

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE SHIRLEY C. ROBINSON

CASE NO. 12-ALJ-04-0902-AP

Joseph Barfield, # 175267,Appellant,

v.

South Carolina Department of Corrections, ..Respondent.

APPELLANT'S REPLY TO THE RESPONDENT'S
RETURN TO MOTION TO PROCEED IN FORMA PAUPERIS

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STANDARD

The Court has the right to determine whether an inmate is being deprived of a "State Created Right" or "Liberty Interest" granted to him by a rule, Statute or regulation promulgated by the government. Meachum v. Fano 96 S.Ct.2532. Further, an inmate can claim Due Process violation if he can show deprivation of a protected liberty interest. Such interest are generally limited to (a) Those actions that unexpectedly alter the inmate's term of imprisonment, and (b) Those actions that impose an atypical and significant hardship in relation to the ordinary incidents of prison life. Sandin v. Conner 115 S.Ct. 2293 (1995)

STATUTORY PROVISIONS

South Carolina Code provides in at least four statutes giving prisoners protected liberty interest by charging the state with the humane treatment ² as described in the "Declaration of Policy" (§ 24-1-20). Further, South Carolina Statute provides for the "Management and Control of Prison System" that the Department of Corrections has a duty to provide "Proper Care, Treatment ³" along with feeding, clothing and management of the prisoner. This Statutory language would provide this inmate with further protections as to the charge of the South Carolina Department of Corrections.

Therefore, the Department of Corrections received it's authority from South Carolina Code of Laws that Specify in § 24-1-140. That the Director shall have power to prescribe reasonable rules and

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regulations governing the "humane treatment ±" in part. Lastly, South Carolina further grants powers and provides protections from such that the Department of Corrections "shall" not make any discrimination in the treatment of prisoners placed in their custody, ¶, and the Law provides criminal penalty for the violation of such. In Short, there is Statute that provides for the authority but also there is Statutory language to provide protections from such "Lack of Medical" treatment. Contrary, to the assertion of the Department of Corrections, there is a state created liberty interest provided by South Carolina Statute.

DISCUSSION

Contrary to the assertions of the respondent in this case Moore v. Bennett 777 F.Supp 2d. 969 is inapplicable in this matter. In Moore the treatment was determined optional and experimental at best and the side effect would have been harmful. The Court's analysis was on point as the treatment was not medical norms necessary. Contrary to this case, the medical treatment here is medically necessary and would amount to medical norms. Further, In Moore there was no indication that Prisoner's condition was "symptomatic" or required treatment at time of issue. protocol and requirement for referral to Hepatitis were met, and therapy regarding Hepatitis C was complex and controversial and often caused serious medical side effects U.S.C.A. Constitution Amend

² § 24-1-20 Declaration of Policy.

It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system and with a view of making the system self-sustaining and that those convicted of violating the Law and sentenced to a term in the State penitentiary shall have humane treatment and be given opportunity, encouragement and training in the matter of reformation.

³ § 24-1-130. Management and Control of Prison System.

The Director shall be vested with the exclusive Management and control of the prison system and all properties belonging thereto subject to the limitations of Section § 24-1-20 to 24-1-260 and shall be responsible for the management of the affairs of the prison system and for the proper care, "treatment", feeding, clothing and management of the Prisoners confined therein. The Director shall manage and control the prison system.

8. Moore Supra. Futner, Contrary to the assertions of the Respondent's in (4) the South Carolina Code of Laws provides multiple state Statute's that provide the authorities and protections for incarcerated persons as the Department of Corrections has a Statutory duty to provide such medically necessary services.

Where any inmate committed within the South Carolina Department of Corrections that inmate would be totally reliant on the Medical Services of the Department of Corrections. The agency would have an exclusive authority in the providing medical services. There are four distinct differences between Moore and the Instant case. 1) In the Appellant's case it has been clearly determined by the SCDC medical staff that the Appellant's condition is "symptomatic and by the Respondent's own medical staff would require treatment at this time. 2) The protocol and requirement for referral to Hepatitis were not met. 3) The treatment in this case even though complex and controversial had a greater chance of success, and, 4) The Therapy has a higher effective rate and there was less of a chance of the treatment causing serious medical side effects. Just to look at the first issue of whether or not the condition was symptomatic and

± § 24-1-140. Director Empowered to make rule and regulation; separation and classification of prisoners.

The Director shall have the power to prescribe reasonable rules and regulations governing the humane treatment, training, and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character or offense upon which the conviction of the prisoner was secured.

¶ § 24-5-90. Discrimination in treatment of prisoners.

It shall be unlawful for sheriffs or jailers to make any discrimination in the treatment of prisoners placed in their custody.

Every violation of this section shall be a misdemeanor and, upon conviction thereof, the person convicted shall be fined not less than twenty-five dollars and imprisoned for not less than one month nor more than twelve months.

requiring treatment at this time, The Department of Corrections own medical staff has verified this question to the affirmative. The Department own medical staff diagnosis and opinion supports the treatment in question. The Department's policy denying medically necessary treatment based on a inmates prior drug/tattoo charge is not sufficient in and of itself to deny medically necessary treatment in the face of immediate medical need for such treatment is not reasonable.

Finally, The denial of Medically necessary treatment and the allowing of an inmate to suffer due to such policy is "Cruel and Unusual Punishment" in violation of the United States Constitution. Because there is a State Created Liberty Interest created by South Carolina State Statute, This Appeal should be allowed to proceed without prepayment of cost.

CONCLUSION

Based on the foregoing, the Appellant Prays that this Court rule that a State Created Liberty is implicated as to allow this appeal to proceed without prepayment of cost and a waiver of paying the \$100.00 Notice Fee. The Appellant Respectfully Submits the following to the Court for their consideration.

Respectfully Submitting,

Joseph Barfield

Joseph T. Barfield

This 4 Day of June, 2013.

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CERTIFICATE OF SERVICE

I JOSEPH BARFIELD, DO HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THE FOREGOING, APPELLANT'S REPLY TO RESPONDENT'S RETURN TO MOTION TO PROCEED IN FORMA PAUPERIS ON THE RESPONDENT'S COUNSEL OF RECORD BY DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID ON June 4, 2013, 2013. AND ADDRESSED AS FOLLOWS:

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