

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE S. PHILIP LENSKI

ALC CASE NO 18-ALJ-04-0224-AP
APPELLATE CASE NO 2018-001307

RECEIVED

OCT 01 2018

SC Court of Appeals

SANYIKA ASKARI APPELLANT

V.

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS RESPONDENT,

OPPOSITION TO MOTION TO STRIKE APPELLANT'S
DESIGNATION OF MATTER AND INITIAL BRIEF
ON APPEAL

THIS MATTER IS BEFORE THIS COURT PURSUANT TO THE PROPERLY FILED APPEAL WITH THE HONORABLE CLERK OF COURT AND APPEAL ADMINISTRATIVE LAW JUDGE S. PHILIP LENSKI'S JULY 2, 2018 DISMISSAL ORDER.

ON AUGUST 28, 2018 APPELLANT FILED HIS DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL IN WHICH HE SUBMITTED HIS "INMATE REQUEST TO STAFF MEMBER MAY 4, 2017" IN THE RECORD ON APPEAL. ON THIS DATE OF FILING APPELLANT FILED HIS INITIAL BRIEF IN WHICH HE DOES ARGUE WITHIN HIS BRIEF. INCLUSION OF THIS DOCUMENT IS WELL GROUNDED AND DOES NOT VIOLATE THE SOUTH CAROLINA APPELLATE COURT RULES AS ARGUED BY THE RESPONDENT'S MOTION.

RESPONDENT HAS REQUESTED THAT THIS COURT STRIKE ANY AND ALL REFERENCES TO HIS INMATE REQUEST TO STAFF MEMBER FROM HIS DESIGNATION OF MATTER AND INITIAL BRIEF AND REQUESTS AN ORDER TO DIRECT THE APPELLANT TO FILE ANEW HIS PROPERLY FILED DESIGNATION OF MATTER AND INITIAL BRIEF

CONFORMING TO RESPONDENT'S UNDERSTANDING OF THE SOUTH CAROLINA APPELLATE COURT RULES.

AS CITED ON PAGE 2 OF THE RESPONDENT'S MOTION... THE ADMINISTRATIVE LAW COURT FILINGS IN THIS APPEAL ARE LIMITED TO THE ENTIRE RECORD AS FILED BEFORE THE LOWER COURT. THE APPELLANT'S NOTICE OF APPEAL DOES CONTAIN STEP 1 AND 2 GRIEVANCES, RESPONDENT'S MOTION TO DISMISS, MOTION FOR AN EXTENSION OF TIME, MOTION TO HOLD APPEAL IN ABEYANCE AND THE COURT'S ORDER OF DISMISSAL.

IT IS TRUE JUDGE LENSKI DISMISSED THIS APPEAL WITHOUT ADHERING TO ALC RULE 58. SUCH A RECORD IS REQUIRED BY THE RULE IN THE ALC AND THE RESPONDENT RECOGNIZES THAT THE ALC'S PREMATURE DISMISSAL DID NOT AFFORD THE APPELLANT AN OPPORTUNITY OF DUE PROCESS OF THE REQUIRED STANDARD OF ALC RULE 58.

ALC RULE 58. RECORD AFTER FINAL DECISION

- A. ALL DOCUMENTS FILED
- B. ALL EVIDENCE RECEIVED OR CONSIDERED, INCLUDING ALL COPIES OF ALL RELEVANT SENTENCING SHEETS IN SENTENCE CALCULATION MATTERS, AND COPIES OF SPECIFIC POLICIES RELIED UPON BY THE AGENCY;
- C. A STATEMENT OF MATTERS JUDICIALLY NOTICED
- D. ALL PROFFERS OF PROOF OF EXCLUDED EVIDENCE;
- E. THE FINAL ORDER OR DECISION WHICH IS SUBJECT TO ADMINISTRATIVE REVIEW.
- F. A TRANSCRIPT TAKEN OF THE TESTIMONY DURING THE PROCEEDING.

STATUTORILY THIS ALC RULE IS FURTHERMORE GOVERNED BY S.C. CODE ANN § 1-23-330 (2005)

ALL THE FACTS ARE CONCLUSIVE YET ORGANIZED BY THE RESPONDENT TO DENY THE APPELLANT'S ADHERENCE TO THE RULES AND POLICY OF WHICH THE RESPONDENT CREATED.

