

In State of South Carolina  
In the Court of Appeals

On appeal from Carolin C. Matthews A.L.C.

ALC Case No. 14CO444 - I.J.

Appellate Case No. 2014-002173

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South Carolina Department of Corrections \_\_\_\_\_ Respondant,

vs.

anthony Erving \_\_\_\_\_ Appellant

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Brief of Appellant

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SC Court of Appeals

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On Appeal from Carolyn C. Matthews of the ALC  
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South Carolina Dept. of Corrections — — — — Respondant,  
vs.  
Anthony Ewing — — — — — — — — — — Appellant,

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Designation of Matters  
to be included in the Record on Appeal

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- 1.) all Institutional Classification (I.C.C.) documents and evidence used in hearing determination of Appellant's transfer hearing.
- 2.) Transcript and/or tape of I.C.C. hearing.
- 3.) all documents and evidence used to provide basis for warden's Step 1 Grievance decision.
- 4.) all documents and evidence used to provide basis for Officials Step 2 Grievance decision.
- 5.) Appellant's "Intent to Appeal" filed on or about May 27, 2014
- 6.) Appellant's "Brief in Support of Appeal" filed Aug. 8, 2014
- 7.) Appellant's "Motion to Amend Record" filed Aug. 8, 2014
- 8.) Respondant's "Motion to Dismiss" filed Aug. 28, 2014
- 9.) Appellant's Reply to Respondant's Motion submitted on or about Sept. 6, 2014.
- 10.) ALC Judge Matthews Order of Dismissal

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## Statement of Issues

Whereas, the Administrative Law Courts ruling failed to adjudicate any of the issues of fact and law presented by Appellant, in essence these same issues are now before this Court of Appeals. Please notice supplementation of the arguments submitted to the A.L.C. to better conform with the facts and evidence and better explain the arguments. Appellant, herein, adds subsequent issue of abuse of judicial discretion for the ALJ clear failure to fairly and lawfully judge this case and expands the issue of the matter of State Created Property Interest.

Issue 1. Was Appellant wrongfully terminated/transferred in violation of agency policy, statutes and rights?

- Issue 2. Did agency employees intentionally violate said policy, statute, and rights in an attempt to show the termination was a transfer requested by the Appellant?
- Issue 3. Did said violations of policy, statute and right show intent to deny Appellant of property interest, fair hearing, meaningful redress of grievances and due process rights?
- Issue 4. Did ALJ's "Order of Dismissal" lack proper legal procedures so as to be overturned for Abuse of Judicial Discretion?
- Issue 5. Notice expansion of Issue 3. (Original ALC appeal) to include new arguments and cite applicable case law.

### Table of Authorities

#### U.S. Constitution

[T1] U.S. Const Amend. 5 and 14

#### U.S. Supreme Court

- [T2] Board of Regents v. Roth, 408 U.S. 564 (1972)
- [T3] F.C.C. v. Shrieber, 381 U.S. 279 (1965)
- [T4] Garner v. James, 529 U.S. 244 (2000)
- [T5] Goldberg v. Kelly, 397 U.S. 254 (1970)
- [T6] Green v. McEldroy, 360 U.S. 474 (1959)
- [T7] Hudson v. Michigan, 547 U.S. 586 (2006)

- T8 Meadrum v. Jones, 427 U.S. 215 (1976)
- T9 Pully v. Harris, 465 U.S. 37 (1983)
- T10 Ross v. Moffitt, 94 Sup.Ct. 2437 (1974)
- T11 Sandin v. Conner, 515 U.S. 472 (1995)
- T12 U.S. v. Caceres, 440 U.S. 741 (1979)
- T13 U. S. ex rel Accardi v. Shaughnessy, 347 U.S. 260 (1954)
- T14 Vachon v. New Hampshire, 414 U.S. 478 (1974)
- T15 Wolff v. McDonnell, 418 U.S. 211 (1976)

