

THE SOUTH CAROLINA COURT OF APPEALS

T. Terrell Bryan,

Appellant,

v.

SCDC,

Respondent

The Honorable Shirley C. Robinson
Administrative Law Court
Gric. No. PLI 0309-12
ALC Pocket No. 13-ALJ-04-0174
Appellate Case No. 2013-000760

BRIEF

RECEIVED

MAY 01 2013

SC Court of Appeals

T. TERELL BRYAN
#254638, SMU-B14, MCC I
386 Redemption Way
McCormick, SC 29899

PRO SE APPELLANT

Ms. Shanika Johnson
4444 Grand River Rd.
Columbia, SC 29210

COUNSEL FOR RESPONDENT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

INFORMATION FOR PRISONERS FILING AN APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT (FORM AO 240) AND A FINANCIAL CERTIFICATE WHICH ARE REQUIRED TO PROCEED *IN FORMA PAUPERIS* IN CIVIL RIGHTS ACTIONS/*BIVENS* ACTIONS

Effective April 9, 2006, the costs for filing a lawsuit is \$350.00 and must be paid when the complaint is filed. If you are unable to pay the filing fee, you may file an Application to Proceed without Prepayment of Fees and Affidavit (Form AO 240) which is a request to proceed *in forma pauperis*. All prisoners, other than pre-trial detainees, also must file a completed Financial Certificate.

A. General Information About Form AO 240:

1. The Form AO 240 (form attached) is a request for the court to determine whether you qualify for proceeding in a case without **prepayment** of the full filing fee as established in 28 U.S.C. § 1914 (currently \$350.00). Payment of the full filing fee is required by 28 U.S.C. § 1915. In order for your Form AO 240 to be considered by the United States District Court for the District of South Carolina, it must be typewritten or legibly handwritten. All information must be clearly and concisely written in the appropriate space on the form. Your original signature must be on the form you submit to the Court.
2. When your Form AO 240 is completed, you should mail THE ORIGINAL Form AO 240 along with the additional items listed in the Checklist, which is enclosed, to:

**Clerk, U.S. District Court
District of South Carolina
901 Richland Street
Columbia, South Carolina 29201**

If you are submitting your Form AO 240 and/or Financial Certificate in response to an order of this Court, you must put your case number on the documents and mail the ORIGINAL documents to the address provided in the order.

3. It is important to realize that even though a plaintiff may be permitted to proceed *without prepayment of the filing fee*, if the plaintiff fails to prevail in the case, costs may be taxed against him or her when the case is ended, as specified in 28 U.S.C. §§ 1915(f) and 1920; and *Flint v. Haynes*, 651 F. 2d 970 (4th Cir. 1981).

NOTE TO PRISONER (other than pretrial detainee): Filing the FINANCIAL CERTIFICATE is required under 28 U.S.C. § 1915(a)(2) in order for you to proceed *in forma pauperis*. THE FORM AO 240 IS NOT COMPLETE AND WILL NOT BE CONSIDERED BY THE COURT UNLESS THE FINANCIAL CERTIFICATE HAS BEEN PROPERLY COMPLETED.

B. General Information About the Financial Certificate:

1. A Financial Certificate (form attached) must accompany your Form AO 240. The Financial Certificate must be signed by you and be completed and signed by the appropriate officer having authority to review and calculate financial information in relation to your inmate trust account. ***If you are detained***

TABLE OF CONTENTS

	Page
Cover Page _____	1
Table of Contents _____	2
Table of Authorities _____	3
Statement of Issue(s) _____	4
Statement of the Case _____	5
 ARGUMENT	
I. THE ALC'S ORDER IS NOT FINAL WHERE THERE WAS NO BRIEFING & IT DOES NOT RULE ON THE MERITS OF WHETHER THE APPEAL IMPLICATED A PROPERTY INTEREST. _____	6
 Conclusion _____	7

CHECKLIST

When a civil rights case from a state, local or federal prisoner is received, the Office of the Clerk of Court shall determine whether the case is in proper form. The term "in proper form" means that the Clerk of Court has received:

- (1) A complaint with your original signature on the appropriate form or in a form substantially similar;
- (2) The full filing fee or an Application to Proceed without Prepayment of Fees and Affidavit (Form AO 240) requesting to proceed *in forma pauperis*;
- (3) A Financial Certificate form (from all prisoners except pre-trial detainees) completed by the plaintiff and by an officer or employee of the institution where the plaintiff is confined or of the prison system in which the plaintiff is confined;
- (4) A separate Form USM-285 for each defendant sued if the plaintiff is proceeding *in forma pauperis* (Note that the plaintiff **must** provide information sufficient to identify the defendant(s) on the Form(s) USM-285. The United States Marshal cannot serve a defendant that is not properly identified, and defendants that are not served may be dismissed as parties to a case.);
- (5) A separate summons form for each defendant sued ***or*** one summons listing all defendants and their addresses;

If you need additional space on any of the forms, you may submit additional pages. The plaintiff must use letter-sized paper [8 x 11 inch] and write or type text on one side of a sheet of paper only. Do not write or type on both sides of any sheet of paper. Do not write to the edge of the paper, but maintain one inch margins on the top, bottom and sides of each paper submitted.

