

The State of South Carolina
in the Supreme Court

Certiorari from Lee County
Court of Common Pleas

H. Ferrell Cochran Jr., Circuit Court Judge

Case No. 13-CP-31-181

Gary Steven Scott #282106 Petitioner

v.
South Carolina Dept. of Corrections Respondent

Petition for Writ of Certiorari

Gary Steven Scott
~~Mary Steven Scott~~
430 Oak Lawn Rd.
Pelzer, S.C. 29669

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JAN 03 2014

S.C. SUPREME COURT

Issues Presented

- I. Whether S.C. Tort Claims Act the Proper Forum to address Constitutional infringement caused by South Carolina Dept. of Corrections' Employees
- II. Whether 1st Amendment Claims are Cognizable under the S.C. Tort Claims Act where Gross negligence can be Proven
- III. Whether the United States Constitution is applicable to the States via the 14th Amendment in Negligence action filed under the S.C. Tort Claims Act

Statement of Case

For Ramadan 2012 and 2013 the Petitioner experienced problems within the South Carolina Dept. of Corrections receiving his breakfast meals in a timely manner "Before" the time for the dawn prayer. Immediately upon this revelation the Petitioner complained to the respondents about the tardiness of the meals and the significance of consuming the meal "Prior" to the time for the dawn prayer but the responses received did not remedy the problem and as a result the Petitioner's fast for the entire month of Ramadan was compromised two years running.

The Petitioner contends that when S.C.D.C. failed to adhere to its own policies governing the observance of Ramadan (S.C.D.C. Policy PS.10.05 subsection 9 and 9.1) wherein it states that during Ramadan the Sahur (Breakfast) meal will be served "Before" the time for the dawn prayer. The significance of eating the meal before the time for the dawn prayer is that once the time for the dawn prayer has come there is to be no more eating. To do so is to nullify the fast. (No more eating until sunset.)

Argument

I. Whether S.C. Tort Claims Act the Proper Forum to address constitutional infringement caused by South Carolina Dept of Corrections Employees

The Petitioner contends that there's nothing in title 15-78-10 prohibiting the Procurement of relief for a violation of a U.S. Constitutional Provision caused by a governmental entity. For purposes of the statute the S.C. Dept. of Corrections is a governmental entity who can be held liable for its tortious Acts caused by gross negligence. In fact, under the Tort Claims Act, if a government entity's or its employees discretion is exercised in a grossly negligent manner, then the governmental entity involved is liable for its torts as if it were a private individual. Buncan v. Hampton County School Dist No. 2 517 S.E. 2d, 449.

II. Whether 1st. Amendment Claims are cognizable under the S.C. Tort Claims Act where gross negligence can be Proven

Pursuant to the Tort Claims Act it states that "Gross negligence, in the context of liability by a government entity is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do; it is the failure to exercise slight care."

The Petitioner contends that in light of the fact that S.C.M. had a duty to Petitioner to adhere to the mandates of its policies (P.S. 10.05 subsection 9 and 9.1) to allow him to practice his religion thereby requiring the agency and its employees to provide the breakfast in a manner that accommodates its own policy and Petitioner's faith. Once the Petitioner informed the Party's (named in his action in the lower court) that the meals were not being brought as they should be to adequately observe Ramadan it then constituted an intentional conscious failure to do something which

it is incumbent upon one to do; the failure to exercise slight care when they allowed the problem to continue without being corrected. It was then when the tortious act was committed.

The Petitioner contends that his action should not have been dismissed, because although the action involved a constitutional infringement it also involved gross negligence.

As this court will see about the other rules that the Respondents cite that their argument is moot. The Petitioner acted in good faith when he filed service on them by certified mail. As the Respondents didn't receive copies of timely filings it was at the hand of the agency Mailroom at the institution. The Petitioner has provided documentation to the lower court that was submitted along with Petitioner's Proposed Order; The Petitioner submits that he has adequately stated a cause of action in the lower court and that the court had proper jurisdiction from where the Petitioner made an attempt in good faith to adequately serve the Respondents.

III. Whether the United States Constitution is applicable to the States via the 14th Amendment in Negligence action filed under the S.C. Tort Claims Act

At the hearing for the Respondents motion to dismiss it was stated by the Respondents that the issue currently before the court involves a federal question that should be brought in the Federal Courts, but the Petitioner begs to differ in that the ground work for this issue has already been laid where the United States Constitution has been made applicable to the States through the 14th Amendment. Thus the existence of the current policies that the Petitioner is arguing that the agency failed to honor. This issue is akin to Miranda rights which involve 5th and 6th Amendment rights, ~~to~~ to the United States

Constitution, but they apply to the states via the 14th Amendment to the U. S. Constitution.

This issue involves a classic case of gross negligence that is cognizable, under the Tort Claims Act.

Conclusion

Based on the foregoing the Petition for Writ of Certiorari should be granted

Respectfully Submitted,

Gary Steven Scott

Gary Steven Scott

430 Oak Lawn Rd

Pelzer, S.C. 29669

This 23rd day of December 2013

In the State of South Carolina
In the Supreme Court

Habeas Corpus from Lee County
Court of Common Pleas
R. Terrell Cochran Jr., Circuit Court Judge

Case No. 13-CP-31-181

Mary Steven Scott #282106 Petitioner

v.
South Carolina Dept of Corrections Respondent

Certificate of Service

This is to certify that Mary Steven Scott, on the 23rd of December 2013 mailed by United States Certified Mail a copy of Petitioners Petition for a Writ of Habeas Corpus to:

S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

The State of South Carolina
Office of the Attorney General
P.O. Box 11549
Columbia S.C. 29211

Mary Steven Scott
Mary Steven Scott
430 Oak Lawn Rd.
Pelzer, S.C. 29669

This 23rd day of December 2013

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S.C. SUPREME COURT

May Scott 282106

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4370 Oak Lawn Rd.
Pelzer, S.C. 29669

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P.C.I. MAILROOM

S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

LEGAL MAIL

THE DEPARTMENT OF JUSTICE HAS BEEN ADVISED THAT THIS
ITEM THEREAFTER THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS CONTENTS - S. C. DEPARTMENT
OF CONNECTIONS."