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SC Court of Appeals

Contents of Appeal

The State of South Carolina
In the Court of Appeals

Re: William Ford V. SCDC
Appellate Case No. 2015-000775

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The State of South Carolina
In the Court of Appeals

Appellate Case No. 2015-000775

William Ford Appellate

V.

South Carolina Department of Corrections. Respondant

Initial Brief of Appellate

. . . . Statement of issues on Appeal

- (1) Because SCDC failed to serve Appellant with written Notification of an Involuntary ICC Transfer prior to, during, or after ICC Hearing and Cancellation of transfer was the Appellants due Process violated?
- (2) Because the word "Notice" was misconstrued by the Court did the Appellant suffer a due process violation?
- (3) Does the record as a whole validate provisions pursuant to OP-21.03 sections 4.3, 4.3.1, and 4.4 of section 4 (see Exhibit.C).
- (4) Did the Court err in its ruling law in Furtick which caused a personal injury to the Appellants Process?

History

I am the Appellant William Ford, 232122, an inmate presently confined at MacDougall Correctional Facility for 1st degree Burglary and Kidnapping. On 10-8-14 Appellate was verbally informed by Case Manager/Classification Ms. Boyd that he was being transferred on an Involuntary Interstate Corrections Compact (ICC). Appellant was then told by Ms. Boyd that he would be having a ICC Hearing on 10-9-14. According to Policy OP-21.03 Sections 4.3 and 4.3.1 of Section 4, Appellant was to be informed of ICC Hearing and ICC Transfer by Written Notice. On 10-12-14 Appellant filed a Step (1) Grievance seeking Due Process of a Written Notification and Clarification pursuant to Policy. On 10-16-14 Final Action was taken by Warden Taylor. On 10-17-14 Step (2) Grievance was filed by Appellant further requesting to be properly informed. On 12-10-14 Step (2) was Final. On 1-5-15 Appellant appealed to the (ALJ) Administrative Law Court concerning Due Process Violation of Agency's Policy OP-21.03 Sections 4.3 and 4.3.1 of Section 4 "Involuntary Transfer written Notice". An Order of Dismissal was issued on January 28th, 2015 by the Honorable Shirley C. Robinson (ALJ).

This Appeal Follows:

Statement of Facts

On 10-8-14 Ms. Boyd Case Manager / Classification verbally informed Appellant that he was going to be transferred out of State on an Involuntary ICC Transfer per the Division Director, SCDC's General Counsel, and the U.S. Attorney's office of S.C. - After questioning Ms. Boyd what this was in reference to she then said that I (Appellant) needed to speak with Mr. Bellinger who is the State Coordinator for ICC Transfers, whom she called on the Speaker Phone. Mr. Bellinger accused me of knowing what this was about. Ms. Boyd then said that it had something to do with taxes, and then told me that I would have to appear before the ICC Board Hearing on 10-9-14. At the ICC Hearing the Appellant was once again verbally informed that the Involuntary ICC Transfer was per the Division Director, SCDC's General Counsel, and U.S. Attorney's office of S.C..

On 10-12-14 Appellant Filed Step (1) Grievance Challenging Due Process (see Exhibit. B). A second (2nd) Grievance Step (2) was filed on 10-17-14 Continuing questions of violations of Policy (see Exhibit. B(1)). After no evidence of ever receiving a Written Notice according to policy Appellant Filed Notice of Appeal with (ALJ) Administrative Law Court (see Exhibit. B (2)). A Final Order of Dismissal was issued on 1-28-15 (see Exhibit. A and A (1)). In closing the Court erred by its ruling concerning the rule of Law in Furtick. That subject matter is lacking in which a plain error became harmful due to the language of Notice and not a Written Notice that has been construed to be one intent and not the other. Here the Appellant is only concerned about the process and not the result of being transferred. Therefore the record as a whole is invalid of a written report that must be provided to Appellant pursuant to OP-21.03 sections 4.3, 4.3.1 and 4.4 of section 4 (see Exhibit. C).

