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STATE OF SOUTH CAROLINA

Supreme Court

NOV 15 2023

S.C. SUPREME COURT

Appeal from Administrative Law Court

Judge M.G. Kimpson

ALC Case No. 2023ALJ040097AP

Ct. App. Case No 2023-000776

filed Oct. 25, 2023

Director of South Carolina Department of Corrections, Respondent,

v.

Robert Wazney, Appellant.

PETITION FOR WRIT OF CERTIORARI

Robert Wazney

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Bennettsville, Sc 29512

Appellant, Pro se, captive, victim

803-996-4958

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CERTIFICATE OF PETITIONER

Petitioner certifies that petition for rehearing was made and finally ruled upon by the Court of Appeals on October 25, 2023, APPX. M /.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that Petitioner's case is dismissed for failure to pay filing fees, denying in forma pauperis, where Petitioner's case rests on fundamental constitutional rights?

Certiorari / ii.

STATEMENT OF THE CASE

August 23, 2022, Robert Wazney, Petitioner, brought this action pursuant Informal Resolution (a/k/a KIOSK, RTSM, ARTSM) in where after a prison transfer Petitioner discovered his personal property was stolen. Petitioner sent a KIOSK to report the stolen property, however, the KIOSK being dysfunctional, could only be accessed to send but not retrieve sent KIOSK documents. Petitioner filed grievance against the stolen property and indicating his sent KIOSK and his inability to access KIOSK reference number. Petitioner requested for his property to be replaced. / APPX. A, B, C /. South Carolina Department of Corrections could not process Petitioner's grievance without the KIOSK number. Ultimately, the grievance process failed to provide a remedy for Petitioners loss.

Petitioner attempted in many ways to remedy the issue, however failed, and filed Notice of Appeal with S.C. Administrative Law Court (ALC) / APPX. D /, and Petitioner filed a 'tort claim' / APPX. Z / with S.C. Insurance Reserve fund, the 'tort claim', as of the date of this paper, has gone unanswered. The Notice of Appeal with ALC was Dismissed for lack of jurisdiction in where the alleged loss does not implicate a state created property interest / APPX. E /.

ALC committed error of law in where it overlooked the facts of the case. Petitioner filed Notice of Appeal / APPX. F / with S.C. Court of Appeal (SCCOA). SCCOA dismissed the case for failure to pay filing fees / APPX. H /. Petitioner provided SCCOA with in forma pauperis papers / APPX. I /, however, SCCOA dismissed Petitioner's appeal / APPX. K / for failure to pay filing fees, denying in forma pauperis, where petitioner's case did not rest on fundamental constitutional rights / APPX. K /. Petitioner petitioned for rehearing / APPX. L /, ut was denied / APPX. M /. The petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

I. The Court of Appeals should have held that in forma pauperis is granted, Martin v. State, 321 SC 533, 471 SE2d 134 (1995), and reversed or modified the Administrative Law Court decision.

Affidavit or Declaration

COMES NOW, Robert Wazney, Captive, Appellant, who after being duly sworn deposes and states:

I am Robert Wazney, I purchased and own a 13 inch television (TV) / APPX. A / which was stolen by the South Carolina Department of Corrections (SCDC), the Respondent above. Also, all of the televisions cables and connectors were stolen by the SCDC, / APPX. B /. I reported the stolen property to the SCDC / APPX. C / pursuant to their grievance policy 'OP - 22.03.8', but the procedure for challenging the deprivation dose not satisfy the requirements of procedural due process. So I filed an appeal with the South Carolina Administrative Law Court (ALC) / APPX. D / The ALC overlooked the language of my appeal, see APPX. D, near top of page:

" ... A general statement of the grounds for appeal is ... IN VIOLATION OF procedural guarantee of the due process clause, SC CONST Art. I § 3, U.S. Constitution Amendment 14 ... (SCDC) has imposed atypical and significant hardship beyond ordinary incident of prison life in where SCDC has failed to provide postdeprivation remedy ... "

and overlooked the language of my grievance / APPX. C, middle of page /:

