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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carl Chisolm, #185789,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of)
 Corrections,)
)
 Respondent.)

Docket No. 21-ALJ-04-0340-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Carl Chisolm (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals from a Step 2 Grievance which affirmed his conviction for violating SCDC Policy-22.14, Offense 838, Soliciting Improper Relationships. Appellant did not lose any accrued good time credits. In his Notice of Appeal, Appellant contends that his Due Process rights were violated because his hearing was not held in a timely manner in violation of the Department's policy.

The Court's jurisdiction to review Department final decisions in non-collateral or administrative matters¹ stems from the South Carolina Supreme Court decision in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). These administrative matters entitled to review "[t]ypically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* at 369, 527 S.E.2d at 750. In determining to adhere to the limited nature of judicial review in inmate matters, the court prefaced that "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Id.* at 382, 527 S.E.2d at 757 (citation omitted). The court further recognized that procedural due process is guaranteed only

¹ A non-collateral or administrative matter is "[o]ne in which an inmate does not challenge the validity of a conviction or sentence." *Al-Shabazz v. State*, 338 S.C. 354, 368, 527 S.E.2d 742, 749 (2000).

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when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. *Id.* at 369, 527 S.E.2d at 750 (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972)).

Post *Al-Shabazz* decisions have determined that a matter is reviewable by the ALC where an inmate's appeal implicates a state-created liberty or property interest. *See, e.g., Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); *see also Wicker v. S.C. Dep't. of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (recognizing another limited ALC jurisdictional exception where inmate claims deprivation of a property interest). Under certain circumstances, states may create liberty interests which are protected by the Due Process Clause, but "[t]hese interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443-45, 586 S.E.2d 124, 127-28 (2003) (applying *Sandin* to resolve a "condition of confinement claim").

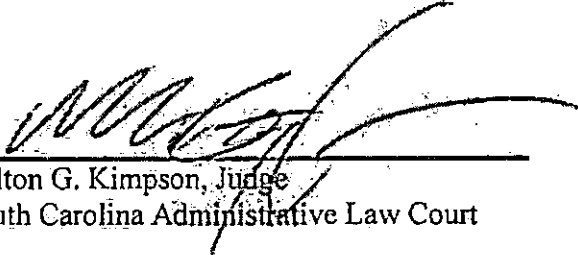
In *Slezack v. S.C. Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), our supreme court distinguished subject matter jurisdiction from appellate jurisdiction in clarifying the ALC's jurisdiction in inmate grievance matters. The court explained that the ALC has subject matter jurisdiction to hear appeals from the final decision of the Department in non-collateral or administrative matters. *Id.* at 331, 605 S.E.2d at 507 (citation omitted); *see also Howard*, 399 S.C. at 625, 733 S.E.2d at 215 ("The ALC has subject matter jurisdiction under the [APA] to hear properly perfected appeals from the SCDC's final orders in administrative or non-collateral matters.") In addition, "[t]he AL[C] has appellate jurisdiction over any matter where the procedural prerequisites for perfecting such an appeal have been met." *Slezack*, 361 S.C. at 331, 605 S.E.2d at 507 (citation omitted). However, while the ALC has jurisdiction over all properly perfected appeals from Department final orders, summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest. *Id.* at 333, 605 S.E.2d at 509.

Despite Appellant's contentions, the Step 2 Grievance decision indicates that he lost zero days accrued good time as a result of his conviction for Offense 838. Appellant's appeal also does not relate to his sentence, sentence-related credits, or custody. Moreover, the allegations in Appellant's appeal do not amount to a freedom of restraint that imposes atypical and significant hardship on him in relation to the ordinary incidents of prison life. *See Sandin*, 515 U.S. at 484.

Further, the failure of an agency to follow its own policies does not amount to a constitutional violation. *Joyner v. Ozmint*, No. 3:09-CV-2524-DCN-JRM, 2010 WL 3783167, at *5 (D.S.C. Sept. 22, 2010), aff'd, 425 F. App'x 223 (4th Cir. 2011). There is clearly no state-created liberty or property interest implicated here. In the absence of such a state-created liberty or property interest, the Court finds that summary dismissal is appropriate. See *Slezak*, 361 S.C. at 331, 605 S.E.2d at 508. (“[s]ummary dismissal may be appropriate where the inmate’s grievance does not implicate a state created liberty or property interest.”) Therefore,

IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.

October 27, 2021
Columbia, SC


Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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 27 day of October, 2021
By: 
Judicial Law Clerk