Note to Inmate: *If you are detained in a county jail, city jail, or local detention center, you do not have to submit the Financial Certificate. You **must** submit the Form AO 240.*

TABLE OF AUTHORITIES

CASES

PAGE

Cobbledick v. U.S., 309 U.S. 323, 60 S.Ct. 540 (1940) _____ 6

Travelscape, LLC v. S.C. Dept. of Rev., 391 S.C. 89, 705 S.E.2d 28 (2011) _____ 6

in a county jail, city jail or local detention center, you do not have to submit the Financial Certificate.

2. If you do not meet the requirements for paying the filing fee in installments, then the full filing fee found in 28 U.S.C. § 1914 must accompany the civil rights complaint. If you cannot afford to pay the full filing fee, but you have sufficient funds (as calculated according to the Prison Litigation Reform Act) to pay an installment payment, then you must pay the first installment of the filing fee, as computed on the Financial Certificate, at the time you file your complaint.
3. **A properly completed financial certificate is required for the court to consider the Form AO 240 submitted by a prisoner in the South Carolina Department of Corrections or Federal Bureau of Prisons.** DO NOT submit your own affidavit instead of the Financial Certificate, or your case may be delayed. The obligation to pay the filing fee in a case arises out of the filing of a case. See 28 U.S.C. § 1915.
4. To obtain a financial certificate disclosing how much money you have credited to your account(s) with the institution in which you are confined, you must sign your name and write your prisoner number (if you have one) on the lines provided at the top of the Financial Certificate (form attached). You should then submit only that page to the division/department that keeps the records of how much money you have in your account(s). (The name of that division/department varies depending on where you are being held, for example, "institutional services" - "accounting", etc.) Someone in that division/department will complete the remainder of the Financial Certificate and return it to you. It is then ready to be submitted to the court with the civil rights/*Bivens* complaint. You must submit the original Financial Certificate, not a copy.
5. The Financial Certificate must be current and signed by the authorized officer of the penal institution within six (6) months of its submission to the court. The Form AO 240 with the completed financial certificate, the accompanying civil rights complaint and all other papers listed on the Checklist must be mailed to the Clerk's Office TOGETHER.
6. When you receive the completed financial certificate, it will show whether you have sufficient funds to pay the full filing fee or whether you qualify for proceeding by paying the filing fee in installments. This determination is based on how much money is currently on deposit in your institutional account(s) and how much money to which you had access over the past six (6) months. Below is a line-by-line description of the information provided on the Financial Certificate:
 - (a) The first line shows the average monthly deposits to your prison trust account.
 - (b) The second line shows the average monthly balance in your prison trust account for the immediate past six (6) full months.
 - (c) The third line shows the total amount of money to which you have access in your institutional account(s) as of the date that the financial certificate was completed. Money that is not readily accessible is not included in this total; the institution or agency confining you may have a policy which requires that a certain minimum balance be maintained, and so the amount shown on the third line would only include an amount in excess of the required minimum.
 - (d) The fourth line shows the initial installment payment of the filing fee.

STATEMENT OF THE ISSUES ON APPEAL

I. IS AN ALC'S ORDER THAT DOES NOT ADDRESS THE MERITS & NOT ALLOW BRIEFING A FINAL APPEALABLE ORDER?

CHECKLIST

When a civil rights case from a state, local or federal prisoner is received, the Office of the Clerk of Court shall determine whether the case is in proper form. The term "in proper form" means that the Clerk of Court has received:

- (1) A complaint with your original signature on the appropriate form or in a form substantially similar;
- (2) The full filing fee or an Application to Proceed without Prepayment of Fees and Affidavit (Form AO 240) requesting to proceed *in forma pauperis*;
- (3) A Financial Certificate form (from all prisoners except pre-trial detainees) completed by the plaintiff and by an officer or employee of the institution where the plaintiff is confined or of the prison system in which the plaintiff is confined;
- (4) A separate Form USM-285 for each defendant sued if the plaintiff is proceeding *in forma pauperis* (Note that the plaintiff **must** provide information sufficient to identify the defendant(s) on the Form(s) USM-285. The United States Marshal cannot serve a defendant that is not properly identified, and defendants that are not served may be dismissed as parties to a case.);
- (5) A separate summons form for each defendant sued **or** one summons listing all defendants and their addresses;

If you need additional space on any of the forms, you may submit additional pages. The plaintiff must use letter-sized paper [8 x 11 inch] and write or type text on one side of a sheet of paper only. Do not write or type on both sides of any sheet of paper. Do not write to the edge of the paper, but maintain one inch margins on the top, bottom and sides of each paper submitted.

*Note to Inmate: If you are detained in a county jail, city jail, or local detention center, you **do not** have to submit the Financial Certificate. You **must** submit the Form AO 240.*

STATEMENT OF THE CASE

This matter is before the court pursuant to the Notice of Appeal filed by Appellant, T. Terrell Bryan. Appellant appeals the decision of Respondent, SCOC, denying his grievance in which he complains that they lost a thermal set & three t-shirts. Such being property, **THEREFORE**, implicating a property interest.

