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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-04-0376-AP
Appellate Case Number: 2014-002068

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SC Court of Appeals

Stephen A. Beckham, #236548

Appellant.

v.

South Carolina Department of Corrections,

Respondent

Initial Brief of Appellant

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Statement of Issue on Appeal

Does the Administrative Law Court have jurisdiction to review the South Carolina Department of Corrections decision that it does not have to comply with a Circuit Court Judge's order requiring destruction of all records pertaining its agency disciplinary action?

Statement of Case

On November 1, 2005, inmates Johnny Brewer and Jimmy Causey escaped from the Broad River Correctional Institution. On February 7, 2007, the South Carolina Law Enforcement Division (hereinafter "SLED") served an arrest warrant on the appellant, Stephen A. Beckham, alleging his aiding and abetting the escape of Brewer and Causey. On September 10, 2009, the Fifth Circuit Solicitor's Office dismissed this charge. By order dated July 11, 2013, the Honorable DeAndrea G. Benjamin ordered the records pertaining to this charge expunged.

On October 29, 2013, Mr. Beckham filed a grievance with the South Carolina Department of Corrections (hereinafter "SCDC" or "the Department") requesting the Department remove the administrative charge of escape and remove all references to this charge from his record. On November 7, 2013, SCDC denied Mr. Beckham's grievance.

On November 7, 2013, Mr. Beckham appealed the Department's denial of his grievance. On March 17, 2014, SCDC again denied Mr. Beckham's grievance. The final agency decision is dated April 3, 2014.

Mr. Beckham appealed to the Administrative Law Court. The Department did not contest jurisdiction. By written order dated September 5, 2014, the Honorable Shirley C. Robinson found the Administrative Law Court lacked jurisdiction and dismissed the appeal.

Mr. Beckham timely filed a notice of appeal. This brief follows.

Statement of Facts

On November 1, 2005, inmates Johnny Brewer and Jimmy Causey escaped from the Broad River Correctional Institution. Both Brewer and Causey were apprehended outside of the institution. Record on Appeal (hereinafter "R.") ____.

SLED investigated. The Fifth Circuit Solicitor's Office obtained sealed indictments against Brewer and Causey for escape. The Solicitor's Office also obtained a sealed indictment against Mr. Beckham for aiding and abetting the escape. R. ____.

On February 7, 2007, SLED served an arrest warrant on Mr. Beckham, alleging his aiding and abetting the escape of Brewer and Causey. R. ____.

Immediately following Brewer's and Causey's capture, the Department initiated disciplinary action against the two. At the time, SCDC *did not* take similar action against Mr. Beckham. An internal memorandum from SCDC's Inspector General explains:

Since both Causey and Brewer were apprehended outside of the institution, their inmate disciplinary actions took place in a timely manner. This was possible because no use of the information contained in the SLED investigative reports, which led to the recent indictments, was necessary to sustain their disciplinary convictions. However, the same circumstances did not apply to Inmate Beckham. Any disciplinary action taken against him would have relied solely on the contents of the sealed SLED Investigative report which was a principle factor in the grand jury returning a true bill indictment against him for aiding and abetting. Because of this no disciplinary action has been taken against him in regard to the aforementioned escape.

The Inspector General then requested the Department waive "the time requirements of the inmate disciplinary policy." R. ____.

On September 10, 2009, the Fifth Circuit Solicitor's Office dismissed Mr. Beckham's charge for aiding and abetting escape. R. _____. By order dated July 11, 2013,

the Honorable DeAndrea G. Benjamin “ordered that all records relating to such arrest and subsequent discharge . . . be dismissed, expunged, and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information.” R. ____.

SCDC continues to maintain a public record of the escape charge, which can be viewed on the Department’s website.

On October 29, 2013, Mr. Beckham filed a grievance with the Department stating, “I received a court ordered expungement of Escape/Aiding and Escape.” He contended:

SCDC has not cleared my record. State law allows no exception for SCDC to even keep an “Administrative Charge” on my record. SCDC is violating the law and my rights.

Mr. Beckham then requested “[t]hat the administrative charge and all other references to this incident be immediately removed from my record.” R. ____ (emphasis original).¹

On November 7, 2013, SCDC denied Mr. Beckham’s grievance. R. _____. The same day, Mr. Beckham appealed, pointing out that SCDC should comply with the court order. R. _____. On March 17, 2014, the Department denied the appeal, stating:

[T]he expungement order regarding arrest charges does not require the Class I Escape disciplinary to be removed from your record. This disciplinary conviction remains as does the Class I escape on your classification history based on the disciplinary conviction.

