

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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AUG 08 2018

Appeal from Administrative Law Court  
Honorable HW Funderburk, Jr., Administrative Law Judge

**S.C. SUPREME COURT**

Case No.: 18-ALJ-04-0050-AP

South Carolina Department of Corrections.....Respondent

v.

Terry Smith 160785 .....Appellant

Motion for Certification to the Jurisdiction of the Supreme Court

**Statement of the Case**

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal filed August 3, 2018, by Terry Smith (“Appellant”), an inmate incarcerated in the South Carolina Department of Corrections (“SCDC”). In the lower court, Appellant appealed SCDC’s Final Agency Response to Appellant’s original grievance of May 26, 2017, and the case was assigned to Judge HW Funderburk, Jr., of the South Carolina Administrative Law Court (“ALC”), on February 23, 2018. Judge HW Funderburk, Jr., issued his Final Order on July 3, 2018. In that Order, HW Funderburk, Jr., reversed and remanded SCDC’s prior Final Agency Response.

**Argument**

The Appellant raised issues in his appeal from the Final Agency Response that the ALC could not properly examine, most notably flagrant violations of the Appellant’s Sixth and Eighth Amendment Constitutional rights committed under color of state law. These violations spring from the government’s usage of SC Code Ann Section 24-13-40 that produce an as-applied violation of the Appellant’s 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment rights under the Constitution of the United States.

Despite the ALC’s contention, relying on *Young v SC Department of Health and Environmental Control*, 383 SC 452, 680 SE 2d 784 (Ct App 2009), that since Appellant did not raise the issue *prior* to initial brief, the issue was not preserved, procedural circumstances make the preservation automatic. See

*Rhames v Federal Bureau of Prisons*, 2002 WL 12680005 at \*5 (SD NY, June 6, 2002): “While it is important that prisoners comply with administrative procedures designed by the Bureau of Prisons, rather than using any they might think sufficient, . . . it is equally important that form not create a snare of forfeiture for a prisoner seeking redress for perceived violations of his constitutional rights.”

SCDC requires grievances to be stated upon a pre-printed form, providing an area of less than three (3) inches space to enunciate the complaint about the Department’s behavior. In a matter as complex as the present matter, such a small presentation cannot possibly satisfy *every* required statement, and thus is exactly the danger perceived by the court in *Rhames*. If the Appellant had made an effort to present a full statement of the matter, according to SCDC policy that statement would have been rejected by SCDC for the simple failure to fit in the allotted space. The courts have widely recognized that this prevents a complete enunciation of complaints, and consequently allows those complaints to be raised when the proper venue is reached.

The purpose of the grievance process is to allow SCDC a chance to correct deficiencies in government action and policy *before proceeding to litigation*. The purpose of appealing a constitutional violation to the Supreme Court of South Carolina is to give that court a chance to correct deficiencies in law *before proceeding to higher courts*. These matters go hand in hand. The ALC recognized that SCDC had performed deficiently in the computation of the Appellant’s sentence, and now this court can recognize that the State violated the Appellant’s constitutional rights in the construction of his sentence—and provide redress.

The South Carolina Court of Appeals should certify this matter to the Supreme Court under Rule 204(b) so that the constitutional question might be properly heard.

#### Conclusion

WHEREFORE, the Appellant respectfully requests that the court certify the present case for review by the Supreme Court before determination by the Court of Appeals. The present case contains matters of significant public interest and legal principles of major importance.

August 2, 2018  
Bishopville, SC

s/ Terry Smith  
Terry Smith 160785 F4B 1207  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

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Proof of Service  
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The undersigned hereby certifies that on August 3, 2018, true and correct copies of the Notice of Appeal and Motion for Certification to the Jurisdiction of the Supreme Court were served by depositing the same in the prison mail system, postage prepaid, to the following addresses:

Dept of General Counsel  
SC Dept of Corrections  
PO Box 21787  
Columbia SC 29221

Clerk's Office  
South Carolina Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia SC 29201

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia SC 29211

August 2, 2018  
Bishopville, SC

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Terry Smith 160785 F4B 1207  
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