

In the State of South Carolina
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

Honorable James R. Barber, III, Circuit Court Judge

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SC Court of Appeals

Case No. 2010-CP-40-05896
Appellate Case No. 2012-211917

Stewart Buchanan, Appellant,

v.

Robert Brown, in his individual capacity, [first name unknown] Bowie, in her individual capacity, and David Tatarsky, in his individual capacity, Respondents.

Final Brief of Appellant

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Pro Se Appellant

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Statement of Issues on Appeal

I. Whether this case presents a controversy regarding Appellant's fundamental rights which require waiver of the filing fee? Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995)?

II. Whether the Lower Court erred in concluding that jurisdiction of Appellant's case resides in the ALC?

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Statement of the Case

A. The Facts:

May 7, 2008 Appellant submitted for agency review four (4) grievances pursuant to SDC Policy GA-01.12 (Inmate Grievance System) lodging four (4) separate constitutional challenges to Defendant Brown's actions against him. (R. pps. 3-9, pg. 16 pgs. 1-11, pg. 17 pgs. 12-17; Appellant's Reply Brief pps. 3-4, pg. 6 pgs. 1.) Defendants Bowie and Tatarsky acted independently and outside of policy against Appellant to prevent these grievances being reviewed and answered. (R. pg. 18 pgs. 18-24, pg. 13; Appellant's Reply Brief pgs. 6-7.) Four (4) years and four (4) months later, these grievances have yet been answered. (R. pgs. 12-13, pgs. 36-42; Appellant's Reply Brief pg. 3 pgs. 5, pg. 5 pgs. 3, pg. 8 pgs. 3.) Appellant's Complaint in the lower court raises a total of twelve (12) constitutional challenges to the three (3) Respondents' actions against him. (R. pgs. 19-22 pgs. 26-37; Appellant's Reply Brief pg. 5.)

On September 15, 2011 the Honorable James R. Barber, III, Circuit Court Judge, ordered Respondents to submit within seven (7) days a plan to answer Appellant's grievances. Respondents refuse to answer these grievances. (R. pps. 34-35.)

On November 8, 2011 Judge Barber dismissed the case for lack of subject matter jurisdiction saying, "Plaintiff is required to submit his case to the Administrative

Law Judge Division". Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).
(P. pps. 43-45.)

B. Definitions:

"Agency": The South Carolina Department of Corrections (SCDC) is an "administrative agency" cognizable under S.C. Code Ann. §1-23-310(2) and S.C. Const., Art. I §22.

"Private Rights": This term found in S.C. Const., Art. I §22, is a phrase interchangeable with the terms "legal rights, duties and privileges" found in S.C. Code §1-23-310(3) and in common law's "state created liberty interests".

"Agency Hearing": As used herein, this term is synonymous with that provided by S.C. Code Ann. §1-23-310(3) and the phrase "due notice and an opportunity to be heard" of S.C. Const., Art. I §22.

"Final Agency Decision": As contemplated by S.C. Const., Art. I §22, the final agency decision of SCDC to grievances filed by Appellant pursuant to SCDC Policy GA-01.12 affecting his "private rights" is a "quasi-judicial decision".

C. The Law:

"Prisoners may file appeals with the ALJD pursuant to the provisions for Contested Cases." Al-Shabazz, supra. (emphasis supplied.)

"Contested case' means a proceeding including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. §1-23-310(3).

"[S]tate created liberty interests ... are not necessarily limited to sentence credit issues and major disciplinary decisions." Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003).

"The ALC has no jurisdiction to determine the constitutionality of state law or state regulations." Great Aames, Inc. v. S.C. Dept. of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000).

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Argument

I. This case presents a controversy regarding Appellant's fundamental rights which requires waiver of the filing fee, Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995),

Appellant states it is clearly evident that this case involves his fundamental rights to due process of law and access to the courts; therefore, as an indigent, Appellant should be granted leave to proceed in forma pauperis.

II. The Lower Court erred in concluding that jurisdiction of Appellant's case resides in the ALC.

When there is no agency decision, the prisoner cannot perfect his appeal to the ALC; so, the ALC has no jurisdiction. (R. p. 49; Appellant's Reply Brief, p. 8 pgh. 3.)

When there has been no agency hearing, the ALC has no jurisdiction as there is no "contested case". S.C. Code §1-23-310(3), Al-Shobazz, supra; (R. p. 49; Appellant's Reply Brief, pg. 9, pgh. 2.)

When there has been no response whatsoever to grievances after the passing of four (4) years and four (4) months, Appellant has been denied due process of law and he is entitled to judicial review; however, the ALC has no jurisdiction. (R. pgs. 49-50; Appellant's Reply Brief pg. 10 pgh. 4, pg. 11 pgh. 1.)

Conclusion

Wherefore, premises considered, Appellant prays that this Court reverse the Lower Court's finding that jurisdiction in this case resides in the ALC, and that this Court remand this case to the Richland County ^{Court (SS)} Clerk of Common Pleas for further proceedings.

Respectfully submitted:

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Dated: January 7, 2013

State of South Carolina
In the Court of Appeals

Appellate Case No. 2012-21917

Stewart Buchanan,
Appellant,
v.
Robert Brown, et al.,
Respondents

Affidavit of Service

Personally appears Affiant Stewart Buchanan who, first being duly sworn, hereby deposes and says that I placed originals of my "Final Brief of Appellant" in sealed envelopes addressed to (1) Samuel F. Arthur, III, Esq., Aiken Bridges, P.O. Drawer 1431, Florence, SC 29503, and (2) Clerk of Court, S.C. Court of Appeals, P.O. Box 11629, Columbia, SC 29211, and deposited same in the McCormick CI mail Room on this 7th day of January, 2013.

S/ Stewart Buchanan
Affiant

Sworn to and subscribed before me
this 07 day of Jan., 2013,

J F Franklin
Notary Public
My commission expires: 12-16-2019

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CLERK OF COURT