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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Case No. 2024-002073

Anthony Crosby,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

REPLY OF APPELLANT

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ARGUMENT

On February 25th, 2025, the Respondent's Initial Brief was received in this matter. Four issues were raised:

1. That there is substantial evidence to support the Administrative Law Court's (ALC) final decision
2. That the Law Enforcement Training Counsel (LETC) and the hearing officer did not act arbitrarily or capriciously, abused their discretion and commit fundamental errors in hearing procedures.
3. Appellant raised an issue for the first time on appeal therefore was not preserved for this appeal
4. Appellant failed to follow a rule for 40(B), SCALC therefore he did not properly perfect the appeal

The following the Response to each of those individually together with three other issues raised in the Respondent's Brief.

1. That there is substantial evidence to support the Administrative Law Court's (ALC) final decision

This statement is incorrect. A review of the entire hearing together with the Briefs submitted on behalf of Appellant shows clearly that there was no evidence that reached the level of substantial evidence to support the ALC's final decision. This case concerns an analysis of Appellant's actions over a period of 3 months in this matter (September 2022, January 2023 and February 2023). An OPR investigation was conducted by Investigator James Reap (Reap). In the hearing at no time was Reap qualified to testify as an expert. The Respondent references Reap's testimony as

he recognized that Appellant utilized a different method in producing documents and he recognized the expertise of Appellant. The critical point of Reap was that his presentation was treated as expert testimony by the Hearing Officer and he was never qualified as an expert. This is recognized by Respondent in the Respondent's Brief. Both Appellant and respondent's counsel recognize the issue of Reap not being a qualified expert for testimony.

Reap's testimony actually supports Appellant's position. There was great discussion regarding the contact only warnings and reap testified that Appellant engaged in practices of duplicating contact notices during his last year of service and further stated that he was unaware of any training Appellant may have received in how to generate these warnings. Importantly, per the Respondent's Brief, Reap testified that, "the information contained in the warnings was not false but that the documents themselves were false, as they should not have been created in the first place." (Respondent's Brief pg14) Nowhere in his testimony did Reap find that the information on the documents was false. The information he testified was correct and accurate for each traffic stop. The Respondent's Brief states that, "the South Carolina Code of law does not specifically prohibit the issuance of these warnings." (Respondent's Brief pg.15) In essence, Reap was testifying and criticizing the number of warnings written. When reviewing witness testimonies, there is only one conclusion. It is stated that the tickets written by Appellant were legitimate. (Respondent's Brief pg.16)

The misconduct charge against Appellant was for untruthfulness. The Respondent's Brief references that the Department had transferred documents to the

Smart Cop system. It was brought out that Appellant was not truly instructed in the Smart Cop system, as he was originally trained in a different system. The new Smart Cop system co-ordinates all documents and videos to one case with one case file number. In every case all documents issued in that matter were readily apparent by the consistent numbering system. It is impossible to show that numerous documents from one incident create multiple and different reports. All of the numbers in the system in this matter are consistent and coordinated as one. A review clearly shows that all documents refer to one incident and Defendant.

The Respondent's Brief latched upon Reap's testimony which sets forth that the South Carolina Code of Laws does not prohibit the issuance of contact warnings at a traffic stop but in spite of that Appellant's actions were interpreted as misleading and untruthful to the Department regarding the number of traffic stops he performed. This is contrary to the Smart Cop system which links all documents relating to a traffic stop into one file, preventing a duplication of incidents and inflation of reporting records.

Respondent's Brief alleged that Appellant would gain multiple benefits such as personal satisfaction and admiration from his peers for using multiple documents for each traffic stop. The law allowed Appellant to issue these documents and statistics for performance should be based upon the number of case files in Smart Cop, not the total number of documents an officer enters into the Departments system, thereby preventing any allegation of traffic stop numbers being inflated. The issue came out of the reporting error of Smart Cop. All of the documents entered into the system were factually correct and permissible in law. Crosby never lied on any form or

document entered into the Smart Cop system. To conclude that his large number of authorized submitted documents gave Appellant an inflated ego and recognition is simply incorrect. Respondent's Brief shows clearly that all documents and their information uploaded into the Smart Cop system were factually correct. It is improper to say that Appellant's deception was by providing actual accurate documents to the Smart Cop system.

If Appellant violated a policy, should have been disciplined progressively per that department policy, however in this case the matter was filed as misconduct with the South Carolina Criminal Justice Academy as misconduct by untruthfulness despite all documents being testified to by the Department as informationally truthful. Appellant did not willfully lie or deceive. The Respondent is alleging that all of the information was accurate, but it was documented too much, too many times, even though it was allowed and that is reason to maintain the Appellant was untruthful and should be permanently be denied his law enforcement certification. This position defies the facts and common sense.