¹ Mr. Beckham’s October 29, 2013 grievance also states, “My attorney has also contacted General Counsel of SCDC.” R. _____. On September 9, 2013, counsel provided General Counsel with a copy of the expungement order and requested the Department remove the escape from Mr. Beckham’s record. In an email exchange on January 22, 2014, General Counsel informed Mr. Beckham’s counsel the Department relies on *Compton, infra.* as authority for not removing the administrative charge from Mr. Beckham’s record.

The Department's decision became final on April 3, 2014. R. _____. The final agency decision informed Mr. Beckham, "You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court." R. _____.

Mr. Beckham appealed to the Administrative Law Court, contending the Department's decision was contrary to *Compton v. S. Carolina Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011). The Department did not contest jurisdiction, but rather argued for a different interpretation of *Compton*. By written order dated September 5, 2014, the Honorable Shirley C. Robinson found the Administrative Law Court lacked jurisdiction and dismissed the appeal. R. _____.

This appeal follows.

Argument

The Administrative Law Court has jurisdiction to review the South Carolina Department of Corrections decision that it does not have to comply with a Circuit Court Judge's order requiring destruction of all records pertaining its agency disciplinary action.

A. Standard or Review.

S.C. Code Ann. §1-23-610(B) provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also Howard v. S. Carolina Dep't of Corr., 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012).

B. Argument.

The court below observed:

This case presents an interesting factual issue as there is no evidence to support Appellant's internal conviction without the indictment from the external charge, which has been expunged. Unfortunately, because the expungement occurred years after the internal disciplinary conviction, Appellant could not attack the sufficiency of the evidence on which the conviction relied at the time. However, once the expungement was issued, it undermined Appellant's internal conviction because, according to the Department's own internal memorandum, the conviction relied solely on the indictment for the external charge. Whether Appellant's internal conviction should stand under these facts is a novel issue. However, while the Court has sympathy for Appellant's situation, I ultimately determine the Court does not have jurisdiction to reach Appellant's issues.

R. _____. The Administrative Law Judge focused on whether "the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutional protected liberty or property interest." R. _____. The court below focused on whether Mr. Beckham's future parole eligibility created a sufficient liberty interest for it to accept jurisdiction, citing *Cooper v. S. Carolina Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008); *Sullivan v. S. Carolina Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). R. _____.

Although he argued in the Administrative Law Court the Department of Probation Parole and Pardon Services "could deny Mr. Beckham parole based on information the Circuit Court ordered destroyed," R. _____, this consideration was not his only argument. S.C. Code Ann. §17-1-40(A)(1) provides:

A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of

the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

This statutory provision creates a liberty interest in the destruction of the records involved in this appeal. By not complying with the court order, the Department is infringing on Mr. Beckham's protected interest.

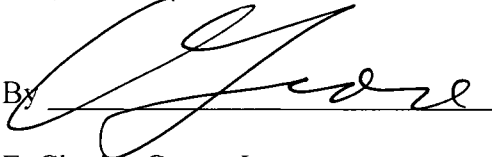
Under the facts found by the court below, the reliable, probative evidence on the whole record is entirely in Mr. Beckham's favor. The Department is in violation of the expungement statute and lacks the statutory authority to ignore a valid court order. Its interpretation of *Compton* is influenced by an error of law. The Department's decision is arbitrary, capricious, and abuse and unwarranted exercise of discretion. S.C. Code Ann. §1-23-610(B)

This Court, therefore, should reverse the Administrative Law Court and remand this case for further consideration of the parties' respective interpretations of *Compton*.

Conclusion

This Court should reverse the Administrative Law Court's ruling it lacked jurisdiction and remand Mr. Beckham's case for consideration on the merits.

Respectfully Submitted,

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December 29, 2014
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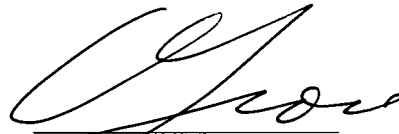
South Carolina Department of Corrections,

Respondent

Certificate of Service

I certify that I have served a copy of this initial brief on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

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