Closing Arguments
"Questions Presented"

- (1) Was or was not Appellants due process violated by a ruling in closing that was misconstrued in page 2 of 2 of Exhibit. A(1) concerning page 1 of 2 of Exhibit. A of Notice given verbally or written according to Policy OP-21.03 sections 4.3 and 4.3.1 of Section 4 (see Exhibit. C and reverse side).
- (2) Was the record as a whole valid of a written statement or does the record specifically state that Appellate was informed pursuant to OP-21.03 sections 4.3, 4.3.1 and 4.4 of section 4 (see Exhibit. C).
- (3) Did the Court err in its ruling Law in Furtick, Appellants Liberty and Interest stem from a Grievance in that a Novel Question of Law concerning Due Process was violated according to Policy (see: Law/Analysis).

Law / Analysis

The South Carolina Constitution Article 1 § 23 specifically states (Provisions of Constitution are mandatory). The South Carolina Department of Corrections is an Agency of the State, therefore under the Color of the State General Assembly the Constitution applies to policy, pursuant to 24-1-30 and 24-1-20.

The South Carolina Constitution Article 1 § 22
(Procedure before Administrative Agencies; Judicial review).
No person shall be Finally bound by a Judicial or Quasi-Judicial decision of an Administrative agency effecting private rights except on due Notice an opportunity to be heard; nor shall he be deprived Liberty of property unless by a mode of procedure prescribed by the General Assembly and he shall have in all such instances the right to judicial review.


McCray v. State 305 S.C. 329, 408 SE 2d. 241; It talks about the Findings of fact and Conclusion of Law is to be ruled on in its entirety.

Anonymous v. State Board of Medical Examiners 496 SE 2d-17 (sc 1998).
"Absent an allegation of fraud or a statute of a court Rule requiring a higher standard, The Standard of Proof in Administrative hearing is generally a preponderance of the evidence. . . Utilization of a higher level of proof is ordinarily reserved for situations where particularly important when individual interests of rights are at stake, such as the potential deprivation of individual Liberty citizenship, or parental rights." 2 Am. Jur. 2d Administrative Law 363 (1994)

jurisdiction when an inmate contests the Department's decision to permanently deny the inmate's parole eligibility. Id. Finally, under certain circumstances, an inmate may have a state-created liberty interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 483-84 (1995); see Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (applying Sandin to resolve a "condition of confinement claim").

Here, Appellant complains SCDC officials did not properly inform him that he was scheduled to be involuntarily transferred to another correctional institution. This complaint does not arise from punishment administered for a disciplinary conviction, nor does it relate to Appellant's sentence, sentence-related credits, or custody. Moreover, this is not an "atypical" condition of restraint. Accordingly, Appellant has not alleged deprivation of a state-created liberty or property interest in this matter. Therefore, the Court finds Furtick to be controlling, and the case is dismissed for lack of jurisdiction.

IT IS HEREBY ORDERED that this appeal is **DISMISSED, with prejudice.**
AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
 Administrative Law Judge

January 28, 2015
 Columbia, South Carolina

The State of South Carolina Department of Corrections
 1100 North Main Street, Columbia, SC 29201
 803-732-2345
 www.scdcr.gov
 JANUARY 28 2015
 [Handwritten initials]

Exhibit B

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: William E. Ford
SCDC NUMBER: 232122
INSTITUTION: MacDougall
HOUSING UNIT: Magnolia 1 B 20-A
WORK ASSIGNMENT: Dorm

10/13/14
E. Boyd

Office Use Only
Grievance No. Mac E 0126-14
Code: General _____
Policy _____
Disc. Hear. _____
Class. ✓
Date Received 10/13/14
IGC Initials EL

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was given notice to report to classification on 10-8-2014. Ms. Boyd notified me that I would be having an ICC Transfer. When I ask her about it she said I had to talk to the State Coordinator for ICC Mr. Bellinger. I talk to Mr. Bellinger and he was unable or unwilling to tell me anything as to where, when, or why I was being transferred and accused me of "knowing what its about."

ACTION REQUESTED: I was not properly informed as to where, when, or why I was being transferred nor was I informed as to the cause of such transfer whether it is in retaliation of SCDC or a Federal Investigation. Thus I am requesting to know whats going on.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

ON 10-9-2014 Ms. Boyd sent me to the Institution Classification Board and I further asked about my unanswered questions. We talked again with Mr. Bellinger and he still did not tell me why this is happening.

William E Ford 10-12-2014
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Ford: I have reviewed your grievance and pertinent information. I have spoken with Ms. Boyd, Classification Case Manager, and was informed that this is an involuntary transfer (Interstate Corrections Compact) per the Division of Operations. SCDC's General Counsel and the US Attorney Office/SC.

