State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Administrative Law Judge Carolyn Matthews

Case # 2014 - 001214

Tyrone Perry # 307793 Appellant

V.

South Caroline Department of Corrections Respondent

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AUG 28 2014
SC Court of Appeals

MOTION FOR REINSTATEMENT

This matter comes before the Court of Appeals. The Appellant's case was dismissed on August 12, 2014 for the appellant's failure to pay the filing fee. The Appellant contends that he is indigent and the agency has yet to comply with the Appellant's requests for his financial report. Two reports have been sent, but to no avail. The Appellant humbly motions for reinstatement due to the Appellant's issues are a matter of due process and federal questions of law. The Appellant can not comply with the financial report due to a STATE Agency not complying with this request

This 25th day of August 2014

S/ Tyrone Perry # 307793

430 Oaklawn Rd

Pelzer S.C. 29669

State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Carolyn Matthews Administrative Law Judge

Case # 2014-001214

Tyrone Perry SCDC No 307793 — Appellant

Vs

South Carolina Dept. of Corrections — Respondent

Petition for Reinstatement

Statement

Appellant Tyrone Perry was found guilty at a disciplinary hearing on July 22nd 2013 before hearing officer R.L. Turner. Appellant's personal property was taken for a total of 240 days and Appellant has to mail his t.v. out. Appellant appealed on a step one and step two grievance at the institutional level. Both grievances were investigated and denied. Appellant appealed to the Administrative law Court on Feburary 19, 2014. but the Administrative Law Court dismissed the appeal. On May 29, 2014 Appellant appealed to the South Carolina Court of Appeals. The appeal was dismissed on August 12, 2014 for the Appellant being indigent and not able to pay the filing fee.

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Argument 1

Whether the Agency's and Administrative law Court decision is contrary to the findings of Wolff V. McDonnell 418 US 539 (1974) and Slezac V. SCDC 361 SC. 327. 605 SE2d 506 (2004)

Under the mandates of Wolff V. Mc Donnell 418 US 539 prisoners have a due process right to 1) notice of charge 2) disclosure of evidence against defendant 3) opportunity to be heard 4) right to confront and cross examine adverse witnesses 5) neutral and detached hearing body 6) aid of counsel substitute or other substitute aid where case is complex 7) written statement by the fact finder as to evidence relied on. The appellant argued this and was denied by the agency and "ALC" who's decision is contrary to the findings in Wolff. Also in Slezac V SCDC inmates are entitled minimal due process in cases involving state created liberty or PROPERTY INTERESTS. The PROPERTY INTERESTS apply in my case being that I lost my personal property so the agency and "ALC" decision is contrary to the findings of Slezac V. SCDC 605 SE2d 506 (2004). The DHO recorder for the hearing officer of the agency failed to file Appellant's written statement to file on record. The DHO recorder (a state agent) impeded on the Appellant's substantial rights to be heard.

Conclusion

Based on the foregoing argument appellant request conviction of 809 Threatning to Inflict harm to be overturned

Argument 2

Whether the Court of Appeals errored in dismissing Appellant's appeal and not comply with 24-27-400.

The order from the Court of Appeals dismissed the Appellant's case for not paying the filing fees. Here at the institution the Appellant has filed for two certified slips for copies of his trust fund. but the agency fails to respond Once on August 4, 2014 and once again on August 21, 2014. The mailroom designee will write an affidavit if needed, but the STATE will not comply with the Appellant's requests for his trust fund account information. Yet something external to the defense that impedes on the Appellant to comply. The Appellant filed a motion to proceed in forma pauperis and was denied. Under 24-27-150 if a prisoner is unable to make first payment the case may still be filed but its up to prisoner to pay the filing fee. Under 24-27-400 requires that an indigent person be allowed access to the courts. I am indigent, but this STATE Agency fails to send my finicial report. So my constitutional rights to access the courts is being precluded by the actions of a state entity.

Conclusion

Based on the foregoing reason appellant would request that his case be filed and heard so that he may obtain relief.

Argument 3

Whether STATE officials violated Appellant's substantial rights to Due Process and Appellant's Constitutional rights

Due Process requires equal protection of the law. In the current case a State official has impeded on the Appellant's ability to comply with rules and precluded the Appellant from relief. At the prison institutional level Appellant has due process right to counsel substitute. Counsel substitute has per SCDC policy to obtain witness testimony 24 hours prior to the hearing. My counsel substitute did not question my requested witnesses. Also the hearing officer has a duty to write a statement on the fact finder as to evidence relied upon. Under Wolff V. McDonnell this is a due process right. I have a right to be heard. I filed a written statement as to what happened and evidence I requested. The DHO recorder failed to file this violating my Due Process per Wolff V. McDonnell 418 US 539. I filed for two financial reports of my indigent status. The agency failed to provide me with this. All STATE agents who violated my substantial Constitutional rights. See exhibits.

Conclusion

Based on the foregoing arguments appellant request for his case to be heard and conviction overturned.

