

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert Belton, #200509,
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 16-ALJ-04-0392-AP
Grievance No. BRCI 0026-16

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 Robert Belton (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant seeks review of the Department's final decision determining that he is correctly classified as "violent," due to his kidnapping conviction. On August 31, 2016, the Department filed a Motion to Dismiss on the grounds that Appellant does not have a liberty or property interest sufficient to merit review by the ALC. The Court agrees.

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. 2015) ("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. 2015) (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. 2015). 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

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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.

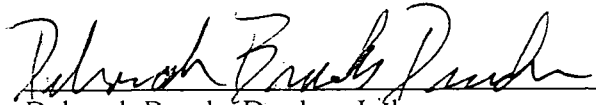
Here, Appellant has failed to demonstrate that he has a state-created liberty interest in his security classification. An inmate’s mere assertion that he has been given a certain security classification, without evidence that the classification imposes an atypical and significant hardship, does not establish 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).

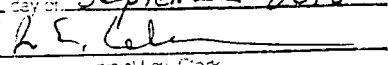
ORDER

IT IS THEREFORE ORDERED that Respondent’s Motion to Dismiss is **GRANTED** and Appellant’s appeal is **DISMISSED, WITH PREJUDICE.**

AND IT IS SO ORDERED.


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

September 26, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
I hereby 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,
by the United States mail, postage paid, or in the Interagency
Mail Service addressed to the party(ies) or their attorney(s).
On 26th day of September 2016

Judicial Law Clerk