

SCALC Rule 62. By filing an appeal, the Appellant has an obligation to advance a position. "There is a limit beyond which the court should not allow a litigant to consume the time of the court" *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990). Therefore, pursuant to Rule 62, the Respondent's Motion to Dismiss is granted and this matter is hereby dismissed.

However, even if the Appellant had timely filed his brief, ~~this court has no jurisdiction to entertain his appeal.~~ The court's jurisdiction to hear such matters 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 interests² 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). There is clearly no state created liberty or property interest implicated here.³

² The court has limited jurisdiction in some property matters, but that is not at issue in this case.

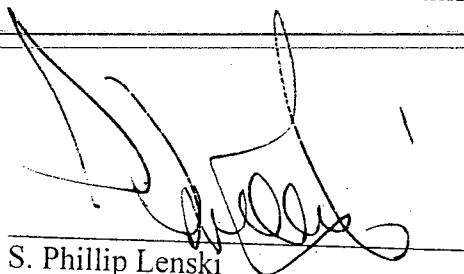
³ Even if the court had jurisdiction to hear the Appellant's as-applied constitutional challenges, they are without merit. As a threshold matter, the Appellant has not sufficiently demonstrated that his legal mail was opened, let alone read, by prison officials in this instance, rather than by his roommates or other inmates who may have had access to his living area. The Appellant states that he was not present when the alleged offense occurred, and relies on hearsay as his only evidence to show fault on behalf of prison officials. Moreover, SCDC policy states that the Department "reserves the right to conduct unannounced routine searches of . . . inmates [sic] personal and state issued property, inmates living quarters (e.g., room, cell, etc.), . . . and any item received through authorized channels, i.e., commissary, canteen, mail, etc. at any time to control contraband." SCDC policy OP-22.19; see also *Hudson v. Palmer*, 468 U.S. 517 (1984) (holding that an inmate has no reasonable expectation of privacy in his living quarters, and that random searches are essential to effective security in penal institutions). Furthermore, the Appellant does not allege that there is a pattern or practice by SCDC officials of opening legal mail outside of the inmates' presence, and there is no evidence to support such a claim. Thus, even assuming that the Appellant's arguments are factual, at most the alleged conduct amounts to a negligent act by SCDC officials. However, case law on this subject confirms that negligently reading legal mail outside the presence of an inmate does not rise to the level of a constitutional violation. See, e.g., *Glenn v. Bracey*, C/A No. 6:06-0550-GRA-WMC, 2006 WL 2796319, at *5-6 (D.S.C. Sep. 27, 2006) (conducting a thorough analysis of case law on this precise issue from various jurisdictions prior to concluding that

Thus, even had the Appellant timely filed his brief, 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

February 2, 2018
Columbia, South Carolina

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 thereof in the United States Mail, postage prepaid, in the emergency mail service addressed to the parties or their attorney(s).

This 2nd day of February 2018
by: [Signature]
Judicial Law Clerk

such an act is not violative of the constitution).