

State of South Carolina

In the Supreme Court

Appeal from Richland County

Court of Common Pleas

D. Craig Brown Circuit Court Judge

Case No: 2018-000866

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OCT 30 2018

S.C. SUPREME COURT

Tyrone Perry ----- Appellant

vs

South Carolina Dept. of Corrections ----- Respondent

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OCT 29 2018

SC Court of Appeals

Petition for Writ of Certiorari

Office of General Counsel  
Stephen H. Lunsford  
4444 Broad River Rd  
Attorney for Respondent

s/ Tyrone Perry 307793  
Tyrone Perry 307793  
430 Oaklawn Rd Q2A-121  
Pelzer S.C. 29669

## Questions for Review

- 1) Whether the trial court violated Article 1 section 3 of the South Carolina Constitution
- 2) Whether the trial court violated Article 1 section 22 of the South Carolina Constitution
- 3) Whether the trial court erroneously applied *Al-Shabazz vs. State* 527 SE2d 742 (2000)
- 4) Whether the Court of Appeals decision is in prior conflict of Rule 240(d) and *Hudson vs. Hudson*
- 5) Whether the Appellant's substantial rights to Due process to the Constitution are violated.

## Statement of the Case

On 12-22-14 Sgt Cooper and Sgt Blackburn shook the Appellant's room down. Under SCDC policy O.P. 22.19 section 7.1 Search of Inmates I have a right to be present to observe the search. There was a reckless disregard for this and I was made to stand out of sight and as a direct result my personal property went missing. I initiated a step 1 grievance on Feb 3, 2015 and did not receive a final decision until Feb. 12, 2016. SCDC policy GA 01-12 states that grievances are to be completed from beginning to end in 171 days section 11. Then on 12-31-14 Lt Palmer took my personal property and alleged it was altered but gave no in depth of how a pair of shorts were altered. I filed a step 1 grievance on Feb 2, 2015 and received a final decision on Feb 12, 2016. So on November 5, 2015 I filed a South Carolina Tort Claim under 15-78-10. A hearing was held on June 9, 2016 in Richland County. On June 14, 2016 this case was dismissed by Circuit Court Judge D. Craig Brown who stated the Administrative Law Court is the proper avenue. The Appellant filed a 59(e) motion on June 22, 2016 and it took the Circuit Court Judge one year and ten months to rule on this motion. The Appellant also filed a Petition for Rehearing, a second 59(e), and a 59(b) motion on April 24, 2018. which were ignored and not scheduled by the Circuit Court. Prior to this on August 10, 2016 the Appellant appealed the decision of the circuit court to the Court of Appeals case # 2016-001606. Due to the pending post trial motion this appeal was dismissed without prejudice until the ruling on the 59(e) motion. The Circuit Court Judge D. Craig Brown took so long on January 12, 2017 the Court of Appeals sent the remitter down without the circuit court never ruling on the 59(e) motion. This is a Hudson-us-Hudson violation as a matter of law time is to be stayed until a ruling on the post trial motion. So the case was relabeled 2018-000866. I'm indigent so this petition follows.

## Argument 1

Article 1 section 3 of the South Carolina Constitution states: privileges and immunities of the citizens of this state of the United States under the Constitution shall not be abridged nor shall any person be deprived of life, liberty, or Property without due process of law nor shall any person be denied equal protection of the laws. In the Appellant's current case SCDC failed to abide by its own policy and procedures and stay within its timeframe guidelines. The respondents claim that Appellant is required to exhaust administrative remedies. And the circuit court states: the Appellant is requesting the circuit court to over turn SCDC's final decision in the form of a step 2 grievance. Also that the Appellant did not appeal that final agency decision to the Administrative Law Court which is the proper avenue. The circuit court erroneously applied the facts and constitution of and in this case. The Appellant filed step 1 grievances on Feb 2<sup>nd</sup> and 3<sup>rd</sup> of 2015. So per SCDC's own regulations a final decision was to be rendered about or around August 2015. The Appellant filed under the South Carolina Tort Claim Act because SCDC was in default. The issue at hand was whether the respondents acted in a grossly negligent manner in a duty or responsibility owed to the Appellant. Further there's nothing in the tort claim act that requires the Appellant to avail himself of administrative remedies prior to the filing of suit under the act. Had legislative intended such practice it would have put such language in the act. Moreover exhaustion of administrative remedies isn't required when it's clear it would be futile Ward-vs-state 538 SE2d 254 (2000) Appellant filed two grievances with respondent concerning the loss of his property. The respondents denied his claim and refused to replace or recompensate the Appellate for his loss.