[Signature] 10/16/14
IGC Signature Date

William E Ford 10-16-14
Grievant Signature Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

WARDEN'S DECISION AND REASON:

Inmate William Ford, #232122, Grievance MacD 106-14

I have reviewed your grievance and pertinent information.

You have been notified by State Classification that you are scheduled for an **INVOLUNTARY** transfer (Interstate Corrections Compact). I have spoken with Ms. Boyd, Classification Case Manager, and she told me that SCDC has been informed you are to be **involuntarily** transferred and that this transfer has been authorized by the Division of Operations, SCDC's General Counsel and the US Attorney (SC).

You were given notification of your appearance at the Classification Hearing and were informed by Mr. Bellinger of State Classification of the above. No additional information is available at this time. However, when SCDC is notified of when and where you are to be transferred you will be notified at that time in order that you can inform your family and make arrangements for any property that you cannot take with you to be mailed home.

Based on the above, I consider your grievance resolved. If you wish to appeal this decision, please see Ms. Ramey, Grievance Coordinator, to obtain a Step 2 form.

Edel T Tyler 10-16-14
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

William Ford 10-17-14
Grievant Signature Date

Georgina Ramey 10-17-14
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Exhibit B(i)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: William Ford RECEIVED
SCDC NUMBER: 232122
INSTITUTION: MacDougall OCT 21 2014
HOUSING UNIT: Mag 1 INMATE GRIEVANCE
WORK ASSIGNMENT: Docm

Office Use Only
Grievance No. 10-28-14
Code: General _____
Policy _____
Disc. Hear. _____
Class.
Date Received 10/17/14
IGC Initials GF

10-28-14

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

SCDC Failed to properly inform me of transfer. Policy states a 48 hour notice be given, and a detailed memorandum stating the reasons for transfer, and counsel, none of this was ~~be~~ given to me per (OP-21.03 4.3 - 4.3.2) Because of this, ~~I~~ have fear, anxiety, depression, and I can't sleep. Transfer without due process implicates my state created liberties. Persons in step 1 failed to perform their duties i.e. protocol

William Ford 10-17-
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concern has been reviewed. This matter was explained to you by your Warden and an attorney in the General Counsel's Office. You have been informed that there will be no ICC transfer.

Therefore, I consider this matter resolved.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 12/10/14
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

William Ford 12-17-14
Grievant Signature Date

[Signature] 12/17/14
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Ford 232122)

Appellant,)

vs.)

South Carolina Department of Corrections,)

Respondent.)

NOTICE OF APPEAL

DOCKET NO 15 -ALJ-04-0001 - AP
GRIEVANCE NO.: MacD 106-14

Notice is hereby given that William Ford does hereby appeal the final decision of the South Carolina Department of Corrections dated 12-10-14 and received on 12-17-14, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The appellant is seeking judicial review of agency's decision by SCDC on Grievance dealing with an Involuntary transfer hearing. SCDC Policy provides that an inmate be given notice of hearing, and a detailed memorandum stating reasons for transfer, and Counsel. None of the process due to Ford was provided him in this matter and agency's decision denying grievance requesting the policy be followed is an unreasonable application of clearly established protocol. The agency's decision is clearly erroneous and the appellants substantial rights have been prejudiced in view of the evidence in light of the whole record. (see OP-21.03 Section 4) (see OP-21.04 Rule 29.3 through 34.1).

William Ford
Appellant's Name

William Ford
Signed

M.C.I. 1516 Old Gilliard Rd
Mailing Address

1-5-15
Dated

Ridgeville, S.C. 29472

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, William Ford (your name), on the 5th day of January, 2015, in Ridgeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: SCDC office of General Counsel

Address: P.O. Box 21787

City, State, Zip Code: Columbia, S.C. 29221-1787

Print your name: William Ford
(See reverse side for instructions)

Sign your name: William Ford

Exhibit C

3.6 Upon review and approval of the submitted application, the *ICC coordinator or designee* will determine if South Carolina has a contract with the requested state. If a contract has been signed and is valid, the *ICC coordinator or designee* will forward a completed copy of the inmate's Central and medical records to the requested state for review and approval/disapproval. The inmate will be advised of this action.

3.7 Upon notification of disposition (approval/disapproval) from the requested state, the *ICC coordinator or designee* will advise the inmate and, if the request has been approved, will make transportation arrangements with the receiving state.

