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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Samuel L. Johnson-Administrative Law Judge

APPELLATE No. 2026-000193
[docket no. 25-ALJ-04-0630-AP]
[grievance no. PCI 330-25]

SOUTH CAROLINA DEPT. OF CORRECTIONS.....RESPONDENT,

V.

BRIAN K. NESBITT.....APPELLANT.

APPELLANT INTIAL BRIEF

BRIAN K. NESBITT [#201166/SCDC]
PERRY CORR. INSTITUTION
430 Oaklawn Road
Pelzer, South Carolina 29669

ISSUES ON APPEAL

1. Did SCDC violate Nesbitt's protected right[s] to gain -- efficient & adequate health care under the law[s], to include the eighth amendment made available to the State[s] under the fourteenth amendment?
2. Did the ALC err in granting SCDC's Motion to Dismiss?
3. Did the ALC err in dismissing Nesbitt's appeal w/ prejudice?
4. Did the ALC err in finding that it refused the issue[s] - because Nesbitt's Issues did not show any "liberty-interest" when in fact it did and setting forth MITCHELL as caselaw precedent as reasoning[s] to dismiss?
5. Did Nesbitt hold a liberty-interest in seeking prescribed assessments & equipment needed for adequate/efficient health care assessment i.e.-Orthopedic Shoes to eliminate pain -and- suffering under the law[s], to include the State of South Carolina & United States Constitution[s]?
6. Did the ALC err in setting forth that it lacked jurisdiction/s ingenerally ["no-liberty interest set forth"] and summarily dismissing his appeal due to "no liberty interest" set forth?

ARGUMENT[S]

Brian K. Nesbitt filed SCDC Grievance Forms seeking Orthopedic Shoes to eliminate pain & suffering due to his health care conditions and ailments. And-SCDC refused such at all steps even knowing that a Orthopedic Specialist aka-Doctor prescribed him "Orthopedic Footwear to eliminate his pain & suffering and in his current condition[s].

Upon appeal to the Administrative Law Court, ["ALC"] used SCDC v. Mitchell, 377 S.C. 256, 659 S.E.2d 233 (2008) Case-Law to summarily dismiss his appeal to the ALC[at-SCDC Final Decision].

Mitchell is not proper under the circumstance[s] or when it cite[d] "Dismissal via 'no created liberty interest', so the ALC did infact "Err" in its' ruling[s].

Nesbitt's issue[s] at hand did infact hold a created liberty interest under the circumstance[s].

"Liberty" is safeguarded by the due-process clause of the Fourteenth Amendment. And Liberty which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people , to include those incarcerated.

Nesbitt's Issue[s] at hand encompasses an infringement of a created liberty interest that imposed a atypical and significant hardship on him triggering his due-process guarantee/s and thereof-judicial review. And-his condition[s], i.e.-Pain -and- suffering[s] of confinement implicated[s] a created state liberty. See Skipper v. SCDC, 370 S.C. 267, 273-74, 633 S.E.2d 910 (2006), quoting Al-Shabazz, 338 S.C. 354, 369, 527 S.E.2d 742 (2000)-(recognizing "condition[s] of confinement implicate[d] a state-created liberty interest.").

ARGUMENT[S]-Cont.

SOUTH CAROLINA CONSTITUTION:

"The General Assembly shall establish instituion[s] for Confinement[s] of all persons convicted ..of crimes ..and shall provide for the custody, maintenance, health, and welfare, - education, and rehablitation of the inmate[s]."

S.C. CONST. ART. XII, §2.

It is a requirement of the due-process & equal protection clause[s] of the State of South Carolina -and- United States Constitution[s] --that if the State elicts to incarcerate a person, it MUST provide efficient and adequate health care to those/these it elicts to incarcerate.

See-Estelle v Gamble, 429 U.S. 97, 97 S.Ct. 285 (1976)-AND-
Deshaney v. Winnebago Co. DSS, 489 U.S. 189, 109 S.Ct 998 (1989).

"Excessive bail shall not be requires, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual puishment be inflicted."

S.C. CONST. ART. I, §15.

UNITED STATES CONSTITUTION:

"Excessive bail shall not be required, nor excessive fines, imposed, nor cruel and unusual punishment[s] inflicted."

U.S. CONST. AMEND. §8.

