

REC'D 11/06/2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Stephen Stanko, #6022,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 18-ALJ-04-0282-AP

ORDER

Stephen Stanko, #6022,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 18-ALJ-04-0283-AP

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to two appeals filed by Stephen Stanko (Appellant), an inmate incarcerated in the South Carolina Department of Corrections (Department or SCDC).

Appellant filed two Notices of Appeal (Notices) on May 31, 2018. In both Notices, Appellant asserts that the Department failed to follow their policies and procedures resulting in a mishandling and loss of some of Appellant's property when Appellant was transferred from one facility to another. Appellant also filed a Motion for Joinder of the appeals. On October 9, 2018, the Court granted the Motion for Joinder, wherein the cases were consolidated solely for purpose of review with each case retaining its caption and docket number.

Appellant is a Death Row inmate previously housed at Lieber Correctional Institution. On September 26, 2017, he was transferred from Lieber Correctional Institution to Kirkland Correctional Institution. Appellant asserts that the Department did not allow him to inventory and pack up his personal property prior to the move. As a result, Appellant argues that the Department failed to follow several SCDC policies, resulting in the loss of some of his personal items.

FILED

November 2, 2018

SC ADMIN. LAW COURT

On November 11, 2017, Appellant filed Step 1 Grievance seeking reimbursement for items that he asserts were not returned to him after his transfer.¹ On December 9, 2018, Appellant filed another Step 1 Grievance for additional items he claims he did not receive after his transfer.² The Warden denied the grievances. After the Step 2 grievances were denied, Appellant filed Notices of Appeal on May 31, 2018. Also, on May 31, 2018, Appellant filed his briefs. The Notices of Assignment were filed June 14, 2018. The Records on Appeal were filed August 20, 2018.³

On September 10, 2018, Appellant filed a Response asserting that the Records filed by the Department were incomplete. On September 19, 2018, Appellant filed a document entitled "Additional Amendments to Notice of Appeal and Original Brief" (Amendment). In the Amendment, Appellant asks the Court to order the Department to provide a complete record and to provide certain SCDC policies.⁴ Appellant asserts these items are needed to show the Department violated its own policies.

Also, on September 10, 2018, Appellant filed a document entitled "Addition/Amendment to Notice(s) of Appeal And Original Brief." Although Appellant asks the Court to take notice of, and make findings as to, the conduct of the Department, the ultimate relief sought, which is to compensate Appellant for the loss of the items in question, remains the same.

On September 27, 2018, Respondent filed its brief. On October 4, 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 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

¹ Appellant asserted in his Step 1 Grievance that he did not receive the following "Hobbycraft" items after the transfer: sixteen blue pens; two pencil sharpeners; plastic ruler; plastic mechanical pencils; two capsules of 0.5mm pencil lead; and six to eight black, fine-point and felt-tip pens/markers.

² Appellant claims that he did not receive the following items after his transfer: pictures of his family, who are now deceased with Catholic prayer and memorandum notices; two coiled headphone extensions; electric clipper and guards; blue toboggan; pencil sharpeners, erasers, and mechanical pencils. He also alleged he is missing the following canteen items: one Mountain Dew, two Code Red, one box of Tide, 1 ham, one corn, one chili, one Jack Mack, and three rolls of toilet paper.

³ Hereinafter, the Court will discuss both grievances as if it was one appeal though each appeal remains distinct.

⁴ Because the inclusion of these documents will not affect the outcome of the case, the Court need not address this request.

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.* 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). If 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).

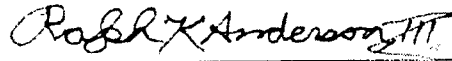
Appellant seeks to have the Department compensate him for the loss of personal property. However, the ALC does not have jurisdiction to grant money damages, or alternative items, for negligence, even if negligence is proven. *See S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 186-87, 700 S.E.2d 468, 470 (Ct. App. 2010) ("The ALC has no authority to decide civil matters or to award monetary damages in cases." (quoting Randolph R. Lowell, *South Carolina Administrative Practice and Procedure*, 152 (2d ed. 2008))). Rather, it is the court of common pleas or the federal courts that have subject matter jurisdiction over tort claims. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). Furthermore, though "certain cases may be taken from the trial court's original jurisdiction by the General Assembly," no such action has been taken concerning this case. *Id.* at 423, 567 S.E.2d at 234. The ALC thus lacks subject matter jurisdiction to consider this issue. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897, 900 (1989) ("Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by [the] Court.").

Moreover, in *Daniels v. Williams*, 474 U.S. 327, 330 (1986), the United States Supreme Court noted that "[h]istorically, [the] guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property." Therefore, "the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Id.* at 328. The United States Fourth Circuit Court of Appeals further commented that "[t]he basic rationale for the *Daniels* decision is a powerful one." *Pink v. Lester*, 52 F.3d 73, 75 (4th Cir. 1995). It went on to state that "[t]he term 'deprive,' as employed in the Fourteenth Amendment, suggests more than a mere failure to take reasonable care: it connotes an intentional or deliberate denial of life, liberty, or property." *Id.* at 75. In fact,

to allow claims based on theories of negligence would “trivialize the centuries-old principle of due process of law.” *Daniels*, 474 U.S. at 332.

ORDER

IT IS THEREFORE ORDERED that the Departments decision is **AFFIRMED**.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

November 2, 2018
Columbia, South Carolina