

No: _____

Supreme Court, U.S.
FILED

MAY 30 2023

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Dominique Gerald Burns

Appellant.

V.

South Carolina

ON PETITION FOR WRIT OF CERTIORARI

By: i:a freeman known to use the name

Dominique-Gerald: Burns

In the interest of

DOMINIQUE GERALD BURNS (LEGAL ENTITY)

QUESTION PRESENTED

1. WHETHER THE COURT OF APPEALS ERRED IN ITS RULING WHEN IT FAILED TO PROTECT THE APPELLANT'S PROCEDURE DUE PROCESS.
2. WHETHER STATE ADMINISTRATIVE AGENCY HAVE JUDICIAL AUTHORITY TO MAKE AN ORDER AFTER JURISDICTION HAS BEEN CHALLENGE AND NO NEGOTIATION HAS BEEN REACH.

PARTIES TO THE CASE

SOUTH CAROLINA, DEPARTMENT OF SOCIAL SERVICES

DOMINIQUE GERALD BURNS

RELATED PROCEEDINGS

- *South Carolina, DSS v. Burns, No. 2020 DR 3100049 County of Lee Administrative Process Order of Default. Judgment entered on March 3, 2020 and Approved by Family Court Judge on March 18, 2020.*
- *South Carolina, DSS v. Burns, No. 2020 DR 3100049 County of Lee Family Court 13th Judicial Circuit. Judgment entered on May 19, 2021.*
- *South Carolina, DSS v. Burns, No. 2021000558 Court of Appeals South Carolina. Judgment entered on June 17, 2022.*
- *South Carolina, DSS v. Burns, No. 2021000558 Court of Appeals South Carolina. Judgment on Petition for Rehearing entered on August 18, 2022.*
- *South Carolina, DSS v. Burns, No. 2022001176 Supreme Court of South Carolina. Judgment entered on April 18, 2023.*

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully request that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix

_____ to the petition and is

[] reported at

_____ or, [] has been designated for

publication1 but is not yet reported; or,

[] is unpublished.

The opinion of the United States district court

appears at Appendix _____ to the petition and

is [] reported at _____ or, []

] has been designated for publication but is not yet reported; or,

[] is unpublished.

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at

Appendix B to the petition and is

[] reported at _____
or,

[] has been designated for publication but is not yet
reported; or,

[x] is unpublished.

The opinion of the SOUTH CAROLINA COURT OF
APPEALS court appears at Appendix A to the
petition and is

[] reported at _____ or,

[] has been designated for publication but is not yet
reported; or,

[x] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case Was

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of

Appeals on the following date:

_____ and a copy of the order denying rehearing appears at Appendix

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on

_____ (date) in Application No.

The jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was 04/18/2023

_____ A copy of that decision appears at Appendix C

[x] A timely petition for rehearing was thereafter denied on the following date: 04/18/2023 and a copy of the order denying rehearing appears at Appendix C

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____
(date) on _____
(date) Application No. _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVE

CONSTITUTION OF THE STATE OF SOUTH CAROLINA ARTICLE 1 (DECLARATION OF RIGHTS)

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due Process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

**CONSTITUTION OF THE UNITED STATES
ARTICLE 1 (BILL OF RIGHTS) (AMENDMENT 14)**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SOUTH CAROLINA CODE § 63-17-730(2)

(2) the division may issue an order of default setting forth the amount of the obligor's duty of support, if the obligor:

(a) Fails to appear for the negotiation conference as scheduled in the notice;

(b) Fails to reschedule a negotiation conference before the date and time stated in the notice or within thirty days of service of the notice of financial responsibility, whichever is later; or

(c) fails to send the division a written request for a court hearing before the time scheduled for the negotiation conference or within thirty days of service of the notice of financial responsibility, whichever is later;

- SOUTH CAROLINA CODE § 63-17-740(A)
Service of notice of financial responsibility.

(A) The division shall serve a notice of financial responsibility on the obligor not less than thirty days before the date stated in the notice for the negotiation conference:

(1) In the manner prescribed for service of process in a civil action; or

(2) By an employee appointed by the division to serve process; or

(3) By certified mail, return receipt requested, signed by the obligor only. The receipt is prima facie evidence of service.

- SOUTH CAROLINA CODE § 63-17-750 (C)

Negotiation conference; consent order; monthly support obligation.

(C) If no stipulation is agreed upon at the negotiation conference, the division shall file the notice of financial responsibility and proof of service with the clerk of court of the county in which the obligor resides or, if the obligor does not reside in the State, with the clerk of court of the county in which the obligee resides, and the matter must be set for a hearing in accordance with Section 63-17-780.

STATEMENT OF THE CASE

On December 13 2019, at 9:00 a.m. an Administrative Negotiation hearing was scheduled to hold the alleged Defendant DOMINIQUE GERALD BURNS, as surety or guarantee for an alleged Child Support Title IVD case for services obtain by the incompetent ward of the

corporate STATE OF SOUTH CAROLINA known as

XAVIA RAYNAE DAVIS.

On November 17, 2019, i: a freeman known to use the name Dominique-Gerald: Burns, sent a written objection to the administrative process Notice of Financial Responsibility by certified mail return receipt number 7018 3090 0002 1106 5869:

On December 13 2019, at 9:00 a.m. i: a freeman known to use the name Dominique-Gerald: Burns, arrived to challenge personam jurisdiction and to object to the Administrative Negotiation Hearing.

