

S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

Re: Bryan v. SLOC, Appellate case No. 2012-210356

Dear Clerk,

Enclosed for your filing is a "Petition For Writ of Certiorari." Please provide me a case no. for the petition.

9/17/12, SC
dated

Without prejudice,
X. T. Terrell Bryan, all rights reserved,
T. Terrell Bryan
#254634, SMU-B19, MCC I
385 Redemption Way
McCormick, SC 29899

RECEIVED
SEP 21 2012
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From South Carolina Court of Appeals
Hon. Jenny A. Kitchings, Clerk of Court of Appeals
Appellate Case No. 2012-210366
ALC Docket No. 11-ALJ-04-1005
Grie. No. BR 0597-11

T. Terrell Bryan,

Petitioner,

v.

SCDC,

Respondent.

PETITION FOR WRIT OF CERTIORARI

T. Terrell Bryan
#254638, SMU-719, MCCF
386 Redemption Way
McCormick, SC 29899

PRO SE PETITIONER

Mr. Chas D. Florian
Staff Attorney / SCDC
4444 Broad River Rd.
Columbia, SC 29210

COUNSEL FOR RESPONDENT

RECEIVED

SEP 8 1 2012

S.C. SUPREME COURT

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STATEMENT OF ISSUE ON CERTIORARI

I. DID THE ALC ERR IN DISMISSING THE APPEAL BEFORE APPELLANT COULD FILE A BRIEF &/OR WITHOUT AFFORDING APPELLANT AN OPPORTUNITY TO FILE A BRIEF?

II. DID THE S.C. COURT OF APPEALS ERR IN DENYING RECONSIDERATION &/OR REINSTATEMENT, WHERE SCDC AFFORDED APPELLANT NO ACCESS TO HIS LEGAL MATERIALS FOR OVER TWO MONTHS?

STATEMENT OF THE CASE

This matter is before the South Carolina Supreme Court pursuant to this Writ of Certiorari Filed by the ~~see~~ see Appellant T. Terrell Bryan, an Inmate Confined &/or incarcerated within the custody, control, supervision & care of the South Carolina Department of Corrections (SCDC).

Appellant Filed a step one grievance on 4/01/11, grievance No. BR < I 0597-11. The step one was denied on 6/12/11. Appellant Filed a step two on 7/12/11. The step two was denied on 7/31/11.

Appellant was served the step two on 11/17/11 & timely appealed to the S.C. Administrative Law Court on 12/19/11. The Honorable John D. McLeod, S.C. Administrative Law Judge denied the Appeal on 1/04/12. 16 (SIXTEEN) DAYS LATER!! 16 (SIXTEEN) MERE DAYS LATER!!

Appellant then Filed a Notice of Appeal to the S.C. Court of Appeals on 3/26/12. The Honorable Jenny A. Kitchens/Clerk, denied the Appeal on 4/12/12. Remittitur was mailed to Appellant on 8/14/12.

Thus is this timely Writ of Certiorari.

STATEMENT OF FACTS

The Appellant Filed a step one grievance Challenging the Findings OF guilt in a DHO charge, in which his Constitutional right to due process was violated. He was denied an opportunity to be heard where the DHO interrupted & interfere with Appellant making a statement & presenting his case. The DHO denied favorable witnesses & stopped Appellant from presenting evidence.

The Appellant drew up his appeal documents in this case in January of this year, but on the 23rd of January the Appellant was transferred to Perry C.I. from Broad River C.I. Per Perry's policy an Inmate's property is turned over to Contraband For Contraband officers to search through the Inmate's property for Contraband. For two months Contraband held Appellant's property. SDC's grievance records shows several grievances Appellant Filed complaining of his legal property being returned. See grievance No./ALC Packet No. 12-ALJ-04-196-IJ.

No Inmate could file an Appeal when SDC had in their control & possession the Appeal papers to file the appeal. Such is impossible. It would be unreasonable to expect an Inmate to do so.

