STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Stewart Buchanan, #069848, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 20-ALJ-04-0215-AP Grievance No. PCI 0043-20 **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Stewart Buchanan (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant seeks review of the Department's Step 2 Grievance decision regarding alleged prison employee misconduct. On August 5, 2020, Appellant filed his brief, a motion to compel production of documents, and a motion to supplement the Record on Appeal. On October 2, 2020, in response to those motions, the Department filed a motion to deny Appellant's motions.[1] On September 17, 2020, the Department filed a Motion to Dismiss, stating that there is no state-created liberty or property interest involved in this matter. On September 28, 2020, Appellant filed a response to this motion.

On October 22, 2020, Appellant filed a motion for default judgment on the ground that Respondent failed to file its brief by October 14, 2020, the deadline established in this Court's order dated September 14, 2020. Pursuant to SCALC Rule 34(B), a motion to dismiss an appeal automatically stays the time limits for perfecting the appeal until the motion is decided. Therefore, Respondent's deadline to file its brief was stayed upon the filing of its Motion to Dismiss. Appellant's motion for default judgement is, therefore, denied.

As an initial matter in considering Respondent's Motion to Dismiss, the Department has mischaracterized Appellant's argument in its brief. Appellant is not arguing that he is entitled to employment with Jumpstart, Inc., as the Department suggests. Appellant alleges the Department retaliated against him for filing a sex discrimination complaint against the Department following Chaplain Larry Epps learning of Appellant's transgender status and subsequently denying Appellant the use of the chaplaincy office and equipment Appellant used to perform ministry work.

[1] Because this Court has determined that this case should be dismissed, there is no need for this Court to rule on these motions.

This case is comparable to Booker v. South Carolina Department of Corrections, 855 F.3d 533 (2017). In that case, the Fourth Circuit Court of Appeals held that an inmate could bring a federal claim under 42 U.S.C. § 1983 after alleging the Department retaliated against him for filing a prison grievance.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C.A. § 1983 (1996).

Prisoners have a right protected under the First Amendment to be free from retaliation by prison officials after filing a prison grievance. Booker, at 545. Therefore, Appellant's claim of misconduct against the Department, if proven, has its remedy under a federal § 1983 action.

This Court has routinely refused to hear cases in which an inmate grievance complains of misconduct of a Department employee. This Court reviews Department grievance decisions pursuant to the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Under the Al-Shabazz line of cases, this Court may only review matters related to a state-created liberty or property interest. See id., 338 S.C. at 368–69, 527 S.E.2d at 749–50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Specifically, the South Carolina Supreme Court has stated that summary dismissal of an otherwise properly perfected inmate appeal "may be appropriate where the inmate's grievance does not implicate a **state-created** liberty or property interest." Slezak v. S.C. Dept. of Corrs., 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (citation omitted) (emphasis added). When a prison matter does not implicate constitutional interests, this Court traditionally maintains a "hands off" approach. See Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757 (citing Pruitt v. State, 274 S.C. 565, 567–68, 266 S.E.2d 779, 780 (1980)).

Because Appellant has not alleged the infringement of a state-created liberty or property interest, it is appropriate to dismiss this appeal. Therefore, this Court will grant Respondent's Motion to Dismiss. Appellant's claim is more properly heard in federal court.

ORDER

THEREFORE, IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITHOUT PREJUDICE.**

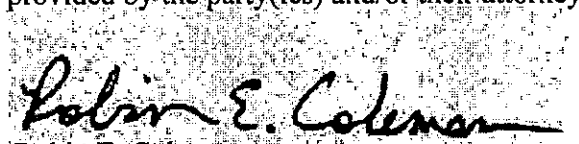
AND IT IS SO ORDERED.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 29, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

October 29, 2020
Columbia, South Carolina