2. That the Law Enforcement Training Counsel (LETC) and the hearing officer did not act arbitrarily or capriciously, abused their discretion and commit fundamental errors in hearing procedures.

The LETC and Hearing officer were arbitrary and capricious, and abused their discretion and commit fundamental errors in hearing procedures by accepting Reap's testimony as an unqualified expert witness. Reap had never testified nor was he previously qualified as an expert witness. Reap's non expert testimony was utilized as

the basis to draw conclusions regarding Appellant's actions. Appellant did not violate state law or his training. At no time did Appellant violate to rights of the motorist he stopped. He recorded all incidents accurately on multiple forms. To conclude, filing accurate forms into the Smart cop system is an attempt to deceive the Department is false. The Department witnesses testified that the information was accurate and allowed by the Department.

It was raised by the department that not all the documents were served upon the motorists. This fact does not change that the information was accurate and at least one document was served upon the motorist in each incident. The department could have simply disciplined and provided training regarding the Smart Cop system to correct scrivener's errors in form submission. All the Appellant needed was additional training.

Respondent's Brief references that the LETC properly denied the motion to reopen the record and to add additional documents into the record. That decision was grossly unfair and improper. The LETC was denying Appellant the right which had no negative effect on the Department. It was a simple Motion to allow documents to be submitted and provided to the LETC at that point. That action suggests that the LETC did not wish to view truthful documents. The documents could and should have been admitted for consideration.

3. Appellant raised an issue for the first time on appeal therefore was not preserved for this appeal

It was error for the hearing officer to allow rebuttal testimony by the Reap and Lieutenant Thompson (Thompson) following testimony of Appellant. The reason being that the counsel for the hearing Officer failed to exclude Reap and Thompson following their testimony. The Motion was to sequester the witnesses and that was granted. However, the witnesses remained in the court room following their testimony and were allowed to take that stand after Appellant testified. This clearly violates rules of fairness. Once the original sequestration was granted, that would apply to both witnesses following their testimony, which in this case was ignored. To do so is to abuse discretion and irreparably taint the record.

That the Appellant first raised an issue on appeal is wrong. The issue was that the issue raised was raised after the LETC meeting. At the hearing before the Hearing Officer, 11/7/23, the issue did not exist. The Hearing Officer conducted the hearing and afterwards a Recommendation was made by the hearing officer, 1/5/24. On 1/24/24, Appellant filed a Motion in Opposition to the Recommendation. On 3/7/24 the parties were notified that the LETC would meet and render its decision on 3/18/24. On 3/18/24 the LETC the council voted to accept the Hearing Officer's Recommendation and deny certification and their final decision Order was signed 4/23/24. On 4/25/24, a certified letter was sent to Appellant containing the final LETC Order and the Appellant filed a Notice of Appeal to the Administrative Law Court on 5/21/24. The case was assigned on 6/3/24. On 7/18/24 the ALC issued their final Order. On 11/6/24 the Appeal was filed before this court.

The alleged issue that respondent maintains was not properly preserved arose at the LETC actions on 3/18/24. The record shows clearly that the Chairman of the LETC, Chief Mark Keel (Keel) stated on the record in response to a question from another LETC member that any charge of misconduct in which the allegation is that of deception or untruthfulness, the punishment must be decertification. Keel told Appellant's Counsel, unequivocally that to decide case concerning truth, the only punishment that could be imposed was permanent decertification. His reasoning was to provide consistency in dispositions.

. It was clear in this case the decision was rendered absent any discussion of other punishments allowed under S.C. Code Regs. §37-108(A)(1)(2)(3)(4)(5) governing the LETC. Four other options for discipline are available to the LETC, but despite that it was not discussed by the LETC or considered. The alternative disciplines are 1. *Denial and/or revocation (withdrawal) of certification for a specified amount of time;* 2. *Certification granted with probation;* 3. *Certification granted with any additional requirements deemed just and proper by the Council;* and/or 4. *Public reprimand.* S.C. Code Regs. §37-108(A)(2)(3)(4)(5)

This issue came to light before the LETC hearing, that being after the original hearing before the Hearing Officer. It is improper for the LETC when determining Appellant's past and future career to ignore additional options for disposition given under the regulations governing their actions. It is the position of Appellant's Counsel that it is the obligation of the LETC to review and consider other possible punishments as set forth in their governing regulations. This issue only arose before the LETC hearing and after the Record was created. To allow the LETC to ignore the

mandates set forth in the statutes and their regulations and rules is wrong. This amounts to an improper interpretation of and application of S.C. Code Regs. §37-108(A)(1)(2)(3)(4)(5). To allege that it was improper to raise this issue is to ignore the timeline of events in this matter. The issue arose after the Hearing Officer's Hearing, some 2 months later. The punishment issue did not arise at the Hearing Officer's Hearing as he does not decide the punishment and disposition, the LETC does, months later, it is therefore improper that Respondent allege that Appellant was improper in raising an issue that only occurred before the LETC. This is contrary to the concept of fairness. It is impossible to raise an issue that did not exist at the lower level.