THE GRIEVANCE PROCESS WITHIN THE DEPARTMENT OF CORRECTIONS IS THE ONLY AVENUE BY WHICH AN INMATE CAN RECEIVE JUDICIAL REVIEW OF AN ADMINISTRATIVE DECISION BY AN AGENCY. SUCH PROCESS CONFORMS TO THE INMATE'S RIGHT OF DUE PROCESS. SEE AL-SHABAZZ V. STATE 338 S.C. 354, 527 S.E. 2d 742 (2000) AND TANT V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 408 S.C. 334, 759 S.E. 2d 398 (2014).

HERE WITHIN THE DEPARTMENT OF CORRECTIONS THE RESPONDENT SUBTLELY OMITTS ONE CRUCIAL FACT ABOUT THE RULES GOVERNED BY THE RESPONDENT'S POLICY.

HERE, WITHIN THE RESPONDENT'S MOTION TO STRIKE THE RESPONDENT DOES NOT CITE THE OBVIOUS POLICY RULE FOUND IN S.C.D.C. POLICY; GA-01.12 INMATE GRIEVANCE SYSTEM SECTION 13 AT 13.2 WHICH SAYS... INMATES MUST MAKE AN EFFORT TO INFORMALLY RESOLVE A GRIEVANCE BY SUBMITTING A 'REQUEST TO STAFF MEMBER' FORM TO THE APPROPRIATE SUPERVISOR / STAFF.

SEE S.C.D.C. POLICY ON <https://sword.doc.state.sc.us/policysearch/html/GA-01-12.htm>.

IN APPELLANT'S AUGUST 28, 2018 DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, APPELLANT HAS INCLUDED ALL DOCUMENTATION AS REQUIRED BY ALC RULE 58, AND HIS INMATE REQUEST TO STAFF MEMBER DATED MAY 4, 2017 IS A PART OF HIS APPEAL THAT HE INTENDS TO PROVIDE FOR THIS COURT TO DETERMINE. THE SAME DOCUMENT HE INTENDED FOR THE ALC JUDGE TO DETERMINE AS WELL.

WITHOUT ALC JUDGE LENSKI'S ADHERENCE TO ALC RULE 58, THE RESPONDENT SEEKS TO PERVERT THE APPELLATE COURT PROCESS ALTOGETHER.

THE RESPONDENT ATTEMPTS TO CITE SOUTH CAROLINA APPELLATE COURT RULES 209 (B) , 210 (C) AND 208 (B) (4) IN AN ATTEMPT TO DECIEVE THIS COURT ABOUT THE TRUTH SURROUNDING THIS APPEAL.

IT IS TRUE ... THE APPELLANT CITES HIS REQUEST TO STAFF MEMBER FORM ON SEVERAL OCCASIONS IN HIS BRIEF BECAUSE WITHOUT A REQUEST TO STAFF MEMBER THEN THERE WOULD BE NO GRIEVANCE.

WHAT SHALL WE SAY THEN ? THE RESPONDENT WOULD MOTION TO STRIKE THIS APPEAL BECAUSE NO GRIEVANCE STEP 1 OR 2 WAS BEFORE THE ALC ?

WHAT SHALL WE SAY THEN ? FAULT THE APPELLANT FOR COMPLIANCE OF S.C.D.C. GRIEVANCE POLICY GA-01.12 INMATE GRIEVANCE SYSTEM AND DENY HIS COMPLIANCE BECAUSE ALC JUDGE LEWSKI DISMISSED THE APPEAL BEFORE IT WAS DUE ?

THE APPELLANT WILL CONTEND AND RAISE THAT HE DOES HAVE A STATUTORY CONSTITUTIONAL RIGHT PURSUANT TO S.C. CODE ANN § 1-23-330 ACCORDINGLY IN SECTION (2) DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM OF COPIES OR EXCERPTS , IF THE ORIGINAL IS NOT READILY AVAILABLE. UPON REQUEST PARTIES SHALL BE GIVEN AN OPPORTUNITY TO COMPARE THE COPY TO THE ORIGINAL SECTION (4) NOTICE MAY BE TAKEN OF JUDICIAULY OF COGNIZABLE FACTS.... STATUTE IN PART.

