

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Alonzo Jeter, III,)
)
Appellant,)
)
v.)
)
South Carolina Department)
Of Social Services,)
)
Respondent.)
)

MOTION TO DISMISS
Appellate Case No. 2019 - 001835
(Appeal from the Administrative Law Court)

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JAN 06 2020

SC Court of Appeals

TO: Alonzo Jeter, III and the South Carolina Court of Appeals

YOU WILL PLEASE TAKE NOTICE that the Respondent, South Carolina Department of Social Services, by and through its undersigned counsel, opposes the Petitioner's appeal to the South Carolina Court of Appeals and moves to have the case dismissed with prejudice on the following ground:

Failure to State a Claim for Which Relief Can be Granted

1. The Administrative Law Court found that "the Appellant did not appeal the Department's (SCDSS) determination or request a hearing until August 13, 2018, **over four years** [emphasis mine] after receiving the Overpayment Demand Letter. S.C. Code Ann. Regs. 114-180 (C)(1)(a) mandates that "requests for hearing must be filed with the caseworker or OAH ... within ninety (90) days of notice of the adverse action for Food Stamps."
 - a. Appellant has not offered any evidence that he appealed or requested a hearing within the 90 days or that he appealed or requested a hearing any earlier than 2018. **By his own admission in his Initial Brief, page 2**, he writes, "In 2018, Appellant became aware that the denial did not apply to him because he did not have a felony drug offense, but rather his drug offense was a misdemeanor offense." (this fact was disputed by appellant, but later admitted in his initial brief).
 - b. Thus the Administrative Law Court did not err in affirming the decision of the Department which deemed Appellant's request for a fair hearing as untimely.
2. The Administrative Law Court found this: "In accordance with 21 U.S.C § 862(a)(2) individuals who were convicted of a drug related felony after August 22, 1996 are ineligible to receive SNAP benefits. On October 12, 2004, the Appellant pled guilty to Possession of Crack-First in violation of S.C. Code § 44-53-375(A), which at the time of the Appellant's conviction was a felony."
 - a. **Appellant admits this in his Initial Brief, page 11**, he writes: "Appellant pled guilty on October 12, 2004, to the crime of possession of Crack 1st Offense, in

- violation of S.C. Code Ann. §44-53-375 (A). At the time of Appellant's conviction in October 2004, this crime in which, Appellant pled guilty was classified as a felony offense." [see page 11 of Appellant's Initial Brief]
- b. Appellant has offered no evidence that any changes in the classification of criminal charges had a retroactive effect in South Carolina on his guilty plea and conviction and that his conviction is not considered a felony as a matter of law.
 - c. Thus the Administrative Law Court did not err in affirming the decision of the Department which deemed Appellant ineligible to receive SNAP food stamp benefits.
3. The Administrative Law Court found these facts: "In 2001, the Appellant applied for and started to receive SNAP benefits from November 2011 through March 2013. In 2013, the Department became aware of the Appellant's ineligibility to receive SNAP benefits due to his felony drug conviction. The Department terminated his benefits, and on December 11, 2013, made a demand for repayment.
- a. Appellant argues that it was not "client error," but "agency error" that caused the agency to grant him benefits in the first place and since it was "agency error," he should not have to pay back the ineligible benefits. [see Appellant's Initial Brief, page 18].
 - b. Appellant states that "Client error is "where the client withheld information because of misunderstanding or incapacity." [see Appellant's Initial Brief, page 18]. This is exactly what happened. Appellant withheld the information that he had a felony conviction when he applied for SNAP benefits. By his own admission, it was a felony conviction at the time he pled guilty (see page 11 of Appellant's Initial Brief).
 - c. Appellant states that he was not aware until 2018 that the felony crime for which he pled guilty in 2004 had been later been made a misdemeanor in 2005 (after his conviction). Therefore he was obviously aware that he pled to a felony and erroneously said he did not have a felony conviction on his SNAP application back in 2011.
 - d. Thus the Administrative Law Court did not err in affirming the decision of the Department which place debt upon Appellant for past amount of SNAP benefit received.
4. Per the ALC final order, "On September 3, 2019, the Department filed motions to amend the ROA, to file brief late, and the Respondent's brief."
- a. Per the ALC final order, "On September 16, 2019, the Appellant filed a response to the "Department's motions requesting the court deny the Department's motion and dismiss the appeal with an adverse ruling against the Department and in the Appellant's favor."
 - b. The Administrative Law Court did not file its final order until September 20, 2019.
 - c. Obviously the Appellant had an opportunity to file a reply brief with his motions that he filed on September 16, 2019.
 - d. Thus the Administrative Law Court did not err and abuse its discretion. It did not deny Appellant equitable opportunity to file a Reply brief, nor did it violate Appellant's rights of due process.

In conclusion, the Appellant failed to state a claim for which relief from the Court of Appeals can be granted. The Appellant admitted in his initial brief to this court all the facts upon which the ALC made its decision and thus there remain no grounds for appeal.

Pursuant to Appellant Rule 240 (b) – A motion to dismiss an appeal shall automatically stay the time limits for perfecting the appeal until the motion is decided. Thus the Respondent requests that the Court of Appeals rule on this motion and if the motion is denied, inform the Respondent when the Respondent's Initial Brief and Designation of Matter are due.

Respectfully submitted,

A handwritten signature in black ink that reads "Chad A. Mitchell". The signature is written in a cursive style with a horizontal line underneath the name.

Chad A. Mitchell, Esq. SC Bar #74730
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IN THE COURT OF APPEALS

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 v.)
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 South Carolina Department)
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 Respondent.)
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CERTIFICATE OF SERVICE

Appellate Case No. 2019 - 001835
(Appeal from the Administrative Law Court)

I, Chad Mitchell, do hereby certify that Respondent's Motion to Dismiss attached hereto, was mailed, by first class, with proper postage, by placing in the US Postal Service, to the following:

Mr. Alonzo Jeter, III
Tyger River Correctional Institution
U-90216A/282902
200 Prison Road
Enoree, SC 29335

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SC Court of Appeals

1/2/2020
Date

Chad A. Mitchell
Chad A. Mitchell

DSS SOUTH CAROLINA
DEPARTMENT of SOCIAL SERVICES

HENRY McMASTER, GOVERNOR
MICHAEL LEACH, STATE DIRECTOR
CHAD MITCHELL, ESQ., ASSISTANT GENERAL COUNSEL



January 2, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: Alonzo Jeter, III v. SCDSS
Appellate Case No. 2019 - 001835 (Appeal from the Administrative Law Court)

Dear Ms. Kitchings,

Enclosed for filing in the above referenced case, please find Respondent's Motion to Dismiss (original and six copies) along with a Certificate of Service. By copy of this letter, this Motion to Dismiss has been mailed to Alonzo Jeter, III. Please let me know if anything further is needed and thank you.

Sincerely,

A handwritten signature in black ink that reads "Chad A. Mitchell".

Chad Mitchell

Cc: Alonzo Jeter, III
Tyger River Correctional Institution
U-90216A/282902
200 Prison Road
Enoree, SC 29335

01/03/2020
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DSS SOUTH CAROLINA
DEPARTMENT of SOCIAL SERVICES

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OFFICE OF GENERAL COUNSEL, ROOM 621
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Columbia, South Carolina 29211