The Eighth Amendment is applied to the State[s] vllta the Fourth Amendment. Robinson v. California, 370 U.S. 660, 82 S.Ct 1417 (1962); State v. LA. v. Resuseber, 329 U.S. 459, 467 S.Ct 374, 378 (1947); Panetti v. Quarterman, 551 U.S. 930, 127 S.Ct 2842 (2007); O'Neil v. Vermont, 114 U.S. 323, 12 S.Ct. 693 (1892)

The terms of the South Carolina Provision have been interpreted to require the same analysis as that to be performed in a[n] Eighth Amendment Issue[s]. See State v. Wilson, 306 S.C. 498, 512, 413 S.E.2d 19 (1992).

The Eighth Amendment requires State Penal Staff to ensure [or/and] provide inmates with needed medical care. Withholding medications for health care issues will constitute a violation, -along; withholding or denying a medical appliance for which the prisoner[s] has a need. Durham v. Kelly, 82 F.4th 217, 230 (2023); Shipp v. Murphy, 9 F.4th 694 (2021).

State creates a protected liberty interest by placing substantive limitations on official discretion, in the instances where the decisionmaker is not required to base its decision objectively or define criteria.--Aka "cannot deny or discreet or obstruct [etc]. See Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 465, 101 S.Ct 2460, 2465 (1981).

Procedural due process[s] imposes constraints on governmental decisions which deprive individuals of liberty or property interest within meaning of the Due Process Clause of the Fifth [or/and] Fourteenth Amendment[s]. Seabrook v. Knox, 369 S.C. 191, ___, 631 S.E.2d 907 (2006) quoting Mathews v. Eldridge, 424 U.S. 319, 372, 96 S.Ct 893 (1976).

State statute & regulation, including prison regulations, will create a liberty interest subject to due process protection. Vann v. Oklahoma, 28 Fed.Appx 861, 863 (2001)-Collecting Case[s].

The Fourteenth Amendment prohibits the State of South Carolina [Dept of Corrections] from depriving "any person of life, liberty, or property without due process of the law[s]." In order to determine whether a due-process violation has occurred, an initial determination MUST BE made that a protected liberty interest exist, and if so, the next step is to define what process

-is mandated to protect it. See-Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct 2293 (1995) -and- Protects "the individual against arbitrary action[s] of the Government[s]." See-Wolf v. McDonnell, 418 U.S. 539, 558, 94 S.Ct 2963 (1974).

Surely-Nesbitt's Pain & Suffering is protected under the Eighth Amendment and Required under the Fourteenth Amendment of the United States Constitution, to include protected under the South Carolina Law[s] & Constitution as setforth in this Pleading[s].

Surely-South Carolina's Dept. of Corrections would surely become arbitrary if it left Nesbitt to endure ["Pain & Suffering"] -or- inflict[ed] cruel & unusual punishment[s] towards/to Nesbitt and the protection[s] of the Constitution[s] create[d] a liberty-interest ..

The Eighth Amendment ensures that SCDC will not inflict such ..and made to the State of South Carolina by the Fourteenth Amendment. See-Estelle, 429 U.S. at 102, 97 S.Ct 285 --quoting Robinson, 370 U.S. at 676.

A liberty interst may arise from the U.S. Constitution itself-by reason of guarantees implicit in word -"liberty" /or/ it may arise from an "expectation or interest" created by State Law[s] or Policy[s]. U.S. Const. Amend. §14. Stephenson v. Commissioner of Corrections, 203 Conn.App. 314, 248 A.3d 34 (2021).

The infliction of such "unnecessary suffering & pain is inconsistent with contemporary standard[s] of decency as -- manifested in ..common laws v^lew --that is but just ..that the public be required to care for the prisoner[s], who cannot by reason of deprivation of his librety, care for himself. Estelle.

The government has an obligation to provide medical care to those it is punishing by incarceration[s]. Estelle, 429 U.S. at 103. Deliberate indifference to serious medical needs of prisoner[s] constitutes --the unnecessary & wanton infliction of pain [& suffering] ..proscribed by the Eighth Amendment. Id. 429 U.S. at 104.

The South Carolina Supreme & Appellate Court[s] have - addressed the issue[s] that SCDC [and-ALC] cites as reasoning to block or-and hinder Nesbitt's Issue[s] of Pain & Suffering, and infliction of cruel & unusual punishment[s] at denial[s] to Orthopedic Footwear Needed to eliminate such, i.e.-Pain & Suffering[s] --numerous times since Al-Shabbaz.

