

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge
Docket No. 15-ALC-04-0399-IJ

SC Court of Appeals

Appellate Case No. 2015-002096

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

Bernard Bagley
#175851/HD133/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

PRO SE

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER APPELLANT'S NOTICE OF APPEAL CONTAINED A COPY OF A FINAL DECISION OF SCDC WHICH IS THE SUBJECT OF THE APPEAL AS REQUIRED BY ALC RULE 59(C).
2. WHETHER APPELLANT EXHAUSTED HIS ADMINISTRATIVE REMEDIES AND HAS FAILED TO MEET THE REQUIREMENTS OF THE APA FOR REVIEW BY THE ALC.
3. WHETHER IGC IS ARBITRARY OR CAPRICIOUS FOR FAILURE TO PROCESS APPELLANT'S GRIEVANCE KRCI-0825-15 AS REQUIRED BY POLICY GA-01.12.
4. SCDC CLASSIFICATION AND INMATE RECORDS OFFENDER MANAGEMENT SYSTEM HAS FAILED TO UPDATE APPELLANT'S INFORMATION AND PERTINENT DOCUMENTATIONS THAT WOULD PROHIBIT SCDC RETENTION OF EVIDENCE OF A CHARGE EXPUNGED AS OUTLINED IN STATUTE §17-1-40, OF S.C. CODE OF LAWS.

STATEMENT OF THE CASE

The Appellant learned soon after January 15, 2015, that the department of corrections Classification Division, and Inmate Records Offender Management System data base has prejudicial information and documentations that SCDPPPS (department of probation, parole and pardons services) have access to, in which prohibit SCDC retention of evidence pertaining to a charge once it has been expunged as outlined in statute §17-1-40, of S.C. Code of Laws.

Bagley requested that this information and documentation be removed from the data base because it is causing him immediate and irreparable harm by allowing SCDPPPS pre-parole investigations receive this information for parole officials to consider and use as a other factor (#15 criteria form 1212 A) to deny him favorable consideration for placement on parole.

SCDC officials response is SCDPPPS has access to its data base. SCDC Classification nor inmate records OMS has destroyed the records pertaining to the expunged charge and on the sentence commitment sheet 90-GS-40-5849, even though that proceeding against him has been dismissed and expunged, yet, the parole officials will continue to deny him consideration for parole based on that offense history in violation of §17-1-40.

Appellant filed grievance KRCI-0535-15, but prison officials stated that he must allow proper authorities to address the matter. He agreed to such. A few weeks later, prison officials stated that the issue has been addressed, and the SCDPPPS have access to its data base. Bagley submitted grievance KRCI-0825-15, in which the IGC failed to process. Bagley filed a notice of appeal along with step 1 grievance KRCI-0825-15 to the ALC, whereas, order of dismissal stated that the matter is not properly before this Court. Wherefore, this appeal now come.

ARGUMENTS

1. APPELLANT'S NOTICE OF APPEAL CONTAINED A COPY OF A FINAL DECISION OF SCDC WHICH IS THE SUBJECT OF THE APPEAL AS REQUIRED BY ALC RULE 59(C).

The Appellant asserts that his notice of appeal contained a copy of grievance KRCI-0825-15, step 1 inmate grievance form. The IGC did not process the grievance, thus, making it the final decision for the agency. Additionally, the IGC did not provide Appellant a step 2 grievance to further the process. As such, he provided the copy of the step 1 which is required by ALC Rule 59(C).

2. APPELLANT HAD EXHAUST HIS ADMINISTRATIVE REMEDIES AND HAS MET THE REQUIREMENTS OF THE APA FOR REVIEW BY THE ALC.

Appellant contends that ALJ Durden has failed to follow the ALC rules in special appeals in this case. The record is clear that Bagley has exhausted his administrative remedies when the IGC did not provide him a step 2 grievance to further the process. As such, Appellant met the requirements of the APA for review by the ALC, but due to Judge Durden's bias arbitrary or capricious acts of retaliatory appeal denial is her easy way to be derelict in judicial duty with a presumption that Appellant will not be able to pay the \$100.00 filing fee to further the appeal, thus, being dismissed without redress.

If the ALJ just taken a moment and meaningfully reviewed this case her findings would have showed Bagley exhausted his administrative remedies and that his appeal met the requirements of the APA for review by the ALC under Article 1, §1-23-380, of S.C. Code of Laws.

3. IGC IS ARBITRARY OR CAPRICIOUS FOR FAILURE TO PROCESS APPELLANT'S GRIEVANCE KRCI-0825-15 AS REQUIRED BY POLICY GA-01.12.

