

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from the Administrative Law Court
Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2023-000373

RECEIVED

May 05 2023

S.C. SUPREME COURT

LEONARD LEE FOSTER, #179576,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

**SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS**

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ISSUE PRESENTED

The Petition for Writ of Certiorari should be denied because there is nothing special or important raised in the issues on appeal and the Appellate Court properly denied appellant's petition for rehearing.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Leonard Lee Foster (Petitioner), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). On March 1, 2022, Petitioner filed a Step One grievance regarding his allowance of good time credits. On March 11, 2022, SCDC denied the Step One grievance. Thereafter, on March 15, 2022, Petitioner filed a Step Two grievance to appeal the disposition of his Step One grievance. On April 15, 2022, SCDC denied the Step Two grievance, and Petitioner appealed to the Administrative Law Court. On September 27, 2022, Administrative Law Judge Ralph King Anderson, III affirmed SCDC's final agency decision.

Petitioner appealed to the South Carolina Court of Appeals, and on January 9, 2023, the Court of Appeals issued an order dismissing the matter because Petitioner failed to submit the notice of appeal filing fee. See Leonard Lee Foster v. South Carolina Department of Corrections, Op. No. 2022-001485. Petitioner then filed a motion to reinstate on January 19, 2023. This petition for rehearing was denied by the Court of Appeals on February 27, 2023. Petitioner appealed to this court.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole.

Id.

ARGUMENT

The PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THERE IS NOTHING SPECIAL OR IMPORTANT RAISED IN THE ISSUES ON APPEAL AND THE APPELLATE COURT PROPERLY DENIED APPELLANT'S PETITION FOR REHEARING.

The petition for writ of certiorari should be denied because the issues raised do not meet the guidance set forth in Rule 242(b), SCACR. The Rule states:

(b) Considerations governing Review: A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are *special and important reasons*. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR (emphasis added).

This case presents no "special and important reasons" to grant the petition for writ of certiorari as none of the guidelines set forth in Rule 242 (b) SCACR are met. *Id.* The dispute Petitioner raises before the Court raised is whether Petitioner's brother paid the filing fee for the notice of appeal in accordance with SCACR 203. On December 13, 2022, the Court of Appeals informed the Petitioner that his motion to proceed in forma pauperis will not be considered and the appeal would be dismissed unless the filing fee was paid within 15 days. On January 9, 2023, the Court of Appeals dismissed the appeal because Appellant failed to submit the filing fee as required by Rule 203. On January 19, 2023, Petitioner filed a Motion to Reinstate asserting that the Court overlooked that the filing fee was, allegedly, paid within 15 days of the Court's December 13, 2022, letter. Subsequently, the Court of

Appeals concluded that there was no basis for rehearing and correctly denied the petition for rehearing. The denial of the Petition for Rehearing means that the filing fee had not been paid pursuant to the rules and the Court's instructions. This case involves no novel issues, dissent, conflicts in precedent, substantial constitutional issues, or federal questions, and therefore none of the guidelines set forth in Rule 242 (b), SCACR, are met here. Appellant's petition for writ of certiorari should be denied.

Rule 221 (a) states that petitions for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the Court..." Rule 221(a), SCALC. On February 27, 2023, the Court of Appeals correctly denied the petition for rehearing concluding that no material fact or principle of law has been overlooked to grant the petition for rehearing. See Leonard Lee Foster v. South Carolina Department of Corrections, Op. No. 2022-001485. Significantly, Petitioner does not make any argument that the Court of Appeals erred in denying these points. Appellant alleges, without evidence, that the filing fee was paid. Accordingly, this Court should deny the Petition.

CONCLUSION

For the reasons discussed above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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May 5, 2023