3.8 If an inmate is approved for an interstate transfer and the requested state is not a member, the inmate will be advised in writing by the *ICC coordinator or designee*.

3.9 If an inmate is approved for an interstate transfer and the requested state is a member of the Compact by an agreement with South Carolina, but is not active, the *ICC coordinator or designee* will make a reasonable effort to implement such an agreement.

3.10 The receiving state will submit an initial classification summary to South Carolina within ninety (90) days of the receipt of the inmate and thereafter will submit a classification progress report semi-annually. The *ICC coordinator or designee* will review the reports, make any necessary changes in the Earned Work Credit section of the inmate's automated record, and submit reports for file in the inmate's central record.

3.11 Transfer under the provisions of the Interstate Corrections Compact will not affect the release or parole date as determined by the State of South Carolina, except as applicable to any normal earned work credit changes or disciplinary actions. Inmates who serve South Carolina sentences in other states may be awarded earned work credits and/or earned educational credits as determined by the Division Director of Classification and Inmate Records, based upon information furnished by the other state's corrections department.

3.12 Pursuant to procedures regarding Interstate Corrections Compact (ICC) transfers, inmates who transfer under the ICC do so at their own request and are not eligible for inmate pay from SCDC while at the receiving state. If the inmate is returned to SCDC for administrative reasons, s/he may be assigned to a job and receive inmate pay provided such is allowed by policies/procedures governing inmate pay.

3.13 An SCDC inmate that was transferred to another state as a result of an Interstate Corrections Compact transfer may request to be returned to the SCDC. The inmate must clearly state his/her reasons for requesting their return to the SCDC. If this request is approved, the inmate will be responsible for all expenses incurred in facilitating this request. Once returned to the SCDC, the inmate will be ineligible for future ICC transfers, under this incarceration or future incarcerations.

3.14 If any inmate is disapproved by the SCDC or the requested state, for an Interstate Corrections Compact, s/he may reapply six (6) months after the date of disapproval if all other requirements cited in Procedure 3.1, above, are met.

By: ~~See change mark 1, 2006~~ ?

4. SOUTH CAROLINA AS SENDING STATE - INVOLUNTARY TRANSFER: When an inmate is to be involuntarily transferred from the SCDC to another state, the procedures below will be followed:

4.1 The Warden may request that an inmate be considered for an involuntary transfer to another state. This request would normally be based upon a need by the inmate for protection beyond that which is available within this state, or based upon the inmate's being a management problem in SCDC, or in the interest of rehabilitation (i.e., to provide an inmate a fresh start in another prison system). The inmate should not have any post-conviction relief hearings pending or *detainers*.

4.2 The Classification Caseworker will forward the request for the involuntary transfer to the *ICC coordinator or designee*.

4.3 The Classification Caseworker will serve written notice (SCDC Form 18-34, "48 Hour Notice") upon the

See Reverse Side

Exhibit C

inmate at least 48 hours prior to the *ICC* hearing, advising the inmate that s/he:

4.3.1 is being considered for an involuntary transfer to another state prison system under the Interstate Corrections Compact (NOTE: A detailed memorandum outlining the reasons for the transfer will be included in the written notice *with a copy to the inmate*, and will also be read to the inmate at the hearing.);

4.3.2 may request a counsel substitute to investigate the reasons for the involuntary transfer and assist in his/her presentation at the hearing;

4.3.3 has the right to be present at this hearing and that a taped recording of the hearing and State Classification Committee deliberations will be maintained for six (6) years;

4.3.4 may offer witnesses on his/her behalf as to why s/he should or should not be granted such a transfer (NOTE: The *ICC coordinator or designee* may limit the number of witnesses and rule on issues of relevancy. Reasons will be documented as to why certain evidence or witnesses were not admitted into the record.);

4.3.5 may cross-examine witnesses offered against him/her, if any;

4.3.6 will have an opportunity to be heard; and

4.3.7 will be advised by memorandum of the State Classification Committee's findings.

4.4 The *ICC Coordinator or designee* will, within *three (3) working days* after the hearing, submit a report to the Division Director of Classification and Inmate Records recommending approval or denial of the interstate transfer. This report will be in memorandum format and will contain explicit reasons why such transfer should or should not take place. The inmate will be provided a copy of this report.

