11, 2015, and Defendants were constructively served on May 27, 2015 as a result of actual service on the South Carolina Attorney General on May 26, 2015. On June 8, 2015, Defendants filed a motion to dismiss. Subsequently, on June 19, 2015, Plaintiff filed an opposition to the motion to dismiss. On September 1, 2015, the Clerk sent notice of the hearing to all parties. Thereafter, on September 21, 2015, Plaintiff filed a motion for appointment of counsel. In the interest of judicial economy, the Court heard the motion for appointment of counsel together with the scheduled motion to dismiss.

Plaintiff's complaint contains several allegations related to a June 1, 2013 incident that occurred at Broad River Correctional Institution. Compl. 1-6. The gist of Plaintiff's argument appears to be that SCDC violated his due process rights during the disciplinary hearing process, *id.* at 1, resulting in sanctions that have

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caused him "atypical and significant hardships in relation to the ordinary incidences of prison life." *Id.* at 5.

Defendants have moved to dismiss the case, arguing that Plaintiff is simply trying to get a second "bite of the *Al-Shabazz* apple." Mot. Dismiss 2. Specifically, Defendants have moved for dismissal pursuant to Rule 12, subsections (b)(3) and (b)(6), SCRCP. *Id.* at 1. As to dismissal under Rule 12(b)(~~6~~)^{1 July}, Defendants argue that this Court is not the appropriate tribunal to entertain what is essentially an appeal of a prison disciplinary action. *Id.* at 2. Defendants argue that *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) provides the proper procedures for an inmate's appeal of the results of a prison disciplinary hearing and that, pursuant to *Steel v. Benjamin*, 362 S.C. 66, 70, 606 S.E.2d 499, 502 (Ct. App. 2004), there is no question that such appeals must go directly and exclusively to the Administrative Law Court instead of to the Circuit Court. *Id.* Defendants also cite the fact that Plaintiff did, indeed, appeal the disciplinary cases to the Administrative Law Court, but that the court dismissed all three cases, with prejudice. *Id.* at 1. Moreover, Defendants argue that the Court should dismiss this case under Rule 12(b)(6) for failure of Plaintiff's complaint to state a valid cause of action upon which relief can be granted.

In response to Defendants' motion, Plaintiff argues that the South Carolina Constitution's due process guarantee allows Plaintiff's case to proceed in this Court. Pl.'s Opp'n. Plaintiff further argues that "[b]ecause the Administrative Law [Court] of this state is by statute [*sic*] an agency of the executive branch," he therefore has "an absolute right" to challenge that decision. *Id.*

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The Court, having reviewed the pleadings and heard oral argument in this case, agrees with Defendants that Plaintiff's case should be dismissed. As an initial matter, it appears to the Court that Plaintiff's complaint is in fact an attempt at an appeal of the process leading up to, and of the sanctions imposed as a result of, Plaintiff's June 18, 2013 disciplinary hearing within SCDC. See Compl. 1 (Plaintiff claiming he was denied due process at his disciplinary hearing, specifically "the right to assistance in preparing for the hearing," "the right to a fair and impartial decision maker at the hearing," and "the right to call witnesses and present evidence"); *id.* at 5-6 (listing sanctions imposed as a result of the disciplinary conviction).

In addition, while Plaintiff's prayer for relief includes requests for declaratory relief and the award of monetary damages, Plaintiff's complaint is simply a reiteration of the arguments that Plaintiff has already raised by appeal to the Administrative Law Court through the *Al-Shabazz* process. Furthermore, the Court agrees with Defendants' additional argument, raised at oral argument, that this Court lacks subject matter jurisdiction under Rule 12(b)(1), SCRCP, over an appeal of the results of an inmate disciplinary hearing within SCDC. Finally, to the extent Plaintiff wishes to pursue claims against individual SCDC defendants relating to alleged violations of his constitutional rights, Plaintiff is not without a forum in which to raise such claims. This Court, however, is not the proper tribunal to raise the issues presented in Plaintiff's complaint.


The Court lacks subject matter jurisdiction in this case pursuant to Rule 12(b)(1), SCRCP because all appeals of inmate disciplinary cases must be taken to

the Administrative Law Court and then, if necessary, to the Court of Appeals. Under *Al-Shabazz v. State*, the Circuit Court no longer has jurisdiction over such appeals. Dismissal is therefore warranted pursuant to Rule 12(b)(1), SCRPC. Additionally, on its face, and even in a light most favorable to a *pro se* inmate, Plaintiff's complaint fails to state a valid cause of action upon which relief can be granted, especially since any suit brought against individual public defendants for alleged constitutional violations are not cognizable in the courts of this State, but only in the courts of the United States. Dismissal is therefore warranted pursuant to Rule 12(b)(6).

IT IS THEREFORE ORDERED that Defendants' motion to dismiss is **GRANTED** and this case is **DISMISSED**, with prejudice.

IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel is **DENIED**.

AND IT IS SO ORDERED!



Honorable Tanya A. Gee
Circuit Judge, At-Large

Columbia, S. C.

October 1, 2015