

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven L. Barnes,)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Case No. 15-ALJ-30-0318-1J

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a petition filed on July 6, 2015 by Steven L. Barnes (Petitioner) challenging his classification and detention as a Safekeeper with the South Carolina Department of Corrections (SCDC or Department).

FACTS/PROCEDURAL HISTORY

Petitioner was held as a pre-trial detainee in the county of jails of Aiken, Laurens, and Greenwood between February 7, 2014 and April 28, 2015. On or about April 20, 2015, the sheriff of Edgefield County sought to have Petitioner classified as a Safekeeper and transferred to the custody of SCDC while he awaits trial.¹ The Department recommended that Petitioner be designated as a Safekeeper, and the Office of the Governor issued an Executive Order on April 28, 2015 approving that designation, which was renewed on August 12, 2015.² As a result of the Governor's Order, on April 28, 2015, Petitioner was removed from a county jail and transferred to SCDC as a Safekeeper.

On April 30, 2015, Petitioner filed a written objection, through his attorneys, to his Safekeeper status within SCDC on constitutional and statutory grounds. In a letter dated July 2,

¹ Petitioner alleges that his transfer from county jail to SCDC was out of retaliation for his filing of numerous grievances while in jail. However, there is no evidence in the record to substantiate these claims, and therefore the Court will not consider those contentions. More importantly, the hearing held in this matter was conducted to determine if the Court had jurisdiction to review this matter. Thus, the retaliation allegation could not be considered unless the Court could lawfully exercise jurisdiction.

² There was a question about whether this Court has jurisdiction over the Office of the Governor in this matter. However, at the hearing, the parties agreed with the Court that this question was premature, because the Office of the Governor had not been added as a party in this case.

FILED

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2015, the Department denied Petitioner's objections and explained the reasons for his transfer to SCDC and classification as a Safekeeper. On July 6, 2015, Petitioner filed an action in this Court seeking injunctive relief.³ On August 28, 2015, the Department filed a Memorandum of Law in Support of Dismissal of the Petition. A hearing was held in this matter at the ALC in Columbia, SC.

DISCUSSION

Based on the memoranda submitted and the subsequent hearing held in this matter, the issues in this case can be reduced to (1) whether this Court has jurisdiction to hear Petitioner's challenge to the classification and transfer of Petitioner to SCDC as a Safekeeper pursuant to S.C. Code Ann. § 24-3-80 (Supp. 2014), and (2) whether the Court has jurisdiction to consider the conditions of Petitioner's confinement as a Safekeeper pursuant to Section 24-3-80.

Classification and Transfer of Petitioner as a Safekeeper

Petitioner argues that this Court has jurisdiction to review the decision to classify him as a Safekeeper and transfer him to SCDC. Petitioner argues that the Department made the final decision in its July 2, 2015 letter to classify Petitioner as a Safekeeper, and therefore this Court has the authority, under *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and its progeny, to hear this case.⁴ Petitioner also argues that even if it is the Office of the Governor that made the final decision, the Court still has jurisdiction to hear this case.

The Department, on the other hand, argues that Section 24-3-80 deprives this Court of subject matter jurisdiction to review the decision to classify Petitioner as a Safekeeper and transfer him to SCDC, and that the Department did not, and could not, render a final decision as to Petitioner's classification and transfer as a Safekeeper, as only the Governor, who is not a party in this case, could make that decision. The Department therefore requests that the Court dismiss the petition for lack of subject matter jurisdiction. I agree with the Department as to this issue.

³ Petitioner styled his filing as a "Request for Contested Case Hearing." However, this Court labeled this action "Request for Injunctive Relief" in its Notice of Assignment, because it involves requests for injunctive and declaratory relief, though neither term is expressly stated.

⁴ In its Memorandum, Petitioner also argued that even if the Office of the Governor made the final decision, the Court would still have jurisdiction. However, at the hearing, Petitioner conceded and the Court concluded that the Court could not address the matter of whether it had jurisdiction over the Office of the Governor because the Governor was not a party in this case.

Section 24-3-80 states:

The director of the prison system shall admit and detain in the Department of Corrections for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment duly authorized by the Governor, provided, a warrant in due form for the arrest of the person so committed shall be issued within forty-eight hours after such commitment and detention. **No person so committed and detained shall have a right or cause of action against the State or any of its officers or servants by reason of having been committed and detained in the state prison system.**

(Emphasis added).