" ... I cannot access my KIOSK Requests Inbox and thereby cannot provide a KIOSK reference number. "

and dismissed the case based on the language, and evidence, it overlooked / APPX. E / pursuant Slezak, omitting the overlooked language in its opinion, see APPX. E, p.2 paragraphs 2 and 3):

" ... the inmate's grievance does not implicate a state created liberty or property interest ... due process claim does not arise unless or until the state fails or refuses to provide a suitable post deprivation remedy. "

So, I filed an appeal with South Carolina Court of Appeals (SCCOA) / APPX F /, but SCCOA dismissed my appeal because in forma pauperis is denied in where SCCOA believes my in forma pauperis request does not rest on a fundamental constitutional rights / APPX. G /.

Analysis

Establishment of a Fundamental Constitutional Right.

I purchased the TV on the canteen / APPX. A /, and the TV is listed as authorized property for inmates under SCDC Policy OP - 22.03.8. I have a right to use my TV in the manner I see fit without government interference. This demonstrates that I have a protectable interest of liberty or property.

Once I discovered my property was stolen, I immediately sent a KIOSK complaint (informal resolution) to Security. However, with the KIOSK being disfunctional in where I could not access 'inbox' section, I filed a grievance pursuant SCDC Policy OP-22.03.7 ('used for the resolution of all property reimbursement claims'), but the grievance could not be processed without a KIOSK number, KIOSK numbers are in the 'inbox' section which is inaccessible to me. The grievance process thereby does not provide for remedy of deprivation of my protectable liberty or property interest. This demonstrates the state action and that the state procedure for challenging the deprivation fails to provide suitable postdeprivation remedy and does not satisfy the requirements of procedural due process. The written policies are in place, however, they just could not be implemented due to the disfunction of the SDDC KIOSK. This was explained to many of SCDC staff without avail.

I also tried to remedy the stolen property through a 'tort claim' mailed to the South Carolina Insurance Reserve Fund, but it went unanswered and I was left with no way to remedy my stolen property.

Property interests are protected by the Due Process Clause. "... nor shall any State deprive any person of life, liberty, or property without due process of law" U.S.Const. amend. XIV § 1

Property interests subject to protection under the Due Process Clause are not created by the Constitution; rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those enefits. Town of Castle Rock, Colo. v. Gonzales 545 US 748, 125 S.Ct. 2796 (2005); Tri County Paving, Inc. v. Ashe County, 281 F.3d 430, 2002 WL 255508 (4th Cir. 2002), James Academy of Excellence v. Dorchester County School Dist. Two, 376 SC 293, 657 SE2d 469 (2008).

The taking of an inmates personal property outside policy is atypical and significant hardship on an inmate in relation to the ordinary incidents of prison life. An agency, such as the SCDC, violates the Due Process Clause of the Fourteenth Amendment when a state employee negligently deprives an inmate of property provided the State does not make available a meaningful postdeprivation remedy. Also, an unauthorized, intentional deprivation of property by a state employe violates due process if no meaningful postdeprivation remedy for the loss is available. Hudson v. Palmer, 468 US 517, Vukadinovich v. Zentz, 995 F.2d 750 (7th cir.)

Here, the §4DC has mishandled my property in a grossly negligent manner, stolen, and my grievance clearly implicates a State created liberty or property interest and implicates the SCDC's failure to provide a suitable postdeprivation remedy, which manifests a due process violation.

Due process violations are protected under the Due Process Clause of the United States Constitution Amendment 14. A fundamental constitutional right is a right which has been found to be protected under the Due Process Clause. Blacks Law Dictionary (11th ed. 2019). Hence, the basis of my claim is a Fundamental Constitutional Right guaranteed to me by the United States Constituion Amendment 14.

Fundamental Constitutional Right established.

