

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley Robinson, Administrative Law Judge
Case No. 12C0902

APPELLATE CASE NO. 2013-000288

Joseph Barfield, 175267, APPELLANT,

v.

South Carolina Department of Corrections
"SCDC" RESPONDENT.

BRIEF OF APPELLANT

South Carolina Department of Corrections
Office Of General Counsel
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Columbia, SC 29221-1787
(COUNSEL FOR RESPONDENT:)

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JUL 10 2013

SC Court of Appeals

ISSUES ON APPEAL

I.

DID THE DEPARTMENT OF CORRECTIONS INSTITUTE A POLICY (MEDICAL DIRECTIVE) THAT WAS VIOLATIVE OF THE SOUTH CAROLINA AND/OR UNITED STATES CONSTITUTION ?

II.

DID THE DEPARTMENT OF CORRECTIONS INSTITUTE A POLICY (MEDICAL DIRECTIVE) THAT WAS VIOLATIVE OF SOUTH CAROLINA CODE OF LAWS ?

STATEMENT OF FACTS

I went to the G.I. clinic and was seen by Dr. Elkenton. He told Appellant that he was a candidate for treatment and that he should have been receiving treatment since 2005, the time that they discovered the problem. The Doctor told Appellant to hang in there and that he would undergo a biopsy and ultrasound within the next few weeks. The Department initiated this Life necessary treatment. However, on 3/29/12 (Thursday 11:00 Am) Dr. Drago informed Appellant that he was disapproved for the treatment for Hepatitis C because the Appellant had a (Under the Influence) charge in SCDC that was 21 years old (1991). Dr. Paul Drago said that there was a new Medical directive that stated that inmates having a prior drug or tatoos conviction would no longer be given the Hepatitis C treatment.

The Department's Doctors have indicated that this is a medically necessary treatment. The Appellant filed his step one grievance on 4/9/12, and the Department responded with a "Unprocessed due to that the grievant can only attach one sheet (5/21/12). The Grievant re-submitted and the Warden (Willie Eagleton) responded on (6/15/12) with his referral to medical and stated that " as it is not within my purview to make medical decisions" and the grievant was told to continue to sign-up for sick call. The Appellant/Grievant timely filed his Step two which was likewise dismissed.

On or about 12/12/12, the Appellant/ Grievant filed his Notice of Appeal and served it on both the South Carolina Administrative Law Court and the Respondent's Counsel of record along with a Certificate of Service. The Appellant filed his brief and the State responded. The Court (ALC) ultimately dismissed this Appeal. The Appellant then timely filed his Notice of Appeal on both the South Carolina Department of Corrections and the This Court (South Carolina Court of Appeals). The Appellant submitted a Brief asking the Court to waive the Filing fee and allow the Appellant to proceed In Forma Pauperis, citing the Constitutional magnitude of this case. On June, 21 2013, This Court Granted the Appellant to proceed "In Forma Pauperis" and this appeal follows.

STANDARDS

The Court has the right to determine whether an inmate is being deprived a "State Created Right" or "Liberty Interest" granted him by a rule, Statute, or regulation promulgated by the Government Meachum v. Fano 427 U.S. 215. Further, An inmate can claim a 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 515 U.S. 472. Lastly, The Elementary principles of the Cruel, and Unusual Clause of the Eight Amendment establish the Government's obligation to provide medical care for those whom it is punishing by incarceration. Estelle v. Gamble 429 U.S. 97.

I.

THE DEPARTMENT OF CORRECTIONS HAS INSTITUTED A POLICY (MEDICAL DIRECTIVE) THAT IS VIOLATIVE OF BOTH THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION.

The South Carolina Department of Corrections hereafter referred "Department" has instituted a medical directive that would in essence deny medically necessary treatment to inmates that would die if the treatment was withheld. The "Department" instituted a policy some time in 2005, that any inmate convicted of a tatoos or drug charge (Institutional charge) would not be given the Hepatitis C Treatment. However, the fact here, is that this Institutional conviction was in 1991, some 21 years before the policy. This policy would:

A.

Violate the concept of the South Carolina and United States Constitution in that this policy would violate the "Elementary Principles of the "Cruel and Unusual" Punishment Clause of the Eighth Amendment Establish the Government's obligation to provide

medical care for those whom it is punishing by incarceration Estelle v. Gamble 429 U.S. 97. The Eighth Amendment would be offended if the State was allowed to preclude giving a criminal incarcerated person medically necessary treatment, when doing so would lead to the inmates needless suffering and ultimate death. as such this Directive is repugnant to both the South Carolina And United States Constitution is allowed to stand.

B. As stated in Sandin v. Conner ID 515 U.S. 472, The Directive would cause create a Atypical and Significant Hardship in relation to ordinary incident's of prison life. As stated here, the practice would not only be violative of the eighth Amendment, But also the Fourth Amendment. When other similarly situated inmates can receive this treatment, that is both life sustaining but also readily accessible it would clearly amount to a eighth and Fourth Amendment violation to allow the Department to withhold such treatment based on any criteria. The "Department's Own medical staff agree about the Appellant's condition and the need for such treatment but are telling the Appellant to keep signing up for sick call and forgoing the treatment that "Department" has already stated is needed. The Appellant is being denied this Medically necessary treatment because of a 1991 conviction (Internal Prison disciplinary) for being under the influence.

II.

THE DEPARTMENT OF CORRECTIONS HAS INSTITUTED A POLICY (MEDICAL DIRECTIVE) THAT IS IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS. South Carolina provides in at least four Statutes giving prisoners protected Liberty Interest by charging the State with the humane treatment² as described in the "Declaration of Policy" (S.C. Code Ann. § 21-1-20). Futher South Carolina Statute provides for the "Management and Control of prison System" that the Department of Corrections has a duty to provide "proper care, treatment³" along with feeding, clothing and management of the prisoner. This Statutory language would provide this inmate with futher protections as to the charge of the South Carolina

Department of Corrections. Therefore, the Department of Corrections receives its authority from South Carolina Code of Laws that specify in S.C. Code Ann. § 24-1-140, that the director shall have the power to prescribe reasonable rules and 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.

CONCLUSION

Based on the foregoing, the Appellant Prays that this Court VACATE the decision of the South Carolina Administration Law Court, Rule that the denial of medically necessary treatment in this case rise to the level of a Eight and/or fourth Amendment violation and require the South Carolina Department of Corrections to provide the necessary medical treatment.

Respectfully, Submitted,

Joseph Barfield

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.

S.C. Code Ann. § 24-1-130. Management and control of prison system.

³ 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.

± S.C. Code Ann. § 24-1-140 Director Empowered to make rules 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 of offense upon which the conviction of the prisoner was secured.

¶

S.C. Code Ann. § 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.