## Argument 2

Article 1 Section 22 no person shall be finally bound by a judicial or quasi judicial decision of administrative agency affecting private rights except on due notice and an opportunity to be heard; no shall he be subjected to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a made of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review by the South Carolina Constitution. SCDC gave itself regulations that bound itself to respond to administrative resolution 171 days pursuant to SCDC policy GA 01.12 section 11. Anything over this time frame is estopping the Appellant from judicial review one that the South Carolina Constitution guarantees. Being that I executed the South Carolina Tort Claim Act the judge's only duty was to see if the facts and evidence presented was enough to proceed to jury trial in which I requested. The Circuit Court Judge's order was clearly erroneous and misplaced, so I filed a 59(e) to have all issues as matter of law and fact adjudicated on. It took the circuit court judge one year and ten months to rule. I am a mental health layman but I do not use that as a crutch. Under title 44-22-30 any person involuntarily committed in the mental hospital for mental illness and chemical dependency is entitled to a lawyer. I was involuntarily hospitalized so with my understanding and no help from a lawyer the Circuit Court judge denied me an adequate chance at judicial review. I filed a Petition for Rehearing, a second 59(e), and a 59(b) motion properly all in which I NEVER heard anything on. So this is a direct violation of my constitutional rights.

### Argument 3

The Circuit Court Judge stated under 12(b)(1) that the Al-Shabazz held that an inmate may seek review of the Department's final decision in an administrative matter under the APA. In Al-Shabazz the Supreme Court stated [C]ourts traditionally have adopted a hands off doctrine regarding judicial involvement in Prison Disciplinary Procedures and other internal matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions. SCDC went in default when they failed to comply with their own timelines per their policies which precluded me from my personal property in which I have a constitutional right to. However nothing in Shabazz mandates the exhaustion of administrative remedies prior to filing under South Carolina Tort Claim Act. The Circuit Court Judge erroneously applied Al-Shabazz therefore intruding the Appellant's rights to due process, and the right to be fully heard. So the circuit Court judge's order is misplaced. And the taking of my property was not due to prison disciplinary.

## Argument 4

In the cases Hudson-vs Hudson if a post trial motion is pending and you file a notice of intent time is to be stayed until the Circuit Court Judge rules on the motion. For some reason unknown to the Appellant the Circuit Court Judge took one year and ten months to rule. During the time of the Appellant patiently waiting on properly filed motions the Court of Appeals initially dismissed my case without prejudice. Case # 2016-001606 so as I patiently wait on the circuit court judge on January 12, 2017 the remittur was sent to the lower courts. Pursuant to Hudson-vs-Hudson and Otten-vs-otten time is to be stayed until a ruling is made. The Appellant feels as a matter of fact and law this should've been a factor considered in determining in letting the Appellant advance in the Court of Appeals under Rule 240 (d). I feel the circuit court judge's actions warranted extraordinary circumstances then a hearing wasn't granted on the motions nor was the Appellant allowed to brief the Court of Appeals only in the Petition for Rehearing. Although the Court of Appeals used Martin-vs-state to apply and thwart the Appellant from receiving judicial review from an arbitrary and erroneous decision I feel Martin was misplaced due to the actions of the circuit court judge.

## Argument 5

The Constitution of the United States and South Carolina both state the Appellant has a due process right to judicial review of erroneous or arbitrary decisions made by Circuit Court Judges. Even though im a mental health layman who was involuntary committed in the mental hospital during this litigation and statute 44-22-30 was violated I met every tight deadline. I in good faith at all times acted in trying to resolve this issue with my low understanding and the respondent has and continues to act un reasonable and give fake facts and false conclusions of law to mis lead the Judge in aspects to Al-Shabazz. The Constitution guarantees fundamental fairness to Property interests and my property has been taken and gone for nearly four years now and steady I fight for the rights the Constitution gave me. Article 1 Section 23 of the S.C. Constitution states Provisions of the constitution are mandatory. I just pray the Supreme Court of S.C. considers this petition and give me the rights the constitution gave to me

Wherefore the foregoing reasons the Appellant prays the Supreme Court remand to the Circuit Court for a Jury trial.

This 23<sup>rd</sup> day of October 2018

Sx Tyrone Perry 307743  
430 Oaklawn Rd Q2A-121  
Pelzer S.C. 29669

state of South Carolina

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Proof of Service

I certify that I have served this Petition for Writ of Certiorari by depositing a copy of it in the U.S. mail postage prepaid to the following:

S.C. Court of Appeals

Jenny Abbott Kitchings, Clerk

P.O. Box 11629

Columbia S.C. 29211

S.C. Supreme Court

Daniel E Shearouse

P.O. Box 11330

Columbia S.C. 29201

Office of General Counsel

Stephen H. Lunsford

4444 Broad River Rd

Columbia S.C. 29221

This 23<sup>rd</sup> day of October 2018

s/ Tyrone Perry 307793  
430 Oaklaw Rd Q2A-121  
Pelzer S.C. 29669

Tyrone Perry # 307793  
Perry Correctional Institute  
430 Oaklawn Rd Q2A-121  
Pelzer S.C. 29669

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South Carolina Supreme Court  
Daniel E Shearouse, Clerk  
P.O. Box 11330  
Columbia S.C 29201

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