

LEGAL MAIL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Case No:19-ALJ-04-0240-AP

Appellate Case No:2019-001627

RECEIVED
JAN 16 2020
SC Court of Appeals

Nathaniel Johnson, Jr. #211574,

v.

South Carolina Department of Corrections,

Respondent,

REPLY BRIEF IN RESPONSE TO THE BRIEF OF THE RESPONDENT

/s/ Nathaniel Johnson Jr. #211574

Mr. Nathaniel Johnson, Jr. #211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
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Pro-Se Appellant

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TABLE OF AUTHORITIESCASES

- * Brown v. Plata, 131 S.Ct. 1910, 1928 (2011)
- * State v. Huiett, 302 S.C. 169, 394 S.Ed.2d. 486 (S.C. 1990).
- * Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d. 17 (1981).

STATUTES

- S.C. Appropriation Act. Proviso 37.16 Part 1(b) 2005-06
- S.C. Appropriation Act. Proviso 65.8 2018-19
- S.C. Code Ann §24-13-80(B)(2).
- SCDC Policy HS-18.17

S.C. Const. & United States Constitution

- S.C. Const. art#1 Sec.§13
- S.C. Const. art#1 Sec§23
- S.C. Const. art#1 Sec§2
- U.S.C.A. V.
- U.S.C.A. XIV. Sec§1

STATEMENT OF ISSUES ON APPEAL

1). Whether (SCDC) South Carolina Department of Corrections created a policy HS-18.17 that authorized charges to the Appellant's E.H. Cooper Trust Fund Account for the co-payment of Meds, Medical visits, or Health care violates State or Federal Law?

2). Whether the Appellant is entitled to receive free medical care, free health care, under the S.C. Appropriation Act Provision 37.16 authorized under Part1(b) of 2005-06?

STATEMENT OF THE CASE

Same as Initial Brief of the Appellant.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-600(5) Supp 2016, Section § 1-23-380(5) provides the applicable standard of review:

The (ALC) Administrative Law Court sits in a appellate capacity under the (APA) S.C. Administrative Procedure Act, rather than as an independent finder of fact. The standard used by appellate bodies to review agency decisions is provided by the S.C. Code of laws mentioned above. The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the substantial rights of the Appellant have been prejudiced because of the Administrative findings, interference, conclusions, or decisions are:

- (a). in violation of constitutional or statutory provisions;
- (b). in excess of the statutory authority of the agency;
- (c). made upon an unlawful procedure;
- (d). affected by other errors of law;
- (e). clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and
- (f). arbitrary or capricious or characterized by abuse of discretion.

ARGUMENT

The Appellant argues the issue of whether SCDC's policy HS-18.17 authorizing the charges to the Appellant's E.H. Cooper Trust Fund Account for co-payments, meds or health care violates State or Federal Law?

In the Respondent's Initial Brief, it evaded the issues being raised by the Appellant, in its response.

However, the question raised is an constitutionality issue for the Court, to determined. The ALC Court, did not have the authority to rule as to whether or not the department's policy HS-18.17, is unconstitutional.

The Appellant, argues that he should be reimbursed based upon the S.C. Appropriation Act, Provision 37.16 authorized under Part#1(b) of the 2005-06.

The Appellant contends that this Court, has full jurisdiction over this issue. Secondly, the Respondent's argument is totally irrelevant to the issues being raised on Appeal. The Appellant, argues that the issues raised stems from a state-created liberty or property interest against the Appellant. This matter constitutes punishment twice for the same offense and amounts to Double Jeopardy. Once through incarceration, and again by the Appellant, being forced to protect his freedom from restraint against his liberty, or property interest for their gain or interest. The Appellate believes that he should be protected by the Due Process Clause, when his liberty or property interest are being infringed upon or imposes a significant hardship in relations to the deprivation of a state-created liberty or property interest.

The Respondent argued that the Appellant should have sought going into a circuit court, rather than going before the (ALJ) Administrative Law Judge, and that the Appellant should seek a declaratory judgment from that court. The Appellant, would submit to this Court, that by going before the ALC, it was a procedural step in exhausting his Appeal or grivance process.

ARGUMENT CONTINUED

* Brown v. Plata, 131 S.Ct. 1910, 1928 (2011), Prisoners are dependent on the State for food, clothing, medical care, health care, and prescription meds. When the Agency fails to provide sustenance for inmates, it may actually produce physical torture or a lingering death. SCDC was negligent in failing to supply the Appellant with basic needs or ordinary medical and health care.

Agencies shall not infringe upon or deprive any person of an state-created or protected property interest encompassed by the Fifth and Fourteenth Amendment.

* State v. Huiett, 302 S.C. 169, 394 S.Ed.2d. 486 (S.C. 1990), in order for the Ex Post Facto Clause to be applicable the statute or provision in question must be criminal or penal in purpose and nature.

* Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d. 17 (1981), a law which imposes additional punishment to that prescribed at the time the offense was committed is prohibited under the Ex Post Facto Clauses of the S.C. Constitution art#1 §4, and the United States Constitution art#1 Sec § 9 & 10 cl#3.

Therefore, the new Proviso 65.8 of the General Appropriation Act. 2018-19, was not in effect at the time of the Appellant's previous offense, and does not apply.

The Appellant, would like to state, for the record, that he was under the (ADA Act) Americans with Disabilities Act, before being incarcerated for crimes that the Appellant, did not commit. Appellant, was a recipient receiving SSI on the 1st of the month, and receiving SSA Social Security every 3rd of the month. The State deprived the Appellant, of Life, Liberty, and Property without proper due process. Since incarceration the Appellant, has paid \$200.00 per year for medical expenses for 13 years. Still maintaining his innocence while being delayed justice. Appellant, is currently litigating for his freedom, liberty, and justice.

CONCLUSION

WHEREFORE, the Appellant, prays that this Honorable Court, find in favor of the Appellant, and grant relief of an reversal with instructions of an further proceedings in this matter. If, the Court, finds that this practice is unconstitutional please order reimbursement to the Appellant, as a matter of law as justice is so required.

Dated: Mon. January 13th, 2020

Respectfully submitted
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JAM JAGB

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v.

South Carolina Department of Corrections,

Respondent,

CERTIFICATE OF SERVICE

Undersigned Appellant, hereby certifies that on this 13th day of

January, 2020, I mailed a true copy of the Appellant's Reply Brief in Response to the Brief of the Respondent, to Ms. Imani Byas, Staff Attorney, Office of General Counsel, S.C. Department of Corrections, P.O. Box 21787, Columbia, S.C. 29221.

Dated: Mon. January 13th, 2020.

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
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Dated: Mon. January 13th 2020

The Honorable Jenny A. Kitchings
 Clerk of Court, S.C. Court of Appeals
 Post Office Box 11629
 Columbia, S.C. 29211

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RE: Nathaniel Johnson, Jr. #211574, v. South Carolina Department of Corrections
 Appellate Case No's #2019-001627, & #2019-001628.

Dear Ms. Kitchings:

Enclosed please find the Reply Brief In Response to the Brief of the Respondent, two (2) copies of each case number, one to be filed with the S.C. Court of Appeals, and please send back an clocked stamped copy for my records. The Appellant, has made the necessary corrections to each case number in regards to this matter. Also, the Appellant, is requesting an clocked stamped copy back of his Initial Brief submitted to the Court. Along with the Reply is the Appellant's Certificate of Service, served upon the other counsel of record, Imani Byas, Staff Attorney.

Sincerely,

/s/ Nathaniel Johnson Jr. #211574

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The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals

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