IV. STATEMENT OF CLAIM - continued.

The form consists of 25 horizontal lines. A large 'X' is drawn across the entire page, from the top-left to the bottom-right and from the top-right to the bottom-left, crossing in the center. This indicates that the content of the form is redacted or has been removed.

ARGUMENT

I. THE ALC'S ORDER IS NOT FINAL WHERE THERE WAS NO BRIEFING & IT DOES NOT RULE ON THE MERITS OF WHETHER THE APPEAL IMPLICATED A PROPERTY INTEREST.

The ALC's "order of Dismissal", attached EXHIBIT^A 2, the ALC held that the ALC has subject matter jurisdiction when the grievance appeal implicates a property interest, but dismissed holding I have not alleged a deprivation of a property interest. No briefing was allowed, where Respondent's Brief would have admitted this case implicates a property interest.

Per EXHIBIT^A 3 - Step 11 Grie. No. PCI 0509-12 I alleged a loss of property. The ALC does not have not ruled on property interest cases, only cases where an inmate loses earn sentence-related credits. **MOREOVER**, the ALC could rule on the constitutionality of the property deprivation. TravelScope, LLC v. S.C. Dept. of Rev., 391 S.C. 89, 705 S.E.2d 28 (2011).

Under the "finality Rule" the order is not a final appealable order thus **DEPRIVING THIS COURT OF JURISDICTION**, where the order does not address the merits of the property interest (I stated I lost property), failing to terminate the litigation between the parties. Cobbledick v. U.S., 309 U.S. 323, 60 S.Ct. 540 (1940).

V. RELIEF

State briefly and exactly what you want the court to do for you.

[The following area contains horizontal lines for writing, which have been crossed out with a large handwritten 'X'.]

I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 20____.

Signature of Plaintiff

CONCLUSION

THIS COURT LACKS JURISDICTION where the ALC's order is not a final appealable order. This court should REMAND with instructions to rule on the property interest or the constitutionality of the property deprivation.

4/23/13 isc
dated

without prejudice,
x. ~~NMA~~, all rights reserved,
T. Tesell Bryan
#254638, SMV-019, MCCI
386 Redemption Way
McCormick SC 29899

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this w/EXHIBITS on:
ms. Shanika Johnson; 4444 Broad River Rd.; Columbia, SC 29200

FILED

MAR 08 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

T. Terell Bryan, 254638,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 13-ALJ-04-0174-AP
Grievance No.: PCI 0309-12

ORDER OF DISMISSAL

EXHIBIT
#2


This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed March 5, 2013 by T. Terell Bryan (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the decision of the Department denying his grievance in which the Appellant complains the Department has misplaced several of his t-shirts and thermal shirts. The Appellant requests that these items be returned to him or in the alternative, that they be replaced.

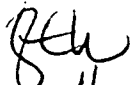
The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep’t of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004) provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).

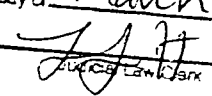
The Appellant has not alleged a deprivation of a state-created liberty or property interest in this matter. Therefore, the Court finds Furtick to be controlling in this matter.

IT IS HEREBY ORDERED that this appeal is **DISMISSED, with prejudice.**

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge


March 8th, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).
This 8 day of March 2013
By: 
Attorney at Law

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: T. Terrell Bryan
SCDC NUMBER: 254633
INSTITUTION: PCI
HOUSING UNIT: BY6
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. IC10309-12
Code: General PRIS
Policy _____
Disc. Hear. _____
Class. _____
Date Received 2/8/12
IGC Initials SM

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

When I came to PCI on 1/23/12 I had on a thermal set & a T-shirt. When brought to B-dorm (BY6) I was strip searched & my thermal set & T-shirt was taken. on about 1/26/12 Sgt. Raylanc search my cell & took the two T-shirts that he gave me with my property on 1/25/12. I received no property inventory form to be shown that my property has been added to my other property. Upon information & belief my property has been thrown away.

ACTION REQUESTED: A property inventory form completed to show that my property has been placed with my other property. If my property has been thrown away, for it to be replaced with double that in new property or for a criminal investigation.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I wrote Warden McCall on 1/26/12. I spoke to Capt. Asstiens on 1/24/12. I have not received a property inventory form.

E 12 2/06/12
Grievant Signature Date

ACTION TAKEN BY IGC:

All pertinent information and documentation has been reviewed. See Warden's response.

EXHIBIT
#3

[Signature] 10-04-12
IGC Signature Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

Bryan 254638 PCI 309-12

Sergeant Ragland stated that he did in fact confiscate the items from you. Sergeant Ragland stated that a 19-2 was completed and attached to the bag in which your property was placed in. The was taken to the property control room for storage. The form did not come with carbon copies. Therefore, you were not issued a copy. Based on this information, your appeal is without merit and, therefore, **denied**. If you do not agree with my decision, you have five days to file a Step 2 appeal.

[Handwritten Signature] *anttdy* 10/05/12
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

vevnr 10/16/12
Grievant Signature Date

Ms. Johnson 10.05.12
IGC Signature Date

Served By:
P. Tallut 10-16-12

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.