

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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JUL 16 2018
SC Court of Appeals

Sanyika Askari, #236679,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
)
)
)

Docket No. 18-ALJ-04-0224-AP

**ORDER DENYING APPELLANT'S
MOTIONS FOR EXTENSION OF
TIME AND TO HOLD APPEAL IN
ABEYANCE AND GRANTING
RESPONDENT'S MOTION TO
DISMISS**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by the Appellant, Sanyika Askari, who is incarcerated with the South Carolina Department of Corrections (Department). After the Appellant's Step 1 and Step 2 grievances were filed and denied, he filed his Notice of Appeal with the court on May 11, 2018. The Appellant does not appeal a disciplinary matter but contends that the Department has failed to remove a 1997 attempted escape charge from his Inmate Record and that the Department is maintaining these charges in their Offender Management System in violation of his constitutional rights to due process and equal protection of the laws.

On June 14, 2018 the Department filed a motion to dismiss pursuant to *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).¹ On June 22, 2018 the Appellant filed a Motion for Extension of Time requesting a thirty (30) day extension until September 17, 2018 to file his brief. On June 25, 2018 the Appellant also filed a Motion to Hold Appeal in Abeyance because the Record on Appeal (ROA) is not in proper form and does not contain all of the correct documents pertaining to the Appellant's disciplinary history. For the reasons set forth below, the court grants the Department's motion and denies both of the Appellant's motions.

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

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¹ As of the date of this order, the Appellant has not yet responded to the Department's motion to dismiss. JUL 02 2018

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. *Id.*

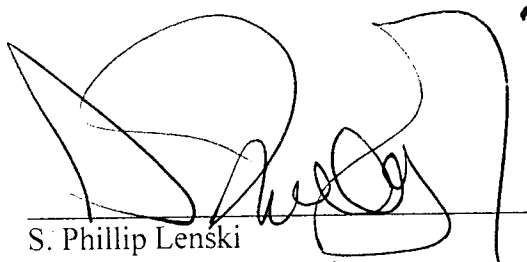
The Supreme Court further explained the court's jurisdiction in Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004). Slezak emphasized that, while the court has jurisdiction over all properly filed inmate grievance appeals, the Court is not required to hold a hearing on every matter. *Id.* "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." *Id.* citing Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995). Additionally, the South Carolina Court of Appeals has opined that where a state-created liberty interest is not implicated in a prisoner appeal, this court should dismiss the appeal. Skipper v. S.C. Department of Corrections, 370 S.C. 267, 633 S.E. 2d 910 (Ct. App. 2006). Under Slezak, the ALC is to have jurisdiction of 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." In this case, this appears to be the case. Because the Appellant's grievance does not implicate any state-created liberty or property interest, the court dismisses his appeal.

While dismissal negates the need to address the Appellant's two motions, the court notes that in his abeyance motion the Appellant asserts that he had his escape charge expunged. However, he fails to provide any documents to corroborate this claim. The exhibits included in the Appellant's abeyance motion refer to other charges against the Appellant, but not the escape charge. Additionally, the ROA in this case has not been filed and is not due until July 26, 2018. Therefore, even if this court were to deny the Department's motion to dismiss, there is no evidence to support the Appellant's assertion that the Department's record is incomplete, and therefore, no good cause to hold the Appellant's appeal in abeyance. As to the Appellant's motion for an extension of time to file his brief, because the court finds that the underlying grievance of the Appellant does not implicate a state created liberty or property interest, then there is no cause to grant the Appellant an extension of time to file a brief.

THEREFORE, for the foregoing reasons, the Appellant's Motion for Extension of Time to file the Appellant brief and the Appellant's Motion to Hold Appeal in Abeyance are **DENIED**

² The Court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

and that the Respondent's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.
AND IT IS SO ORDERED.

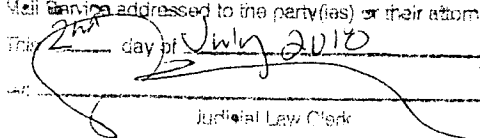


S. Phillip Lenski
Administrative Law Judge

July 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 hereof, in the United States Mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 2nd day of July, 2018


Judicial Law Clerk