

The state of South Carolina
In the Court of Appeals

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NOV 16 2015

SC Court of Appeals

Appeal from Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2015-002114

William Ford, #232122 Appellant,

v.

South Carolina Department of Corrections Respondant.

Brief of Appellant

William Ford, #232122
MacDougall Correctional Inst.
1516 Old Gilliard Rd
Ridgeville, S.C. 29472
Pro-se Appellant

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Statement of Issues on Appeal

- (1) Was the ALC summary dismissal merited in this case?
- (2) Was SCDC staff/personnel in violation of not following policy in conducting ICC hearing and preparing inmate for the transfer?
- (3) Was SCDC staff/personnel in violation in their search of Appellant's legal box?
- (4) Is SCDC liable for damages incurred by the Appellant because of staff/personnel's action pertaining to the entire ordeal?

Statement of the Case

The Appellant was contacted on 10-8-14 by SCDC's Classification Personnel and told that he was to be present at an ICC hearing the following day. The ICC hearing was conducted the following day 10-9-14 where the Appellant was present. Several Correspondances were sent to SCDC officials understood to be authoritative issues left open from the ICC hearing. As a result of the decision rendered from the ICC hearing, the Appellant was contacted on 12-3-14 by SCDC staff/Personel and informed he was to be transported the next day. On 12-4-14 the Appellant with all his belongings was brought to the transportation area. After several hours of delay, the Appellant, without his belongings, was sent back to the dormitory to await further instructions. On 12-5-14 the Appellant was contacted by SCDC staff/personel and was told everything was nullified, at which time he was then given back his belongings. On 12-9-14 the Appellant filed a step (1) Grievance attempting a resolution. SCDC staff/personel gave back an unsatisfactory response on 12-29-14 in which the Appellant filed a step (2) Grievance on 12-30-14.

The agency (SCDC) responded to the step (2) Grievance with their final decision on 5-28-15. The Appellant filed a Notice of Appeal to the agency's decision on the Administrative Law Court and respondent on 6-23-15. The Administrative Law Court dismissed the appeal by order on September 25th 2015. The Appellant filed a Notice of Appeal on all parties on September 4th 2015. The arguments of that appeal follows:

Arguments

Was the ALC summary dismissal merited in this case?

No. The South Carolina Legislative Body Create the Administrative Law Court (ALC) to resolve issues concerning state agencies and the grieved party. As of concern to this case, the S.C. Supreme Court gave jurisdiction to hear grievance issues involving the South Carolina Dept. of Corrections (SCDC) in Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000).

The ALC's jurisdiction was limited to grievances that included state-created liberty or property interest. As concerning this appeal, the Appellant was grieved by being violated of several state-created liberty interests and also a state and federal created property interest. SCDC is a state-created agency which is empowered by statute § 24-1-20 and § 24-1-30 with the power to implement its own policies and regulations to sustain itself. By legislature granting the agency those exclusive powers, it is hereby understood that the policies and regulations implemented by the agency are state-created liberty interests as it pertains to regulating the inmates incarcerated rights granted to them by law. Also concerning the Appellant's legal property at the center of the dispute, it is understood that the Appellant has a privileged right to confidentiality between him and his attorney created by the 6th Amendment of the U.S. Constitution made applicable to the state by the 14th Amendment of the same constitution. For the ALC to issue an order of dismissal to this instant appeal for the reason set forth in the order of the Appellant's complaints not of concern of a state-created liberty or property interest is unmerited. The issues argued in the appeal concern the agency itself violating their

own policies, which concern the Appellant's state-created liberty interests, and also the violation by the agency of the Appellant's state and federal protected property interest. Since the ALC passed on the chance to properly adjudicate the discrepancies involved in this appeal, the Appellant now is granted right to present those claims to this Court, which are contained in the following arguments.

was SCDC staff/personnel in violation of not following policy in conducting ICC hearing and preparing inmate for transfer?