First, it is clear from the plain language of the statute, that only the Governor can “duly authorize[]” the commitment of a prisoner to SCDC for safekeeping. Therefore, even if the Department’s decision had been stylized as a final decision, the Department did not have the authority to make the decision. As noted above, only the Governor possesses the authority to render a final decision with respect to Petitioner’s classification and transfer as a Safekeeper. This fact is also reflected in Section 3 the Governor’s Executive Order 2000-11 (February 16, 2000), which states, “Upon receipt of the **recommendation** of the Director of the Department of Corrections, **the Governor shall make a determination** as to whether a safekeeping order should be granted **and, if appropriate, issue the requested order.**” (emphasis added). But regardless of whether the Office of the Governor or the Department rendered the final decision, Section 24-3-80 precludes a right of action or cause of action against **any** of the State’s officers or servants, which would include both the Governor and the Department.

This Court thus must determine whether the injunctive and declaratory relief that Petitioner seeks constitutes a “right of action” or a “cause of action.” The Notes to Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP) appears to draw a distinction between causes action and remedial writs, including injunctions. The Notes set forth that “Rule 65 makes it clear that the various remedial writs are not causes of action but remedies or relief, the right to which must be supported by the law and the facts. Therefore, the injunction or other writ granted does not become permanent or final until final judgment in the action. . . .” However, the appellate courts in South Carolina have referred to an action for injunctive or declaratory relief as a “cause of action.” *See, e.g., Knohl v. Duke Power Co.*, 260 S.C. 374, 376, 196 S.E.2d 115, 116 (“We have held that a complaint fails to state **a cause of action for injunctive relief** unless facts are alleged which show that the plaintiff has no adequate and complete remedy at law.”) (emphasis added); *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2006) (“The alter ego cause of

action is directly related to Sloan's **cause of action for a declaratory judgment** that Friends is a public body.") (emphasis added); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 640, 699 S.E.2d 699, 708 (Ct. App. 2010) ("We reverse the circuit court's conclusion . . . that the complaint failed to allege facts supporting **causes of action for . . . injunction, and declaratory relief.**") (emphasis added). Therefore, if an injunction is interpreted as a cause of action, review of the transfer of a defendant to the Department for safekeeping is not allowed. Furthermore, even if an injunction is not a cause of action, it is certainly an "action" that is brought in the Court. The plain language of Section 24-3-80 bars the "right" to bring any action, which includes an injunction. Accordingly, regardless of whether Petitioner's action as it pertains to his classification and transfer as a Safekeeper is a right of action or a cause of action, Section 24-3-80 clearly precludes either kind of action from being brought against the State or any of its officers or agents.

Petitioner nevertheless claims that even if the Governor is the final decision-maker as to Safekeeper status, her decision would have to be reviewable by this Court or else Section 24-3-80 would be unconstitutional. Petitioner adds that "[t]his Court's authority to act and hear this case is even more necessary and constitutionally mandated where the real reason for Petitioner's removal from the county jail and transfer into state custody is not because of any current or recent infractions or behavior as envisioned by the Executive Order."⁵

As an initial matter, this Court cannot consider facial challenges to the constitutionality of a statute or regulation. *See Travelscape v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011). However, this Court "is empowered to hear as applied challenges to statutes regulations." *Id.* at 109, 705 S.E.2d at 39. Here, the Court has been provided with no authorities indicating that a prisoner has a state-created liberty interest in his mere classification as a Safekeeper or in the location in which he is housed while he awaits trial. As the Court will discuss further below, a prisoner does have a state-created liberty interest in the conditions of confinement once he has been classified and transferred to an SCDC facility as a Safekeeper. However, as to the Governor's basis for his classification and transfer of a prisoner as a Safekeeper, Petitioner has failed to establish that Section 24-3-80 was unconstitutionality applied in this case. For this reason and because the statute plainly precludes rights of action or causes of action regarding the

⁵ The "Executive Order" that Petitioner references here is Executive Order 2000-11 (February 16, 2000), and the "infractions or behavior" that he references are set forth in Section 1 of this Order as follows: "(1) is a high escape risk; (2) exhibits extremely violent and uncontrollable behavior; and/or (3) must be removed from the county facility to protect the individual from the general population or from other detainees."

would be a vain or futile act.”). “Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *See Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). The administrative remedies provided for inmates pursuant to the Department’s Inmate Grievance Policy are Step 1 and Step 2 grievances.

