

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank Mitchell Gaster, #153004,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 18-ALJ-04-0016-AP

ORDER OF DISMISSAL

RECEIVED

AUG 23 2018

SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (court) pursuant to the South Carolina Department of Corrections' (Department) motion to dismiss the appeal of Frank Gaster (Appellant), an inmate incarcerated with the Department. After the Appellant's Step 1 and Step 2 grievances were filed and denied, he filed a Notice of Appeal with this court on January 17, 2018. The Appellant is challenging the Department's classification policy and claims that the Department is applying their policy unconstitutionally by assigning him an increased classification level based solely on a 1988 prior conviction.

The Record on Appeal was filed on March 28, 2018 thereby making the Appellant's brief due on or before April 25, 2018. On May 2, 2018, the Department filed a Motion to Dismiss because the Appellant had not submitted his brief and because the Appellant's appeal does not implicate a state-created liberty or property interest in accordance with *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004). However, the Appellant filed his brief on May 9, 2018, stating that his brief was late due to a lockdown of his correctional institution after deadly prison riots.

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 interests¹ 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

¹ The Court does have limited jurisdiction in some property matters, the authority for which is not cited here.

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SC ADMIN. LAW COURT

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). "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). In the present case, the Appellant has failed to allege a deprivation of a state-created liberty or property interest. The South Carolina Supreme Court noted in *Brown v. Evatt*, that "[t]he federal constitution vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution." 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996) (citing *Sandin v. Conner*, 515 U.S. 472 (1995)). Though the Court acknowledged that state law placing "substantive limitations on official discretion" could create such a liberty interest in a particular security or custody classification, the Court added:

[E]ven if a state law regime mandates both a detailed procedural process for making classification decisions and substantive criteria to be used in making those decisions, no constitutionally protected liberty interest is created if under the regime either the primary decisionmaker or any reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria.

Id. at 194-95, 470 S.E.2d at 851 (citing *Slezak v. Evatt* 21 F.3d 590 (4th Cir.1994), *cert. denied* 513 U.S. 889 (1994)). The Court then concluded:

Neither the state statutes which create and define the powers of the SCDC nor SCDC's operational classification regulations create the required liberty interest. Though they provide procedural safeguards and substantive criteria for making base-line classification decisions, these are made only as recommendations that are subject to discretionary review and rejection by higher-level prison officials.

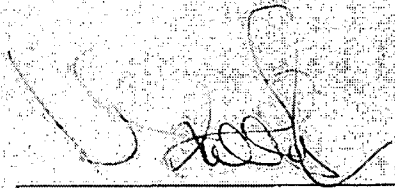
Id. at 195, 470 S.E.2d at 851.

Here, because the Appellant is challenging his classification, and that decision is subject to discretionary review and rejection by higher-level prison officials, the Appellant has not alleged a state-created liberty interest. Although the Appellant did file a brief with the court and the court

finds good cause for the delay, because the Appellant has not alleged a deprivation of a state-created liberty or property interest in this matter; the court finds *Slezak v. S.C. Dep't of Corr.*, *supra* and *Skipper, supra* to be controlling.

IT IS THEREFORE ORDERED, for the foregoing reasons, that the Department's Motion to Dismiss for failure to file a brief is **DENIED** and the Department's Motion to Dismiss pursuant to *Slezak* is **GRANTED**, and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.

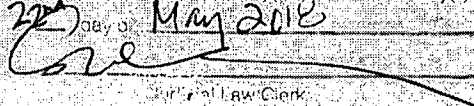


S. Phillip Lenski
Administrative Law Judge

May 22, 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 herof in the United States Mail, postage paid, or in the interagency mail service addressed to the party(ies) or their attorney(s).

on 22nd day of May 2018


Deputy Law Clerk

I got these addresses from McFarlin's Form 6 Folder crap.

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