Yes. SCDC has policies/procedures in place to insure that all persons (officials and inmates) are aware of what is expected of them as the department strives to be safe, orderly, and efficient, conducive to all involved. In particular to the case, the department has two (2) policies that govern the conduct of ICC Hearings, OP-21.04 and OP-21.03. OP-21.04 delineates a set of rules that is to govern the officials involved (emphasis on rules 24-32), OP-21.03 is a detailed memorandum that pertains to the ICC process, which emphasizes the particular procedures that are to be followed when the department is the sender in an Involuntary ICC transfer in section 4. The Respondent violated both of the mentioned policies in conducting the ICC Hearing in this instant case. It was the responsibility of the chairperson to be knowledgeable of the policies/procedures relating to this case (OP-21.04 rule 30.1). There was no 48 hour notice served to the Appellant prior to the hearing advising him of his rights (OP-21.04 rule 32 and OP-21.03 section 4.3). The Appellant never received a copy of the detailed memorandum outlining the reasons for the transfer, nor was such read to the Appellant at the hearing (OP-21.03 section 4.3.1 and hearing transcript).

The Appellant was never advised of his right to have a Counsel substitute to investigate the reasons for the transfer or to assist him with the presentation at the Hearing (OP-21.03 section 4.3.2). Policy also states that the Appellant will be advised by memorandum of the Hearing Findings which did not take place (OP-21.03 section 4.3.7). Lastly it was the responsibility of an SCDC official to put the Appellant on notice prior to the date of the transfer as to what he would be able to take and what he would have to send home.

Policies/procedures are in place to regulate the conduct of inmates and also of officials in SCDC. It is questionable the blatant disregard of policy/procedure in this instant case. (Note: The Appellant was in contact with the Federal Government pertaining possible illegal activities/crimes being committed by SCDC employees prior to the unexplained involuntary transfer that was to take place that led to this whole ordeal). It is reasonable to conclude the intention was to "leave no trail" of the actual motives for the transfer by the department and also for the Appellant to suffer actual loss. (The Respondant did not submit the Transcript of the ICC Hearing as part of the record in a continual attempt to cover their disregard of policy/procedure). The department has essentially conceded their officials disregard policy/procedure by not defending the adherence of policy/procedure in their grievance response (see also Exhibit (1) and (2)).

Was SCDC staff/personel in violation in their search of Appellant's Legal Box?

Yes. SCDC officials answered the grievances back concerning the search of Appellant's legal box outside of his presence by

identifying the two (2) officers present at the search of the legal box and stating it was justified pursuant to OP-22.19 section 8. The Appellant contends that the officers who conducted the search were in violation of SCDC Policy / procedures and the Appellant's Constitutional rights.

The Policy stated by SCDC officials in the case governs the search of inmates cell/cubes (OP-22.19 section 8). The incident in question was not a search of Appellant's cell/cube and notably it was the search of his legal box. The department does not specifically address the search of legal boxes in policy but they do have a policy in place that governs the inspection of legal mail (Ps. 10.08 section 7), which reasonably would be applicable to the search of a legal box. The department has memos out and has directed its officials at all their institutions to enforce that nothing except legal material is to be stored in any legal box of any inmate understandably for such reasons. The policy that governs the inspection of legal mail (Ps. 10.08 section 7) in all occasions states it is to be done in the presence of the inmate (section 7.2). Furthermore, the U.S. Constitution protects the rights involved in Attorney - Client relationship by the 6th Amendment, applied to the states through the 14th Amendment. The U.S. Supreme Court has ruled concerning the protection of Attorney - Client Privileges for inmates in the penal setting. see Wolff v. Mc Donnell, 418 U.S. 539, 94 S. Ct. 2963, 91 L. Ed. 2d 935 (1974).

All rulings have greatly protected those rights as long as they do not jeopardize or upset penological concerns.

The legal box in question contained only the Appellant's legal material, which was known to the department's officials. Nothing the department can say or conjure up will justify the search of the Appellant's legal box outside his presence. Again it is much in question the reason behind the planned transfer. Coinci-

dently after the inexcusable, unjustifiable censorship of the Appellant's legal material outside of his presence it was found to be the Appellant was the "Wrong inmate" for the transfer, unchallenged in the step (1) Grievance, the department's officials had approximately five (5) hours to inspect/search the Appellant's legal box in his presence! Nothing Penalogically / security interest restricted the search/inspection from taking place in the presence of the Appellant. It is only reasonable to conclude the search was done outside the Appellant's presence to censor/pillage the Appellant's legal material in search of evidence damaging to SCDC's interest, to the extent of violating their own policy/procedures and the Appellant's Constitutional rights.