Federal Case Law

- T16 Adams v. James, 784 F.2d 1077 (11<sup>th</sup> Cir. 1986)
- T17 Gordon v. Lelke, 574 F.2d 1147 (4<sup>th</sup> Cir 1978)
- T18 Grillo v. Caughlin, 31 F.2d 53 (2<sup>nd</sup> Cir 1994)
- T19 Hall v. Marion Co. Sch. Dist., 31 F.2d 183 (4<sup>th</sup> Cir 1994)
- T20 James v. Guinland, 866 F.2d 629 (3<sup>rd</sup> Cir. 1989)
- T21 Johnson v. Packet, 929 F.2d 1067 (1991)
- T22 Mincy v. Head, 206 F.3d 1106 (2000)
- T23 Pelphresne v. Village of Williams Bay, 917 F.2d 1117 (7<sup>th</sup> Cir 1990)
- T24 Phillips v. Calhoun, 956 F.2d 949 (10<sup>th</sup> Cir 1992)
- T25 Smith v. Ozymint, 578 F.3d 246 (4<sup>th</sup> Cir 2009)
- T26 U.S. v. Heffner, 420 F.2d 809 (4<sup>th</sup> Cir 1969)
- T27 U.S. v. Tobias, 899 F.2d 1375 (4<sup>th</sup> Cir. 1990)

S.C. State Constitution

- T28 S.C. Const. Art. I § 2, § 3, and § 22

State Case Law

- T29 Al-Shabazz v. State, 527 S.E.2d 742 (SC 2000)
- T30 Prockings v. Lynch, 112 S.E. 94 (S.C. 1922)

(S.C. Case Law Continued)

- T31 Brown v. S.C. Bd of Ed., 391 S.E.2d 866 (S.C.1990)
- T32 Furtich v. S.C.D.C., 649 S.E.2d 35 (S.C.2007)
- T33 Kiwah Prop. Owners Grp. v. P.S. Comm. of S.C. 525 S.E.2d 863 (S.C.1999)
- T34 MRI at Belfair, LLC v. S.C.D.E.H., 664 S.E.2d 471 (S.C. 2008)
- T35 Ross, Med. Univ. of S.C., 492 S.E.2d 62 (S.C.1997)
- T36 Skinner v. S.C.D.C., 633 S.E.2d 910 (App.Ct. 2006)
- T37 Slegack v. S.C.D.C., 605 S.E.2d 506 (S.C.2004)
- T38 Sloan v. Bd. of Phy. Examiners, 636 S.E.2d. 598 (S.C.2006)
- T39 Spartanburg Reg. Med. Ctr. v. Oncology and Hematology, 690 S.E.2d. 783 (S.C.2010)
- T40 State v. Austin, 409 S.E.2d 811 (S.C.App. 1991)
- T41 State v. Hughes, 552 S.E.2d 315 (S.C.2001)
- T42 State v. Landon, 645 S.E.2d 660 (S.C.2006)
- T43 State v. Prosslar, 613 S.E.2d 381 (App.Ct. 2005)
- T44 State v. Quattlebaum, 527 S.E.2d 105 (S.C.2000)
- T45 Trimmer v. S.C. Dept. of Labor, 5746 S.E.2d 491 (App.Ct. 2013)
- T46 U.S. Outdoor Adv. Inc. v. S.C.D.O.T., 481 S.E.2d 112 (S.C.1997)
- T47 Wingard v. Lee, 336 S.E.2d 495 (S.C.1985)
- T48 Young v. Charleston Co. Sch. Dist., 725 S.E.2d 107 (S.C.2012)

S.C. Statutes

- T49 S.C. Code Ann. § 1-23-320(1)
- T50 S.C. Code Ann. § 1-23-340
- T51 S.C. Code Ann. § 1-23-600D
- T52 S.C. Code Ann. § 1-23-610D
- T53 S.C. Code Ann. § 24-13-210 A
- T54 S.C. Code Ann. § 24-13-230(A)

S.C. Court Rule

- T55 Rule 501 SCACR

SC.D.C. Policy

(S.C.D.C. Policy Continued)

