

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nathaniel Johnson, 211574,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 19-ALJ-04-0271-AP
Grievance No.: ACI 100-19

ORDER RECEIVED
SEP 25 2019
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the appeal filed by Nathaniel Johnson (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant seeks judicial review of the Department’s decision denying his grievance.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). *Slezak v. South Carolina Department of Corrections* provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. 361 S.C. 327, 605 S.E.2d 506 (2004). However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012).

For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when (1) an inmate is disciplined and punishment is imposed, or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003). Additionally, this

~~Court has jurisdiction when an inmate contests the Department’s decision to permanently deny the~~
inmate’s parole eligibility. *Id.* Finally, 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

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ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *see Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (applying *Sandin* to resolve a condition of confinement claim).


In this appeal, Appellant is requesting reimbursement of the \$250.00 which is assessed to inmates for State Deoxyribonucleic Acid (DNA) Identification Record Database Act purposes. Appellant contends the fee and the collection of the fee is against Department policy and violates South Carolina law. In response to Appellant’s step 2 grievance, the Department explained that it does not have the authority to make the reimbursement because the fee is assessed by the South Carolina Law Enforcement Division (“SLED”). The Department collects the fee from inmates prior to his or her release and remits the fee to the State’s general fund to be credited to SLED.

Additionally, Appellant’s reliance on *Eubanks v. SC Department of Corrections, et al.*, 561 F.3rd 294 (4th Cir. 2009) is misplaced. In *Eubanks*, the court held “the statutory requirement that the \$250 fee must be paid before a prisoner is paroled or released from confinement is unenforceable against him.” However, the DNA sample and processing fee requirements were determined to be not *ex post facto* because they were not punitive. *Id.*

Upon careful review and consideration, I find that Appellant’s issue does not arise from punishment administered for a disciplinary conviction, nor does it relate to Appellant’s sentence, sentence-related credits, or custody. Additionally, this appeal does not involve an “atypical” condition of restraint. Accordingly, Appellant has not alleged deprivation of a state-created liberty or property interest in this matter. Therefore, the Court finds *Howard* to be controlling, and the case must be dismissed for lack of jurisdiction.

THEREFORE, IT IS HEREBY ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.¹


SHIRLEY C. ROBINSON
Administrative Law Judge

September 16th 2019
Columbia, South Carolina

¹ Appellant filed a Motion for Summary Judgment and a Motion to Supplement the Record. The Department filed a response in opposition to Appellant’s motion. However, because the Court is dismissing this appeal, Appellant’s Motions are moot. *See Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (citation omitted) (The Court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”).

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 Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).

This 16 day of September 2019

By: _____
Judicial Law Clerk