

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 11 2014

APPEAL FROM THE ADMINISTRATIVE LAW COURT **S.C. Supreme Court**

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2014-001035

Moshtaba VedadAppellant,

v.

South Carolina Department of Transportation.....Respondent.

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Natalie J. Moore
SC Bar No. 4058
South Carolina Department of Transportation
P.O. Box 191
Columbia, SC 29201
803/737-1252
moorenj@scdot.org

ATTORNEY FOR RESPONDENT

The Respondent, South Carolina Department of Transportation (“Department”), respectfully submits this Return to Appellant’s Petition for a Writ of Certiorari to the Court of Appeals.

History of the Case

Appellant’s termination from employment for misuse of a State vehicle, and for keeping improper records of his vehicle use, has been subjected to administrative/judicial review 4 times, and with this Writ, he now seeks a 5th review. Appellant asserts that at the first review, before Department, he should have been allowed to present testimony, including direct and cross, though this is contrary to State law per S.C. Code Ann. § 8-17-330, which specifically states the requirements of the State Administrative Procedures Act (“APA”) do not apply at the internal appeal level, though Appellant is granted a right to Counsel at that level, which he exercised.

Appellant next appealed his termination to the State Employee Grievance Committee (“Committee”), which granted an APA hearing, as required by S.C. Code § 8-17-330, where he personally testified, presented documentary evidence and was allowed, through Counsel, to cross-examine Department’s witness. The Committee affirmed Appellant’s termination.

Appellant next appealed to the State Administrative Law Court, which affirmed the Committee’s decision, without oral argument. Next, Appellant appealed to the Court of Appeals, where the case was fully briefed, as well as argued, after which, like the 3 bodies before it, the Court also affirmed the termination. Appellant now seeks a 5th review by the State Supreme Court.

Argument

Appellant's Petition for Writ of Certiorari is in large part a restatement of his two Briefs below. Therefore, rather than doing the same by submitting a Return consisting of large portions extracted from its Brief, Respondent will instead address only those portions of the Petition that constitute new material and craves reference to its Brief of Respondent submitted to the Court of Appeals for a detailed discussion of the legal authorities cited by Appellant in his Petition.

I. The Court of Appeals correctly ruled that there is no property right in the continued employment of a State employee.

The first of 2 issues raised by Appellant in his Petition is: "Did the South Carolina Employee Grievance Act Provide the Appellant with a Property Interest in Continued Employment?" Petition for Writ of Certiorari, p. 1. This issue is addressed in Paragraph no. 1. of the Court of Appeals Opinion which cites the South Carolina State Employee Grievance Procedure Act noting that the statute does not indicate a property interest in continued employment on the part of a State employee. Unpublished Opinion No. 2014-UP-087, Paragraph no. 1.

Appellant asserts there is no discussion in the Opinion of contrary authority cited in his Brief, specifically *Detweiler v. Virginia Department of Rehabilitative Services*, 705 F.2d 557 (4th Cir. 1983). Petition for Writ of Certiorari, pp. 4, 5. *Detweiler* interprets the laws of Virginia in 1983. Under S. C. Code Ann. §14-8-250, Rule 220(b)(2), SCACR, and *Voelker v. Hillock*, 288 S.C. 622, 344 S.E.2d 177 (Ct. App. 1986), the Court of Appeals may issue a

memorandum opinion when a point is manifestly without merit. The Court of Appeals Opinion sets forth each issue with citations to statutes and case law that support its ruling affirming Appellant's termination, which this Court has ruled in *In re: Memorandum Decisions by Court of Appeals*, 322 S.C. 53, 471 S.E.2d 456 (1993), is sufficient to meet the requirement of giving a reason for deciding each issue raised in an appeal.

Appellant cites no authority that holds that the South Carolina Employee Grievance Act provides a property interest in continued. Appellant's statement that this Court held in *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) "that a public employer's regulatory scheme may create a property right on the part of a public employee to continued employment," Petition for Writ of Certiorari, p. 7, is inaccurate. The *City of Forest Acres* case concerns a possible *contractual* right to employment, not a property right.

II. The hearing of the State Employee Grievance Committee afforded Appellant the process that he was due under the law in South Carolina.

The second issue raised by Appellant in his Petition is: "Did the Agency Terminate the Appellant's Employment in Violation of Due Process of Law by Failing to Provide Him with a Constitutionally Adequate Post-termination Hearing?" Petition for Writ of Certiorari, p. 1. This issue is addressed in Paragraph no. 2. of the Court of Appeals Opinion. Unpublished Opinion No. 2014-UP-087, Paragraph no. 2. Appellant again states the Court of Appeals "failed to consider or address" specific case law cited in his Brief. Petition for


Writ of Certiorari, p. 8. As discussed in section I. of this Return, the Court of Appeals is authorized to issue a memorandum opinion when a point is manifestly without merit. In citing *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008) and *Olson v. S.C. Dep't of Health & Env'tl. Control*, 379 S.C. 57, 663 S.E.2d 346 (Ct. App. 2008), the Court demonstrates that it did consider the issues raised by the Appellant. A Court need not base its decision on any specific case, but on the applicable law. The important point is that the Court of Appeals decided this case based on the law in South Carolina. Many of the cases relied upon by Appellant are based on the laws of other States.

Appellant cites *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963) and *Brown v. S.C. State Bd. of Education*, 301 S.C. 326, 391 S.E.2d 866 (1990), for the proposition that he was entitled to a hearing. Petition for Writ of Certiorari, p. 17. Contrary to Appellant's statement: "In the case of Mr. Vedad, there was no full, post-termination hearing," Petition for Writ of Certiorari, p. 10, he was given a full hearing before the State Grievance Committee, which is what the law in South Carolina requires.

Conclusion

Appellant has shown no error on the part of the Court of Appeals. This Court should not further protract this matter. It should decline review.

Respectfully submitted,



Natalie J. Moore, SC BAR # 4058
SCDOT Assistant Chief Counsel
P.O. Box 191
Columbia, SC 29202
moorenj@scdot.org
803.737.1252

Columbia, SC

June 11, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT

JUN 11 2014

Shirley C. Robinson, Administrative Law Judge

S.C. Supreme Court

Appellate Case No. 2014-001035

Moshtaba VedadAppellant,

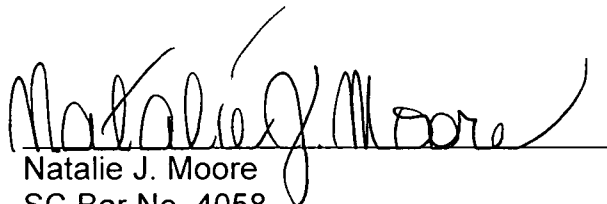
v.

South Carolina Department of Transportation.....Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Writ of Certiorari on Mostaba Vedad by depositing a copy of it in the United States mail, postage prepaid, on June 11, 2014, addressed to his attorney of record, Allan R. Holmes, GIBBS & HOLMES, Post Office Box 938, Charleston, South Carolina 29402.

June 11, 2014



Natalie J. Moore
SC Bar No. 4058

South Carolina Department of Transportation
P.O. Box 191
Columbia, SC 29201
803/737-1252
moorenj@scdot.org
ATTORNEY FOR RESPONDENT