Here, Petitioner submitted a letter through his counsel to the Department objecting to his classification and treatment as a Safekeeper, to which the Department responded with a letter rejecting his objections and explaining the reasons for his classification and transfer.⁷ The Department asserts that the letter was not its final decision as to Petitioner’s conditions of confinement but rather a response to the issues raised regarding the placement of Petitioner in the Department’s custody as a Safekeeper. In fact, the July 2, 2015 letter is not designated as a “final” order and does not indicate that a final determination is being made regarding specifically challenged custody issues. Therefore, I find that Petitioner did not establish that this letter was the final department decision.

Moreover, Petitioner’s letter failed to follow the appropriate procedure for filing a grievance. The Department asserts that if Petitioner’s issues were raised via a Step 2 Grievance, the specific challenges to confinement would be reviewed with much greater scrutiny than the response given in the July 2 letter.⁸ Thus, since a Step 2 review may provide an “adequate remedy,” I find Petitioner failed to exhaust his administrative remedies and has not demonstrated any circumstances supporting an exception. *See S.C. Code Ann. § 1-23-380* (Supp. 2014); *see also Storm M.H. ex rel McSwain, supra; Ward v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000); *Brown v. James, supra*. Therefore, the Court cannot consider the conditions of Petitioner’s confinement at this time. Accordingly, I find it appropriate for this matter to be remanded to the Department so that Petitioner can have the opportunity to file a Step 2 Grievance for the Department’s consideration in order to create a record for review in this matter, and to give the Department an opportunity to perhaps remedy, if warranted, Petitioner’s grievances.

⁷ Petitioner’s letter is not in the Record.

⁸ The Department stated at the hearing that it accelerates the procedure for the Safekeepers, due to the brief nature of their housing, which is another why the process would begin with a Step 2 Grievance instead of a Step 1 Grievance.

classification and transferal of prisoners for safekeeping, the Court grants the Department's request to dismiss for lack of subject matter jurisdiction as to this issue.

Conditions of Confinement

Petitioner next argues that this Court has jurisdiction to consider the conditions of his confinement as a Safekeeper pursuant to Section 24-3-80. He argues that he was treated like SCDC inmates who had committed disciplinary infractions, even though he had not committed any violations. For example, Petitioner asserts that he was denied publications from publishers, postage, and was limited in his access to legal counsel.⁶ The Department requested the Court to dismiss the petition based on a lack of subject matter jurisdiction to consider this issue. Because I agree with Petitioner that the Court has subject matter jurisdiction to consider the conditions of his confinement, the Department's request to dismiss as to this issue is denied.

Though Petitioner is a pretrial detainee Safekeeper, not an inmate who is being incarcerated based on a conviction and sentencing, the Court nevertheless finds that based on *Al-Shabazz, supra*, this Court's jurisdiction likely extends to pre-trial detainee Safekeepers with respect to their conditions of confinement. Therefore, the Court concludes that it has subject matter jurisdiction to consider the conditions of Petitioner's confinement.

However, the Court must also consider whether it has procedural jurisdiction. Normally, an inmate who fails to exhaust his administrative remedies by availing himself of the Department's established grievance process deprives the Court of procedural jurisdiction to hear an appeal. *See Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act."); *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) ("The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule."); *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (quoting *Brown*, 389 S.C. at 54, 697 S.E.2d at 611 ("A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies

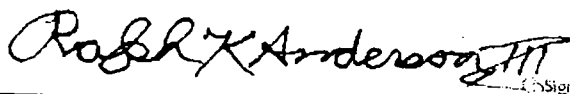
⁶ Petitioner also mentioned in his Memorandum that he had been denied access to Dove soap, which SCDC's medical unit had approved for a skin condition. However, the Department asserted at the hearing that this particular matter had been resolved.

ORDER

IT IS THEREFORE ORDERED that the Department's request for dismissal as to the issue of Petitioner's classification and transferal to SCDC as a Safekeeper is **GRANTED**.

IT IS FURTHER ORDERED that the case be **REMANDED** to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration.

AND IT IS SO ORDERED.



Ralph King Anderson, III

Ralph King Anderson, III
Chief Administrative Law Judge

November 5, 2015
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

November 5, 2015
Columbia, South Carolina