In an ALC contested case, all parties must be afforded an opportunity to be heard, the record of a contested case must include a statement of matters official noticed, and finding of fact must be based exclusively on the evidence and on matters officially noticed. SC Code Sect. 1-23-320(A), (G)(3), (I). A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings, and if a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. SC Code Sect. 1-23-350.

Here, the ALC Judge made an error of law in where he overlooked the material factual or legal matter included on the face of the grievance indicating my inability to access the KIOSK to obtain and provide the SCDC the needed KIOSK number for the grievance to process ("I cannot access my KIOSK Requests Inbox thereby cannot provide a KIOSK reference number") / APPX. C /, and without it, meaningful postdeprivation remedy for the loss of my property is unavailable ("SCDC has failed to provide postdeprivation remedy for Robert Wazney's claim concerning the taking of his private property") / APPX. D /. The judge's final decision, where he failed to officially notice these facts, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. All clearly appear on the face of the record, see, / APPX. C, D, E /.

The ALC has committed a substantial error of law which has caused substantial or material ham of an irreparable nature, and has resulted in a manifest injustice to the Plaintiff. The ALC decision is a departure from the essential requirements of law causing a miscarriage of justice.

The South Carolina Court Of Appeals.

SCCOA denied my in forma pauperis request because it did not rest on a fundamental constitutional right, SCCOA is in error because, under the Due Process Clause, my protected liberty or property interest and the SCDC's requirement to provide a suitable postdeprivation remedy, is a fundamental constitutional right, that right was denied and the in forma pauperis request should have been granted, and the SCCOA appeal should not have been dismissed.

As noted above, it is clear the ALC Judge committed an error of law which affected his findings of fact leading to an erroneous conclusion to the prejudice of the petitioner.

In an action at law tried by the court without a jury, the judge's findings of fact have the same force and effect as a verdict of a jury and will not be reversed upon appeal unless the court committed some error of law leading to an erroneous conclusion or unless the evidence is reasonably susceptible of the opposite conclusion only. Townes Assoc., Ltd. v City of Greenville, 266 SC 81, 221 SE2d 773 (1976); Midland Guardian Co. v Thacker, 280 SC 563, 314 SE2d 26 (Ct.App.1984); Auto Owners Ins. Co. v Langford, 330 SC 578, 500 SE2d 496 (Ct.App. 1998); State Farm Mut. Auto. Ins. Co. v Calcutt, 340 SC 231, 530 SE2d 896 (Ct.App.2000); Gordon v. Colonial Ins. Co. of California, 342 SC 152, 536 SE2d 376 (Ct.App.2000); Auto Now Acceptance Corp. v. Catawba Ins. Co., 342 SC 526, 537 SE2d 533 (Ct.App. 2000); Smith v. Auto-Owners Ins. Co., 660 SE2d 271 (S.C.Ct.App. 2008).

A general presumption that Administrative Law Court correctly decides questions of state law is inapplicable where such court's stat-law ruling is plainly wrong, presumption reflects judgment as to utility of reviewing court decisions on issues of state law in most cases, not belief that Courts of Appeals have some natural advantage in this domain. See, e.g., Griffin v. Bryant, 56 F.4th 328 (4th Cir. 2022)(Record left unresolved issues of material fact in where procedures for bringing grievance were unavailable.).

The Court of Appeal standard of review for cases decided by the ALC is set forth in section 1-23-610(B) of the South Carolina Code, which provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute it's judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of 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.

SC Code Ann. § 1-23-610(B)(Supp.2011).

The Court of Appeals, in applying the provisions of Code Sect. 1-23-610(B), should have reversed or modified the ALC decision in where the substantive rights of the petitioner have been prejudiced in light of the ALC Judge's error of law. Instead, the Court of Appeals failed to see the error and made error itself by denying in forma pauperis under the belief no fundamental error of law has occurred.

Certiorari Review.

