

state of South Carolina
County of Richland
Tyrone Perry # 307793
Plaintiff

vs

South Carolina Dept of Corrections
Defendant

In the Court of Common Pleas
2015-CP-40-6789

Motion to Alter or Amend Judgment

JEANETTE
D.C.P. 005

2016 JUN 30 AM 10:25

NOT FILED

Pursuant to Rule 59(e) SCBCP the plaintiff hereby moves to alter or amend the judgment of this court filed on June 14, 2016 and received by the plaintiff on June 21, 2016

Procedural History

I the plaintiff Tyrone Perry attended a hearing on my complaint filed November 5, 2015 and the hearing was June 9, 2016. I allege the defendant violated SCDC policy rules and regulations by not timely responding to its own grievance system. Being that the defendants did not respond per SCDC policy which is bound by state law and statutes in a timely manner they violated the plaintiff's due process and therefore their failure to respond technically the plaintiff exhausted his administrative remedies.

Argument

The plaintiff testified that the defendants had 171 days from beginning to end to complete the grievance process per its own policy. The plaintiff filed his step one grievance on February 3, 2015. Per SCDC policy the defendants have about or around to August 23, 2015 to respond to both steps and give the defendant his final order so that he may proceed to the Administrative Law Court. The plaintiff can not proceed to the Administrative Law Court without the final order. The plaintiff did not receive his final order until February 12, 2016 which is over a year from which the plaintiff originally filed his first grievance. The defendants were over six months late of their own policies and procedures. The plaintiff filed this complaint on November 5, 2015 while the defendants where in default of their own rules and regulations. In a multi step grievance system the agency's inability to follow its own rules and regulations and time frames made the plaintiff exhaust those remedies by their inability to respond. The plaintiff followed all rules and protocol but the defendants failed to abide by regulations. In the judge's order it states the plaintiff is requesting the Courts to overturn SCDC's final agency decision in the form of a step two grievance. This is not and was not the case. The plaintiff testified that SCDC never gave a final decision in the specified time frame per SCDC policy. The defendants had 171 days to give a final decision which was up in August 2015. In November 2015 the plaintiff filed this complaint with the courts. The defendants did not give a final decision until February 2016. This action was already commenced

So the plaintiff is not requesting the court to overturn a defaulted decision. The plaintiff can not go to the Administrative Law Court or exhaust his Administrative remedies if the defendants do not respond. In which they did not per SCDC policy which infringes on the plaintiff's due process.

Conclusion

For the foregoing reasons the plaintiff request this Court to alter or amend the dismissal and preserve issues for appellate review.

This 22nd day of June 2016

vs Tyrone Perry
Kirkland C. I.
4344 Broad River Rd D-28
Columbia S.C. 29210

State of South Carolina
County of Richland
Tyrone Perry # 307793
Plaintiff

In the Court of Common Pleas
2015-CP-40-6789

Vs

Proof of Service

South Carolina Dept of Corrections
Defendant

FILED
2016 JUN 30 AM 10:26
JEANETTE MCBRIDE
CLERK OF COURT
RICHLAND COUNTY, S.C.

I certify that I have served a copy of this motion to alter or amend judgment 59(e) by depositing a copy of it in the U.S. mail postage prepaid to the following:

Jeanette McBride
Clerk of Court
Richland County
P.O. Box 2766
Columbia S.C. 29202

Honorable D. Craig Brown
P.O. Box 2766
Columbia S.C. 29202

vs Tyrone Perry

This 29th day of June 2016