

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Judge

Docket No. 12-ALJ-04-0153-AP

Isiah James, Jr.,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

James appeals the 'Order of Dismissal' of the Honorable John D. McLeod dated 9-6-12. Appellant received a copy of the 'Order of Dismissal' on or about 11 September 2012.

September 30, 2012

/s/ 

Isiah James, Jr., 96883  
RCI, CA-52, POB 2039  
Ridgeland, S. C. 29936

Other Counsel of Record:

Shanika Johnson  
POB 21787  
Columbia S. C. 29221-1787

### PROOF OF SERVICE

I certify that I have served the Notice of Appeal on South Carolina Department of Corrections (SCDC) and party [Lower Court] by depositing a copy of it in the U.S. Mail, postage prepaid, on October 4, 2012, addressed to Shanika Johnson, POB 21787, Columbia, SC 29221-1787 and Hon. Jana Shealy, 1205 Pendleton Street, Suite 224, Columbia, SC 29201.

S/ Moriah James, II

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4 October 2012

Hon. Daniel Shearouse:  
S.C. Supreme Court  
Post Office Box 11339  
Columbia, S.C. 29211

Re: James v. SCD C, 12-ALJ-04-015-AP  
Appeal From Administrative Law Court [ALC]

Dear Clerk:

Enclosed please find 'Notice of Appeal', Proof of service, Order of dismissal of 9-6-12, motion for pauper status, 'Initial Brief of Appellant', Designation of matter and etc, for processing with your office

Please note this is an appeal from ALC and there was no in court hear - NO transcript of record. Thank you for the assistance.

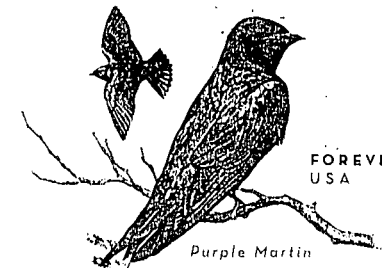
Respectfully submitted,

Leah James, II 96883

RCF, CA-52, POB 2039  
Ridgeland, S C 29936

Isiah James, Jr., 96883  
RCI, CA-52  
P. O. Box 2039  
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RIDGELAND CORRECTIONAL  
INSTITUTION

OCT 03 2012

Hon. Daniel Shearouse, Clerk  
S. C. Supreme Court  
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Columbia, South Carolina 29211

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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Isiah James, #096883, )  
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 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )  
 )

Docket No. 12-ALJ-04-0153-AP

**ORDER OF DISMISSAL**

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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).

On appeal, Appellant contends that his custody status classification and his ability to earn good time credits through work was reduced on two occasions, in 1985 and 1997, subsequent to being transferred between correctional facilities, extending the time of his maxout date. Appellant argues that the changes to his custody status classification are a violation of his due process rights and a violation of the *ex post facto* clause.

**DISCUSSION**

In the lexicon of inmate law, this is known as a custody status case.

The following quote from Al Shabazz, v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) is appropriate to the facts relied upon by Inmate in this matter inasmuch as Al-Shabazz, id., is the source of the jurisdiction of this Court in custody status cases:

At first glance, our decision today appears to conflict with precedent because we establish a method of judicial review in cases in which we previously determined an inmate usually does not have a protected liberty interest. See *Brown v. Evatt*, 322 S.C. 189, 470 S.E.2d 848 (1996) (inmate has no liberty interest in a particular custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and not otherwise violative of the Constitution) (citing *Sandin v. Connor*, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed.2d (1995)); *Crowe v. Leeke*, 273 S. C. 763, 259 S.E.2d 614 (1979) (transfer within the prison system or downgrading custody status is not subject to judicial review as long as prison officials do not act arbitrarily, capriciously, or from personal bias or prejudice).

*Brown* and *Crowe* do not stand for the proposition that judicial review is

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improper or unavailable. To the contrary, those cases teach that such review must be available to determine whether “the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution,” or whether prison officials have acted arbitrarily, capriciously, or from personal bias. *Brown, id; Crowe, id.*

We emphasize, however, that we continue to endorse the limited nature of judicial review manifest in *Brown* and *Crowe*. Courts 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. *Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980). We intend to adhere to this “hands off” doctrine when reviewing the outcome of any major or minor disciplinary hearing in which an inmate has a protected liberty interest due to the potential loss of sentence related credits. **In addition, the process due an inmate—as well as the level of judicial scrutiny—in a custody status case ... in which an inmate does not face the loss of sentence related credits is further limited by the fact that neither of those matters is a protected liberty interest within the scope of the Fourteenth Amendment.** (emphasis supplied).

Al Shabazz, v. State, 527 S.E.2d at 756-7.