Is SCDC liable for damages incurred by the Appellant because of staff/personel's actions pertaining to the entire ordeal?

yes. The department disregarded policies/procedures in an attempt to violate the Appellant's protected rights and for him to suffer actual loss. The Appellant has suffered emotional anxiety/mental arguisk and also personal property loss because of SCDC officials disregard of policy/procedures.

The disregard of IRC hearings policy (OP-21.03 section 4) caused emotional anxieties to befall Appellant, not knowing "why" he was being transferred or if he was to ever see loved ones again, with him being transferred so far away. Had the department followed policy giving the Appellant the reason(s) for the transfer (OP-21.03 section 4.3.1) or to all^{ow} him to request a counsel substitute to investigate those reasons

(section 4.3.2), it could have quickly been resolved he was the wrong inmate, if that was the actual reason the transfer was cancelled. The anxiety from the ordeal caused the Appellant to call home much more often and request more visits. Inmate calls are billed to the recipient and travel cost for visits are upon the visitors. Also the Appellant had to give away personal items (food, books, etc) in an attempt to reduce his "luggage" for travel, being he was told only at the time of transfer what he could or could not take, (see warden's response of the step (1) Grievance). Procedurely Appellant was to be told what he could carry prior to the date of transfer so he could have those items properly disposed. (Note: The personal items mentioned by the Appellant in step (1) grievance were "sentimental items" he disputed parting with in which he received back). The Appellant did make an attempt to recover the actual loss for damages with the departments attorney in a settlement but the offer was declined and he was told to further his attempt through this pending appeal. (see App. Exhibit 4).

Furthermore the Appellant is suffering from anguish by the department's pilfering of his legal material apparently in their attempt to recover possibly damaging evidence against them. It is shown they were in violation of their policy and government law in doing so. The Appellant is at a point now where he really does not trust the officials in the department. There needs to be correction brought forth in this ordeal.

Conclusion

For the reasons enclosed in the arguments presented, the Appellant prays this court adjudicates the claims within in his favor.

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S. Phillip Lenski, Administrative Law Judge

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SC Court of Appeals

Appellate Case No.: 2015-002114

William Ford # 232122

Appellant,

v.

South Carolina Department of Corrections

Respondant.

Proof of Service

I certify that I have served the Brief of Appellant on South Carolina Department of Corrections by depositing a copy of it in the United States Mail, postage prepaid on November 12th 2015, addressed to their attorney of record, Daniel Crooks, P.O. Box 21787, Columbia, S.C. 29221

November 12th 2015

s/ William Ford

William Ford # 232122
MacDougall Correctional Inst.
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Ridgeville, S.C. 29472

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William Ford #232122

Appellant,

v.

South Carolina Department of Corrections Respondant.

Proof of Service

I certify that I have served the Brief of Appellant on South Carolina Court of Appeals by depositing a copy of it in the United States mail, postage prepaid on November 12th 2015, addressed to the South Carolina Court of Appeals P.O. Box 11629 Columbia, S.C. 29211

November 12th 2015

S/ William Ford

William Ford #232122
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South Carolina Court of Appeals
Clerk of Court Office
P.O. Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

Dear Clerk of Court,

Please find enclosed my Brief that I am submitting to this Court. Would you please send me a clocked stamped copy for my records. Also I have included the letter you sent me dated November 9th 2015 along with copies of the Proof of Service and to let you know that I have sent SCDC's Attorney Daniel Crooks the Application and Proof of Service. Thank you for the great job you do by making sure things are done properly and thank you for your time and help concerning this matter.

Respectfully Submitted,

William Ford

William Ford # 232122
MacDougall Correctional Inst.
1516 Old Gilliard Rd
Ridgerville, S.C. 29472

November 12th 2015



The South Carolina Court of Appeals

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November 09, 2015

William Ford, 232122
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

Re: William Ford v. SCDC (2)
Appellate Case No. 2015-002114

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SC Court of Appeals

Dear Mr. Ford:

Upon reviewing your proof of service, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, you must serve the counsel for the respondent.

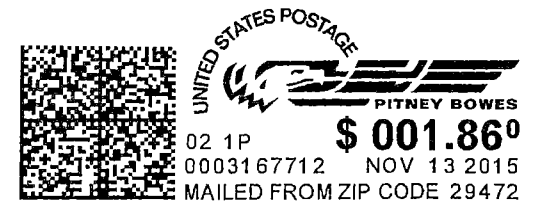
Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Daniel John Crooks, III, Esquire

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