

RECEIVED

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

NOV 05 2018

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

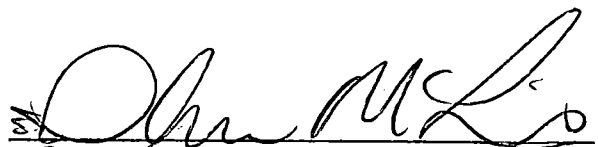
Appellate Case No. 2018-001896  
Docket No. 18-ALJ-04-0211-AP  
[Grievance No. ECI 0118-18]

Shawndell Monte McFarlin, # 200701  
Appellant

v.

South Carolina Department of Corrections (z)  
Respondent

[INITIAL] BRIEF OF APPELLANT

  
Shawndell Monte McFarlin  
SCDC Number 200701  
610 Hwy #9, West  
Bennettsville, S.C. 29512

Dept. of General Counsel  
S.C. Dept. of Corrections  
PO Box 21787  
Columbia, S.C. 29221

## TABLE OF CONTENTS

Table of Authorities .....	2
Statement of Issues on Appeal .....	3
Statement of the Case .....	4
Facts .....	6
Argument .....	8
The ALC abused its discretion in failing to intercede when minimal due process protections for a state-created interest was denied to Appellant under SCDC Policy GA-01.12.....	8
Conclusion .....	10

# TABLE OF AUTHORITIES

## CASES

<u>McFarlin v. S.C. Dep't of Corrections,</u> Docket No. 17-ALS-04-0572-AP Appellate Case No. 2018-001741 .....	9
<u>Skipper v. S.C. Dep't of Corr.,</u> 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) .....	9
<u>Slezak v. S.C. Dep't of Corr.,</u> 361 S.C. 327, 605 S.E.2d 506 (2004) .....	8
<u>Torrence and Ward v. S.C. Dep't of Corr.,</u> Opinion No. 26328 Heard March 6, 2007 - Filed May 7, 2007 .....	8,9

## STATUTES

S.C. Code Ann. § 24 - 3 - 430 .....	7
S.C. Code Ann. § 24 - 3 - 315 .....	7
S.C. Code Ann. § 24 - 3 - 40 .....	7

## OTHER AUTHORITIES

SCDC Policy GA-01.12 .....	4,5,7,10
Title 18 U.S.C. § 1761 .....	7

## STATEMENT OF ISSUES ON APPEAL

Did the ALC abuse its discretion in failing to intercede when minimal due process protection for a state-created interest was denied to Appellant?

## STATEMENT OF THE CASE

On February 23, 2018, Appellant submitted a Step 1 Grievance arguing that SCDC Policy GA-01.12 was unconstitutional, in relation to the Prison Industry program at Evans, "when it stipulates that institutional job assignments are non-grievable issues except where there may be extenuating medical circumstances involved." He argues that he was deprived of a state-created right without due process because of this policy. He contends that the policy should be repealed or modified, and that he be awarded back pay, and have his employment reinstated.

In denying Appellant's Step 1 Grievance, the Warden noted that SCDC Policy GA-01.12 "has not been declared unconstitutional by any judicial authority" and that "inmates are not entitled to any job assignment or custody classification."

On March 11, 2018, Appellant submitted a Step 2 Grievance reiterating the arguments from his Step 1 Grievance, maintaining that he was "unlawfully and wrongfully terminated"

from his prison industry job, in which he had a state-created interest, without due process of law because SCDC Policy GA-01.12 unconstitutionally makes institutional job assignments [in relation to Prison Industries] non-grievable issues.

On April 23, 2018, the Responsible Official denied Appellant's Step 2 Grievance, noting that standards and criteria are used in selecting inmates for prison industry labor to maintain the private sector's product quality and safety standards, and that "it has been determined that self-imposed behavior may have contributed to [Appellant's] eligibility to participate in the productive duty assignment."

On May 3, 2018, Appellant filed a Notice of Appeal in the ALC, reiterating his argument from his Step 2 Grievance but also adding law relating to the effects of comparative negligence. On May 29, 2018, Appellant filed a brief. On July 27, 2018, the Department filed the Record on Appeal. On August 6, 2018, Appellant filed a second brief. On September 5, 2018, the Department filed a Motion to Dismiss. On October 10, 2018, the ALC filed an Order of Dismissal. And on October 16, 2018, the Appellant filed his Notice of Appeal on all parties.

## FACTS

On September 21, 2016, Appellant was terminated from his Prison Industry job for being honest with his supervisor, Appellant did not start the conversation. The conversation was subsequently wrongfully converted into the Appellant was under the influence at work, which was not true. The termination was pretext under "Poor Quality Parts"; and was actually a camouflaged retaliatory discharge for a discrimination claim the Appellant submitted against his supervisor in 2015.

The Appellant has never been under the influence at work; never been late for work, unexcused; never been absent from work, unexcused; had no rejects in over 10 years; worked above standard and over production; worked through all breaks, except lunch; volunteered to assist others; followed instructions, unless by doing so fulfill the supervisor's constructive discharge theory; have been disciplinary-free for over 15 years; had overall good work habits; was given a certificate of reward for satisfactory

completion of an on-the-job training course the same month he was terminated; Appellant desperately attempted mitigation and afforded Respondent last clear chance to rectify the situation.