Bagley asserts that IGC Hough should have processed his grievance because she is aware that grievance KRCI-0535-15 did not remedy the issue raised in his grievances. IGC violated policy GA-01.12, by failing to allow Bagley to redress a wrong, and her failure to follow the regulation of GA-01.12, is arbitrary or capricious, because she did not provide him a step 2 to further the process. If GA-01.12 policy is stating that KRCI-0825-15 is duplicate to KRCI-0535-15, as only "1" grievance per issue will be allowed when the matter is not moot, then GA-01.12 policy is unconstitutional under the First Amendment of the U.S. Constitution, and arbitrary or capricious.

4. SCDC CLASSIFICATION AND INMATE RECORDS OFFENDER MANAGEMENT SYSTEM DID FAILED TO UPDATE APPELLANT'S INFORMATION AND PERTINENT DOCUMENTATIONS THAT WOULD PROHIBIT SCDC RETENTION OF EVIDENCE OF A CHARGED EXPUNGED AS OUTLINED IN STATUTE §17-1-40, OF S.C. CODE OF LAWS.

Bagley asserts that an injunction is required enjoining SCDC from forwarding information regarding a previous offense to SCDPPPS, that will prohibit dissemination of record pertaining to a criminal charge which is expunged.

Appellant contends that he is suffering irreparable harm based on SCDC violation of statute §17-1-40, prohibiting retention of evidence pertaining to a charge once it has been expunged and whereby he is immediately and irreparably harmed, thus, as would entitle him to injunctive relief enjoining SCDC from forwarding information regarding an expunged offense to SCDPPPS.

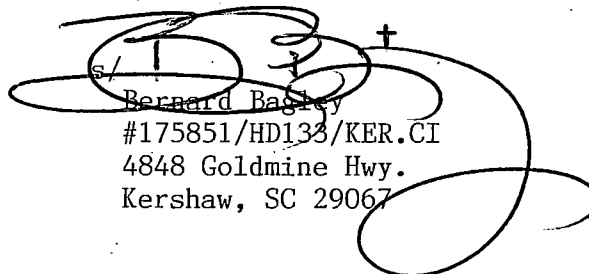
SCDC nor SCDPPPS have destroyed such records even though the proceedings against Bagley has been dismissed and expunged, but SCDPPPS will continue to deny him parole based on the offense history. SEE: §17-1-40(A).

Also, that same expunged offense is showing and indicated on the sentence commitment sheet 90-GS-40-5849, without any form of redaction or amended sentence commitment sheet.

CONCLUSION

Appellant pray that this Court will grant relief by an injunction, and further necessary or proper relief based on any other relief to which he may be entitled. Also, and amended sentence commitment sheet 90-GS-40-5849, excluding the expunged offense from the same.

Respectfully submitted,


s/ Bernard Bagley
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October 21, 2015

Pro se

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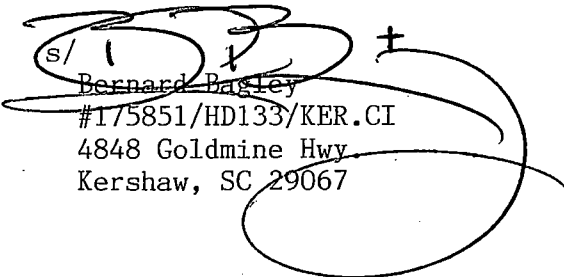
South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 208(a)(1),
SCACR.

October 21, 2015

s/  Bernard Bagley
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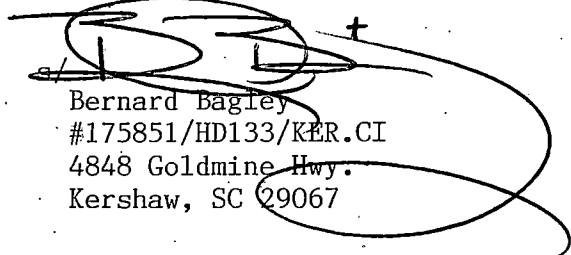
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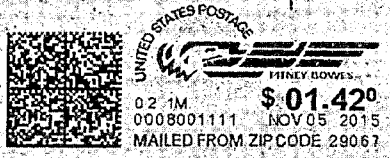
Respondent.

CERTIFICATE OF SERVICE 

I, Bernard Bagley, Appellant, certify that I have served the within Initial Brief of Appellant dated October 21, 2015, on Respondent this 25th day of October, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to: Daniel J. Crooks, III
SCDC
P.O. Box 21787
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