T56	S.C.D.C. Policy	OP-21.04	Classification
T57	S.C.D.C. Policy	OP-21.04	
T58	S.C.D.C. Policy	OP-21.04	
T59	S.C.D.C. Policy	OP-21.04	
T60	S.C.D.C. Policy	OP-21.04	
T61	S.C.D.C. Policy	OP-21.04	
T62	S.C.D.C. Policy	OP-21.04	
T63	S.C.D.C. Policy	OP-21.04	
T64	S.C.D.C. Policy	OP-21.04	
T65	S.C.D.C. Policy	OP-22.14	Disciplinary

S.C.D.C. Forms

T66	S.C.D.C. Form	19-123
T67	S.C.D.C. Form	19-54

Statement of the Case

This case is before this Court pursuant to appeal from dismissal by the S.C. Administrative Law Court. On 12/20/13 appellant filed Step 1 Grievance challenging the lawfulness of termination/transfer from his job with prison industries, which he had held for three (3) years, to assignment as a dorm worker. Note P.I. position paid minimum wage, dorm worker, nothing. (ie. property interest and interest in continued employment at specific job. On 1/2/14 Warden denied grievance but provided no arguments and presented no evidence to dispute appellant's allegations of wrongful termination. Therefore on 1/10/14 appellant filed Step 2 Grievance, but on 4/22/14 "Responsible Official" denied it. Consider the Official alleged "transfer" was due to "institutional need"; this defense was not raised in Step 1. Like Step 1 no arguments were made, no policy cited, no evidence produced. Therefore appellant appealed to the ALC on 9/8/14 but appeal was dismissed

with prejudice on 9/10/14. Because the ALJ's decision was not based on applicable policies or relevant law Appellant appeals.

## Statement of Facts and Arguments

Notice: Appellant's prior request to consider issues presented in appellant's Brief in Support of Appeal and other documents filed with the AHC which it failed to judge on the merits.

Issue 4. Did ALJ's "Order of Dismissal" amount to abuse of discretion sufficient to overturn ruling?

Consider State and Federal courts have clearly defined abuse of discretion as failure to apply proper legal standards or to follow proper procedure in making legal determinations or making finding of facts that are clearly erroneous [T22] [T45], some courts add decisions unsupported by evidence [T43]. Other important considerations include the "integrity of the participants" [T46], further quasi-judicial and judicial judgments must be independent, fair, competent and unbiased [T36]. Consider the State and Federal Constitutional right to a fair hearing [T1] [T28] [T19], further judgments unsupported by the pleading are defective. [T30] [T48] [T43]. When the lack of evidence in the States pleadings is considered [T30] [T27] [T14] the ALC ruling violates the law.

The only evidence submitted by the agency were the Step 1 and 2 Grievance forms. Note Warden's "Decision" in Step 1 offers only general conclusions that fail to address Appellant's issues or argue against his allegations, nor is the lack of required agency documentation addressed [T66] [T67]. There is no evidence that I.C.C. policies were followed such as [T58] [T59] [T60] [T61] [T62] [T63] and other requirement procedures. Because of the vagueness and ambiguity of the Warden's decision it fails to meet the legally required elements of facts and evidence in specific detail to aid review. [T30] [T18] [T5].

Similar deficiencies are found in Step 2; note policy violations listed above, but like warden the "Official" sees nor address violations. Instead Official claims termination/transfer was due to "institutional need" but fails to say how this premise was arrived at nor what that "need" was. As Official's decisions are based on Step 1 allegations it is clear it was decided on facts not in evidence. Step 2 also fails to meet statute and law mandates to be sufficiently detailed to enable review: [T51] [29] [41].

A cursory review of Appellant's Brief in Support of Appeal filed 8/8/14 provided the Agency with due notice this case centered on two (2) basic issues, state created property interest and due process violations. "Motion to Enlarge" provide Agency and ALC with relevant evidence. S.C.D.C.'s General Counsel appear to hold in his "Motion to Dismiss" that the ALJ lacks jurisdiction over property matters but the courts in every citation he lists hold that ALC has jurisdiction over property interests. Further he cites Shippoe [T39] and appears to hold prison industries job is a privilege but considers the Agency hold many things as "privilege", canteen, telephone, property, visitation etc. but agency policy [ ] holds they can't be taken except for serious misconduct and then through specific due process procedures. Note relevant case law held lack of entitlement to a particular privilege does not free prison officials to grant or deny the privilege for impermissible reasons [T16]; the U.S. Supreme Court rejected the legal premise employment is a privilege [T2]. Counsel deceptively states the case should be dismissed because "... S.C.D.C. relied on substantial evidence..." but no evidence was presented by the Agency or their counsel except the conclusory statements in the Step 1 and 2 Grievances. Note Appellant made prima facie showing of prejudice but counsel fails to meet the burden of proving by substantial evidence that there wasn't any [44]. In that counsel offers no evidence relevant citations of law or reasonable argument his "conclusions" are inadmissible.

