

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kenneth Rivera, #318979,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 21-ALJ-04-0103-AP
Grievance No.: BRCI-0769-20

ORDER OF DISMISSAL

RECEIVED
MAY 13 2021
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Kenneth Rivera (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC or Department).

Appellant complains that, since his housing unit was placed on COVID-19 lockdown, he only receives privileged correspondence once a week, only receives legal mail every other week, and that these delivery delays have caused him to miss important deadlines. He claims this is contrary to SCDP Policy OP-10.08, which he claims requires that correspondence be delivered no later than 48 hours after its receipt by SCDC. Appellant requests that all legal correspondence and privileged correspondence be delivered to him in a timely manner.

In responding to Appellant's Step 1 Grievance, the Warden explained that this matter was addressed with SCDC mailroom staff at Broad River Correctional Institution, where Appellant is housed, and that it has been determined staff are delivering mail to inmates at the best of their ability given COVID-19 protocol and limited staff availability. He advised that inmates may request a receipt form for legal correspondence which provides the date such correspondence was received by the mailroom and what date it was actually distributed to and received by the inmate. The Warden determined that Appellant failed to demonstrate that SCDC mailroom staff have intentionally delayed the mail distribution process and denied his grievance.

In responding to Appellant's Step 2 Grievance, the Responsible Official (Official) noted that extenuating circumstances may disrupt daily operation and staffing of the mailroom, but that should disruptions occur, measures are taken as expediently and effectively as possible to diminish the disruptions. The Official denied Appellant's Step 2 Grievance, finding that SCDC records

indicate that the mailroom has been distributing mail, that Appellant has been receiving legal mail, and that Appellant has failed to demonstrate that SCDC staff have intentionally delayed the mail distribution process.

On March 24, 2021, Appellant filed a Notice of Appeal with the ALC. There is no indication that Appellant served the Department with the Notice of Appeal. The Certificate of Service section accompanying Appellant's Notice of Appeal indicates it was served on the ALC at its street address; it does not certify that the Department was served.¹

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.

The Court must dismiss this appeal. There is no indication that Appellant served a copy of the Notice of Appeal on the Department. In addition, 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)." Here, Appellant has not lost any good time or demonstrated that SCDC has erroneously calculated his sentence-related credits or custody status. Nor is he being punished as a result of a serious rule violation.

Furthermore, the ALC cannot and should not extend its jurisdiction over an internal prison matter.

¹ The South Carolina Supreme Court in *Al-Shabazz*, stated an "inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of [SCDC]'s final decision." *Id.* at 377, 527 S.E.2d at 754. Additionally, SCALC Rule 59 provides that "[t]he notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken." Therefore, the Court need not further consider any service defect in its discussion.

See Al-Shabazz v. State, 338 S.C. 354, 382, 527 S.E. 2d 742, 757 (2000) (citing *Pruitt v. State*, 274 S.C. 565, 567-68, 266 S.E.2d 779, 780 (1980)) and *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012). The frequency of mail delivery and operation of the mailroom is an internal prison matter and does not involve the denial of a state created liberty or property interest.

Therefore, because Appellant has not provided a certificate of service of the Notice of Appeal on the Department and because this appeal does not involve the deprivation of a state-created liberty or property interest, the appeal must be dismissed. *See Slezak, supra*.

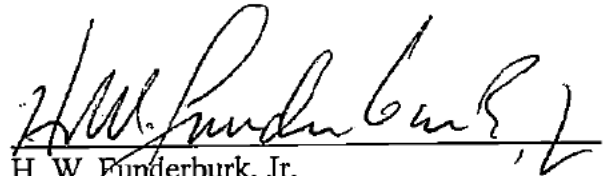
ORDER

It is therefore,

ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
April 13, 2021


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 hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 13th day of April, 2021
By: Elizabeth A. Perkins
Judicial Law Clerk

FILED

APR 13 2021

SC ADMIN. LAW COURT