

IN STATE OF South Carol.-A
IN THE COURT OF APPEALS

ON Appeal From Carolyn C. MATTHEWS ACC.

ACC CASE No. 14C0444 - I.J.

APPELLATE CASE No. 2014-002173

South Carolina DEPARTMENT OF CORRECTIONS Respondent

VS.

Anthony Ewing Anthony Ewing Appellant

BRIEF OF APPELLANT

RECEIVED

DEC 04 2014

SC Court of Appeals

RECEIVED

DEC 16 2014

SC Court of Appeals

Anthony Ewing Pro Se
220446 KRCI MD 3
4343 Gold Mine Hwy
Kershaw S.C.

29067

Table of Contents

Table of Authorities	P. 1
STATEMENT OF ISSUES ON APPEAL	P. 1
STATEMENT OF CASE	P
STATEMENT OF FACTS AND ARGUMENTS	P
CONCLUSIONS	P

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 FACTS AND EVIDENCE AND LETTER EXPLAIN THE ARGUMENTS. APPELLANT, HEREIN ADDS SUBSEQUANT ISSUES OF ABUSE OF JUDICIAL DISCRETION FOR THE ALJ CLEAR FAILURE TO FAIRLY AND LAWFULLY JUDGE THIS CASE AND EXPANDS THE ISSUES 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?

ISSUES 4. Did ACT's "Order of Dismissal" lack proper legal procedures so as to be overturned for abuse of judicial discretion?

ISSUES 5. Notice expansion of Issue 3, (Original ACC Appeal) to include new arguments and cite applicable case law.

Table of Authorities

T1

U.S. Constitution

U.S. CONST. AMEND. 5 AND 14

U.S. SUPREME COURT

T2

BOARD OF REGENTS V. ROTH, 408 U.S. 564 (1972)

T3

F.L.C. V. SHRIELER, 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. MC ELROY, 360 U.S. 474 (1959)

T7

Hudson V Michigan, 547 U.S. 586 (2006)

[T8] MEADHAM V. FANO, 427 U.S. 215 (1976)

[T9] PULLY V. HARRIS, 465 U.S. 37 (1983)

[T10] ROSS V. MOFFIT, 94 SUP. CT. 2437 (1974)

[T11] SANDIN V. CONNER, 515 U.S. 472 (1995)

[T12] U.S. V. CACERS, 440 U.S. 741 (1979)

[T13] U.S. EX REL ACCARDI V. SHAUGHNESSY, 347 U.S. 266 (1954)

[T14] VACHON V. NEW HAMPSHIRE, 414 U.S. 478 (1974)

[T15] WOLFF V. McDONNELL, 418 U.S. 211 (1976)

FEDERAL CASE LAW

[I16] ADAMS V. JAMES, 784 F.2d 1077 (11th Cir. 1986)

[I17] GORDON V. LEIKE, 594 F.2d 1147 (4th Cir. 1978)

[I18] GRILLO V. CAUGHLYN, 31 F.2d 53 (2nd Cir. 1994)

[I19] HALL V. MARION CO. SCH. DIST., 31 F.2d 183 (4th Cir. 1994)

[I20] JAMES V. GUINLAND, 866 F.2d 627 (3rd Cir. 1989)

[I21] JOHNSON V. PACKET, 929 F.2d 1067 (1991)

[I22] MINCY V. HERD, 206 F.3d 1106 (2000)

[I23] PELFRENE V. VILLAGE OF WILLIAMS BAY, 917 F.2d 1117 (2th Cir. 1990)

[I24] PHILLIPS V. CALHOUN, 956 F.2d 949 (10th Cir. 1992)

[I25] SMITH V. OGMINT, 578 F.3d 246 (4th Cir. 2009)

[I26] U.S. V. HEFFNER, 420 F.2d 809 (4th Cir. 1969)