Carefully consider the ALJ's "Order of Dismissal" filed 9/10/14, her first paragraph review of documents contained no mention of the appellant's timely filed Brief in Support of Appeal, nor his Motion to expand the record and its evidence documents; it must be assumed they were not considered which would be a abuse of discretion. Consider that ALJ Matthews citations of law are irrelevant. She deceptively argues James [T29] held for no entitlement to a prison job means no property interest. But cursory review of that federal case show it concerned only federal prisoners and clearly stated liberty and property interests are created by state statutes which is what Appellant argues. The three (3) state statutes she cites to support her argument deal with work/school credits and parole matters that have no relation to property interest issues of this case. It is reversible error for an appellate Court to consider issues not properly raised [T45]. Note "Orders" last para. page 2 where ALJ Matthews argues Slezacek, [T31] held dismissal proper if property interest not implicated but consider even in Step 1 and 2 grievances allege violation of agency policy [T57], wherein work is required of all inmates [T64] or they can be disciplined. This mandatory work requirement and subsequent punishment gives inmates entitlement to work. Further, at-will employment laws would not herein apply. Appellant avers this is sufficient to implicate a property interest. Like the Agency quasi-judicial rulings, the ALJ's ruling to dismiss fails to meet legal requirement of aiding in review. [T51] [T29] [T41]

Issue 5.) Does the Appellant have a state-created property interest in his prison industries job?

Note above stated claim of entitlement to work in prison provided by specific criteria and sufficiently mandatory language provided in agency policy. Note agency policies have the force of law [T47] [T4]. S.C. Courts hold a man's trade is his property

[T31] [T6]. Also the S.C. Supreme Court held the right to specific employment must be free from unreasonable governmental interference [T40] and have found for a property interest in continued employment [T37]. These issues are well summed up in Sandlin [T11], "It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined."

Consider Agency policy required that Appellant work, agency assigned him to a specific job and paid a specific wage; also agency policy's specific criteria govern termination from that job. Appellant argues these facts and prior stated laws fully demonstrate a stated created property interest. The wages paid created a specific interest in continued employment in that P. I. job, also note under policy removal from job depends on poor performance or disciplinary problems and there are specific due process criteria to be met. The Agency has offered no evidence of either and has not demonstrated it complied with its own policies. They have made no allegations of poor performance or bad behavior. Further note neither the agency, their counsel nor the ALJ have made their rulings based on logic, reason or law. It appears from the facts and evidence the Agency and the ALJ believe that the Agency does not have to follow its own policies or provide due process of law.

Issue 6.) Have acts and omissions as to policy, rule, statute law and right committed by agency employees and the ALJ deprived the Appellant of his right to meaningful regress of grievances, substantive/procedural due process and fair adjudication?

Appellant argues his punitive termination was done without the filing of agency required documentation of wrongdoing. Consider again agency policies have force of law [T25] [T44] [T47] [T4] and offer specific criteria and mandatory language as to why and how inmates may be punished, this is covered in to areas of policy Classification and Disciplinary, both indicate there are specific reasons and there must be substantial evidence [T2] [T57]

The Agency has the burden to provide explanation of a compelling interest to maintain order, security, discipline or control costs [T25]. Agency is required to show evidence, or in this case the absence thereof, of said negative behavior [T48]. None of this is present in this case. The U.S. Supreme Court has held where agency policies allow for punishment for misconduct [T15] [T8] "the determination of whether such behavior has occurred become critical" Further the I.C.G. reviewed no evidence and has, thus far, failed to provide transcript for appellate review. Consider the Agency has offered no evidence of any wrongdoing by Appellant. The agency's failure to provide both procedural and substantive due process shows the decisions to be arbitrary and capricious because it is governed by no fixed standards [T46] [T35] and no substantial evidence. Note Issue 4. argument show policy was not followed in step 1 and 2. The Federal courts have held state agencies must follow their own policies [T13] [T12] [T26].