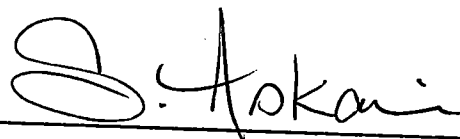
THE STATUTE IS BROAD AND DIRECTS THE ALC JUDGE TO DETERMINE ANY EVIDENCE WITHIN THE RECORD THAT IS CONTESTED IN CONTESTED CASES. BECAUSE THE ALC DISMISSED THE APPEAL IN THIS CASE , THIS DOES NOT OPERATE TO CIRCUMVENT THE

STATUTORY LAW. THE RESPONDENT DID NOT CONTEST THE INMATE REQUEST TO STAFF DOCUMENT IN THEIR MOTION TO DISMISS. WITHOUT AN INMATE FOLLOWING SUCH A PROCESS THEN A GRIEVANCE WILL NOT SUFFICE.

THE APPELLANT DOES BELIEVE THAT HE HAS A STATUTORY RIGHT TO BE AFFORDED TO HIM CF. SEE BRANNON V. STATE 345 S.C. 437, 548 S.E. 2d 866 (2001).

FINALLY, APPELLANT CONTENTS THAT THIS COURT SHOULD DENY THE RESPONDENT'S MOTION AND ACCEPT THE DOCUMENT THAT RESPONDENT COMPLAINS ABOUT WITH IT IN MIND THAT THE ALC JUDGE DISMISSED THIS APPEAL BEFORE IT WAS DUE.

THIS THE APPELLANT FOREVER PRAYS.



SANYIKA ASKARI #230679
AUCENDALE C.I., F2B-43
1057 REVOLUTIONARY TRAIL
FAIRFAX, S.C. 29827-1151

SEPT. 27, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE S. PHILLIP LENSKI

ALC CASE NO. 18-ALJ-04-0224-AP
APPELLATE CASE NO. 2018-001307

SANYIKA ASKARI, #236679 APPELLANT
V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RESPONDENT,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I RECEIVED THE RESPONDENT'S MOTION TO STRIKE FROM THE A.C.I. MAILROOM ON SEPT. 20, 2018, AND THAT ON TODAY'S DATE I SERVED A COPY OF THE FOREGOING OPPOSITION TO MOTION TO STRIKE APPELLANT'S DESIGNATION OF MATTER AND INITIAL BRIEF ON APPEAL TO RESPONDENTS BY DEPOSITING A COPY OF SAME IN U.S. MAIL, POSTAGE PREPAID ADDRESSED AS FOLLOWS:

- 1) ANNIE RUMBER, STAFF ATTORNEY, OFFICE OF GENERAL COUNSEL, 4444 BROAD RIVER ROAD, COLUMBIA, S.C. 29211-1787
- 2) E. HARVIN BELSER FAIR, CLERK, SOUTH CAROLINA ADMIN. LAW COURT, 1205 PENDLETON ST., STE 224, COLUMBIA, S.C. 29201

SEPT. 27, 2018

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S. Askari

SANYIKA ASKARI #236679
ALLENDALE C.I., F2B-43
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THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF THE SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, S.C. 29211

RE: SANYIKA ASKARI V. SOUTH CAROLINA DEPT. OF CORR.
CASE NO 2018-001307

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DEAR MRS. ABBOTT KITCHINGS

I AM ENCLOSING THE ORIGINAL AND ONE COPY OF THE **OPPOSITION** TO MOTION TO STRIKE APPELLANT'S DESIGNATION OF MATTER AND INITIAL BRIEF ON APPEAL IN THE ABOVE CASE FOR FILING. PLEASE FILE THE ENCLOSED AND RETURN CLOCK-STAMPED COPY TO ME IN THE ENCLOSED SELF-ADDRESSED ENVELOPE.

WITH BEST WISHES, I REMAIN

VERY TRULY YOURS,

S. Askari

SANYIKA ASKARI #236679
ALLENDALE CI., F2B-43
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CC: RESPONDENTS
ADMIN. LAW COURT

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SEP 25 2018

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