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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kevin Herriott, #313862, )  
)  
Petitioner, )  
)  
v. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
)

Docket No. 21-ALJ-04-0094-1J

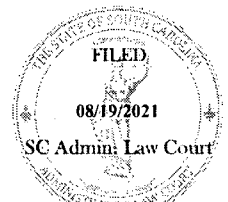
ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed on March 22, 2021, by Kevin Herriott (Petitioner), an inmate incarcerated in the South Carolina Department of Corrections (Department or SCDC).

On February 5, 2021, Appellant filed a Step 1 Grievance asserting that his property was seized illegally in violation of the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution. The Warden returned the Step 1 Grievance, finding the grievance to be untimely. Appellant did not file a Step 2 grievance; rather, Appellant filed a Notice of Appeal on March 22, 2021, asserting his personal property was unreasonably seized by the Department.

Following the Notice of Assignment, the Department filed the Record on Appeal on June 10, 2021. On June 29, 2021, Petitioner filed a Motion to Hold Case in Abeyance (Motion), in which he asserted he was transferred to an out-of-state institution and had not yet received his property from SCDC. Thus, he requested the Court hold the case in abeyance until he received his property and case file. The Court sent a letter to the parties on July 13, 2021, ordering the Department to respond to the Motion. Thereafter, the Department filed a Response to the Motion (Response) asserting Petitioner's property was retrieved by his mother on July 2, 2021, and thus, the Department no longer has possession of his property.<sup>1</sup>

<sup>1</sup> The Court notes that on July 31, 2021, Petitioner filed a Reply to the Department's Response asserting he did not consent to the Department giving his property to his mother, who possesses his power of attorney, and thus he still request the Court to order the Department to send his property to his current address. It appears that despite Petitioner's argument to the contrary, he has effectively received his property. Nevertheless, as explained below, this Court does not have jurisdiction to hear this matter even if the Department improperly relinquished Appellant's property to his mother. Moreover, Appellant's response is not properly for this Court because he again did not file a proof of service showing he properly served the Motion on the Department. See SCALC Rule 5 ("Any document filed with the Court shall be served upon all parties to the proceeding.").



On July 26, 2021, the Department filed a Motion to Dismiss (Motion) asserting this case should be dismissed because Appellant has not been deprived of a state-created liberty or property interest. As of the date of this Order, Appellant has not responded to that assertion.

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 **only** way for the [ALC] to obtain subject matter jurisdiction over [an inmate's] claim is if it implicates a state-created liberty interest." *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (emphasis added). Thus, in *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004), our Supreme Court explained that 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." *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).

In this case, the type of property loss alleged by Appellant does not implicate a state-created liberty or property interest.<sup>2</sup> In *Daniels v. Williams*, the United States Supreme Court noted that "[h]istorically, [the] guarantee of due process has been applied to deliberate decisions of

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Appellant again failed to properly serve the Department. Instead, the Certificate of Service attached to Appellant's Reply indicates he served his Reply on the Court.

<sup>2</sup> In addition, regardless of whether Appellant was deprived of a state-created liberty or property interest, Appellant also failed to exhaust his administrative remedies. Before filing an appeal with the ALC, an appellant is required to exhaust his administrative remedies unless the appellant establishes an exception to that requirement. *See* S.C. Code Ann. § 1-23-380 (Supp. 2020) (requiring a party to exhaust all administrative remedies available within the agency before appealing to the ALC); *see also Steele v. Benjamin*, 362 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004) (affirming the dismissal of an inmate's appeal for failure to exhaust administrative remedies). In this case, there is no evidence that Appellant filed a Step 2 Grievance before filing this action, and Appellant has provided no exception to the requirement that he exhaust his administrative remedies prior to filing this action. Absent such exhaustion, this matter is not properly before the Court. *See Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.").

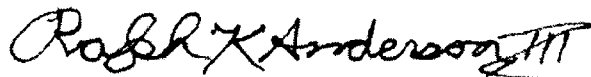
government officials to deprive a person of life, liberty, or property.” 474 U.S. 327, 330 (1986). Therefore, “the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” *Id.* at 328; *see Pink v. Lester*, 52 F.3d 73, 75 (4th Cir. 1995) (noting “[t]he basic rationale for the *Daniels* decision is a powerful one”). Indeed, “[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.” *Pink*, 52 F.3d 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. Here, there is no indication that prison officials engaged in a deliberate denial of life, liberty, or property as contemplated by the Fourteen Amendment. *See Pink*, 52 F.3d at 75. Moreover, the Court is without authority to compensate an inmate for the loss of his personal property.<sup>3</sup>

### **ORDER**

**IT IS THEREFORE ORDERED** that the Appellant’s Motion to Hold Case in Abeyance is **DENIED**.

**IT IS FURTHER ORDERED** that the Department’s Motion to Dismiss is **GRANTED** and Appellant’s appeal is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

August 19, 2021  
Columbia, South Carolina

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<sup>3</sup> The ALC does not have jurisdiction to grant money damages 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).

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



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Stephanie Perez  
Judicial Law Clerk

August 19, 2021  
Columbia, South Carolina