ARGUMENT

I. THE ALC ERRED IN DISMISSING THE APPEAL WITHOUT OFFERING AN OPPORTUNITY TO FILE A BRIEF ON LIBERTY INTEREST CLAIMS OF NOT BEING LABELED A SEX OFFENDER & LOSS OF CREDIT EARNING STATUS.

The ALC erred in dismissing the Appeal without offering the Appellant an opportunity to "file an original brief" where Appellant had "... sixty-five (65) days after the date of assignment" to file an original brief, per the ALC's Rules, V. Special Appeals, Rule 60 Briefs. (A) Time For Filing Briefs.

As already established in the "Statement of the case", the ALC dismissed the case 16 (SIXTEEN) days after Filing! 16 (SIXTEEN) MERE DAYS LATER! Appellant had about 50 (Fifty) days left after dismissal that he could of file a brief, on his liberty interest claims of not being label a sex offender. see Coleman v. Dretke, 395 F.3d 216, 222 (5th Cir. 2004) (Liberty interest in not being labeled sex offender), Kirby v. Siegelman, 195 F.3d 1285, 1291 (11th Cir. 1999) (same).

He could also filed the brief on loss of work-credit-earning status, where he can^{not} work for 360 days, the amount of D.O. (Disciplinary Detention) time given. The D.O. time is served on SMU & on SMU Appellant can not work.

Furthermore, he could of filed the brief on loss of education-credit-earning status, where he could not attend school for about 3 years. Appellant can not attend school while on SMU, he has 360 days D.O. Then the DHO sanction Appellant 360 + 360 days wearing of pink jump suit. Appellant can not attend school ~~for~~ in a pink jump suit. Thus, is a total of 3 years loss of education-credit-earning status. see Wilson v. Jones, 430 F.3d

1113, 1120-21 (10th Cir. 2005) (Liberty interest in avoiding misconduct conviction that results in demotion of credit-earning status...) Noting that per SCOC's policy/procedure OP-22.12, "Special Management Unit," September 1, 2007, §14.1, Inmates on SMU are not eligible to earn work credits, or educational credits.

ARGUMENT

II. THE S.C. COURT OF APPEALS ERRED BY NOT GRANTING RECONSIDERATION &/OR REINSTATEMENT WHERE APPELLANT HAD NO ACCESS TO LEGAL MATERIALS TO PERFECT APPEAL.

On 1/23/12 Appellant was transferred to Perry C.I. from Broad River C.I. & for over 2 months he had no access to his legal materials to perfect this appeal. Such should not be said to be a FAILURE on Appellant's ~~part~~^{part} but it is error on SCOC's part in failing to return his legal materials.

Appellant moved for Reconsideration &/or Reinstatement on 4/23/12 because of same & was denied.

The S.C. Court of Appeals held that Appellant failed to timely serve the Notice of Appeal. This would be error when SCOC had the Notice of Appeal in their possession & refusing to return it. If SCOC would of timely returned the Appellant's property he would of timely filed the Notice of Appeal.

CONCLUSION

I. This Court grant certiorari, & issue an order that both parties submit Briefs. specifically for Respondent to make a reply to all allegations in this Writ & to produce any & all documents relevant to this case, OR...

II. ARGUMENT I. This Court grant certiorari & remand to the ALC, with instructions that the ALC allow Appellant to submit a Brief on his liberty interest claims. &...

III. ARGUMENT II. Remand to the S.C. Court of Appeals to determine if failing to timely file the Notice of Appeal was due to the sole failure of Appellant, or did SCOC failing timely¹ return Appellant's property was the proximate cause.

