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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Derrick Bessent, #273872,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 14-ALJ-04-0560-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Derrick Bessent (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC).

STATEMENT OF FACTS

Appellant asserts that he is experiencing back pain and that the non-narcotic medication he is receiving does not help. He is requesting a second opinion with a specialist. Appellant initially filed his Step 1 Grievance on April 13, 2016 requesting an MRI for his back. The Warden denied Appellant's grievance, noting in his response that an MRI was not indicated and that he could sign up for re-evaluation. Appellant filed his Step 2 Grievance and received a response that unless there was a change in condition, there was no need for an MRI or referral to a specialist. Appellant then filed his appeal on July 19, 2016. SCDC filed the Record on Appeal on October 10, 2016. SCDC filed a Motion to Dismiss (Motion) on November 7, 2016 for Appellant's failure to file a brief. As of the date of this Order, Appellant has not filed a brief or a response to the Motion.¹

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). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests, typically involving: (1) cases in which an inmate contends that prison officials

¹ Appellant sent a letter to the Court on November 10, 2016 stating why he was requesting an MRI but failed to send a copy of the letter to the Department or provide a legal basis for his appeal.

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have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382; 527 S.E.2d at 757.² Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2016) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2016).

DISCUSSION

Appellant's brief was due 90 days after the Notice of Assignment was filed on November 2, 2016. *See See* Rule 60(A) of the South Carolina Administrative Law Court Rules (SCALC Rules). As of the date of this Order, Appellant has not filed a response to the Motion to Dismiss.

Pursuant to SCALC Rule 62, an Administrative Law Judge may dismiss an inmate's appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. Appellant's delay is well beyond the time period set forth in the

² In *Sullivan v. S.C. Dep't of Corr.*, the Supreme Court also found that other conditions of confinement could potentially implicate a state-created liberty interest. However, those interests are "generally limited to freedom from restraint which. . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 355 S.C. 437, 586 S.E.2d 124 (2003) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

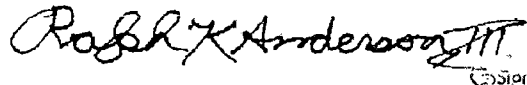
SCALC Rules. Since Appellant was afforded ample time to file his Brief and did not set forth any extenuating circumstances regarding his failure to file in a timely manner, I conclude that this matter should be dismissed.

Additionally, it appears that Appellant is not pleased with his medical care. In establishing this Court's jurisdiction in these matters, the S.C. Supreme Court, in *Al-Shabazz*, recognized that except where there is a possible constitutional violation, since prison officials are in the best position to decide inmate disciplinary matters, the courts, and therefore this tribunal, adhere to a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the Administrative Procedures Act. 338 S.C. at 382, 527 S.E.2d at 757; *see also Pruit v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (stating the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy). The Supreme Court subsequently clarified, in *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004), that while the ALC has jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate "where the inmate's grievance does not implicate a state-created liberty or property interest."

In this case, Appellant has not been deprived of a state-created liberty or property interest. *See, e.g., S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 236 (Ct. App. 2008) (observing that a request for medically recommended support shoes "undeniably" implicated no state-created liberty interest). Since this Court does not have jurisdiction to hear inmate matters that do not involve state-created liberty or property interests.,

IT IS THEREFORE ORDERED that the appeal of the Appellant is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



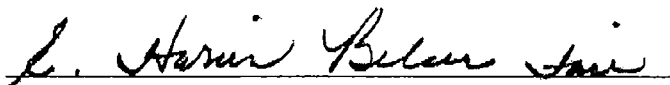
Ralph King Anderson, III

Ralph King Anderson, III
Chief Administrative Law Judge

December 12, 2016
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
Judicial Law Clerk

December 12, 2016
Columbia, South Carolina