In an appeal arising from South Carolina, the 4th Circuit Court of Appeals set forth the following in Slezak v. Evatt, 21 F.3d 590 (4<sup>th</sup> Cir. 1994):

The logical first question in assessing such a claim is, therefore, whether the inmate has a protectible liberty interest in the classification he seeks either to retain (against a “demotion”) or to receive (by a “promotion”). This, in turn raises the question of where such a liberty interest might be found. Here, again, the basics are plain. The federal constitution itself vests no liberty interest in inmates in retaining or receiving any particular security or custody status “ ‘[a]s long as the [challenged] conditions or degree of confinement ... is within the sentence imposed ... and is not otherwise violative of the Constitution.’ ” (citation omitted). Within these limits, so far as the federal constitution is concerned, the security and custody classification of state prison inmates is a matter for state prison-official discretion whose exercise is not subject to federal procedural due process constraints.

But such a liberty interest to retain or attain a particular security or custody classification may be created by state law having a very specific quality. Its effect must be to “plac[e] substantive limitations on official discretion,” (citation omitted) thereby giving rise, at the limits imposed upon discretion, to “legitimate claim[s] of entitlement,” *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908, 104 L.Ed.2d 506 (1989), to the classification sought and administratively denied.

The rub has come in determining whether particular state law has the required quality. Some fleshing out and clarification of the test has been provided in the line of Supreme Court decisions applying it to various state law patterns. Early on, Hewitt emphasized the need for "explicitly mandatory language in connection with requiring specific substantive predicates." (citation omitted). And Olim emphasized that if under state law "the decision maker is not 'required to base its decisions on objective and defined criteria,' but instead 'can deny the requested [classification] for any constitutionally permissible reason or for no reason at all,' " that law creates no protected liberty interest. (citation omitted).. And, again, per Olim, the mere fact that state law mandates specific procedures does not suffice, since "[t]he State may choose to require procedures for reasons other than protection against deprivation of substantive rights." (citation omitted). For, as Thompson most recently has pointed out, that which must be found mandated by state law is not procedures alone, or even procedures plus substantive predicates (objective criteria) alone, but substantive results once prescribed procedures have revealed that substantive predicates have been established. 490 U.S. at 464, 109 S.Ct. at 1910 (state laws that "stop short of requiring that a particular result is to be reached upon a finding that the substantive predicates are met" do not create protected liberty interests).

From these Supreme Court decisions, we have derived and applied the following understandings. No matter how firmly and in what detail procedural protections are mandated by state law for making decisions respecting the conditions of inmate custody and confinement, those standing alone create no protected liberty interest—either in the procedures or in any substantive result sought. *See Stewart v. Bailey*, 7 F.3d 384, 392 (4th Cir.1993). By the same token, no matter how plainly and explicitly substantive predicates for making such decisions are provided by state law, those either alone or in conjunction with prescribed procedures do not, without more, create protected liberty interests.—*See Berrier v. Allen*, 951 F.2d 622, 624–25 (4th Cir.1991) (North Carolina prison regulations); *O'Bar v. Pinion*, 953 F.2d 74, 84–85 (4th Cir.1991) (same); *Paoli v. Lally*, 812 F.2d 1489, 1492–93 (4th Cir.), cert. denied, 484 U.S. 864, 108 S.Ct. 184, 98 L.Ed.2d 137 (1987). (Maryland regulations).

What this all comes to is that constitutionally protected liberty interests are only created by state law regimes which in the end effectively say to inmates: "If facts A, B, and C are established in an appropriate fact-finding process, you are thereupon legally entitled to a more favorable security or custody classification than you presently have," or, "Unless facts A, B, and C are so established, you are legally entitled not to be placed in a less favorable classification than you now have."

Thus, even if a state law regime mandates both a detailed procedural process for making classification decisions, and substantive criteria to be

used in making those decisions, no constitutionally protected liberty interest is thereby created if under the regime either the primary decisionmaker or any reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria. See *Stewart*, 7 F.3d at 392; *Paoli*, 812 F.2d at 1493.

Slezak, 21 F.3d at 594-5 (4<sup>th</sup> Cir. 1994).

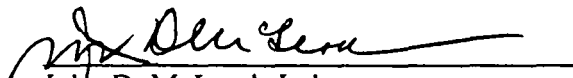
There is nothing in the record before me to indicate that the restriction complained of is “atypical and significant in relation to the ordinary incidents of prison life”, or will affect the duration of his sentence or is beyond the sentence imposed; nor is there any indication of any decision of prison officials that is arbitrary, capricious, or resulting from personal bias or prejudice. I find nothing in the record to indicate that there has been an infringement that reaches Constitutional dimensions. There is clearly no state created liberty interest infringed upon here.

This Court may summarily dismiss an inmate appeal where the grievance does not implicate a state-created liberty or property interest. Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004). The foregoing being dispositive, it is unnecessary to address the remaining issues asserted by Appellant. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

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

**AND IT IS SO ORDERED.**

September 6, 2012  
Columbia, SC

  
John D. McLeod, Judge  
S.C. Administrative Law Court

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 6 day of September, 2012  
By: Anthony R. Johnson  
Judicial Law Clerk