

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

ALC Case No. 18-ALT-04-0016-AP

Appellate Case No. 2018-001555

Frank Mitchell Gaster, #153004 Appellant,

V.

South Carolina Department of Corrections Respondent.

BRIEF

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SC Court of Appeals

Frank M. Gaster appeals the decision of the Honorable
S. Phillip Lenski dated May 22, 2018.

November 18, 2018

Annie Laurie Rumber
4444 B.R.R.
Columbia SC 29221
Attorney for Respondents

Frank M. Gaster
Frank M. Gaster, 153004
EVANS CI
610 Hwy 9 West
Bennettsville SC 29512

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2. Because the court could have applied the various Constitutional Amendments to decide whether Appellants' rights were violated, it should be remanded for reconsideration. 2

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STATEMENT OF ISSUES ON APPEAL

1. Did the ALC Judge err when he failed to rule that Appellant had a state-created liberty interest in his custody status?
2. Did the ALC Judge err when he failed to consider if Appellant's constitutional rights were violated by the application of SCDC Policy OP 21.04, which excludes a certain class of inmates from MII custody status?

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STATEMENT OF THE CASE

On April 27, 2017 Appellant, Gaster, was admitted and classified at the Kirkland R&E Center as MII2, then shipped [75 days later] to Evans CI, a medium security prison. Normally, inmates with non-violent crimes are classified MII1 status, which makes them eligible for less restrictive prisons and work release. The reason given was that a prior sex conviction was being used to exclude MII1 status. SCDC Policy OP 21.04 Inmate Classification (dated 3-30-2015) states: "No sex offenses, no current, prior, or pled sex offense convictions or commitments . . . no prior sex arrest, dismissed/ not processed within past (10) years." The grievance/ appeal process has now come to the South Carolina Court of Appeals to rule on the Administrative Law Court's Order of Dismissal dated November 7, 2018.

FACTS

Regardless of the pretext legalease response from higher-level prison officials and their lawyers, the real reason for Gaster's classification is revealed by the lower-level staff who entered the data into SCDC's computer system. On grievance form Step 2 dated 12-7-17, it states "... Your classification of security level is based on the number and type of prior commitments that you have ..." and on the SCWC KIOSK #17-660058 dated 8-31-17, it states "... Your sex registry doesn't have a statute of limitations since ..." They are referring to S.C. Code 23-3-400 Sex Registry, and SCDC Policy OP 21.04.

ARGUMENTS

This appeal of the May 22, 2018 Order of Dismissal from the Administrative Law Court, Judge S. Phillip Lenski, is based solely on his interpretation of a "state-created liberty interest" as applied to the appellant, Gaster, citing Slezak and Skipper to be the controlling cases. The language used to define "state-created liberty interest" is repeated in many S.C. cases and as to which one is controlling, we can only guess, but the meaning is clear to those inmates who have been affected by custody status. The controlling sentence is as follows: "The court's appellate jurisdiction in inmate appeals is limited to cases involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status..." The appellant asserts prison officials erroneously calculated his custody status [M12], thus establishing a "state-created liberty interest." see McNeil v SCDC 02 ALJ 00336 AP (2001). [emphasis added]

The other factor prison officials may have erroneously applied to Appellant's custody status is, changing his classification from nonviolent [16-1-70] to violent [16-1-60]. Appellant's 1988 crime was classified as violent, but his current [2017] crime is classified as nonviolent. This discrepancy can be observed in the Respondents' Records Package, which they submitted to the ALC in a letter dated March 28, 2018. Within their "Records Package" is a paper titled SCDC Offender Management System Conviction Summary; it states, "SCDC classification . . . violent." However, in the same package on the sentencing sheet, the sentencing Judge checked nonviolent.

Should this court decide that the Appellant does not have a state-created liberty interest, Appellant would ask this Court to consider any other reason(s) to issue an opinion in this matter, including of course, violations of any of the meretricious Amendments to the United States Constitution — 4th, 5th, 14th, art. I, § 10, cl. 1. 3.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

November 18, 2018

Annie Lauri Runler
4444 A.A.R.
Columbia SC 29221
Attorney for Respondents

Respectfully submitted,
Frank M. Gaster
Frank M. Gaster, 153004
Evans CI
610 Hwy 9 West
Bennettsville SC 29512

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PROOF OF SERVICE

I, Frank M. Gaster, #153004, hereby certify that a copy of the foregoing Brief and Designation of Matter was mailed to the Respondents.

November, 2018

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Annie Laurie Rumber
4444 B.R.R.
Columbia SC 29221
Attorney for Respondent

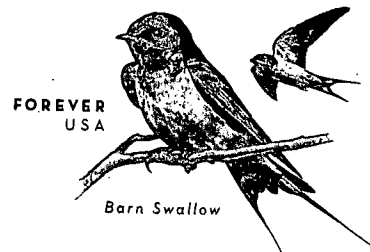
Frank M. Gaster
Frank M. Gaster, 153004
Evans CI
610 Hwy 8 West
Bennettsville SC 29512

Frank M. Gaster, 183004
Evans CI
210 Hwy 9 west
Bennettsville SC 29512

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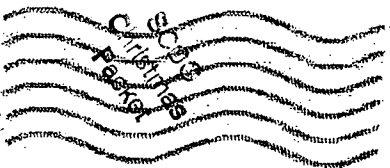
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P.O. Box 11629
Columbia SC 29211

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