The relief sought in an action in the nature of certiorari is to correct substantial errors of law apparent on the record that adversely affect material rights, Seales v. Boston Housing Authority, 40 N.E.3d 1046 (2015), Erie R. Co. v. Collins, 253 US 77 (1920), and is used to inquire whether the inferior tribunal has failed to proceed according to the essential requirements of the law. Janet Realty Corp. v. Hoffman's, Inc., 154 Fla. 144, 17 So.2d 114 (1943).

A writ of certiorari should not issue where it would operate inequitably or unjustly, or in the absence of a substantial injury or injustice to the petitioner. American v. Dept. of Central Mgt., 288 Ill.App.3d 701, Osborne v. San Diego Land & Town Co. of Maine, 178 US 22 (A bill of review will lie for errors in a decree that are apparent on the fact of the record.).

Judicial review of ALC decisions are to be appealed to the South Carolina Court of Appeal. SC Code Sect. 610(A)(1). Petitioner seeks to have reviewed a decision of the the South Carolina Court of Appeal. Therefore, this petition is presented under and pursuant to Rule 242 of the S.C. Appellate Court Rules.

This petition is accompanied by a certified transcript of the record of the proceedings, including the decision petitioner seeks to have reviewed / APPX. K /.

On the above facts the Administrative Law Court was presented with the following point of law: Violation of United States Constitution Fourteenth Amendment Due Process. On this point of law the SC Court of Appeal rendered the following decision: Dismissed, in where in forma pauperis is denied for failure to rest upon a statute or a fundamental right. That same point of law was involved in the case of Martin v. State, 321 SC 533, 471 SE2d 134 (1995), decided by the South Carolina Supreme Court. The facts involved in the last-mentioned case were as follows: "[W]here certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare Boddie v. Connecticut, 401 US 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) ... and Smith v. Bennett, 365 US 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961) ... with Ortwein v. Schwab, 410 US 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) ... and United States v. Kras, 409 US 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973)" and see n.l "The examples given are not exhaustive but are illustrations of when a motion to proceed in forma pauperis must be granted by a judge. Other statutory exceptions and other fundamental rights may require the waiver of filing fees for indigents."

The decision of the S.C. Court of Appeal, which petitioner seeks to have reviewed, is in direct conflict with the above-mentioned decision of the Supreme Court of South Carolina. Because of the reasons and authorities set forth above, it is believed that the decision sought to be reviewed is erroneous and that the conflicting decision of the South Carolina Supreme Court, is correct and should be approved by this court as the controlling law for the State of South Carolina.

In short, the ALC making error of law by overlooking the facts resulted in it's decision to remove it's jurisdiction in it's presuming there was no state created liberty interest implicated, where in fact, there is a state created liberty interest and the ALC had jurisdiction the entire time. The ALC had jurisdiction the entire time because the petitioner's property was stolen and the SCDC failed to provide meaningful postdeprivation remedy for the loss. This is a prima facie case, all of the ingredients are on the face of the record.

If the SCCOA would have noticed the fundamental right, they would not have denied in forma pauperis and dismissed the case.

The Courts below are in error.

CONCLUSION

For the reasons stated, the petitioner asks the court to grant the petition for writ of certiorari.

I declare under penalty of perjury that the foregoing is true and correct.

November 10, 2023.

/s/

Robert Wazney

Petitioner, pro se

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Bennettsville, SC 29512

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STATE OF SOUTH CAROLINA

Supreme Court

Appeal from Administrative Law Court

Judge M.G. Kimpson

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Ct. App. Case No. 2023-000776

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Director of South Carolina Department of Corrections, Respondent,

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Robert Wazney, Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing PETITION FOR WRIT OF CERTIORARI and attached APPENDIX were served on all parties to this action by placing copy of the same in the U.S. Mail postage prepaid addressed to the following address(es) on this day:

I declare under penalty of perjury that the foregoing is true and correct.

Office of General Counsel

S.C. Dept. of Corrections

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November 18, 2023.

/s/

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Petitioner, pro se