

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

SEVENTH JUDICIAL CIRCUIT

Billy Lee Lisenby, Jr., # 200273; John Fortunato, # 347020; Christopher Allen Rainey, # 336389;

Case No.: 2013-CP-42-00139

ORDER

Petitioners,

vs.

The Warden of Tyger River C.I. T. Riley, Assoc. Warden G. Lane, Assoc. Warden Caldwell, Masjor J. Parrish, Captain Tucker, D.H.O. Turner, Lt. L. Lavigne, Counsel Substitute Fowler (Mr.), Counsel Substitute Mrs. F. Bryston, Counsel Substitute Mrs. Henderson, Grievance Clerk Lecompt, William R. Byars Director,

Respondents.

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SC Court of Appeals

This matter is before the undersigned pursuant to a Petition for a Writ of Mandamus filed by Billy Lee Lisenby, Jr., John Fortunato, and Christopher Allen Rainey. Petitioners sought to challenge searches that led to inmate disciplinary convictions against each of them. Respondents moved to dismiss the petition. Present for the hearing of respondents' motion were petitioners Lisenby and Fortunato, as well as counsel for respondents. Those parties having had an opportunity to present their positions in this matter at a hearing on October 2, 2013, I now dismiss this case with prejudice as to petitioners Lisenby and Fortunato.¹

To obtain a writ of mandamus requiring the performance of an act, a petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the

¹ According to the Department of Corrections, petitioner Rainey has been released from incarceration. During the hearing, the Department was directed to determine whether Mr. Rainey received notice of the hearing prior to his release. Respondents have provided the Court with the requested information; however, the Department's records do not reflect that notice was actually delivered to Rainey prior to his release. As a result, the Department's motion is continued as to petitioner Rainey.



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petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. See Wilson v. Preston, 378 S.C. 348, 354, 662 S.E.2d 580, 582-83 (2008).

The present petition fails to meet the requirement for a petition for a writ of mandamus for two reasons. First, respondents have no ministerial duty to perform the acts requested as relief in the petition for a writ of mandamus. See id. (“A duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. In contrast, a quasi-judicial duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued.”). In their petition, petitioners Lisenby and Fortunato seek to compel: an internal investigation; a moratorium on searches of inmates; punishment of employees who previously conducted searches; overturning of their disciplinary convictions through the grievance process; and the administration of polygraph tests. There is no legal duty at all for respondents to perform any of those actions. In fact, unannounced searches of inmate’s cells at irregular intervals are appropriate in the context of a correctional institution and have been repeatedly upheld as constitutional. See Bell v. Wolfish, 441 U.S. 520, 556-57 (1979). Moreover, in the case at hand, the alleged duties are not ministerial in nature. Each duty requested by petitioners Lisenby and Fortunato is quasi-judicial in nature because each one requires the exercise of reason and discretion in its performance.

Second, petitioners Lisenby and Fortunato have another legal remedy available. SCDC’s final decisions, like those of other administrative agencies, are subject to judicial review pursuant to the APA. Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000). To appeal an SCDC agency decision, an inmate must file a notice of appeal in the Administrative Law Court (ALC). Id. at 376, 527 S.E.2d at 753-54. An inmate may seek further judicial review of the ALC’s final decision by filing a notice of appeal in the Court of Appeals. S.C. Code Ann. § 1-

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23-610(A)(1); see, e.g., S.C. Dep't of Corrections v. Mitchell, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008).

In this case, neither Mr. Lisenby nor Mr. Fortunato have properly exhausted the remedy available to them. In order to further challenge their disciplinary convictions, they must exhaust the agency grievance process, appeal the agency's decision to the ALC in the first instance, and then the Court of Appeals. S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2008); Al-Shabazz, 338 S.C. at 376-77, 527 S.E.2d at 754 (2000).

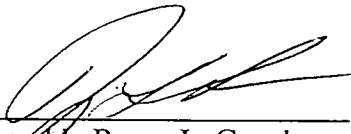
For both of these reasons the petition for a writ of mandamus is dismissed with prejudice as to petitioners Lisenby and Fortunato.

Conclusion

Based on the above findings, I therefore find:

1. The present case should be DISMISSED WITH PREJUDICE as to petitioners Billy Lee Lisenby, Jr., # 200273 and John Fortunato, # 347020;
2. The MOTION TO DISMISS IS CONTINUED as to petitioner Christopher Allen Rainey, # 336389, so that he may be provided notice and an opportunity to be heard.

AND IT IS SO ORDERED.



Honorable Roger L. Couch
Judge, Seventh Judicial Circuit

November 5, 2013
Spartanburg, South Carolina

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