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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S.PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE No. 2024-001769

Clifton Donell Lyles, 294075,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

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ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE ERR IN DISMISSING APPELLANT'S APPEAL HOLDING THAT THE APPEAL DOES NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST?

STATEMENT OF CASE

This matter is before the South Carolina Court of Appeals pursuant to an appeal filed by Clifton Donell Lyles(Appellant), an inmate incarcerated with the South Carolina Department of

Corrections(SCDC or Department). In the present appeal, Appellant seeks to have the Department to change its policy to allow inmates to seek appellate review of unprocessed grievances beyond the Department.

On May 1,2024, Appellant filed a Step 1 Grievance stating that the Departmental policy does not allow an inmate to appeal an unprocessed and returned grievance beyond submitting a request to staff member(RTSM) to the Agency Inmate Grievance Coordinator(AIGC) in the event the AIGC determines the grievance was properly returned unprocessed. The grievance was denied on May 6,2024. Thereafter, on May 6,2024, Appellant filed a Step 2 Grievance. The Step 2 Grievance was processed and returned stating that the issues in the grievance were non-grievable.

On June 3,2024, Appellant filed a notice of appeal in the Administrative Law Court. On June 6,2024, the case was assigned to the Honorable S.Phillip Lenski,Administrative Law Judge. On September 17,2024, the Department filed a Motion To Dismiss pursuant to *Slezak v. S.C.Dep't of Corr.*,361 S.C. 327,605 S.E.2d 506(2004) and *Skipper v. S.C.Dep't of Corr.*,370 S.C. 267,633 S.E.2d 910(Ct.App.2006) because the appeal does not involve a state-created liberty or property interest. On September 23,2024, Appellant filed a response to the Department's motion to dismiss, requesting the court to deny the motion alleging that the issue was in fact a grievable issue, and violated his rights to seek redress of his grievances. On October 10,2024, Judge Lenski granted the Department's motion to dismiss and dismissed the appeal. This appeal follows.

DISCUSSIONS

Appellant contends that the Administrative Law Court's findings that the right to appeal unprocessed grievances beyond the Department does not implicate a state-created liberty interest is err.

The Court fails to note that the Department's failure to allow inmates to seek appellate review of unprocessed grievances beyond the department, does not provide inmates with the minimum due process required by departmental policy GA-01.12. Pursuant to the INMATE GRIEVANCE SYSTEM Policy, GA-01.12, the Department sets out its stated purpose as the following: "To establish guidelines for the development and implementation of an inmate grievance system whereby inmates may seek formal review of complaints relative to disciplinary hearing appeals, Classification appeals, Department Policies, directives, or conditions which directly affect an inmate." see INMATE GRIEVANCE SYSTEM, GA-01.12.

In the present case, Appellant is grieving a department policy which directly affect his ability to seek redress of his grievances. He is alleging that the grievance policy does not allow an inmate to appeal an unprocessed and returned grievance beyond submitting a RTSM to the AIGC in the event it determines the grievance was properly returned unprocessed. This extremely dangerous in that the Department will surely continue to classify any grievance issue that it doesn't want to go beyond its purview, as "unprocessed and returned" as a non-grievable issue.

That is exactly what the Department has done with this issue. Even though it is listed as a "Grievable Issue" under Policy GA-01.12, section 7.1, the Department returned it as Non-grievable, and unprocessed and returned. It even refused to

give Appellant the Notice of Appeal form to file an appeal in the Administrative Law Court.see INMATE KIOSK MESSAGE #24-03524365, and 24-03524935.

What's more, is that this is not the first time that the Department has improperly and abusively used this policy provision to prevent Appellant from raising life threatening conditions in an appeal beyond the Department. On June 5, 2022, Appellant filed a Step 1 Grievance complaining about a shortage of staff and deplorable living conditions. ON June 8, 2022, the grievance was denied as "Duplicate to grievance TCI 0040-20 + TCI 0362-18".see STEP 1 GRIEVANCE DATED 6-5-2022(EXHIBIT A).

On June 10, 2022, Appellant appealed the matter by submitting a RTSM to the AIGC explaining that the grievance was not a duplicate to the previous grievances. He explained that the grievance seems similar because he was suffering some of the exact same conditions at Evans correctional that he suffered at Turbeville correctional. On June 17, 2022, the AIGC returned the RTSM stating that, "The matters are of the same nature. Staffing of the Agency is not a matter that can be instructed by or decided upon through the Inmate Grievance System. There is no justification to reopen any grievance".see Request To Staff Member Dated June 5, 2022(EXHIBIT A). Appellant was not allowed to appeal this matter to the Administrative Law Court or in this Court of Appeals.

Appellant was able to file a federal tort claim pursuant to 42 U.S.C. §1983, against several employees of the Department. In-which, the AIGC submitted an Affidavit specifically saying the suit should be dismissed based on Appellant's failure to exhaust


his administrative remedies, by failing to submit a RTSM to her concerning the unprocessed and returned Grievance No.ECI-0214-22.see AFFIDAVIT OF FELECIA MCKIE(EXHIBIT B). Her allegation is clearly debunked by the RSTM that she personally signed off on.see REQUEST TO STAFF MEMBER DATED JUNE 5,2022(EXHIBIT A).

The Department has twice used Policy GA-01.12,section 13.2, as a means to prevent Appellant from seeking review beyond the Department. These were clear attempts to interfere with Appellant's First Amendment rights to access a meaningful judicial procedure to seek redress of his grievances.see Shaw v. Foreman,59 4th 121(4th Cir.2023)(First Amendment protects right to petition government for redress of grievances, and prisoners retain this constitutional right while they are incarcerated;and his rights to have access to judicial procedures to redress them.);Cruz v. Beto,405 U.S. 319,92 S.Ct. 1079,311 Ed.2d 263(1972). This clearly implicates Appellant's state created liberty interest in protecting his right to complain about his conditions of confinement through a meaningful judicial procedure.

CONCLUSION

The Administrative Law Judge's Order should be vacated, and this matter be remanded for a ruling on the merits. Or that this Honorable Court of Appeals rule on the issue.

This 18 day of November,2024,

BY: 
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Appellant,

v.

South Carolina Department of Corrections

Respondent.

PROOF OF SERVICE

I certify that I have served the "INITIAL BRIEF OF APPELLANT" and the "DESIGNATION OF MATTER" on Christina Cato Bigelow, Esquire, by depositing a copy of the same in the United States mail, postage prepaid, on November 28, 2024, addressed to her office, South Carolina Department of Corrections, 4444 Broadriver Road, Columbia, South Carolina 29221.

BY: Clifton Donell Lyles 294075
PRO SE
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NOVEMBER 28, 2024

THE HONORABLE JENNY A. KITCHINGS
CLERK OF COURT, S.C. COURT OF APPEALS
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COLUMBIA, SOUTH CAROLINA 29211

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RE: Clifton Lyles, 294075 V. South Carolina Department of Cor-
rections Appellate Case No. 2024-001769

Dear Ms. Kitchings,

Please find enclosed the "INITIAL BRIEF OF APPELLANT" and
the "DESIGNATION OF MATTER" along with a "PROOF OF SERVICE" to be
filed in your office.

Sincerely

Clifton Lyles
#294075

Clifton Lyles #294675
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