4. Appellant failed to follow a rule for 40(B), SCALC therefore he did not properly perfect the appeal

Appellant responded to this issue by Motion in Response filed 2/20/25 and stated:

The Motion was dated 2/19/25 and Counsel for Appellant and Respondent spoke that day. The allegation was made that Appellant failed to file a Motion for Reconsideration of the Administrative Law Court's ("ALC") final Order per Rule 40(B), SCALC, which states, "*Prior to filing a Notice of Appeal from the decision of an administrative law judge, a party must file a motion for rehearing stating with particularity the points supposed to have been overlooked or misapprehended by the court. A motion for rehearing must be filed within ten days of receipt of the order.*"

Based upon the ALC's final Order Appellant requested that an appeal to this court be made. Appellant's law enforcement career was ended as a result of this case with the imposition of permanent decertification in law enforcement. Consequentially a Notice of Appeal was filed with this court on 11/26/24, and on 12/23/24 Appellant's Brief was filed. Further on 1/22/25, Respondent filed a Motion for Extension of Time to file the Respondent's Brief and Designation of Matter. The extension was granted and the new filing deadline for the Respondent's Brief and Designation of Matter is 2/2/25.

In the conversation between counsel on 2/19/25, it was noted that Mr Fennell also requested that he be made substitution counsel for the Respondent since the original attorney has left the agency. Mr Fennell acknowledged his filing deadline for Respondent's Brief was two days hence, 2/21/25.

Appellant's Brief was a matter of extensive time and research and costs and was filed and docketed by this court. That Appellant's counsel considers the issues in this case of prime importance for all officers here in South Carolina. It is a complicated issue involving law enforcement certification which impacts all law enforcement in South Carolina and their certification in law enforcement under the statutes of South Carolina.

Counsel was unaware of the amendment of Rule 40(B), SCALC on 4/8/24. Counsel recognizes that a Motion for Reconsideration was not filed before the ALC. On behalf of the Appellant the Appellant Brief has been filed and the Respondent is in the process of filing their Response. It is the position of Appellant's Counsel that in view of all of the facts of the case that the jurisdiction

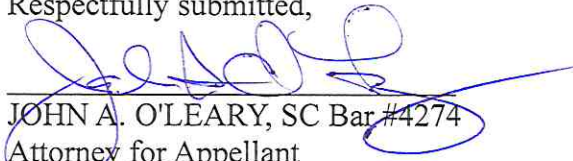
in this matter rests with this court from the brief being formerly filed by the court on 12/23/24. The Motion to Dismiss was only filed immediately prior to the deadline for Respondent's Brief.

We respectfully request that the Motion for Dismissal be denied.

CONCLUSION

All evidence shows that Appellant was not deceitful in his actions, all information provided was correct and truthful. The Order of the LETC is incorrect. We ask that this court reverse the decision of the LETC and allow certification.

Respectfully submitted,



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Dated: 3/3/25

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CERTIFICATE OF SERVICE

I, Jeanette Bettles, the undersigned employee of O'Leary Associates, P.A., attorney for Appellant Anthony D. Crosby, hereby certify that I have served the **Reply of Appellant** in the above-captioned matter on the individual(s) listed below on 3/3/25, by email to:

James Fennell
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Columbia SC, 29212-3540
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Dated: 3/3/25

March 3, 2025

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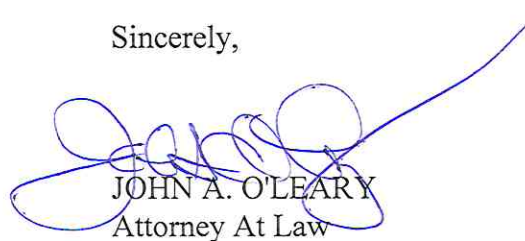
RE: SC Criminal Justice Academy vs. Anthony D. Crosby
Case No(s): 24-ALJ-30-0171-AP
Charge(s): Law enforcement Certification appeal from the Admn. Law Court

Dear Ms. Kitchings:

Attached please find Reply of Appellant with proof of service for filing with the Court.

Thank you for your time and consideration in this matter. If you have any questions or if we may be of assistance, please do not hesitate to call.

Sincerely,



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