Consider cases that hold judicial review must be available to determine whether prison officials acted arbitrarily, capriciously or from bias. [T33] but notice ALJ's Order failed to address this issue even though clearly implicated in Step 1 and 2, and proven in subsequent filings. Note cases which say ALC is not allowed to accept the agency's decision at face value but require an explanation of reasoning [T34]. The Federal Courts have long held there must be meaningful redress of grievances [T28], meaningful appellate access [T7] [T9]

the U.S. Constitution requires these and fair judicial review [28]

### Conclusion

Lastly Consider "Our legal system is based on the principle that a fair and competent judiciary will interpret and apply the laws that govern us." [156]; this principle was ignored in the case at bar. Please notice the standard for review of cases, (1) have statutory or constitutional provisions be violated, Yes? (2) have judicial decisions been made on unlawful process, Yes? (3) were decisions based on or affected by errors of law, Yes? (4) were decisions and rulings clearly erroneous in view of reliable, probative and substantial evidence, Yes? (5) were decisions arbitrary and capricious or biased, Yes? Notice this Court of Appeals is required to review if it can answer "Yes" to just one of these questions.

Another question that federal courts have raised in similar cases is if Appellant treatment was "atypical and a significant hardship was placed on him by the Agency/Court action." [11]. Appellant would argue that the multiple, intentional violations of policy, law and right clearly demonstrated herein must be seen as "atypical" and Appellant introduced conclusive evidence of "hardship" to him and his family. [14]

Also notice ALJ Matthews failed to give this Appellant's pleadings liberal interpretation under "pro se" rule [17] [21] nor can it be said he was given an opportunity to present and have his claims reviewed on the merits, this violates "fundamental fairness" [10]. Whereas Appellant has fully demonstrated the Agency nor the ALC is capable or willing to provide a just and unbiased decision, the Appellant asks for no remand but adjudication by this Appeals Court.

Date 12/1/2014

Signed Anthony Easing Pro Se

11.) Electronic Request (ER) # 14-165815 dated 7/23/14

12.) ER # 14-167723 dated 7/23/14

13.) ER # 14-169969 dated 8/5/14

14.) ER # 14-194603 dated 8/5/14

15.) ER # 14-204500 dated 9/2/14

16.) ER # 14-278728 dated 10/8/14

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I certify that this designation contains no matter which is irrelevant to above appeal.

Date: 12/17/2014

Signed Anthony Ewing

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### Certificate of Service

This is to certify that the undersigned has this date served copies of these documents upon the S.C. Appeals Court at 1015 Sumter Street, Columbia S.C. 29201 and copy of same to General Counsel for S.C.D.C. at 4444 Broad River Rd. Columbia, S.C. 29210. So done by turning said documents into the postal service employees at the appellants institution.

Date 12/17/2014

Signed Anthony Ewing

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Attn: Clerk of Court  
Case No. 2014-002173

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Dear Ms. Kitchings,

**SC Court of Appeals**

This filing is in response to your letter as to bringing my pleadings into compliance with the rules of court. Please understand that pro se petitioners are not professional lawyers and are working under a handicap. Notice also that due to agency restrictions on research times, getting copies (if allowed), specific days on which material can be purchased and what limited materials are available pro se inmates are greatly prejudiced.

I have had to work night and day to get these filing in and pray they are acceptable. If there are further problems please advise so amendment can be timely made. Consider though that this inmates "copy" of filings are sent to you to be date stamped and as they have not yet been returned it is difficult to know how to amend.

Again, inmate copy is included for date stamping. Notice it is hand written because S.C.D.C. unlawfully refuses to make copies of inmate generated court papers.

Date: 12/12/14 Signed: AnThy Emig pro se

P.S.

Kershaw has one (1) typewriter available that must be requested (2) weeks in advance for (2) hour use!