Appellant argues that he was unlawfully and wrongfully terminated from his Prison Industry job maliciously; founded on conspiracy, defamation, and negligent supervision but SCDC Policy GA-01.12 makes institutional job assignments [specifically in relation to Prison Industries] non-grievable issues. So Appellant was not allowed to use the DOC's internal grievance procedure, and had no recourse. Thereby, deprived of his state-created right to earn prevailing wage pursuant to Title 18 U.S.C. § 1761; S.C. Code Ann. §§ 24-3-430, 24-3-315, and 24-3-40; without due process of law protection. The Appellant's complaint is a compelled policy grievance.

## ARGUMENT

The ALC abused its discretion in failing to intercede when minimal due process protections for a state-created interest was denied to Appellant under SCDC Policy GA-01.12.

" [T]he ALC must provide minimal due process protection for state-created interest," accord *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004), cert. denied, 544 U.S. 1033, 125 S.Ct. 2266, 161 L.E. 2d 1060 (2005).

South Carolina Supreme Court held in *Torrence and Ward v. S.C. Dep't of Corr.*, Opinion No. 26328 Heard March 6, 2007 - Filed May 7, 2007 that "inmates participating in the Prison Industries Wire Harness Assembly Facility" [at Evans] "did have state-created interest in participating in that program because the program is federally certified and operates under various state statutes."

The Court described "minimal due

process for state-created interest "mentioned in *Slezak, supra*, as "inmates not having a private right of action; instead, the DOC's internal grievance procedure, with recourse to the Administrative Law Court, is the appropriate way to adjudicate claim(s)."

The ALC acknowledged the Appellant's state-created interest in *McFarlin v. S.C. Dep't of Corr.*, Docket No. 17-ALS-04-0572-AP, Appellate Case No. 2018-001741. But still abused its discretion, in that case, for 1. applying the separation of powers doctrine; and, in 2. failing to forward the Appellant's Notice of Appeal to the appropriate reviewing authority pursuant to ALC, Rule 66.

Now the ALC found that the Appellant's "participation in the Prison Industries program is not a right, but a privilege," and "dismissal of the Appellant's appeal appropriate because his grievance did not implicate a state-created liberty interest" according *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006); demonstrating another

case applying separation of powers. Respondent argues that "it has been determined that self-imposed behavior may have contributed to [Appellant's] eligibility to participate in the productive duty assignment."

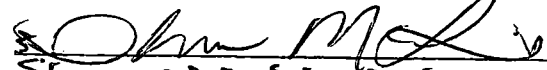
But "even egregious conduct will not be recognized by the law and subject to censure where it causes no injury and consequent damage." Accord S.C. Damages by Richardson and Halfiwanger, page 2.

The ALC abused its discretion in failing to intercede when minimal due process protections for a state-created interest was denied to Appellant under SCDC Policy GA-01.12.

## CONCLUSION

SCDC Policy GA-01.12 should be repealed or modified [in relation to the Prison Industries program, at Evans I]; the Appellant awarded back pay and have his job reinstated.

October 31, 2018

  
Shawndell Monte McFarlin  
SCDC Number 200701  
610 Hwy. # 9, West  
Bennettsville, S.C. 29512

RECEIVED

THE STATE OF SOUTH CAROLINA NOV 05 2018  
IN THE COURT OF APPEALS SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-001896

Docket No. 18-ALS-04-0211-AP  
[Grievance No. ECI 0118-18 I]

Shawndell Monte McFarlin, # 200701,  
Appellant,

v.

South Carolina Department of Corrections (2),  
Respondent.

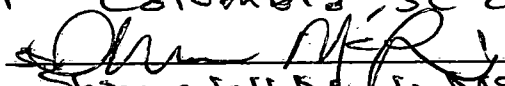
## PROOF OF SERVICE

I certify that I have served the Notice of Appeal, Proof of Service, and the Initial Brief of Appellant on Jenny Abbott Kitchings, Clerk, and South Carolina Dept. of Corrections (2), by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2018, addressed to their attorney of record.

S.C. Court of Appeals  
Jenny Abbott Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211

Dept. of General Counsel  
S.C. Dept. of Corrections  
PO Box 21787  
Columbia, SC 29221

November 1, 2018

  
Shawndell Monte McFarlin  
SCOC Number 200701  
610 Hwy. # 9, West  
Bennettsville, SC 29512

Shawndell Monte McFarlin  
SCDC Number 200701  
610 Hwy. #9, West  
Bennettsville, SC 29512

S.C. Court of Appeals  
Jenny Abbott Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211

RE: Shawndell McFarlin v. SCDC  
Appellate Case No. 2018-001741

Shawndell McFarlin v. SCDC (2)  
Appellate Case No. 2018-001896

**RECEIVED**

NOV 05 2018

SC Court of Appeals

Dear Honorable Clerk :

Enclosed please find :

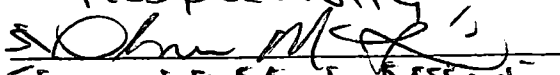
1. The clean, clear copy of the Order in Appellate Case No. 2018-001741 requested by the Honorable V. Claire Allen, Deputy Clerk.

X X X X X

Enclosed please also find :

2. The Initial Brief of Appellant with Proof of Service, and the Designation of Matter to be Included in the Record on Appeal with Proof of Service in Appellate Case No. 2018-001896.

November 1, 2018.

Respectfully,  
  
Shawndell Monte McFarlin  
SCDC Number 200701

UNITED STATES POSTAGE  
PITNEY BOWERS  
02 1P \$001.8  
0000880240 NOV 02 2  
MAILED FROM ZIP CODE 29

No 200201  
AW 59 West  
Avenue, SC 29512

**RECEIVED**  
NOV 05 2018  
SC Court of Appeals

LEGAL  
MAIL

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
Post Office Box 11629  
Columbia, South Carolina 29