On January 17, 2020, Petitioner held a court hearing without sufficient notice of an action given to the Defendant making the administrative process Order of Default inevitable.

On March 2, 2020, the representative of the SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES reviewed and approved the administrative process Order of Default and was later approved by the 3rd Judicial

Circuit Family Court on March 18, 2020, against the alleged Defendant, which is a direct violation of his due process rights granted by the corporate STATE OF SOUTH CAROLINA Constitution and the corporate UNITED STATES CONSTITUTION.

On May 19, 2021, a hearing was held on the Appellant Motion to Vacate Default Judgment on the grounds that the administrative agency and the family court both lack *personam* jurisdiction.

Angela R Taylor, the acting judge presiding over the case ruled that the Plaintiff served the Appellant even though there's no proof of service on the record. The Court of Appeals affirmed the judgment of the family court. Petitioner now seeks a writ of certiorari to review that decision.

REASONS FOR GRANTING THE WRIT

This Writ of Certiorari will be very brief as Appellant argument is strictly pertaining to the violation of his procedural due process and his lawful right to be heard. This court's intervention is necessary to resolve a conflict among the Circuits under which, a procedural defect in the

integrity of the administrative process of the STATE OF SOUTH CAROLINA is used as a tool to violate constitutional protected rights to due process. The SOUTH CAROLINA COURT OF APPEALS substantive misinterpretation of its rules of civil procedures and by way of such misinterpretation resulted in the violation of Appellants protected rights to procedural due process.

James Madison once said that the concentration of all government powers in one branch is “the very definition of tyranny.” Yet, today, administrative agencies regularly exercise all three of those powers. They issue rules with the force of law. They enforce laws. And they prosecute people through a system of administrative proceedings before administrative law judges or ALJs, who are hired by the agency prosecuting you.

In Lucia v. SEC, the U.S. Supreme Court ruled that SEC ALJs were not properly appointed under the Constitution. Even though each suit premised jurisdiction on district courts' ordinary federal-question authority to

resolve "civil actions arising under the Constitution, laws, or treaties of the United States." 28

U. S. C. §1331. The Appellant's last and final efforts to correct the wrongs of the STATE OF SOUTH CAROLINA judicial system rest with this court.

A. Reading the UNITED STATES CONSTITUTION and the STATE OF SOUTH CAROLINA CONSTITUTION both are in agreement but both, the UNITED STATES CONSTITUTION and the STATE OF SOUTH CAROLINA CONSTITUTION conflicts with the STATE OF SOUTH CAROLINA administrative process.

The UNITED STATES CONSTITUTION 14th Amendment and the STATE OF SOUTH CAROLINA CONSTITUTION Article 1, both protects and provides equal protection of the laws by way of procedural due process. The conflict begins when a State administrative agency who has a beneficial interest in the case, acts as judge and jury.

This case presents the question whether administrative proceeding in the State of South Carolina is in violation of procedural due process.

According to the U.S. Supreme Court decision in *Kulko v. Superior Court of California* when a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878); *International Shoe Co. v. Washington*, 326 U. S., at 316. Thus, in the United States Supreme Court "the existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought," *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 313-314 (1950), and a "sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum." *Milliken v. Meyer*, 311 U. S. 457, 463-464 (1940).

S.C. Constitution Article I, Section 22

In 1966, the Legislature appointed a commission chaired by then Senator (later Governor) John C. West to study and propose amendments to the South Carolina Constitution. Among its recommendations, the West Committee recognized the creeping rise of the administrative state, noting agency decisions often “are more significant than laws enacted by the General Assembly or decisions made by the Courts.” Final Report of the Committee to make a study of the South Carolina Constitution of 1895, at 21 (1969). The West Committee registered its agreement “with many other constitutional study groups throughout the country that judicial and quasi-judicial decisions of administrative agencies should be consistent with due process of law and complete fairness to the citizen.” Id. The language it drafted “as a safeguard for the protection of liberty and property of citizens,” id. at 20, was adopted and ratified in 1970 as our current Article I, section 22:

No person shall be finally bound by a judicial or Quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he Shall have in all such instances the right to judicial review.

The South Carolina Supreme Court has held, "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

In dismissing the Petitioner's Motion to Vacate the Administrative Order the lower court relied on the "DSS's certificate of mailing" claiming that it "provided notice of the rescheduled negotiation conference" and that it was "mailed in a sealed envelope, postage prepaid" but never provided proof of the certified mail return receipt signed by

the Appellant of said mailing, nor did the court provide legal authority in support of its ruling.

Rule 4(d)(8) provides, in part: Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.

The Appellant provided the court with multiple factual evidence in support of the South Carolina Rules of Civil Procedure and Constitution explaining how his procedural due process was in fact violated.

CONCLUSION

The Petition should be granted.

Respectfully Submitted,

Without Prejudice, All Rights Reserved

By: Dominique Burns

aka a man known to use the name Dominique-Gerald Burns

In the interest of

DOMINIQUE GERALD BURNS (ENS LEGIS)

c/o 126 Peachtree Lane

Bishopville, South Carolina Republic [29010]

U.C.C 1-103, 1-201 and 1-308