

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nathaniel Caldwell, III, #341823,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 18-ALJ-04-0212-AP
[Grievance No. ACI 0099-18]

ORDER OF DISMISSAL

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OCT 23 2018

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion to Dismiss filed by Respondent South Carolina Department of Corrections (Department or SCDC), seeking to dismiss the appeal filed by Appellant Nathaniel Caldwell, III (Appellant), an inmate in the custody of SCDC.

On February 13, 2018, Appellant submitted a Step 1 Grievance arguing that SCDC's use of "see-through" shower curtains violated his "privacy rights" under Article I, § 10 of the South Carolina Constitution and the 4th Amendment to the United States Constitution. He argued that this "deprivation (sic) of privacy rights is contrary to Institutional (sic) goals, undermines the rehabilitative function(s) of the Institution and serves no penological interest, and these curtains only serve to promote public humiliation." In his grievance, Appellant requested that the "see-through curtains" be removed and replaced with the "green rubber/plastic shower curtains" that had been in place."

In denying Appellant's Step 1 Grievance, the Warden noted that the shower curtains in question are clear in the upper and lower parts to "afford[] pertinent staff the ability to properly identify an offender's face" and "to deter unwanted behavior conducted throughout shower facilities." The Warden also noted that these curtains are "'frosted'" in the middle, "which prohibits clear view of the torso and one's genitalia."

On March 8, 2018, Appellant submitted a Step 2 Grievance reiterating the arguments from his Step 1 Grievance, maintaining that his "personal privacy" was being violated by SCDC's use of "see-through curtains" in the shower stalls. On April 3, 2018, the Responsible Official denied Appellant's Step 2 Grievance based on the same reasons given by the Warden.

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On May 4, 2018, Appellant filed a Notice of Appeal in the ALC, arguing that his right to, and expectation of, personal privacy under the 4th Amendment to the U.S. Constitution, Art. I, § 10 of the S.C. Constitution, and the Civil Rights Institutionalized Persons Act (CRIPA)¹ by SCDC's use of clear shower curtains. He asserted that the "frosted" area in the middle of the curtain did not prevent someone walking within three feet of the stall from seeing him naked, and that there was a gap of 1 ½ to 2 inches between the curtain and wall.

On July 27, 2018, the Department filed the Record on Appeal. On August 8, 2018, Appellant filed a document entitled "Appellant's Designation of Matter for the record on Appeal" and his Initial Brief.² On September 6, 2018, the Department filed a "Motion to Dismiss, or Alternatively, Brief in Support of Affirmation." On September 10, 2018, Appellant filed a "Motion Seeking Enlargement," requesting an enlargement of time during which to file a reply brief. The Court granted this motion in an order dated September 21, 2018. On October 3, 2018, Appellant filed a Reply Brief.

DISCUSSION

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests, 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.* at 382; 527 S.E.2d at 757.³ Later, the Court clarified that the ALC must provide minimal due process for state-created liberty or property interests. *Slezak v. S.C. Dep't of Corr.*,

¹ Appellant did not cite to CRIPA in either his Step 1 or Step 2 Grievance or specify in his Notice of Appeal what specific part(s) of the Act were violated and how. He likewise did not cite to this Act in his Initial Brief. Therefore, Appellant's argument that SCDC violated CRIPA is not preserved for appellate review and will not be considered.

² The Department, not Appellant, is responsible for submitting the Record on Appeal. *See* SCALC Rule 59. Nevertheless, the documents that Appellant wishes to include in the Record are already in the Record. Therefore, to the extent that Appellant was filing a motion to include these documents in the Record, that motion is hereby denied.

³ In *Sullivan*, the Supreme Court also found that other conditions of confinement could potentially implicate a state-created liberty interest. However, those interests are "generally limited to freedom from restraint which. . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). *See also Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

361 S.C. 327, 605 S.E.2d 506 (2004), *cert. denied*, 544 U.S. 1033, 125 S.Ct. 2266, 161 L.E.2d 1060 (2005).

In his brief, Appellant argues that the Department has violated his right to privacy under the Fourth Amendment of the U.S. Constitution and Article I, § 10 of the S.C. Constitution by using transparent shower curtains in the shower stalls. To support his position, Appellant relies primarily upon *Hudson v. Palmer*, 468 U.S. 517 (1984) and also quotes some Fourth Amendment principles from *Katz v. United States*, 389 U.S. 347 (1967), *Smith v. Maryland*, 442 U.S. 735 (1979), and *Bell v. Wolfish*, 441 U.S. 520 (1979).

Without delving into the question of whether Appellant has a constitutional privacy interest in a specific type of shower curtain, the Court concludes that even if Appellant had such a privacy interest, the Court is without jurisdiction to provide a remedy in such a matter.⁴ The South Carolina Supreme Court has found that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimension.” *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. The Court has limited the ALC’s jurisdiction in inmate grievance matters to those that implicate a state-created liberty or property interest. Thus, while the ALC has jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate “where the inmate’s grievance does not implicate a state-created liberty or property interest.” *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508; *see also Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) (finding dismissal of inmate’s appeal appropriate because his grievance did not implicate a state-created liberty interest).” Because the Appellant has not otherwise alleged a deprivation of a state-created liberty or property interest in this matter, the Court finds *Slezak* to be controlling. As such, the Court must dismiss Appellant’s appeal.

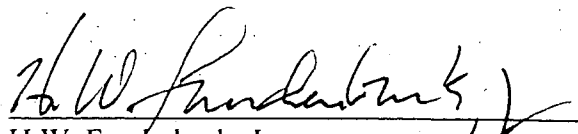
⁴ It is noteworthy that Appellant’s reliance on *Hudson* is misplaced in that it actually holds that an inmate **does not** have a Fourth Amendment right in prison. *See Hudson*, 468 U.S. at 525-28. The S.C. Supreme Court, however, has noted that an inmate in South Carolina has a privacy interest under S.C. Const. art. I, § 10, but that interest is “very limited ... when weighed against the State’s penological interest[.]” *Singleton v. State*, 313 S.C. 75, 89, 437 S.E.2d 53, 61 (1993). In this case, the State’s penological interests were set forth in the responses to Appellant’s Step 1 and Step 2 Grievances.

ORDER

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED**, and that Appellant's appeal is hereby **DISMISSED WITH PREJUDICE**.

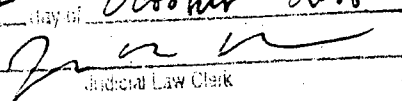
AND IT IS SO ORDERED.

October 9, 2018
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

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, by first class United States mail, postage paid, or in the emergency that a service addressed to the parties) or their attorney(s).

File 9th day of October 2018
By 
Judicial Law Clerk

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