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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Judge
Dock. No. 07-ALJ-04-00517-AP

Order (S.C. Ct. App. filed Oct. 17, 2017)

Fred Gatewood, #289775..... Petitioner,

v.

South Carolina Department of Corrections,,,,,, Respondent.

Court of Appeals Appellate Case No. 2017-002087

Supreme Court Appellate Case No. 2017-002501

REPLY TO RETURN TO PETITION
FOR A WRIT OF CERTIORARI

Pursuant to SCACR 242(g), Fred Gatewood (inmate) submits this reply to SCDC's return to the petition for a writ of certiorari.

QUESTION PRESENTED

SCDC does not present a counter-statement of the question presented (SCACR 242(f)) (SCDC return, p. 1).

SUMMARY OF SCDC'S OPPOSITION TO THE PETITION

SCDC states a summary of its response which, in part, is argumentative (SCDC return, pp. 1-2). Under SCACR 242(f), there is no provision allowing a response summary, let alone one containing argument. Inmate requests that the Court disregard the summary.

COUNTER-STATEMENT OF THE CASE

A statement of the case shall contain facts material to consideration of the question presented (SCACR 242(d)(3)). Here, the question presented is whether the Court of Appeals erred in deciding the ALC's September 7, 2017 rulings were not final decisions and thus not appealable (Petition, p. 1). However, SCDC's counter-statement, in part, summarizes events related to inmate's other petition for certiorari in Gatewood v. SCDC Appellate Case No. 2017-002119, now pending in this Court (SCDC return, p. 3 last para., p. 4 first para.). Inmate contends this information is not material to the question presented here, and should be disregarded.

ARGUMENT

A. SCDC contends the ALC made no rulings at the September 7, 2017 status conference, but only "statements" (SCDC return, pp. 6, 11). A "ruling" is a judicial or administrative interpretation of a statute, judicial determination of admissibility of evidence, or allowance of a motion, etc. (Black's Law Dictionary, Fifth Ed., p. 1197). Here, inmate contends each of the ALC rulings contested concerns the ALC's interpretation or application of legislation, a statute, or a motion, as follows:

First ruling: ALC would not carry out the Court of Appeals' remand (Petition, p. 4; App. pp. 15-16) ("legislation").

Second ruling: ALC did not have contested case but only appellate jurisdiction (Petition, p. 5; App. pp. 15-16, 19) ("legislation", "statutes").

Third ruling: ALC did not have jurisdiction because of pending appeal to the Court of Appeals (Petition, p. 5; App. pp. 12, 15, 20) ("motions", petition for "special referee", petition for "attorney's fees").

Fourth ruling: ALC would not now determine the motion for special referee (Petition, p. 6; App. p. 15) (petition for "special referee").

Fifth ruling: ALC stated counsel had a "vested contract" to a contingent fee (Petition, p. 7; App. pp. 21, 23-24) (Context was discussion of "15-77-300" and petition for attorney fees).

Sixth ruling: ALC stated attorney fees is a remedial action and §15-77-300, current version, can be applied retroactively (Petition, p. 7; App. pp. 21, 23-24) ("15-77-300", petition for attorney fees).

Seventh ruling: ALC stated it can use §15-77-300, current version, to clarify original §15-77-300 (Petition, p. 9; App. pp. 28-29) ("15-77-300").

Eighth ruling: ALC stated under current §15-77-300, ALC cannot grant an attorney fee greater than the contingent fee (Petition, p. 10; App. p. 21) ("15-77-300").

Ninth ruling: ALC stated he did not think he could hear attorney fees until the "official results obtained" are determined (Petition, p. 10; App. p. 20) (petition for "attorney fees", §15-77-300).

Tenth ruling: ALC stated attorney fee is determined by considering the six common law factors, and if necessary the lodestar, etc. (Petition, p. 11; App. pp. 24-26) (petition for "attorney's fees" and §15-77-300).

Eleventh ruling: ALC stated there is a question of law whether litigation in the ALC is a civil action under §15-77-300 (Petition, p. 11; App. p. 34)

(petition for attorney fees and \$15-77-300).

Finally, SCDC contends there is no written order in the appendix (SCDC return, p. 11). The rules require the notice of appeal from administrative tribunals to be accompanied by a "copy of the decision(s) to be challenged on appeal" (SCACR 203(d)(2)(B)(ii)). Here, inmate attached to the notice of appeal a copy of the transcript containing the ALC rulings being appealed (App. pp. 9-38). This should satisfy the requirement of a "copy of the decisions".

Inmate submits the ALC made final rulings and decisions on September 7, 2017, which were properly appealed in accordance with the rules.

B. SCDC contends, since the ALC sits exclusively in an appellate capacity when reviewing SCDC final decisions regarding inmate pay claims, the ALC is not the proper forum to make factual determinations concerning such claims (SCDC return, p. 11). Initially, inmate contends SCDC's argument is not relevant to the question presented (SCACR 242(f)): Whether the Court of Appeals erred in deciding the ALC's rulings were not final decisions and thus not appealable (Petition, p. 1).

