IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC Court of Appeals

CASE DOCKET NO. 2021-000354

APPEAL FROM THE ADMINISTRATIVE LAW COURT
HONORABLE JUDGE ROBINSON ADMINISTRATIVE LAW JUDGE

CASE NO. 21CO033 GRIEVANCE NO. LCI. 595-20

LAWRENCE L. CRAWFORD AKA JONAH GABRIEL JAHJAH T. TISHBITE,

APPELLANT

Vs.

THE S.C. DEPT. OF CORRECTIONS,

RESPONDENT

BRIEF OF APPELLANT

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JULY 23, 2021

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ISSUE(S) ON APPEAL

(1) DID THE ADMINISTRATIVE LAW COURT JUDGE ERR, AND WAS THE APPELLANT'S 1st., 6th., 14th. AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION VIOLATED, AS WELL AS THE ADMINISTRATIVE JUDGE ABUSING HER DISCRETION, WHEN SHE DETERMINED THAT THE ADMINISTRATIVE LAWS COURT JUDGE DOES NOT HAVE THE AUTHORITY TO RENDER UNCONSTITUTIONAL THE S.C.D.C. POLICY IN QUESTION, WHEN SUCH WAS NOT NECESSARY TO ADDRESS THE APPELLANT'S DUE PROCESS RIGHTS ARGUED IN THE BRIEF SUBMITTED IN THE CASE REQUIRING REMAND AND THE ADMINISTRATIVE COURT BE MADE TO RULE ON THE ISSUES IN THEIR TOTALITY?

(2) BY THE INJUSTICE PRESENTED DOES THE COURT AND OR THE S.C. DEPT. OF CORRECTIONS ACTIONS ALSO PRESENT AN ACCESS TO THE COURT(S) CLAIM?

STATEMENT OF THE CASE

THE APPELLANT IS PRESENTLY HELD WITHIN THE S.C. DEPT. OF CORRECTIONS WHERE DUE TO HIS RELIGIOUS BELIEFS PROTECTED UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION. SAID RELIGIOUS BELIEF DUE TO CERTAIN POLICIES OF THE S.C. DEPT. OF CORRECTIONS PERTAINING TO THE REQUIRING THE APPELLANT TO MAKE USE OF THE KIOSK SYSTEM TO INITIALLY SEEK REMEDY WHICH VIOLATES THE APPELLANT'S RELIGIOUS BELIEFS. THE APPELLANT NOT JUST HAVING HIS RELIGIOUS OBSERVANCE SUBSTANTIALLY BURDENED IN VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT. BUT, ADDITIONALLY, BY SUCH S.C.D.C. POLICY, THE APPELLANT IS ALSO DENIED ACCESS TO THE COURT DUE TO THE INABILITY TO EXHAUST UNLESS HE VIOLATES HIS RELIGIOUS BELIEFS, AND HE HAS SUFFERED INJURY IN THE FORM OF PROPERTY LOSS THAT THE PRACTICE OF THE S.C.D.C. POLICY HAS PREVENTED HIM REMEDY.

THE APPELLANT AFTER CONTINUOUS EFFORTS FOR YEARS, WAS FINALLY ABLE TO BRING THE MATTER BEFORE THE ADMINISTRATIVE LAW COURT, WHICH OF COURSE THEY HAVE JURISDICTION TO DETERMINE SUCH PROPERTY RIGHTS. INSTEAD OF RULING ON THE ISSUE OF THE LOSS OF THE APPELLANT'S PROPERTY; THAT COURT IN AN ABUSE OF DISCRETION FAILED TO ADDRESS THIS SPECIFIC ISSUE BUT DID RULE THAT THE ADMINISTRATIVE LAW COURT DO NOT HAVE JURISDICTION TO DETERMINE THE CONSTITUTIONALITY OF A SPECIFIED S.C.D.C. POLICY, WHEN IT TRUTH, SUCH A DETERMINATION AS TO THE CONSTITUTIONALITY OF THE POLICY AS A WHOLE WAS NOT NECESSARY TO DETERMINE THAT BY THE APPELLANT'S CONSTITUTIONAL RIGHTS, WAS THE WARRANTING OF AN EXCEPTION TO THE POLICY REQUIRED IN THE APPELLANTS CASE. THIS APPEAL BEFORE THE S.C. COURT OF APPEALS NOW FOLLOWS.