[I27] U.S. V. TOBIAS, 899 F.2d 1375 (4th 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] BROCKING V. LYNCH, 112 S.E. (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] Turtick v. S.C.D.C., 649 S.E. 2d 35 (S.C. 2007)
- [T33] Kinlan Prop. Owners Grp. v. P.S. Comm. of S.C., 525 S.E. 2d 863 (S.C. 1999)
- [T34] MRE AT DELFRIN, LLC v. S.C. DE. H., 664 S.E. 2d 471 (S.C. 2008)
- [T35] ROSE, Med. Univ. of S.C., 492 S.E. 2d 62 (S.C. 1997)
- [T36] Shipper v. S.C.D.C., 633 S.E. 2d 910 (App. Ct. 2006)
- [T37] STEGACK v. S.C.D.C. 605 S.E. 2d 506 (S.C. 2009)
- [T38] SLOAN v. Bd. of Phy Examiners, 636 S.E. 2d 598 (S.C. 2006)
- [T39] SPARTANBURG Reg. Med. Ctr. v. Ophthalmology and Hematology, 690 S.E. 2d 783 (S.C. 2010)
- [T40] STATE v. Quistin, 409 S.E. 2d 315 (S.C. 2001)
- [T41] STATE v. Hayes, 552 S.E. 2d 315 (S.C. 2001)
- [T42] STATE v. Candon, 645 S.E. 2d 660 (S.C. 2006)
- [T43] STATE v. Proslar, 613 S.E. 2d 391 (App. Ct. 2005)
- [T44] STATE v. Swattlebaum, 552 S.E. 2d 105 (S.C. 2000)
- [T45] TRIMMER v. S.C. Dept. of Labor, 746 S.E. 2d 491 (App. Ct. 2013)
- [T46] U.S. Outdoor Ady Inc v S.C.D.O.T., 481 S.E. 2d 112 (S.C. 1997)
- [T47] Klingard 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 $\frac{5}{1}$ 1-23-320(1)
- [T50] S.C. Code Ann $\frac{5}{1}$ 1-23-340
- [T51] S.C. Code Ann $\frac{5}{1}$ 1-23-600 D
- [T52] S.C. Code Ann $\frac{5}{1}$ 1-23-610 D
- [T53] S.C. Code Ann $\frac{5}{24}$ 24-13-210 A
- [T54] S.C. Code Ann $\frac{5}{24}$ 24-13-230(A)

S.C. COURT RULE

- [T55] RULE 501 SCACR

S.C.D.C. Policy

S.C.D.C. Policy CONTINUED

- [T56] S.C.D.C. Policy OP-21.04 CLASSIFICATIONS
- [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
- [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-21.04 Disciplinary

S.C.D.C. Forms

- [T66] S.C.D.C. 19-123
- [T67] S.C.D.C. 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. i.e. 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 institution need". (4)

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 ALC 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 procedures 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 [T56]. Consider the State and Federal Constitutional right to a fair hearing [T1] [T28] [T11], further judgments unsupported by the pleading are defective.

[T30] [T48] [T43]. When the lack of evidence in the state pleadings is considered [T50] [T21] [T14] The ALC ruling violates the law.

The only evidence submitted by the Agency were the Step 1 and 2 Grievance forms. Afe 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 J.C.L. 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 and review.

TSD TIR TS.

(6)

Similar deficiencies are found in Step 2; note policy violations listed above, but like warden the "Official" sees nor addresses 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. [151] [29] [47].

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 Skipper [138] and appears to hold prison industries job is a privilege but consider 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 [116]; The U.S. Supreme Court rejected the legal premise employment is a privilege [12]. 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 show-

ing of prejudice but counsel fails to meet the burden of proving by substantial evidence that there wasn't any [T44].

In that counsel offers no evidence relevant citations of law or reasonable argument his "conclusions" are inadmissible.

(7)

CAREFULLY CONSIDER THE ACT'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 IT EVIDENCE DOCUMENTS; IT MUST BE ASSUMED THEY WERE NOT CONSIDERED WHICH WOULD BE ABUSE OF DISCRETION CONSIDER THAT ACT MATTHEWS CITATIONS OF LAW ARE IRRELEVANT. SHE DECEPTIVELY ARGUES JAMES [T20] HELD FOR NO ENTITLEMENT TO A PRISON JOB MEANS NO PROPERTY INTEREST, BUT CARSORY 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 MATTER THAT HAVE NO RELATION TO PROPERTY INTEREST ISSUES OF THIS CASE. IT IS REVERSABLE ERROR FOR AN APPELLATE COURT TO CONSIDER ISSUES NOT RAISED [T45]. NOTE "ORDERS" LAST PARA. PAGE 2 WHERE ACT MATTHEWS ARGUES SHEYACK, [T39] HELD DISMISSAL PROPER IF PROPERTY INTEREST NOT IMPLICATED BUT CONSIDER EVEN IN STEP 1 AND 2 GRIEVANCE 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 GIVE INMATE ENTITLEMENT TO WORK. FURTHER, AT-WILL EMPLOYMENT LAWS WOULD NOT HEREIN APPLY. APPELLANT AVENS THIS IS SUFFICIENT TO IMPLICATE A PROPERTY INTEREST. LIKE THE AGENCY QUASI-JUDICIAL RULINGS, THE ACT RULING TO DISMISS FAILS TO MEET LEGAL REQUIREMENT OF

