

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Rivera, #318979,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 21-ALJ-04-0160-AP
Grievance No.: BRCI-0061-21

ORDER OF DISMISSAL

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed on April 21, 2021, by Kenneth Rivera (Appellant), an inmate in the custody of the South Carolina Department of Corrections (SCDC).

Appellant submitted his Step 1 Grievance to SCDC on or about January 11, 2021. Appellant contends that SCDC violated its own commissary policy that allows inmates to exchange unserviceable clothing. He claims that he is entitled to new boxer shorts without incurring any charges for their cost. In denying Appellant's Step 2 Grievance, the Responsible Official explained that Appellant's request was premature. The official noted that Appellant was advised on February 5, 2021, that SCDC has a "life-wear of inmate clothing distribution/exchange that applies throughout the Agency." The official explained that SCDC's records show that Appellant may exchange his boxers on or about April 22, 2021, but if he wishes to exchange them any sooner he will be responsible for any costs incurred. The official concluded that Appellant failed to demonstrate that SCDC staff operated in a manner inconsistent with applicable policy and procedure.

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

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violation. *Id.* at 382; 527 S.E.2d at 757.

The Court must dismiss this appeal. 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.

Additionally, The ALC cannot and should not extend its jurisdiction over an internal prison matter. *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). SCDC’s policies and procedures relating to the replacement or exchange of inmate clothing is a matter of internal prison management.

Furthermore, 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.”

However, in this matter, there is no indication that Appellant timely attempted to serve the Department’s Office of General Counsel with the Notice of Appeal. The Certificate of Service form accompanying Appellant’s Notice of Appeal only indicates that he served a copy of his notice on the ALC at its street address but does not show service on the Department’s General Counsel.

Therefore, because this appeal does not involve the deprivation of a state-created liberty or property interest, because the Court cannot extend jurisdiction over internal prison matters, and because Appellant has not provided a certificate of service of the Notice of Appeal on the Department, the appeal must be dismissed.

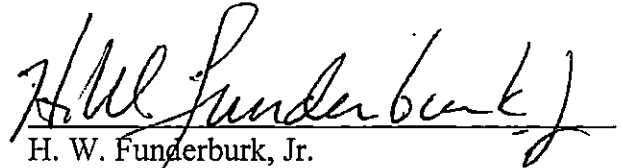
ORDER

It is therefore,

ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
May 14, 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 14th day of May, 2021
By: Elizabeth A. Perkins
Judicial Law Clerk

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