In Sullivan [355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003)], the Supreme Court held that "the only way for the ALC to obtain subject matter jurisdiction-s over a inmate's claim against SCDC is if it implicates a state-created liberty interest in 355 S.C. at 443.

In Slezak [361 S.C. 327, 333, 605 S.E.2d 506, 509 (2004)], the Supreme Court clarified that in its ruling in Sullivan was mistaken, and held "the ALC has jurisdiction over all properly perfected inmates' appeal[s] that donot implicate an inmate's state-created liberty interest in 361 S.C. at 333.

And in Skipper [370 S.C. 267, 279 n.5, 633 S.E.2d 910 , 917 n.5 (2006)] the Court of Appeals cited Slezak stating "We believe the ALC improperly dismissed the inmate's appeal on the ground[s] that it lacked jurisdiction. In Light of the - decision that the inmate's grievance didnt implicate a state-created liberty interest. And ruled "that ALC should dismiss [only] on the merit[s] of the case at issue --as in denial[s] to constitutional protected treatment[s] & assessment[s] to ensure that an prisoner or persons is not be inflicted with cruel & unsual punishment or pain & suffering [per se].

Further-in Wilkinson v. U.S., 598 U.S. 152, 161, 143 S.Ct 870 (2023) --"If a decision [by the court] simply states that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, it is understood as a drive-by jurisdictional ruling" --quoting Arbaugh v. Y&H Corp., 546 U.S. 500, 511, 126 S.Ct 1235 (2006).

The ALC never RULED "if Nesbitt's Pain & Suffering or SCDC's infliction[s] to/towards Nesbitt of Cruel & Unusual - Punishment[s] under the State [-or-] United States Constitution[s] created a liberty interest protected by the Constitution[s] and clearly it does --thereof ALC ERR in summarily dismissing this Appeal to it without making a fundamental ruling on the action[s] or merit[s] on this Issue [i.e.-Pain & Suffering and Cruel/Unusual Punishment/s occurred] and if Nesbitts holds a civil right under the Constitution[s] to NOT ENDURE this Pain & Suffering [etc]... ..and instead ruled by a drive-by jurisdictional ruling rendering inadequate judication[s] and causing Nesbitt to ~~continuously-~~ ^{continuously-} suffer ~~is~~ and endure unconstitutional treatment & assessment[s] by the State of South Carolina.

The ALC ERR in dismissing or granting SCDC Motion[s] for Dismissal --especially citing "no state-created liberty interest in the claims or issues in his pleading" as a reason to dismiss and ruling that one didnot exist within the unconstitutional treatment[s] & assessment[s] dished-out by SCDC and Endured by Nesbitt.

Nesbitt held "LIBERTY" to NOT SUFFER AT SCDC HANDS AND CONFINEMENT. And-SCDC MUST PROVIDE FOOTWEAR TO ELIMINATE PAIN & SUFFERING AND THAT WHICH CONSTITUTES CRUEL & UNUSAL PUNISHMENT "WITHOUT". ALC never RULED "failure to State a Claim upon which relief can be granted." aka-The Merits of the Case/Appeal.

HEREOF ALC RULING[S] MUST ^{be} OVERRULED BY THIS COURT AND RELIEF MUST BE GRANTED TO NESBITT FOR OROTHOPEDIC FOOTWEAR.

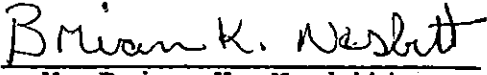
WHEREFORE-THIS HONORABLE COURT SHOULD GRANT APPROPRIATE RELIEF[S]:

(a) SCDC MADE TO ORDER ORTHOPEDIC FOOTWEAR FOR NESBITT,

(b) ALC RULING[S] BE OVERTURN VIA CONSTITUTIONAL & CIVIL RIGHTS VIOLATED BY SCDC ..AND NESBITT SHALL NOT BE MADE TO ENDURE - UNCONSTITUTIONAL TREATMENT AND BE MADE TO ENDURE PAIN & SUFFERING WHEN OR WHILE UNDER INCARCERATION AT SCDC.

RESPECTFULLY SUBMITTED ON THIS 31stDAY OF JANURARY-2026 BY:

2/5/26


Mr Brian K. Nesbitt

PERRY CORR. INSTITUION
430 Oaklawn Road
Pelzer, S.C. 29669