STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Gary NKA Supreme R. Ackbar, #275886,	)	Docket No. 18-ALJ-04-0112-AP
Appellant,	)	
vs.	)	**ORDER**
South Carolina Department of Corrections,	)	
Respondent.	)	

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Ronald Gary NKA Supreme R. Ackbar (Appellant), an inmate incarcerated in the South Carolina Department of Corrections (Department or SCDC). Appellant asserts that "sometime during the month of August" he was illegally seized and traumatized by officials at Lieber Correctional Institution because he was only permitted a total of three showers, he was served cold food, he was denied cleaning supplies to clean his cell, and he was denied outside recreation.

On October 9, 2017, Appellant filed a Step 1 Grievance based upon an "illegal seizure" in a "most cruel and unusual manner" depriving him of his "constitutional rights." In his grievance, Appellant requested that he be awarded (1) punitive and compensatory damages for his suffering, (2) the implementation of the "God Center Culture Islam Way of Life" inside the Correctional Institution, (3) outside mental health care, (4) return of his religious property, and (5) his release from false imprisonment. On November 8, 2017, the Warden denied the grievance, noting that Appellant did not provide dates when the experiences he alleged took place, and there was no evidence supporting Appellant was served cold food or his other allegations. The Warden cited to two SCDC policies in his response, a policy relating to food and a policy relating restriction on showers, etc., that may occur during a lock down situation.

On December 8, 2017, Appellant filed a Step 2 Grievance, arguing:

> The Warden's response does not state any reason why grievant was lock down or any security issue which occurred to warrant the institutional lock down or any threat to the security of the institution. Further the Warden's deliberately delayed response constitutes an impermissible boil point objection as such it clearly seeks clarification.

The Department denied the Step 2 Grievance noting that when a serious incident occurs, the Warden has the authority to cease all inmate movement or otherwise take necessary steps for the safety of inmates and staff. The denial also noted that Appellant failed to show SCDC staff failed to perform their jobs appropriately.

On March 20, 2018, Appellant filed his Notice of Appeal. The Notice of Assignment was filed April 5, 2018. On June 14, 2018, the Record on Appeal was filed. On June 18, 2018, Appellant filed a "Brief and Motion for Preliminary Injunction for the Relief Sought and Declaratory Judgment." On July 19, 2018, the Department filed a Motion to Dismiss under *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 330, 605 S.E.2d 506, 507 (2004).

Thereafter, on July 17, 2018, Appellant filed interrogatory request that was denied on August 9, 2018. On August 27, 2018, Appellant filed a Notice of Verification seeking verification of the Department's defense. On September 20, 2018, Appellant filed a Verified Statement of Fact and a Motion for Summary Judgement. On October 7, 2018, the Department filed a Response to the Motion for Summary Judgment.[1] On October 10, 2018, Appellant filed "Replies to Respondent's responses to Appellant's Motion for Summary Judgement."

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). The Supreme Court limited the ALC's jurisdiction to appeals in which an inmate asserts a state-created liberty interest, typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her 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.* Additionally, under certain circumstances, an inmate may have a state-created liberty interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 483-84 (1995); see Sullivan, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (applying Sandin to resolve a "condition of

[1] Summary Judgment is inappropriate in this case because the Court is sitting in its appellate capacity. *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000) ("The ALJ sits in an appellate capacity to review [the] Department's decisions."). Therefore, Appellant's Motion for Summary Judgment is manifestly without merit. *See* SCALC Rule 65.

confinement claim"). When a state-created liberty or property interest is asserted, the ALC reviews the Department's determination to ascertain whether it provided minimal due process. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004). Nevertheless, when a grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Id.* at 331, 605 S.E.2d at 508; *Furtick v. S.C. Dep't of Corr.*, 374 S.C. 334, 649 S.E.2d 35 (2007).

Here, Appellant's Notice of Appeal states that he is appealing the Department's decision on the "grounds of 4th, 5th, 8th and 14th amendments violation." In his brief, Appellant also references a violation of his Sixth Amendment right to confront the Warden, and argues the Warden violated SCDC policy because he did not respond to Appellant's grievance in a timely manner. Initially, that Court notes that in Appellant's Step One Grievance he complained about an illegal seizure in violation of his generic "constitutional rights." Appellant did not specifically raise as issues the violation of his Fourth, Fifth, Sixth, Eight, and Fourteenth Amendment rights. Furthermore, in his Step Two Grievance, Appellant failed to raise the issue of his alleged illegal seizure, and instead complained about the source of the Warden's authority for a lockdown and about a delayed response to his grievance from the Warden. Because Appellant failed to raise the specific constitutional violations in his Step One Grievance, these issues are not preserved for appeal. *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)); *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("The issue preservation requirement applies to assertions of constitutional violations as well.").

Additionally, as to the Warden's alleged delayed response to Appellant's Step One Grievance, "a prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met." *Weatherholt v. Bradley*, 316 Fed. Appx. 300, 303 (4th Cir. 2009) (citing *Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996)).

Next, to the extent Appellant preserved his general argument that he was illegally seized despite his failure to specifically renew the issue in his Step 2 Grievance, this Court finds Appellant's allegation is essentially a "condition of confinement" claim. *See Sullivan*, 355 S.C. at

443, 586 S.E.2d at 127 (applying *Sandin* to resolve a "condition of confinement claim"); *Sandin*, 515 U.S. at 486 (holding inmates may have a limited interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life"). However, the Record is unclear whether a lockdown actually occurred, and Appellant failed to provide the specific dates when he was allegedly seized and traumatized. Moreover, he failed to describe how he was treated differently than other inmates during these times. Regardless of whether a lockdown occurred, the deprivations Appellant alleges he suffered—cold food, limited access to showers, lack of cleaning supplies, and loss of recreation for a time—do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life such that a liberty interest is implicated, especially in the context of a lockdown. *See Sandin*, 515 U.S. at 486 (holding that thirty days of solitary confinement when compared with inmate's overall prison environment, was not the "type of atypical, significant deprivation in which a State might conceivably create a liberty interest"). In this case, the Court follows the "hands off" approach to internal prison matters. *See Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 ("Courts 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 dimensions."). Therefore, 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. Accordingly,

IT IS HEREBY ORDERED that the Department's Motion to Dismiss is **GRANTED**, and this appeal is therefore **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

October 17, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

October 17, 2018
Columbia, South Carolina

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Ackbar V. SCDC
Appellate Case No. 2018-001949

Dear Clerk

Enclosed herewith is a clear copy of the requested order. This completes your request.

Sincerely
Supreme R. Ackbar

RECEIVED
DEC 28 2018
SC Court of Appeals

12-20-18

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