

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

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Case Tracking Number: 2014-000367

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T. Terell Bryan, 254633, Appellant,

v.

South Carolina Department of Corrections, Respondent.

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APPELLANT'S REPLY BRIEF

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T. Terell Bryan  
#254633, SMO-B19, MCC1  
386 Redemption Way  
McCormick, SC 29899  
PRO SE APPELLANT

Chris Florian  
Deputy General Counsel  
P.O. Box 21787  
Columbia, SC 29221-1787  
COUNSEL FOR RESPONDENT

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# TABLE OF CONTENTS

	Page
Cover Page _____	1
Table of Contents _____	2
Table of Authorities _____	3
Statement of Issue of Appeal _____	4
Argument	
THE ALC ERRED WHERE RESPONDENT CAN NOT SATISFY THEIR BURDEN OF PROVED NON-EXHAUSTION WHERE AFTER THE UNPROCESSED GRIEVANCE THERE ARE NO OTHER AGENCY REMEDY(S) AVAILABLE. _____	5,6
Conclusion _____	7

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# TABLE OF AUTHORITIES

Page

## I. STATUTES

## II. CASES

Conner v. Martinez, 2016 WL 2668977, at \*2 (D. Ariz. Sept. 14, 2016) — 5

Snider v. Melendez, 199 F.3d 108, 114 (2d Cir. 1999) — 5

## III.

## STATEMENT OF ISSUES ON APPEAL

DID THE ALC ERR WHERE RESPONDENT FAILED TO SATISFY THEIR BURDEN OF PROVING NON-EXHAUSTION WHERE THE UNPROCESSED GRIEVANCE IS A FINAL AGENCY DECISION & RESPONDENT FAILED TO SHOW OTHER AGENCY REMEDY(S) WERE AVAILABLE?

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# ARGUMENT

THE ALC ERRED WHERE RESPONDENT CAN NOT SATISFY THEIR BURDEN OF PROVING NON-EXHAUSTION WHERE AFTER THE UNPROCESSED GRIEVANCE THERE ARE NO OTHER AGENCY REMEDY(S) AVAILABLE.

# FACTS

The ALC dismissed for Failure to exhaust all administrative remedies within the agency, without allowing briefing for Respondent to satisfy their burden of proof. The ALC abused her discretion where, without briefing non-exhaustion can not legally be established, & for the court's judgment can not usurp Respondent's burden of pleading in their brief non-exhaustion.

# LAW

Since exhaustion is an affirmative defense, the Respondent has the burden of proving non-exhaustion as well as pleading it. Conner v. Martinez, 2006 WL 2668977, at \*2 (D. Ariz. Sept. 14, 2006) ("Defendant bears the burden of specifying what remedies were 'available' to plaintiff.") That ~~the burden~~ means they have to show that there actually was an available administrative remedy for your problem. The second circuit has held that prisoner's complaint should not be dismissed for non-exhaustion without the court having "established the availability of an administrative remedy from a legally sufficient source." Snider v. Melendez, 199 F.3d 108, 114 (2d Cir. 1999). To do that, the court must examine whether the remedy actually will address the kind of claim the prisoner raises, & must look at exceptions to the remedy to be sure the claim doesn't fall into one of them.

# ARGUMENT

The ALC erred where the court having failed to establish the availability of an administrative remedy from a legally sufficient source. **MOREOVER**, the

Initial Brief of Respondent Fails to Satisfy their burden of proof by specifying what remedies were 'available' to Appellant. Nor does any where in the record before the court establishes the availability of an administrative remedy. They can not where, after the grievance is unprocessed, there is no other remedy(s) available to Appellant within the Agency & none can be established.

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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Purden

Case Tracking Number: 2014-000367

T. Terrell Bryan, 254538, Appellant,

v.

South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I hereby certify that I served a copy of Appellant's Reply, by U.S. Mail, postage prepaid & addressed to: Chris Florian, Deputy General Counsel; P.O. Box 21787; Columbia, SC 29221-1787.

4/21/14, SC  
dated

X. T. Terrell Bryan  
T. Terrell Bryan  
#254538, SMU-B19, MCC-1  
386 Redemption Key  
McCormick, SC 29899

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APR 24 2014

SC Court of Appeals

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# CONCLUSION

I pray this court REMAND to the ALC with instructions to allow the parties to submit briefs & make a determination of if there are any remedy(s) available to me within the Agency.

4/21/14, SC  
dated

X. RP-M-B  
T. Terrell Bryan  
#254138, SMU-B19, MCCI  
386 Redemption Way  
McCormick, SC 29899

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S.C. Court of Appeals

P.O. Box 11549

Columbia, SC 29211-1549

Re: T. Terrell Bryan v. S.C.P.E. ( ), Case Tracking Number: 2014-000366

Dear Clerk,

The Reply Brief I intend to submit in this case is verbatim of Appellant's Reply Brief in T. Terrell Bryan v. S.C.P.E. ( ), Case Tracking Number: 2014-000366. I can not obtain enough paper to make two more copies.

THEREFORE, the court & all parties are on notice of such Brief as if submitted & filed, the Respondent can Reply as usual.

4/21/14, SC  
dated

Thank you,  
T. Terrell Bryan  
#254538, SMU-B19, M-C-I  
386 Redemption Way  
McCormick, SC 29899

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IV. STATEMENT OF CLAIM - continued.

Warden Carthedge

2-05-14

T Terrell Beyan

254638

M.C.C.I

SMU # 14B

On 2-4-14 I asked caseworker Saitsburg to return My College Course paper work and to answer My request Ms. Saitsburg Said "they Say She Couldnt give it to me I Requested My paper work Back Saitsburg is doing this because she dont want to make her rounds on the rock and I have grieved her for Neglecting of her Job duties she Claims SMU Staff members Stoped her from making her rounds So explaining to you was my last option Would you please get back with me as soon as possible Thanks

CC: Chris Florian Staff Attorney

CE: JGB/A. Hallman

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#94

S.C. Court of Appeals

P.O. Box 11549

Columbia, SC 29211-1549

Re: T. Terrell Bryan v. S.C. ( ), Case Tracking Number: 2014-000357

Dear Clerk,

Enclosed for your filing is Appellant's Reply Brief & Proof of Service.

4/21/14, SC  
dated

Thank you,  
T. Terrell Bryan  
#254538-SMU-319, MC-CI  
385 Redemption Way  
McCormick, SC 29889

REQUEST

12/29/13  
254638  
SMU-804

~~Corp. P. Morton  
T. Terrell Bryan  
MCI I~~

~~To: Corp. P. Morton,~~

~~I sent copies on Monday I have not receive them back please check in to this, I believe some one has my papers trying to steal them.~~

~~→ I request three (3) copies of each.~~

~~cc: Chris Fiorina / STAFF ATTORNEY~~

EXHIBIT  
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Corp. P. Morton  
12/4/13

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SN B19, MCCI  
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-SC 29879

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S.C. Court of Appeals

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Chambers SC 29211-1549

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