Request To Staff Member

MS Pollman

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AUG 2 1 2013
DISCIPLINARY

8-20-13

Tyrone Perry

307793

SMU CX8

Ms Pollman on 7-22-13 I went to the DHO for a 809 Threatning to Inflict. I submitted a written statement to the DHO on 7-19-13 in accordance with OP 22.14 section 7.3. You returned my statement to me on 7-24-13 calling me another inmate name. This statement had my witnesses names and my written statement as required by policy. My due process was violated and my witnesses nor statement made it to the record, due to your actions. Could you please come and talk to me about this or notify a higher authority. I tried to exercise my rights and you made a mistake that affected me. I hope you reply in a timely manner. I will notify general counsel if I don't receive a response in (14) days.

THANK-YOU

Mr. Perry, send that statement back to me so I can see what you are referring to. I will copy it & Return to original to you. I need to see it to establish what happened.

Wallena 8/21/13

REQUEST TO STAFF MEMBER

RECEIVED
AUG 2 2 2013
DISCIPLINARY

MS POLLMAN

8-21-13

Tyrone Perry

307793

SMU ~~EX~~ 8 B49

Ms Pollman on 7-22-13 I went to the DHo from the yard. On 7-19-13 I placed my initial statement to the DHO in accordance with OP 22.14 section 7.3 in the mailbox. It was received in time, but you answered to my initial statement as if I was writing a request to staff. Due to this my due process was violated by you and my statement nor my witnesses made it to the hearing or the record. It may have been a mistake on your end and I understand. Could you please come and speak with me on SMU. You addressed me as the wrong inmate as well. Could you please respond back to this request in (10) days or contact an higher authority. I will contact the General Counsel after these (10) days expire if I don't get a response. Your cooperation is greatly appreciated.

OK - I am on it now - I kept a copy of that Reply & you are correct - I did call you the wrong name, for which I apologise. You are also correct, in that I should have put the copy on the DHO file. Again, I apologise. I guess I assumed you would address the DHO at the eventual hearing, or give a statement to Counsel Sub. In any case, I was at fault & am willing to acknowledge as much to Grievance, or whichever authority is enquiring

L Sallina 8/26/13

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: LT. PEAY TITLE:	DATE: 9-11-13
INMATE'S NAME: Tyrone Perry	SCDC #: 307793
INSTITUTION:	LIVING QUARTERS: Q2A-115

Lt Peay Could you please respond back to this request. On 7-9-13 did Coach Robinson get a statement from you. _____ And through 7-19-13 thru 7-22-13 did Mr McCarthy get a statement from you for me for my DHO hearing _____

Your assistance will greatly be appreciated

DISPOSITION BY STAFF MEMBER:
Mr. Perry please note that the only person that have talk to me was Mr. Robinson.

DATE: 9-22-13	SIGNATURE: Lt Peay

SCDC FORM 19-11 (REV.FEB 2001)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST TO STAFF MEMBER

TO: NAME: TITLE:	DATE:
SGT SURRATT	9-12-13
INMATE'S NAME: Tyrone Perry	SCDC #: 307793
INSTITUTION:	LIVING QUARTERS: Q2A-115

I went to the DHO on 7-22-13 for a 809 Threatning to inflict charge. Prior to this I submitted a written statement to the DHO and my counsel substitute. Did Mr McCarthy speak with you in regards to this charge on my behalf from the dates 7-19-13 thru 7-22-13. Could you please respond back to this request

THANK-YOU

DISPOSITION BY STAFF MEMBER: I was never confronted by any staff member about this issue.

DATE:	SIGNATURE:
9/12/13	Sgt. A. Surratt

SCDC FORM 19-11 (REV.FEB 2001)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: LT MADDEN	TITLE: Q2 LT	DATE: 9-11-13
INMATE'S NAME: Tyrone Perry		SCDC #: 307793
INSTITUTION:		LIVING QUARTERS: Q2A-115

Lt Madden Could you please answer back to this request From 7-19-13 through 7-22-13 did Mr McCarthy get a statement from you About a DHO hearing on my behalf

DISPOSITION BY STAFF MEMBER: I LT Madden Did not Receive Any request from Mr. McCarthy, NOR did he question me in Ref. to this Case. I was not made aware of this Case

DATE: 09-17-13	SIGNATURE:

SCDC FORM 19-11 (REV.FEB 2001)

State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Administrative Law Judge Carolyn Matthews

Case # 2014-001214

Tyrone Perry # 307793 ----- Appellant

v

South Carolina Department of Corrections ---- Respondent

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P.C.I. MAILROOM

PROOF OF SERVICE

I Tyrone Perry the above named Appellant certify that I served motion for reinstatement and Petition for reinstatement by depositing a copy of it postage prepaid in the U.S. mail to the following:

South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

South Carolina Supreme Court
P.O. Box 11330
Columbia S.C 29201

s/ Tyrone Perry # 307793

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SC Court of Appeals

Tyrone Perry # 307793
430 Oaklawn Rd QYB-116
Pelzer S.C. 29669

"INTERAGENCY MAIL"

South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

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AUG 25 2014
P.C.I. MAILROOM

"LEGAL MAIL"

"LEGAL MAIL"

RECEIVED
AUG 28 2014
SC Court of Appeals