LEGAL ARGUMENT

(1) DID THE ADMINISTRATIVE LAW COURT ERR, AND WAS THE APPELLANT'S 1st., 6th., 14th. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS HIS RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE, AS WELL AS THE ADMINISTRATIVE LAW COURT JUDGE ABUSING HER DISCRETION, WHEN SHE DETERMINED THAT THE ADMINISTRATIVE LAW COURT JUDGE DOES NOT HAVE THE AUTHORITY TO RENDER UNCONSTITUTIONAL THE S.C.D.C. POLICY IN QUESTION, WHEN SUCH WAS NOT NECESSARY TO ADDRESS THE APPLICANT'S DUE PROCESS RIGHTS ARGUED IN THE BRIEF SUBMITTED IN THE CASE REQUIRING REMAND AND THE ADMINISTRATIVE COURT BE MADE TO RULE ON THE ISSUES IN THEIR TOTALITY? THIS ISSUE AND THE ISSUE ASSERTED IN THE BRIEF FILED BEFORE THE ADM. LAW COURT ON PAGE (3) IS NOW BEFORE THIS COURT, SEEN IN THE DESIGNATION OF MATTER.

(2) BY THE INJUSTICE PRESENTED DOES THE COURT AND OR THE S.C. DEPT. OF CORRECTIONS ACTIONS ALSO PRESENT AN ACCESS TO THE COURT(S) CLAIM?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, MATTERS OF COMMON AND GENERAL KNOWLEDGE, <u>MOSS v. AETNA LIFE INS. CO.,</u> 228 S.E.2d. 108; <u>STATE v. BROAD RIVER POWER CO.,</u> 177 S.C. 240, 180 S.E. 41; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE ADMINISTRATIVE LAW COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST

CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT OR FILE RULE 59(e) MOTION DURING THE PROCEEDINGS, (BLACK LAW DICTIONARY 8th. EDITION.).

FOR THE RECORD. ALL CLAIMS, AND DEFENSES ARGUED BY THE APPELLANT IN THE BRIEF PLACED BEFORE THE S.C. ADMINISTRATIVE LAW COURT ARE ASSERTED BEFORE THE S.C. COURT OF APPEALS. THEY ARE PRESERVED BY THE APPELLANT'S MOTION TO VACATE THE ADM. LAW COURT'S INITIAL RULING.

INSOMUCH, THE ADMINISTRATIVE LAW JUDGE ABUSED HER DISCRETION WHEN SHE DETERMINED THAT THE ADMINISTRATIVE LAW COURT DOES NOT HAVE THE AUTHORITY TO RENDER UNCONSTITUTIONAL THE S.C.D.C. POLICY IN QUESTION RELATED TO THE USE OF THE KIOSK, WHEN SUCH A RENDERING WAS NOT NECESSARY TO ADDRESS THE APPELLANT'S CONCERNS. IT IS NOT NECESSARY TO DECLARE A POLICY UNCONSTITUTIONAL WHEN A MERE EXCEPTION TO THE POLICY COULD HAVE EASILY BEEN GRANTED, EX PARTE GRAHAM, 13 RICH. 277, 47 S.C.C. 277, 1864 WL 1863 (S.C.1864); FAIRFIELD WAVERLY LLC. v. DORCHESTER COUNTY ASSESSOR, 432 S.C. 287, 852 S.E.2d. 739(S.C.App.2020); SHELBY v. SOUTH CAROLINA HIGHWAY PATROL, 432 S.C. 335, 852 S.E.2d. 220 (S.C.App.2020); JERICHO STATE CAPITAL CORP. OF FLORIDA v. CHICAGO TITLE INSURANCE COMPANY, 431 S.C. 437, 848 S.E.2d. 572 (S.C.App.2020).