9/17/12, SC
dated

Without prejudice,
x. T. Bryan, all rights reserved,
T. Terrell Bryan
#254638, SMU-7319, M.C.C.I
386 Redemption Way
McCormick, SC 29399

AFFIDAVIT

I hereby affirm under penalty of perjury this petition is true & correct.

sworn to before me this
17th day of September, 2012
Penny & Morton (L.S.)
my Commission Expires: Feb 28, 2018

Without prejudice,
x. T. Bryan, all rights reserved,
T. Terrell Bryan

AFFIDAVIT & PROOF OF SERVICE

I hereby certify &/or affirm under penalty of perjury, 28 U.S.C. § 1746
& 14 U.S.C. § 1621, that I served a copy of this writ on:

Chris D. Florian
staff Attorney / SCAC
4444 Broad River Rd.
Columbia, SC 29210

on 9/17/12, SC
dated

Without prejudice,
x. T. Terrell Bryan, all rights reserved,
T. Terrell Bryan

sworn to before me this
17th day of September, 2012
Permy G. Morton (U.S.)
my Commission Expires: July 28, 2018

S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

Re: Bryan v. SCOC, Appellate Case No. 2012-208066

Dear Clerk,

Enclosed for your filing is ~~1~~^{two (2)} "Writ of Certiorari". Please provide me a case number.

9/17/12, SC
dated

Without prejudice,
x. hmb, all rights reserved,
T. Terrell Bryan
#254639, SAW-BIA, MCC
386 Redemption Way
McCormick, SC 29499

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From South Carolina Court of Appeals
Hon. Saul E. Short, Jr., Appellate Court Judge
Appellate Case No. 2012-203066
ALC Docket No. 2011-ALJ-04-0642-AP
Griz. No. BR 11 SY3-10

T. Terrell Bryan,

Appellant,

v.

SCOC,

Respondent.

WRIT OF CERTIORARI

T. Terrell Bryan
#254638, SMU-7319, MCC1
386 Redemption Way
McCormick, SC 29369

PRO SE APPELLANT

Mr. Chris D. Florian
Staff Attorney

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STATEMENT OF ISSUE ON CERTIORARI

I. DID THE ALC ERR BY EXERCISING THE "HANDS OFF" DOCTRINE IN LIGHT OF A CONSTITUTIONAL VIOLATION?

II. DID THE S.C. COURT OF APPEALS ERR BY DENYING IN FORMA PAUPERIS STATUS IN LIGHT OF A CONSTITUTIONAL VIOLATION?

STATEMENT OF THE CASE

This matter is before the South Carolina Supreme Court pursuant to this Writ of Certiorari, Filed by the ~~fee~~ se Appellant T. Terrell Bryan, an Inmate confined &/or incarcerated within the custody, control & care of the South Carolina Department of Corrections (SCDC).

Appellant Filed a step one grievance, grievance No. BR21 548-10, on 4/20/10. The step one was denied on 3/30/11. Appellant Filed a step two on 5/12/11. The step two was denied on 7/21/11.

Appellate was served the step two on 7/19/11 & timely appeal to the S.C. Administrative Law Court on 8/22/11. The Honorable Carolyn C. Matthews, Administrative Law Judge denied the Appeal on 1/27/12.

Appellant timely Filed an Notice of Appeal to the S.C. Court of Appeals on 2/10/12. The Honorable Saul E. Short, Jr. denied the appeal on 5/17/12. Remittitur was Filed on 6/14/12. **NOTE**, Appellant could not timely move for Reinstatement &/or Reconsideration where SCDC refused to return his legal property. Remittitur was served on Appellant on 8/21/12.

Thus is this timely Writ of Certiorari.

STATEMENT OF FACTS

on 4/20/10 Appellant filed a step one grievance complaining that he is still in pain & is getting worse, & that he has not been seen by a Neurosurgeon as was allegedly being scheduled as stated in attached step 2 grievance, EXHIBIT #A,
"NEUROSURGERY... IS BEING SCHEDULED."

SCOC lied, neurosurgery was never scheduled.