On the merits, SCDC bases its argument on Joshua Cramer, #251406 v. SCDC ALC Dock. No. 14-ALJ-04-0282-AP (A.L.J.D., Dec. 7, 2017) (SCDC return, p. 12). In Cramer, the Court of Appeals had reversed the ALC on the policy/procedure v. incident grievance issue, and remanded to the ALC for consideration of Cramer's grievance on the merits.* On remand, the ALC held it had no jurisdiction to hear the matter, and because it was on remand from the Court of Appeals for hearing on the merits, the ALC had to remand to SCDC to make the necessary factual determinations (SCDC return, Exh. C, p. 4). In so doing, the ALC relied

* The Court of Appeals' opinion in Cramer v. SCDC Op. No. 2016-UP-392, 2016 WL 4125880 (S.C. App., Aug. 3, 2016) is an unpublished opinion, has no precedential value, and should not be cited (SCACR 268(d)(2)). Inmate requests the Court to disregard this opinion, attached as Exhibit D to SCDC's return.

on Al-Shabazz v. State 338 S.C. 354, 527 S.E. 2d 742 (S.C., 2000); ALC Rule 51; Wicker v. SCDC 360 S.C. 421, 424-5, 602 S.E. 2d 56, 58 (S.C., 2004); and Hamm v. S. Bell Tel. & Tel. Co. 305 S.C. 1, 406 S.E. 2d 157 (S.C., 1991).

In Al-Shabazz, 527 S.E. 2d at 754, the Court stated an inmate may seek review "..of Department's final decision by an ALJ.." and the ALJ sits in an appellate capacity to review "..Department's decisions". Here, in 2016 the Court of Appeals remanded "..the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion" (Gatewood v. SCDC 416 S.C. 304, 785 S.E. 2d 600, 613 (S.C. App., 2016)). As to the "Department's final decision", SCDC issued its final decision for inmate Gatewood in 2007 before the case was ever appealed to the ALC (Id., 785 S.E. 2d at 604). This final SCDC decision is contained in the petition for certiorari Joint Appendix, pp. 43-45, in Gatewood v. SCDC Appellate Case No. 2016-001221. Inmate requests the Court to take judicial notice of that document in the Supreme Court's files. It seems apparent that the review allowed in the ALC by Al-Shabazz is entirely different from the review mandated in the ALC by the Court of Appeals' remand here.

For these reasons, inmate contends Al-Shabazz is not analogous to this case, where the Court of Appeals remanded to the ALC, nine (9) years after SCDC's final decision, for reconsideration of costs, attorney fees and interest following the Court of Appeals' decision rendering Gatewood the prevailing party. Inmate contends the Court of Appeals' remand gave the ALC **jurisdiction** to conduct this review and imposed a **duty** on the ALC to follow the higher court's express instructions (Petition, p. 4, with discussion and authorities).

Pursuant to ALC Rule 51, the Special Appeals rules "..shall apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State..". Thus, Rule 51 merely implements Al-Shabazz, and has nothing to do with the circumstances presented here.

In Wicker, 602 S.E. 2d at 58, the Court held "...the DOC's failure to pay in accordance with the statutes is reviewable by the ALJ". Wicker is also not concerned with the circumstances involved in this case.

Finally, in Hamm, 406 S.E. 2d 157, 160, this Court had "reversed" a rate increase case and remitted to the Circuit Court. This Court did not expressly "remand" to the Commission. This Court stated no such instruction was necessary in the circumstances presented: S.C. Code §18-9-270 stated the Supreme Court could reverse an order appealed from, and the judgment would be remitted to the lower court to be enforced. Further, in light of the Court's precedent, the only reasonable interpretation of the law was for the Circuit Court to return the case to the Commission for it to act in accord with the Supreme Court's opinion.

The ALC in Cramer, and SCDC here, analogized Cramer's case to Hamm (SCDC return, p. 15). The ALC stated:

Similarly, just because the Court of Appeals did not expressly remand the instant case to the Department for the factual determination did not mean that this Court did not have the **authority** to remand the case to the Department for such a determination.

Inmate contends the analogy to Hamm is wrong for two reasons: First, the Court of Appeals here **expressly remanded to the ALC**, not SCDC, to reconsider inmate's costs, attorney fees and interest. Second, the ALC here did not have **authority** to remand to SCDC "for processing" (App. p. 6) because that violated the ALC's jurisdiction and duty as defined by the Court of Appeals' opinion remand. See Petition, page 4. Thus, the ALC remand to SCDC was void and of no effect (20 Am Jur 2d (2015), Courts, §63) (Remand outside court's jurisdiction is null and void, and proceeding is as if remand had not occurred).

SCDC concludes its argument by citing the ALC's remand order to SCDC, which stated, in part, "(I)n addition, the Court of Appeals remanded the issue of (Gatewood's) entitlement to costs, attorney's fees, pre-judgment interest, and

post-judgment interest" (SCDC return, p. 16; App. p. 6). However, this did not completely state what the Court of Appeals' remand had stated: The Court remanded "...the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest **to the ALC for reconsideration** in light of this opinion" (Gatewood v. SCDC, 785 S.E. 2d at 613). Thus, the ALC omission in its remand to SCDC strikes at the heart of the issue presented by SCDC's argument.

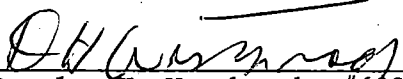
Inmate submits, when the Court of Appeals remanded to the ALC, the ALC was not sitting in its appellate capacity to review SCDC final decisions. Rather, the ALC was sitting in its contested case and appellate capacity to enforce the Court of Appeals' judgment and remand for the ALC to reconsider inmate's entitlement to costs, attorney fees and interest.

C. SCDC contends that none of the considerations governing review in SCACR 242(b) apply (SCDC return, p. 16). Inmate refers the Court to the considerations governing review discussed on page 12 of the petition.

CONCLUSION

For the reasons stated in the petition and this reply, inmate requests the Court to grant the petition for a writ of certiorari.

Respectfully submitted,


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PROOF OF SERVICE

I certify that I served petitioner's Reply to Return to Petition For a Writ of Certiorari on the S.C. Department of Corrections by depositing a copy of it in the U.S. Mail, postage prepaid, on February 5, 2018, addressed to its attorney of record, Lake Summers, Esquire, of Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201. February 5, 2018.


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