ALJs HAVE NO AUTHORITY TO PASS UPON THE CONSTITUTIONALITY OF A STATUTE, REGULATION OR S.C.D.C. POLICY IN THIS INSTANCE. THIS IS NOT WHAT THE APPELLANT SOUGHT THE ADM. LAW COURT TO DO. ADMINISTRATIVE LAW COURTS ARE EMPOWERED TO HEAR AS APPLIED CONSTITUTIONAL CHALLENGES TO STATUTES, REGULATIONS OR POLICIES, AS THEY ARE BETTER SUITED FOR MAKING THE FACTUAL DETERMINATIONS NECESSARY FOR AN AS APPLIED CHALLENGE, AND FINDING A STATUTE, REGULATION OR POLICY UNCONSTITUTIONAL AS APPLIED TO A SPECIFIC PARTY WITHOUT ADDRESSING THE CONSTITUTIONALITY OF THE PROVISION AS A WHOLE. EVEN THOUGH THE ADMINISTRATIVE LAW COURT DID NOT RULE ON THE ACTUAL ISSUES PER SE. THEY ARE PRESERVED BY THE MOTION TO

VACATE THE INITIAL ORDER. FURTHER, THAT COURT DID RULE, STATING, IT DOES NOT HAVE POWER OR AUTHORITY TO PASS ON THE CONSTITUTIONALITY OF THE S.C.D.C. POLICY IN QUESTION. THUS, A RULE 59(e) MOTION WOULD NOT BE NECESSARY TO FURTHER PRESERVE THE ISSUE(S) FOR APPELLATE REVIEW. APPELLATE REVIEW CAN BE DONE BASED UPON THE MOTION TO VACATE AND THIS RULED ON JUDICIAL DETERMINATION CLEARLY ESTABLISHED WITHIN THE COURT RECORD PURSUANT TO THE ADMINISTRATIVE LAW COURT'S FINDINGS. THE ADM. COURT ERRED. THE FINDING STATUTE, REGULATION OR POLICY UNCONSTITUTIONAL AS APPLIED TO A SPECIFIC PARTY DOES NOT EFFECT THE FACIAL VALIDITY OF THAT PROVISION OR POLICY. THE ADM. LAW JUDGE WAS REQUIRED TO RULE AND NOT UTILIZE SUCH AN UNJUST ASSERTION AS A MEANS TO NEGLECT HER FIDUCIARY DUTY TO GRANT THE APPELLANT REMEDY, DOE v. STATE, 421 S.C. 490, 808 S.E.2d. 807(S.C.App.2017); TOWN OF MT. PLEASANT v. CHIMENTO, 401 S.C. 522, 737 S.E.2d. 830(S.C.App.2012).

BY THIS MANIFEST CONSTITUTIONAL ERROR VIOLATING THE APPELLANT'S DUE PROCESS RIGHTS. THE APPELLANT'S RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE WERE VIOLATED, NOT JUST HIS RIGHTS UNDER THE FREE EXERCISE CLAUSE OF THE 1st. AMENDMENT. BY FORCING THE APPELLANT TO USE THE KIOSK SYSTEM THE APPELLANT HAS NO AVAILABLE REMEDY TO ACCESS THE COURTS WHO WOULD THROW HIM OUT BASED UPON THE TECHNICALITY THAT THE APPELLANT DID NOT PROPERLY EXHAUST LEADING TO SUBSTANTIAL PREJUDICE, INJURY AND AN INABILITY TO PROTECT HIS PROPERTY RIGHTS. IF THE ADM. COURT WOULD NOT HAVE RULED SHE HAD NO AUTHORITY TO RENDER UNCONSTITUTIONAL A POLICY, WHICH WAS NOT THE ISSUE HERE. THESE ISSUES AND CONCERNS WITHIN THEIR TOTALITY WOULD HAVE OR COULD HAVE BEEN FAIRLY AND PROPERLY ADDRESSED. INMATE MUST DEMONSTRATE THAT THE POLICY IN QUESTION HINDERED EFFORTS TO PURSUE A CLAIM, WHERE HERE THE POLICY HINDERS THE APPELLANT'S ABILITY TO PURSUE EVERY CLAIM. THE POLICY HAS CAUSE ACTUAL INJURY IN THE FORM OF DEPRIVING OF REMEDY TO ADDRESS LOSS OF PROPERTY AND OTHER CONSTITUTIONAL MATTERS SUCH AS AMERICAN WITH DISABILITY ACT MATTERS, CREATING INABILITY TO PURSUE ANY CLAIM, DESTROYING ALL POTENTIAL REMEDY IF THE

