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FEB 09 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

William Leon Burnett, #352645, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )

Docket No. 17-ALJ-04-0367-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed on July 7, 2017 by the Appellant, William Leon Burnett, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department). The Appellant appeals the denial of his grievance in which he stated that prison officials violated prison policy when he was wrongfully accused of and charged with Offense 811, "Possession of a Weapon," when neither of his similarly situated roommates were, and when prison officials refused to do a fingerprint analysis on the weapon. The Appellant also maintains that his constitutional due process rights were violated when he was denied the ability to have witnesses, including character witnesses and his roommates, present at his hearing. As such, the Appellant requests that this court overturn his conviction.<sup>1</sup> The Appellant does not contend that he that he lost good time, or that his sentence, sentence related credits, or custody status have been erroneously calculated.

The Department filed a Motion to Dismiss on October 2, 2017, arguing that the Appellant had not lost any good time credits but, rather, was denied the opportunity to earn sentence credits for the month in which the disciplinary infraction occurred, and that no independent state created liberty or property interests are implicated by the Appellant. As such, the Department claims that the court does not have subject matter jurisdiction to hear the appeal under S.C. Code Ann. § 1-23-600(D) and *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012).

<sup>1</sup> The Appellant also filed a motion for an oral hearing in this matter. However, as discussed *infra*, in light of the court's findings, a hearing in this matter would fail to change the disposition and the court's inability to offer the Appellant the relief he seeks so the motion need not be considered by the court. Thus, pursuant to SCALC Rule 64, the court

FILED  
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## DISCUSSION

The court's jurisdiction to hear this matter is derived entirely 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's appellate jurisdiction in inmate appeals is limited to cases involving denial of state-created liberty interests<sup>2</sup> typically involving: (1) cases in which an inmate contends that prison officials 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. *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750.

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 (citation omitted). Consequently, review in inmate grievance cases is limited to the record before the court. Pursuant to *Slezak v. S.C. Dep't of Corr.*, the ALC is to have jurisdiction over all properly perfected inmate appeals but “[s]ummary dismissal may be appropriate where the inmate’s grievance does not implicate a state created liberty or property interest.” *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004).

While it is well established that the loss of sentence-related credits implicates a state-created liberty interest, in *Howard v. S.C. Dep't of Corr.*, the Supreme Court considered whether the loss of the opportunity to earn sentence-related credits implicates a state-created liberty interest. *See Howard*, 399 S.C. at 629, 733 S.E.2d at 217. The Supreme Court found that “an inmate does not acquire an interest in sentence-related credits until he or she earns them.”<sup>3</sup> *Id.* Consequently, the Supreme Court held that “an inmate’s loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty interest.” *Id.* Moreover, Section 1-23-600(D) of the South Carolina Code expressly states that “[a]n administrative law judge shall not hear an appeal from an inmate in the custody of [SCDC] involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) . . . .” S.C. Code Ann. § 1-23-600(D) (Supp. 2017). As such, there is clearly no state-created liberty or property interest implicated here and, pursuant to *Howard* and Section 1-23-600(D), this court is

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<sup>2</sup> The court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

<sup>3</sup> As the Supreme Court noted, “there is a difference between an inmate's *forfeiture of accrued* sentence-related credits versus the *withholding of unearned, potentially available* sentence-related credits.” *Howard*, 399 S.C. at 629, 733 S.E.2d at 217 (citing *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 343, 649 S.E.2d 35, 40 (2007) (Toal, C.J. dissenting), *abrogated by Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012)).

without jurisdiction to hear this matter.

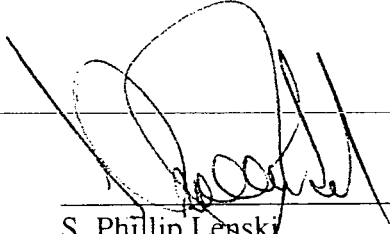
Furthermore, “[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property.” *Howard*, 399 S.C. at 635, 733 S.E.2d at 220 (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750 (citation omitted)). As discussed *supra*, the Appellant's claims do not implicate a liberty or property interest encompassed by the Fourteenth Amendment. As such, the requirements of procedural due process do not apply to the disciplinary proceedings giving rise to those claims. To this point, in *Howard*, the appellant similarly claimed that he was not afforded due process during his disciplinary proceedings when he was denied the ability to present inmate witnesses and documentary evidence that would have refuted the charged offense. *Id.* The Supreme Court found that, since the appellant did not have a claim for deprivation of a valid liberty interest, and did not argue that he was deprived of any property interest, his due process claims were unfounded. *See id.* Accordingly, the court cannot say that the Appellant's due process rights were infringed in the instant case.<sup>4</sup>

Thus, this is clearly a case in which this court must adhere to the traditional “hands off” doctrine regarding judicial involvement in prison disciplinary procedure and other internal prison matters. *See Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980); *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (emphasis supplied).

**ORDER**

**THEREFORE**, the Department's Motion to Dismiss is **GRANTED** and this matter is hereby **DISMISSED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
S. Phillip Lenski  
Administrative Law Judge

January 14<sup>th</sup> 2018  
Columbia, South Carolina

<sup>4</sup> Assuming, *arguendo*, that the Appellant's claims are true and implicative of a state-created liberty or property interest, the court would note that the Appellant is not incorrect in stating that the inability to call witnesses may have violated his procedural due process rights, provided that doing so would not have constituted an undue hazard to institutional safety or correctional goals. *See Al-Shabazz*, 338 S.C. at 371, 527 S.E.2d at 571 (citing *Wolff v. Organization of Prisoners*, 437 U.S. 589, 603, 57 S.Ct. 1320, 56 L.Ed.2d 1325 (1978); *McDonnell*, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974)).

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