

The South Carolina Court of Appeals

Appellate Case No. 2022-000464

Carl Chisolm, 185789  
Appellate

v.

South Carolina Department of Corrections.  
Respondent.

Appellate's Final Brief

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SC Court of Appeals

# INDEX of Authorities

*Al-Shabazz v. State*, 338 S.C. 354, 527 S.E. 2d (2000).

*Mezak v. S.C. Dept. of Corr.*, 361 S.C. 327, 331, 605 S.E. 2d 506, 508 (2004).

*Wolff v. McDonell* 418 U.S. 539 S.Ct.

*Rhodes v. Chapman* 452 U.S. 557 101 S.Ct. 2392 69 L.Ed. 2d (1981)

14<sup>th</sup> Amendment.

SCDC Policy OP 22.14.

8<sup>th</sup> Amendment.

*Berends v. Butz*, 357 F. Supp. 143 (1973).

Final Argument Appellate Case No. 2022-

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1 During the month of August 2020, Appellate Carl J. Chisolm was taken to the Lee Core Inst. and housed in building F-5 with other prisoners from various prisons throughout the state of South Carolina; after being diagnosed with Covid-19 at Perry Core Inst. Appellate was placed in a cell with another sick prisoner that had contracted the Covid-19 virus, at the McDougall Core facility. The building in which Appellate and other Covid-19 diagnosed prisoners were housed, was the same building that a known riot had broken out a few years prior to Appellate's placement there, that left 7 prisoners dead and 12 injured. Remnants of said riot could still be seen within the living area where myself (Carl Chisolm) and other Covid prisoners were being held. Such as bloody mops, filthy showers, dirty rock area, etc, etc. In which Appellate (Carl Chisolm) and another prisoner (Demarco Johnson) despite our illness and weakness, cleaned the dirty rock area, dirty showers, bloody mops, as well as served the cold food trays. An of course, my confinement to this limited amount of space did bring about mental

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Trauma (Seeing other prisoners die right before my eyes), Stress, insignificant hardship, etc. This limited amount of space with well over 128 prisoners confined two prisoners assigned to a single cell, did indeed increase the risk of an even more deadly air borne disease. Appellate was held in that limited amount of space for well over 37 days fighting off the Covid-19 virus; in which the medical world had yet to find a vaccine. [See Rhodes v. Chapman 452 U.S. 557 101 S.Ct. for Courts opinion concerning limited space.] Moreover, the Appellate (Carl S. Chisholm #185789) prior to contracting Covid-19 virus went to state employee's at the Perry Corr. Inst. informing them of another prisoner (Ricky Millson) who was totally disregarding the safety of others, as well as, himself. SCDC had an Action Plan that was handed down by the Governor of the State of South Carolina (Henry McMaster) to the Commissioner Bryan Sterling. Whom sent forth memo's and posts giving insight to preventive measures for prisoners housed within the prison system to follow, in order to reduce and maintain a marginal level of Covid-19 infection within the system. As a part of the Governor's Action Plan, the Agency Task Force in conjunction with experts from

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The Medical Division Service, Environmental Control, and Emergency Management, had posted instructions, Memo's posted throughout the prison system so that prisoners could learn how to manage themselves, as well as, living area properly, in order to avoid a massive outbreak of the Covid-19 virus throughout the prison system. The Appellate's Cellmate at the time Ricky Wilson not only ignored these warnings and posts; but, continued to bring trash out of the trash can into the cell he and Appellate shared, that ultimately lead to the contraction of Covid-19 of Appellate. Appellate did take action in an effort to avoid the contraction by informing the unit supervisor for well over 3 weeks (Lt. Blackwell), then Capt. D. Wilson, then A/W S, McDuffy, then A/W Early. All of whom failed to follow their own established Procedural Protocol handed down by Commissioner Bryan Sterling. Their inaction when action was required did indeed resulted in Appellant's insignificant hardship, of stress, headaches, weight loss, loss of taste, trauma from witnessing other prisoner's die from Covid-19 and worrying if I was gonna be next. Being housed in a filthy block that gave no hope of survival. This failure to act was indeed a violation of Appellate's procedural Due Process and Constitutional rights under the Eighth and Fourteenth Amendments. [See *Berends v. Butz* 357 F. Supp. 143 Mar. 20 1973.]

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Appellate's plea for help during the most serious time of the pandemic went unanswered and Appellate nearly died as a result thereof. In *Slezak v. S.C. Dept. of Corr* the Justice of the Court defined that in order for the law to react; a state created liberty or property interest must be implicated: This Appellate's confinement to a limited amount of space, housed with another sick prisoner whom only decreased the Appellate's chance of recovery, as well as, the deliberate indifference by the Perry Cox. Inst. Officials inaction when an Action Plan was handed down from the Subject Matter Experts through the Governor's office did indeed intrude upon Appellate's "Liberty," in which caused him unwanted pain and suffering. Liberty can be defined or may arise from an expectation or interest by state law or policies. S.C.D.C. Commissioner Bryan Sterling and health advisers made it clear that the prison population were expected to follow certain procedures during the time of an unknown pandemic and prison officials were to carry out this Action Plan. All of which is duly noted by posters, memos, and verbal exchanges by Appellate to various staff members, request to staff, and kiosk requests by Appellate to avoid a serious health issue. The unanswered plea for help did intrude upon Appellate's Due Process Rights under *Al-Shabazz v. State*, and Fourteenth Amendment. The cruel and unusual pain/suffering, as well as, insignificant hardship did violate his 8th Amendment Rights.

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Appellate is seeking two million dollars for pain and suffering or release from State Custody. It is well documented that despite my illness during that time, I did try to help out and bring hope to others that felt hopeless. I kept praying, asking God to strengthen my vision to care for others despite my own pain and suffering.

All I can do now is rest before this honorable Court with praying hands in hopes that the Court view this matter in it's true light. SCDC's motto is to protect the public, staff, and prisoner's alike. However, they (SCDC Attorneys) failed this prisoner when he needed them the most. Appellate went to various staff members trying to avoid a serious threat to his life that was taking the life of many ppl. in society and prison.

Just as the Prophet David spoke in the book of Psalms 27:14 - "Wait for the Lord; be strong and take heart and wait for the Lord." In instant case, wait on the Court's ruling.

Respectfully,

Carl G. Chisholm

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