APPELLANT CANNOT EXHAUST THE CLAIM(S) AS HAS OCCURRED HERE RELATED TO THE LOSS OF HIS PROPERTY ARGUED BEFORE THE ADM. LAW COURT. THE APPELLANT LOST HIS HOT POT, HIS KOSS HEADPHONES AND HIS COOLER, HENDRICKS v. S.C. DEPT. OF CORRECTIONS, 385 S.C. 625, 686 S.E.2d. 191 (S.C.App.2009); HOWARD v. SOUTH CAROLINA DEPT. OF CORRECTIONS, 399 S.C. 618, 733 S.E.2d. 211 (S.C.App.2012). THE APPELLANT MUST BE DEEMED EXEMPT OF THE POLICY IN QUESTION.

THE COURT MAY REVERSE A DECISION OF THE ALC IF IT IS AFFECTED BY AN ERROR OF LAW OR "CLEARLY ERRONEOUS IN VIEW OF THE SUBSTANTIAL EVIDENCE OF THE WHOLE RECORD", BOOKER v. SOUTH CAROLINA DEPT. OF CORRECTIONS, S.E.2d., 2011 WL 11733630 (S.C.App.2011); SULLIVAN v. SOUTH CAROLINA DEPT. OF CORRECTIONS, 355 S.C. 437, 586 S.E.2d. 124 (S.C.App.2003); DUNCAN v. SOUTH CAROLINA DEPT. OF CORRECTIONS, S.E.2d., 2009 WL 9530335 (S.C.App.2009).

UNDER PLRA FOR INMATES SEEKING TO BRING FEDERAL ACTION CLAIMS CONCERNING CONDITIONS OF CONFINEMENT. THE INMATE MUST FIRST EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES WHERE IN THIS CASE THE APPELLANT CAN DO NO SUCH THING IF IN ORDER TO DO SO. SEVERAL ACTION HAVE ALREADY BEEN BLOCKED PURSUED IN THE FEDERAL COURTS DUE TO THIS INJUSTICE. THE APPELLANT MUST BLATANTLY VIOLATE HIS RELIGIOUS BELIEFS TO ACCESS THE COURTS. THIS PRODUCES CONSTITUTIONAL VIOLATION UNDER ROSS PURSUANT TO MACHINATION. SEE ROSS v. BLAKE, 578 U.S. 632, 136 S.Ct. 1850, 195 L.Ed.2d. 117 (U.S.2016); VALENTINE v. COLLIER, 141 S.Ct. 57 (MEM)(U.S.2020). IN OTHER WORDS, EVEN IF AN INTERNAL PROCESS IS "OFFICIALLY ON THE BOOKS," IT IS NOT AVAILABLE IF, AS A PRACTICAL MATTER, IT IS NOT CAPABLE OF ACCESSING IN THIS CASE IF THE APPELLANT MUST VIOLATE HIS RELIGIOUS BELIEFS. THIS DOES NOT EVEN TAKE INTO ACCOUNT THAT THERE IS CLEAR ALTERNATE MEANS TO ADDRESS THIS MATTER BUT S.C.D.C. WILL NOT ALLOW THE APPELLANT TO MAKE USE OF THE ALTERNATIVE IN ACTS OF RETALIATION IN VIOLATION OF 42 U.S.C. § 12203(a)(b) OF THE AMERICANS WITH DISABILITIES ACT. THE SAME