Adding in REVIEW. [T51] [T29] [T41]

ISSUE 5. DOES THE APPLICANT HAVE A STATE-CREATED PROPERTY INTEREST IN HIS PRISON INDUSTRIES JOB?

NOTE ABOVE STATED CLAIM OF ENTITLEMENT TO WORK IN PRISONS 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 MASS TRADE IS HIS PROPERTY

(8)

[T31] T6]. Also the S.C. Supreme Court held the right to specific employment must be free from unreasonable governmental interference [T49] and have found for a property interest in continued employment [T31]. These issues are well summed up in Sandin [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 BE ARBITRARIALLY 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 ruling 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 RIGHTS TO MEANINGFUL REGRESS OF GRIEVANCE, 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] [T49] [T47] [T4] AND OFFER SPECIFIC CRITERIAS AND MANDATORY LANGUAGE AS TO WHY AND POLICY CLASSIFICATION AND DISCIPLINARY, BOTH INDICATE THERE ARE SPECIFIC REASONS AND THERE MUST BE SUBSTANTIAL EVIDENCE [T66] [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 [T49]. NONE OF THIS IS PRESENT IN THIS CASE. THE U.S. SUPREME COURT HAS HELD WHERE AGENCY POLICIES ALLOW FOR PUNISHMENT FOR MISCONDUCT [T15] [T9] "THE DETERMINATION OF WHETHER SUCH BEHAVIOR HAS OCCURRED BECOME CRITICAL" FURTHER THE I.C.C. 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 STANDARD [T46] [T35] AND NO SUBSTANTIATED EVIDENCE. NOTE ISSUE 4 ARGUMENT SHOWS POLICY WAS NOT FOLLOWED IN STEP 1 AND 2. THE FEDERAL COURTS HAVE HELD STATE AGENCIES MUST FOLLOW THEIR OWN POLICIES [T13] [T18] [T26]. CONSIDER ~~whether~~ CASE THAT HELD 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 IMPLIED IN STEP 1 AND 2, AND PROVEN IN SUBSEQUENT FILING. NOTE CASE WHICH SAY ALL IS NOT ALLOWED TO ACCEPT THE AGENCY DECISIONS AT FACE VALUE BUT REQUIRE AND EXPLANATION OF REASONING [T34]. THE FEDERAL COURT HAVE LONG HELD THERE MUST BE MEANINGFUL REDRESS OF GRIEVANCE [T28], MEANINGFUL APPELLATE ACCESS [T7] [T9].

The S.C. CONST. INJUNCTION REQUIRES THESE AND FAIR JUDICIAL REVIEW [28].

CONCLUSION

Lastly Consider "OUR LEGAL SYSTEM IS BASE 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, I HAVE STATUTORY OR CONSTITUTIONAL PROVISIONS BE VIOLATED, YES? (2) HAVE JUDICIAL DECISIONS BEEN MADE ON UNLAWFUL PROCESS, YES? (3) WERE DECISIONS BASED ON OR AFFECT 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 APPEAL 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. [17] APPELLANT WOULD ARGUE THAT THE MULTIPLE, INTENTIONAL VIOLATIONS OF POLICY, LAWS AND RIGHT CLEAR DEMONSTRATED HEREIN MUST BE SEEN A "ATYPICAL" AND APPELLANT INTRODUCED CONCLUSIVE EVIDENCE OF HARDSHIP TO HIM AND HIS FAMILY. [140] ALSO NOTICE ACT MATTHEWIS FAILED TO GIVE THIS APPELLANTS PLEASING 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" [70] WHEREAS APPELLANT HAS FULLY DEMONSTRATED THE AGENCY NOR THE ACC IS CAPABLE OR WILLING TO PROVIDE A JUST AND UNBIASED DECISION, THE APPELLANT ASK FOR NO REMAND BUT ADJUDICATION BY THIS APPEALS COURTS

DATE 12/1/2014

SIGNED ANTHONY ERVING