

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge Carolyn C. Matthews
Administrative Law Judge Shirley C. Robinson

ALC Case No. 13-ALJ-04-0926-AP
Appellate Case No. 2014-001684
Appellate Case No. 2015-002494

RECEIVED

DEC 23 2015

SC Court of Appeals

MATTHEW B. FULLBRIGHT,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

MOTION TO DISMISS

Background

This matter comes before this Court pursuant to the appeal of Matthew B. Fullbright, an inmate in the custody of the South Carolina Department of Corrections. Appellant initially filed an appeal with the Administrative Law Court on December 13, 2013. Appellant sought review of SCDC's denial of his Step One Grievance, which involved access to certain discovery materials. Appellant's case was initially assigned to the Honorable Carolyn C. Matthews, and she dismissed the appeal on April 8, 2014, on the ground that Appellant failed to exhaust his administrative remedies in that he failed to file a Step Two Grievance. The appeal was subsequently reinstated upon Appellant's

motion and Judge Matthews ultimately remanded the case to SCDC to determine Appellant's entitlement to certain papers and discovery. On May 28, 2014, SCDC submitted a letter to the Court in which it denied withholding anything more than crime scene photos and bank statements from Appellant's discovery materials, pursuant to SCDC policy. This letter also noted that SCDC policy allowed inmates to access any withheld material upon request in a secure area.

On August 1, 2015, Appellant filed an appeal to this Court. This Court initially dismissed Appellant's case, but subsequently reinstated it upon review of Appellant's Petition for Rehearing. On October 15, 2015, this Court remanded the case to the Administrative Law Court to issue a Final Order. On October 22, 2015, the case was re-assigned to the Honorable Shirley C. Robinson. On November 3, 2015, Judge Robinson issued an Order of Dismissal which concluded that SCDC officials did not withhold discovery documents to discipline or punish Appellant but were instead merely following SCDC policies restricting in-cell access to crime scene photographs and financial statements. Judge Robinson also concluded that SCDC did not violate Appellant's constitutional liberty or property rights when it withheld the above materials from Appellant pursuant to policy.

On November 25, 2015, Appellant filed and served a Notice of Appeal seeking review of Judge Robinson's November 3, 2015 Order of Dismissal. On December 7, 2015, this Court sent Appellant a letter indicating it had received Appellant's Notice of Appeal and that the case was being assigned Appellate Case Number 2015-002494. Also on December 7, 2015, this Court issued a second letter indicating that Appellant's 2015-002494 Notice of Appeal was deficient in that it was not accompanied by the required

filing fee or a copy of the order being challenged on appeal. In this December 7 letter, this Court stated the appeal would be dismissed in ten days if the deficiencies were not corrected.

On the same date, December 7, 2015, this Court issued an Order in Appellate Case Number 2014-001684, stating that the appeal was no longer being “held in abeyance” and that Respondent’s Initial Brief and Designation of Matter were due within thirty days of the date of the order.

Discussion

Respondent now seeks dismissal of one of these two pending appeals because both appeals involve a challenge to the exact same Order of Dismissal, the order of Judge Robinson dated November 3, 2015. Either the 2014-001684 appeal should be dismissed as an improper premature appeal, or if not, the 2015-002494 appeal should be dismissed as an improper successive appeal. There should not be two pending appeals challenging the same Order of Dismissal. If the 2014-001684 appeal is permitted to stand, Appellant should be required to file amended pleadings reflecting that he is challenging the Order of Judge Robinson dated November 3, 2015.¹

In light of the foregoing, Respondent respectfully requests that this Court dismiss one of these two pending appeals and provide instructions regarding how the parties are to proceed. Respondent respectfully requests that this Court hold the time period for Respondent’s filings in abeyance pending resolution of this Motion.

¹ Respondent would also note that in the 2014-001684 case, Appellant never filed a properly-paginated Record on Appeal pursuant to Rule 210(c), SCACR (“Each page of the Record on Appeal shall be numbered consecutively beginning with the index.”), and his Record on Appeal appears to contain numerous extraneous items that were not before the lower court, such as items pertaining to other inmates, in violation of Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”).

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

CHRISTINA CATOE BIGELOW
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ATTORNEY FOR RESPONDENT

December 23, 2015

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PROOF OF SERVICE

The undersigned hereby certifies that SCDC's **Motion to Dismiss** in the above-referenced matter has been served upon Respondent via U.S. Mail, addressed as follows: **Matthew B. Fullbright, # 349468, Lieber Correctional Institution, Post Office Box 205, Ridgeville, South Carolina 29472, this 23rd day of December, 2015.**



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South Carolina
Department of
Corrections

OFFICE OF GENERAL COUNSEL

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

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SC Court of Appeals

December 23, 2015

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Matthew B. Fullbright, #349468, v. South Carolina Department of Corrections
Appellate Case No. 2014-001684 and
Appellate Case No. 2015-002494

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondent's **Motion to Dismiss** regarding each of the above referenced appeals, which I am today serving on Appellant.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Matthew B. Fullbright, #349468 (with enclosures)
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472