PRINCIPLE OF LAW APPLIES HERE WITHIN THE STATE OF SOUTH CAROLINA. UNDER THE 1st. AMENDMENT THE S.C. DEPT. OF CORRECTIONS CANNOT BURDEN THE FREE EXERCISE OF RELIGIOUS BELIEFS, ESPECIALLY WHERE THEY BEAR NEXUS TO PROPERTY RIGHTS AND STATE CREATED LIBERTY INTEREST RIGHTS PURSUANT TO OBTAINING REMEDY RELATED THERETO, OR THEY MAY NOT PROHIBIT THE EXPRESSION OF AN IDEA VIA THE APPELLANT REFUSING THE USE THE KIOSK, BECAUSE SOCIETY FINDS THE IDEA OFFENSIVE, OR DISAGREEABLE. THE FREE EXERCISE CLAUSE IN CONJUNCTION WITH OTHER CONSTITUTIONAL PROTECTIONS, SUCH AS PROPERTY RIGHTS, VIOLATIONS OF THE TAKING CLAUSE, AND RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT, CAN BAR APPLICATION OF A SEEMINGLY NEUTRAL GENERALLY APPLICABLE POLICY SET IN PLACE BY THE S.C. DEPT. OF CORRECTIONS WHERE THE APPLICATION OF SUCH A POLICY WOULD ALSO VIOLATE THE APPELLANT'S RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE. THUS, THE ALC DECISION MUST BE REVERSED AND THAT COURT BE REQUIRED TO ADDRESS THE APPELLANT'S CONCERNS IN FULL, MASTERPIECE CAKESHOP LTD. v. COLORADO CIVIL RIGHTS COM'N, 138 S.Ct. 1719, 201 L.Ed.2d. 35(U.S.2018); McFAUL v. RAMSEY, 61 U.S. (20 HOW) 523, 525, 15 L.Ed. 1010, 1011 (U.S.1858); U.S. v. SEEGER, 380 U.S. 163 (U.S.1965); U.S. v. RUE, F.Supp.3d., 2015 WL 5007930 (S.D.Tex.2015); SIBLEY v. HERGENROEDER, F.Supp.2d., 2006 WL 3354137 (D.C.Md.2006); NEW HOPE FAMILY SERVICES INC. v. POOLE, 966 F3d. 145(2nd.Cir.2020); TELESCOPE MEDIA GROUP v. LUCERO, 936 F3d. 740 (8th.Cir.2019); CHELSEY NELSON PHOTOGRAPHY LLC. v. LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT,--F.Supp.3d.--, 2020 WL 4745771 (W.D.Ky.2020).

INSOMUCH, ONCE THE ADMINISTRATIVE LAW COURT UNJUSTLY DISMISSED THIS CASE AND THE APPELLANT TIMELY MOTIONED TO VACATE THAT ORDER CHALLENGING THAT COURT'S JURISDICTION TO ISSUE IT? ALL ISSUES IN FUNDAMENTAL FAIRNESS TO THE APPELLANT MUST BE DEEMED PROPERLY PRESERVED ALLOWING THE S.C. COURT OF APPEALS TO TAKE FULL REVIEW OF ALL MATTERS BEFORE IT. THE APPELLANT SEEKS THIS RELIEF TO INCLUDE ANY AND ALL OTHER RELIEF THE COURT WOULD DEEM JUST, FAIR AND PROPER. SEE TRAVELSCAPE, LLC. v.SOUTH CAROLINA DEPT. OF REVENUE, 391 S.C. 89, 705 S.E.2d. 28 (S.C.App.2011).

RESPECTFULLY,

JONNAH THE TISHBITE

JUNE 24, 2021