ARGUMENT

I. THE ALC ERRED BY EXERCISING THE "HANDS OFF" DOCTRINE IN LIGHT OF AN EIGHTH AMENDMENT VIOLATION.

Pursuant to §1-23-380(6), the ALC (Administrative Law Court) may reverse or modify the decision of SCOC if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are: (a) in violation of constitutional or statutory provisions.

Article I, §15 of the S.C. Constitution states that nor cruel, nor corporal, nor unusual punishment be inflicted. This is analogous to the Eighth Amendment, cruel & unusual punishment standard of the U.S. Constitution.

In Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), the U.S. Supreme Court has decided that failing to provide medical care to prisoners violates the Eighth Amendment.

The ALC held that "[t]here is no state created liberty or property interest implicated where, as here, the complaint concerns the adequacy of prison medical treatment." This is error! It is undisputable that the Appellate has a liberty interest in being free from cruel & unusual punishment. **IF NOT THE BILL OF RIGHTS WOULD HAVE NO FORCE OF LAW.** Moreover, this is a violation of the Constitution per §1-23-380(6)(a), in which the ALC can not exercise hands off.

ARGUMENT

II. THE S.C. COURT OF APPEALS ERRED BY DENYING IN FORMA PAUPERIS STATUS IN LIGHT OF AN EIGHTH AMENDMENT VIOLATION.

Both Federal & state courts have the authority to review the actions of prison officials to make sure they comply with due process requirements. Article III of the U.S. Constitution grants Federal Court jurisdiction to hear cases "arising under this Constitution." State courts have "concurrent jurisdiction" which means that they are equally able to decide cases involving the U.S. Constitution.

THEREFORE, it would be error of the S.C. Court of Appeals to refuse to hear this case in light of a Constitutional ^{violation}, an eighth Amendment violation, as previously established.

CONCLUSION

I. This case remanded to the AlC to determine if this Appeal presents a Constitutional violation, per § 1-23-380(6).

II. This case remanded to the S.C. Court of Appeals to determine if in light of an Eighth Amendment violation In Forma Pauperis should be granted.

III. This Court grant Certiorari & order that both parties submit Briefs for full review.

9/17/12, SC
dated

Without prejudice,
x. RMB, all rights reserved,
T. Terrell Bryan
#254638, SMU-B19, PCI
386 Redemption Way
McCormick, SC 29899

AFFIDAVIT

I hereby affirm under penalty of perjury, 28 U.S.C. § 1746 & 18 U.S.C. § 1621, that the above is true & correct.

Sworn to before me this
17th day of September, 2012
Penny G. Morta (L.S.)
My Commission Expires Feb 28, 2014

Without prejudice,
x. RMB, all rights reserved,
T. Terrell Bryan

AFFIDAVIT & PROOF OF SERVICE

I hereby certify &/or affirm under penalty of perjury, 28 U.S.C. § 1746 & 18 U.S.C. § 1621, that I served a copy of this Writ on:

Chris O. Florian
staff Attorney/scoc
4444 Broad River Rd.
Columbia, SC 29210

on 9/17/12, sc.
dated

Without prejudice,
x. ~~me~~ all rights reserved,
T. Terrell Bryan

Sworn to before me this
17th day of September 2012
Penny L. Merton (L.S.)
my Commission Expires: Feb 28, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From South Carolina Court of Appeals
Hon. Saul E. Short, Jr., Appellate Court Judge
Appellate Case No. 2012-208066
ALC | Docket No. 2011-ALJ-04-0642-AP
Gr.e. No. BRCE 548-10

T. Terrell Bryan,

Appellant,

v.

SCOC,

Respondent.

WRIT OF CERTIORARI

T. Terrell Bryan
#254638, SAU-B19, PCI
386 Redemption Way
McCormick, SC 29899

PRO SE APPELLANT

Mr. Chris D. Florian
Staff Attorney/SCOC
4444 Broad River Rd.
Columbia, SC 29210

COUNSEL FOR RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

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This matter is before the South Carolina Supreme Court pursuant to this writ of certiorari, filed by the ~~pro se~~ Appellant T. Terrell Bryan, an Inmate confined &/or incarcerated within the custody, control & care of the South Carolina Department of Corrections (SCDC).

