

State of South Carolina
In the Court of Appeals

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FEB 16 2016

Appeal From the Administrative Law Court
Administrative Law Judge S. Phillip Lenski

ALC Case No. 15-ALJ-04-0313-AP
Appellate Case No. 2015-002114

William Ford, #232122 Appellant,

v.

South Carolina Department of Corrections Respondent.

Response to Motion to Strike Appellant's Designation of Matter

In response to the Respondant's motion filed on February 3, 2016 the Appellant makes this filing.

The Respondant moves for this court to strike the Appellant's Designation of Matter as the claim is designated documents are not relevant to this appeal. The Respondant is right that the appeal at hand pertains to the order of Administration Law Judge S. Phillip Lenski filed on September 25, 2015 for ALC Docket Number 15-ALJ-04-0313-AP. What the Respondant fails to respect is that this court has jurisdiction to rule upon the issues raised in the initial proceeding when the presiding court makes ruling on the presented,

Preserved issues in dismissing the case. (To be preserved for appellate review, an issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity. Lapp v. SCDMV, 387 S.C. 500 692 S.E. 2d 565 (court of Appeals) 2010).

The documents being asked to be stricken all pertain to issues raised in the initial proceeding. (see Appellant's Initial Brief Exhibit (1)). Furthermore, the Respondant had knowledge of the documents being designated when the Designation of Matter was filed on December 23, 2015, as a copy of the Designation was sent to them as well. Had the Respondant felt that the items designated was not relevant to the appeal, there was ample time for the present motion to be filed before now, as now it will infringe upon others proceedings in this appeal time restraints to correct the matter and cause further delay.

S/ William Ford

William Ford, # 232122

Pro-se Appellant

MacDougall Correctional Inst.

1516 Old Gilliard Rd

Ridgeville, S.C. 29472

February 12th, 2016

EXHIBIT (1)

State of South Carolina
In the Administrative Law Court

Appeal of Final Decision

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South Carolina Dept. of Correction FEB 16 2016

SC Court of Appeals

S. Phillip Lenski, Administrative Law Judge

Case No. 15C0313

William Ford, #232122 Appellant,

VS.

South Carolina Dept. of Corrections Respondent.

Certificate of Service

I William Ford #232122, hereby certify that I placed in the United States Mail, a copy of a Pro-se original Brief with postage prepaid and the return address clearly shown on said envelope to:
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

September 15th 2015

s/ William Ford

William Ford #232122
MacDougal Correctional Inst.
1516 Old Gilliard Rd
Ridgeville, S.C. 29472

FILED

SEP 15 2015

State of South Carolina
In the Administrative Law Court

Appeal of Final Decision
South Carolina Dept. of Corrections

S. Phillip Lenski, Administrative Law Judge

Case No. 15C0313

William Ford, #232122, Appellant

Vs.

South Carolina Department of Corrections, . . . Respondent

Certificate of Service

I William Ford, 232122, hereby certify that I placed in the United States mail, a copy of a Pro-se original brief with postage prepaid and return address clearly shown on said envelope to: SCDC General Counsel with the South Carolina Dept. of Corrections at:

SCDC Office of General Counsel
P.O. Box 21787
4444 Broad River Rd
Columbia, SC. 29221

September 15th 2015

S/William Ford
William Ford, 232122
MacDougall Correctional Inst.
1516 Old Gilliard Rd
Ridgeway, S.C. 29472

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 29-32). 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 Respondant 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 the 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 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/personnel 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/cube (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. McDonell, 418 U.S. 539, 94 S.Ct. 2963, 41 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. Coincidentally 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 penologically/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 interests, 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/personnel's action pertaining to the entire ordeal?

Yes. The department totally 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 anguish and also personal property loss because of SCDC officials' disregard of policy/procedures.

The disregard of FCC hearing's policy (OP-21.03 section 4) caused emotional anxieties to befall Appellant, not knowing why he was being transferred or if he was ever to 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-26.03 section 4.3.1) or allowed him to request a counsel substitute

Exhibit (1)

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 the 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 department's 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 were he really doesn't trust the officials in the department. There needs to be correction brought forth in this ordeal.

Conclusion

The Appellant seeks to recover the loss of actual damages, the \$476.22 initially asked for and also another \$80.00 that has since accumulated, and also the department be reprimanded for their blatant disregard of policy in this situation.

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SC Court of Appeals

William Ford, # 232122 Appellant,

v.

South Carolina Department of Corrections . . . Respondant,

Proof of Service

I certify that I have served the Response to Motion to Strike Appellant's Designation of Matter on the South Carolina Court of Appeals by depositing a copy of it in the United States mail, postage prepaid, on 2-11-2016 addressed to: South Carolina Court of Appeals P.O. Box 11629, Columbia South Carolina, 29241.

S/ William Ford

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

February 11th, 2016

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SC Court of Appeals

Appeal From the Administrative Law Court

Administrative Law Judge S. Phillip Lenski

ACL Case No. 15-ALJ-04-0313-AP

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 Response to Motion to Strike Appellant's Designation of Matter on the South Carolina Dept. of Corrections by depositing a copy of it in the United States mail, postage prepaid, on 2-11-2016 addressed to: South Carolina Department of Corrections, Attorney Christina Bigelow, P.O. Box 21787 Columbia, S.C. 29221.

S/ William Ford

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

February 12th, 2016

AM Ford #232122
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FEB 12 2016
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