4.5 *If approved, the report will then be submitted to the Division Director of Classification and Compliance.* The Division Director of Classification and *Compliance* will either approve or disapprove the report and submit it to the *Division Director of Operations*, with an information copy to the *ICC coordinator or designee* and to the Warden.

4.6 Upon receipt, the *Division Director of Operations* will either approve or disapprove the recommendation. If the *Division Director of Operations* recommends approval, s/he will provide a copy of the memorandum and approval to the Division Director of Classification and Inmate Records and instruct him/her that the procedures of the Interstate Corrections Compact are to be utilized and to arrange a transfer as expeditiously as possible.

4.7 The inmate will be advised in writing via a memorandum by the *ICC Coordinator or designee* of the decision.

4.8 The inmate may appeal any request denial to the Director of the South Carolina Department of Corrections.

4.9 The receiving state will provide a Classification Progress Report (available from the Division of Classification and Inmate Records every six (6) months to SCDC. The progress report will include any changes in Earned Work Credits; custody, disciplinary history, and/or security status.

4.10 Inmates who transfer under the ICC on an involuntary basis are not eligible for inmate pay from SCDC while at the receiving state. If an inmate is returned to SCDC for administrative reasons, s/he may be assigned to a job and receive inmate pay provided such is allowed by policies/procedures governing inmate pay.

5. SOUTH CAROLINA AS RECEIVING STATE: When an inmate voluntarily requests to be transferred to the SCDC or is being recommended for involuntary transfer, the interstate transfer procedures below will be followed:

5.1 Inmate requests for interstate transfer or referrals for involuntary transfer will be forwarded to the *ICC coordinator or designee* from the appropriate correctional officials of the sending state.

See Reverse Side

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SC Court of Appeals

Proof of Service

The State of South Carolina
In the Court of Appeals

Re: William Ford V. SCDC
Appellate Case No. 2015-000775

I hereby certify that I, William Ford, on the 29th of April, 2015, in Ridgerville, South Carolina, served a copy of the foregoing Appeal on all parties to this matter by depositing the same in the United States mail in the mailroom here at MacDougall Correctional Institution and addressed to: SCDC office of General Counsel, P.O. Box 21787, Columbia S.C. 29221, South Carolina Administrative Law Court, Edgar A. Brown Building 1205 Pendleton Street, Suite 224 Columbia S.C. 29201, The South Carolina Court of Appeals P.O. Box 11629, Columbia SC 29211.

Sign: William Ford
William Ford, 232122
MacDougall Correctional Inst.
Magnolia 1 ASA
1516 Old Gilliard Rd
Ridgerville, SC 29472

State of SC County of Berkley
The foregoing instrument was acknowledged before me
this 29 day of April, 2015,
by Frances Johns
Notary Public
My Commission Expires 11/10/2024

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Cover Sheet

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SC Court of Appeals

The State of South Carolina
IN the Court of Appeals

To: The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post office Box 11629
Columbia, S.C. 29211

From: William Ford, 232122
MacDougall Correctional Inst
Magnolia 1 A5A
1516 Old Gilliard Rd.
Ridgeville, SC 29472

Re: William Ford V. SCDC
Appellate Case No. 2015-000775

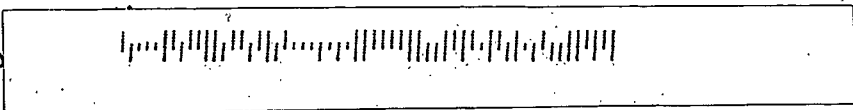
Dear Ms. Kitchings:

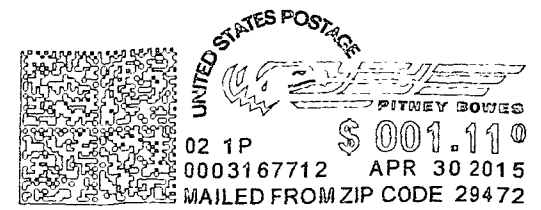
Please find enclosed the contents for my Appeal,
along with Proof of Service. Appellate request that a
stamped clocked copy of this Appeal be returned for his
own records.

Thank you for your time and help!

With kindest regards,

William Ford, 232122

William Fo 
MacDougall Correctional Inst.
Magnolia 1 ASA
1516 Old Gilliard Rd.
Ridgeville, SC 29472



The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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The Department of Corrections has not censored this item, therefore, the Department does not assume responsibility for its written contents - MacDougall Correctional Institution.