Appellant filed a step one grievance, grievance No. BRCI 548-14, on 4/22/10. The step one was denied on 3/30/11. Appellant filed a step two on 5/12/11. The step two was denied on 7/10/11.

Appellant was served the step two on 7/19/11 & timely appeal to the S.C. Administrative Law Court on 8/10/11. The Honorable Carolyn C. Matthews, Administrative Law Judge denied the Appeal on 1/27/12.

Appellant timely filed an Notice of Appeal to the S.C. Court of Appeals on 2/10/12. The Honorable Saul E. Short, Jr. denied the Appeal on 5/17/12. Remittitur was filed on 6/14/12. Note, Appellant could not timely move for Reinstatement &/or Reconsideration where SCDC refused to return his legal property. Remittitur was served on Appellant on 8/11/12.

This is this timely writ of certiorari.

STATEMENT OF FACTS

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Article I, §15 of the S.C. Constitution states that nor cruel, nor corporal, nor unusual punishment be inflicted. This is analogous to the Eighth Amendment, cruel & unusual punishment standard of the U.S. Constitution.

The ALC held that "[t]here is no state created liberty or property interest implicated where, as here, the complaint concerns the adequacy of prison medical treatment." This is error! It is undisputed that the Appellate has a liberty interest in being free from cruel & unusual punishment. **IF NOT THE BILL OF RIGHTS WOULD HAVE NO FORCE OF LAW.** moreover, this is a violation of the Constitution per §1-23-380 (b)(a), in which the ALC can not exercise hands off.

ARGUMENT

II. THE S.C. COURT OF APPEALS ERRED BY DENYING IN FORMA PAUPERIS STATUS IN LIGHT OF AN EIGHTH AMENDMENT VIOLATION.

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THEREFORE, it would be error of the S.C. Court of Appeals to refuse to hear this case in light of a constitutional violation, an eighth Amendment violation, as previously established.

CONCLUSION

I. This case remanded to the ALC to determine if this Appeal presents a constitutional violation, per §1-23-380(b).

II. This case remanded to the S.C. Court of Appeals to determine if in light of an Eighth Amendment violation In forma Pauperis should be granted.

^{submit} III. This court grant certiorari & order that both parties briefs for full review.

9/17/12, SC
dated

without prejudice,
x. RMB, all rights reserved,
T. Terrell Bryan
#254638, SMV-B19, PCI
386 Redemption Way
McCormick, SC 29409

AFFIDAVIT

I hereby affirm under penalty of perjury, 28 U.S.C. §1746 & 18 U.S.C. §1621, that the above is true & correct.

sworn to before me this
17th day of September, 2012

Perry G. Minton (L.S.)
my Commission Expires: Feb 25, 2015

without prejudice,
x. RMB, all rights reserved
T. Terrell Bryan

AFFIDAVIT & PROOF OF SERVICE

I hereby certify &/or affirm under penalty of perjury 28 U.S.C.
§1746 & 18 U.S.C. §1621, that I served a copy of this writ on:

Chris D. Florian
Staff Attorney/SCOC
4444 Broad River Rd.
Columbia, SC 29210

on 9/17/12, SC
dated

Without prejudice,
X. T. Terrell Bryan, all rights reserved,
T. Terrell Bryan

Sworn to before me this

17th day of September, 2012

Penny G. Minton (L.S.)

My Commission Expires: Feb 28, 2018

T. Terrell Bryan
#254638, SMU-B19, M=C I
386 Redemption Way
McCormick, SC 29899

AMS

S.E. Supreme Court
P.O. Box 1133-D
Columbia, SC 29211-133-D