

RECEIVED

APR 01 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, *Administrative Law Judge*

Lower Case No. 13-ALJ-04-0926-AP

Appellate Case No. 2014-001684

Matthew C. Fullbright, # 349468,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

RESPONDENT’S MOTION TO REMAND

COMES NOW Respondent and moves this Honorable Court for an order remanding this case to the Administrative Law Court (ALC). In support of this Motion, Respondent submits the following brief argument.

This matter comes before this Honorable Court pursuant to the appeal of Matthew Fullbright, #349468 (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). This appeal is before the Court on an unusual procedural foundation. Appellant is not really appealing the ALC’s order of remand dated May 21, 2014, as is clearly indicated on page one of his initial brief,

where the two issues on appeal appear to be Appellant's attempt to litigate the manner in which the Department chose to interpret and comply with Judge Matthews' May 21, 2014 order.

Since the order on appeal that is before this Court does not address the merits of the issues on appeal that Appellant raises, review of those issues by the Court would require a *de novo* review of the Department's actions that took place subsequent to the May 21, 2014 order. Moreover, Respondent respectfully submits that this Court (at least at this point in time) is not the proper forum for Appellant to litigate, on the merits, what amounts to Appellant's disagreement with the Department's policies vis-à-vis inmates' access to sensitive material sent through the Department's mail system.

Therefore, due to the convoluted nature of this appeal's procedural posture, and in an effort to allow Appellant the opportunity to properly raise his arguments before the ALC, Respondent moves this Court for an order remanding this matter to the ALC, with instructions to re-open briefing on whether the Department's response to Judge Matthews' May 21, 2014 order of remand adequately complied with that court's order "to determine what papers and discovery Appellant is entitled to." *Order of the Honorable Carolyn C. Matthews*, at 2 (May 21, 2014).

Without such a final resolution and an order by the ALC addressing the substantive issues, this Court is left in the unusual situation of ruling on whether the May 21, 2014 order (the only order that Appellant has indicated he is appealing)

passes appellate review pursuant to S.C. Code Ann. 1-23-610(B), instead of having the benefit of an actual ruling on the merits of Appellant's claims.¹

WHEREFORE, Respondent moves the Court to remand this case with appropriate instructions. Alternatively, should the Court deny this Motion and order Respondent to file an initial brief based on the facts and procedural posture as-is, Respondent would respectfully request that the Court grant it twenty (20) days from the date of such an order to file its brief.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

DANIEL J. CROOKS III

Staff Attorney

Office of General Counsel

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-1355 [direct]

Counsel for Respondent

Columbia, S. C.

March 27, 2015

¹ By recommending that the Court remand this case, Respondent does not intend to deprive Appellant of the opportunity to raise the substantive issues he brings before this Court. Indeed, it is well settled that the ALC's jurisdiction extends to "as-applied constitutional challenge[s] to . . . policy . . ." *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); *see also Travelscape, LLC v. S.C. Dep't of Rev.*, 391 S.C. 89, 108-09, 705 S.E.2d 28, 38-39 (2011) (holding ALC may rule on an as-applied challenge). Here, Appellant's claims are, at their core, arguments about access to the courts.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 01 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, *Administrative Law Judge*

Lower Case No. 13-ALJ-04-0926-AP

Appellate Case No. 2014-001684

Matthew C. Fullbright, # 349468,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

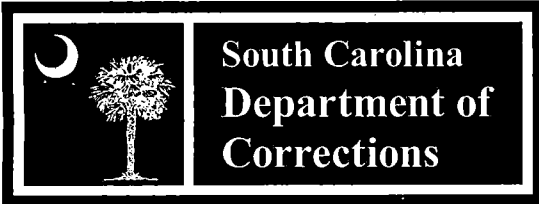
CERTIFICATE OF SERVICE

I, the undersigned, certify that on today's date I placed a copy of the foregoing *Motion to Remand* in the U.S. Mail, addressed as follows: Matthew Fullbright, #349468, Lieber Correctional Institution, P.O. Box 205, Ridgeville, S. C. 29472.

Dated: March 27, 2015



Daniel J. Crooks III
Staff Attorney
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct]



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

March 27, 2015

RECEIVED

APR 01 2015

SC Court of Appeals

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

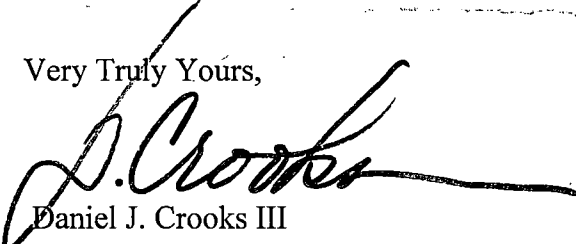
Reference: App. Case No.: 2014-001684
Matthew B. Fullbright # 349468 v. S.C. Department of Corrections

Dear Ms. Kitchings:

Enclosed, please find one (1) original and one (1) copy each of *Respondent's Motion to Remand* and *Respondent's Motion for Panel Review*. Kindly file the originals and stamp and return the clocked-in copies to me.

Thank you for your assistance.

Very Truly Yours,



Daniel J. Crooks III

Enclosures

cc: Matthew B. Fullbright, #349468
Lieber Correctional Institution
P. O. Box 205
Ridgeville, S.C. 29472