

STATE OF SOUTH CAROLINA)
)
COUNTRY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A No.: 19-CP-13-226

John C. Robinson, #097584,
Plaintiff,

v.

State of South Carolina,
Defendant.

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JUN 09 2020

SC Court of Appeals

ORDER

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2020 MAY 18 AM 11:27

This matter comes before this Court by way of summons and complaint filed by the Plaintiff on April 2, 2019. Within this complaint the Plaintiff argues that he is unlawfully being denied parole eligibility. The Plaintiff request this Court order that his sentence be corrected so he could be released immediately.

The Defendant, represented by the South Carolina Department of Probation, Parole and Pardon Services, and the South Carolina Attorney General's office, filed a motion to dismiss on May 9, 2019. Within this motion the Defendant argues that this Court does not have the authority oversee a decision denying parole eligibility. It is the Defendant's position that pursuant to the South Carolina Supreme Court decisions of *Al-Shabbaz* and *Furtick*, any review regarding the denial of parole eligibility is solely the responsibility of the Administrative Law Court (ALC), this Court agrees.

On January 21, 1987, upon being found guilty by a jury of his peers, the Plaintiff appeared before the Honorable E.C. Burnette. He received a life sentence for the offense of kidnapping and criminal sexual conduct in the first degree (CSC 1st). Pursuant to South Carolina law the Appellant was eligible for parole upon the completion of ten years incarceration. However, upon a lawful

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CHESTERFIELD COUNTY, SC

investigation conducted by the Defendant it was discovered that the Plaintiff was previously convicted of armed robbery. Since each of these offenses are classified as violent, the Plaintiff was informed that pursuant to South Carolina law he is not eligible for parole.¹ Upon being notified of not being eligible for parole, the Plaintiff filed a petition for writ of habeas corpus in the Federal District Court of South Carolina. This writ was later dismissed. After this dismissal the Plaintiff filed a summons and complaint in the Fourth Judicial Circuit South Carolina Court of Common Pleas.

Upon being served the summons and complaint the Defendant immediately filed and served a motion to dismiss. On August 12, 2019, all parties appeared before this court to argue said motion. This Court has now determined that due to the lack of jurisdiction an order of dismissal must be granted on behalf of the Defendant.

1. This Court does not have jurisdiction to decide this cause of action.

The Plaintiff raises this cause of action against the Defendant due to what he believes is an unlawful denial of parole eligibility: Any allegation raised by an inmate regarding the possible unlawful denial of parole eligibility must be brought before the ALC. The ALC's jurisdiction to review a final decision of the Department is derived from the South Carolina Supreme Court decisions of *Al-Shabbaz v. State*, 338 S.C. 334, 527 S.E.2d 724 (2000), and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002). In *Al-Shabbaz*, the South Carolina Supreme Court created a new avenue by which an inmate could seek review of a final decision of a state agency in a "non-collateral" matter related to a conviction or sentence. The Court held that an inmate should appeal those final agency decision to the ALC, and ultimately

¹ The board must not grant parole nor is parole is authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. S.C. Code Ann. §24-21-640 (1986).


to the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz*, at 376. In *Al-Shabbaz*, the Court recognized that, “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment imposed; and (2) when an inmate believes that prison officials have erroneously calculated his sentence; sentence-related credits or custody status.” *Id.*, at 369.

The Supreme Court noted in *Furtick*, that the appealable final decision of the Board regarding parole eligibility arises in the latter manner. Where an inmate alleges that the Department erroneously determined that he was not eligible for parole. The review by the ALC under the procedures set forth in *Al-Shabbaz*, is necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick*, at 149. The Court determined that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* The ALJD does have jurisdiction over non-collateral challenges of a final decision of the DPPPS under the procedure outlined in *Al-Shabbaz*. *Id.*, at 150. When the Plaintiff makes these allegations, he is entitled a review of this decision by the ALC, not the Circuit Court. Due to these Supreme Court decisions this court has no jurisdiction over this cause of action.

Since the Plaintiff has filed a cause of action before a Court which does not have jurisdiction. This Court must determine this is an improper venue. This cause of action must be subject to dismissal pursuant to Rule 12(b)(3) of the South Carolina rules of civil procedure.

THEREFORE, due to the reasons presented above, this Court finds that the Defendant's motion to dismiss **GRANTED**.

AND IT IS SO ORDERED this 17th day of May, ~~2019~~ ²⁰²⁰ Paul


THE HONORABLE PAUL MICHAEL BURCH
Circuit Court Judge
Fourth Judicial Circuit

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CHESTERFIELD COUNTY, S.C.

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