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JUL 06 2016

SC Court of Appeals

State of South Carolina
In the Court of Appeals

On Appeal from ALC No. 16-ALJ-04-394-AP

James B. Wersching, _____ Appellant,

VS.

S.C.D.C., _____ Respondant,

Intent to Appeal

Comes prose Appellant arguing ALC "Order of Dismissal" filed 6/2/16 by ALJ Durden violates various fact, principles of law, specific rules, case laws and constitutional rights.

Issue No. I

Notice controlling case law Al-Shabazz v. State, 527 SE2d 742 (S.C. 2000) holding facts presented by inmate must be presumed true, or see Rule 12(b)(6) SCRPC. Note Ostrander v. Green, 46 F.3d 347 (4th Cir. 1995) and Hughes v. Rowe, 419 U.S. 5 (1980) holding pro se pleadings must be "liberally construed". Also Al-Shabazz and Slezak v. S.C.D.C., 605 SE.2d 506 (S.C. 2004) held ALJ cannot dismiss where a property interest is implicated.

Carefully consider inmates "Notice of Appeal" (see attached); it clearly states in the 1st sentence, "Basic premise of inmates cause is the undisputed fact S.C.D.C. employer confiscated state-issued, authorized inmate property."; also note his Step 1 Grievance No. KRCI-1290-15 (see attached) 2nd sentence, "Therefore jackets are a cognizable property interest rooted in state law" and "arbitrary deprivation of my property denied due process." It would be impossible for a reasonable and unbiased person to misconstrue the "property interest" stated in these pleadings.

unless through malicious intent. Further consider Step 1 as to "Warden's Decision" which admits, "decision was made to confiscate" and "S.C.D.C. no longer issues the jackets"; Step 2 Responsible Officials Decision also admits S.C.D.C. issued the jackets, therefore the property issue admitted by respondent and the adjudicable issue of legality is evident in the documents submitted to Judge Durden.

Notice; Order of Dismissal ignores these pleading documents and incomprehensibly bases her decision on the Appellant's failure to raise a liberty issue. This is totally illogical because ALJ's own order cites Stegob which clearly states, "Summary dismissal maybe appropriate where inmates grievance does not implicate a state created liberty or property interest." (see attached)

Issue No. 2

Consider Notice of appeal (see attached) assigned 5/19/16 and Order of Dismissal filed 6/2/16; only fourteen (14) days. At that time the Record had not been filed and respondent nor appellant had answered. Whereas there are specific timelimits stated in ALC rules it is clear litigants were denied their filing rights. This violation of ALC Rule is conclusive evidence Judge's Order was premature because the case was not ripe for adjudication.

See Young v. Charleston Co. Sch. Bd., 725 S.E.2d 107 (S.C. 2012) holding due process requires judicial consideration of "all evidence" and M.R.D. at Belfair v. S.C.D.F.H., 664 S.E.2d 47 (S.C. 2008) held "judicial decisions must be based on substantial evidence". Also consider ALC Rule 58 holds filing of Record and response to be mandatory, "shall file". Therefore it is shown essential evidence required and necessary for proper and lawful adjudication was never considered. Note State v. Hughes, 552 S.E.2d 315 (S.C. 2001) held it to be abuse of judicial discretion "... where trial court's decision is unsupported by the evidence."

Issue No. 3

ALC's Order denied inmate multiple principles of Constitutional law; see Johnson v. Avery, 393 U.S. 483 (1969) "Persons in prison, like other individuals, have a right to petition the government for redress of grievances."; see Ross v. Moffitt, 417 U.S. 600 (1974) "Fundamental fairness entitles indigent defendants to an opportunity to present their claims fairly within the adversary system."; see Lewis v. Casey, 518 U.S. 343 (1996) "prisoners, like all citizens, have a reasonably adequate opportunity to raise constitutional claims before impartial judges."; Bush v. Lucas, 462 U.S. 367 (1983) held for the right to appellate review; while Holmes v. S.C., 547 U.S. 319 (2006) held for "meaningful opportunity to present a complete defense." These cases are clearly established law and ALJ's Order of Dismissal violated all of them.

Issue No. 4

Appellant argues also violation of 8th amendment as to cruel and unusual punishment by unnecessary confiscation of coats during cold, rainy weather. This and circumstances of unlawful confiscation demonstrate "atypical and significant hardship as per Sandin v. Conner, 515 U.S. 472 (1995)

Consider not all inmates coats were taken therefore clear violation of federal and state constitutions, see S.C. Const. Art. 1 § 3 as to all similarly situated inmates must be treated alike in similar circumstances.

Relief Request

Appellant argues he has met his burden to show both error of fact and law but also prejudice to his cause. Therefore he asks this Court of Appeals to reverse the unlawfully issued Order of Dismissal is by Judge Dwyer and remand the proceeding to the Administrative Law Court for an In Banc consideration of

this case on the merits of the Appellant's cause of action.

Signed: James B. Weersing Pro Se Dated: July 1, 2016

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Proof of Service

I, James B. Weersing, do certify and affirm copies of this document were served on the Court of Appeals Clerk and on S.C.D.C. General Counsel at their last known addresses.

Signed: James B. Weersing Dated: 7/1/16

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