

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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AUG 29 2022

APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Hon. Deborah B. Durden, ALJ

Appellate Case No. 2022-000871

GREGORY PENCILLE #312332 Appellant

V.

South Carolina Dept. of Corrections Respondent

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**REPLY BRIEF OF APPELLANT**

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Gregory Pencille 312332  
Evans CI F4A275  
610 Highway 9 West  
Bennettsville, SC 29512  
Appellant, Pro se

## TABLE OF CONTENTS

TABLE OF AUTHORITIES	<u>ii</u>
ARGUMENT	<u>1</u>
CONCLUSION	<u>3</u>

### TABLE OF AUTHORITIES

#### CASES

Bell V. Wolfish, 441 U.S. S20 (1979)	<u>1</u>
Burwell V. Hobby Lobby Stores, Inc. S73 U.S. 682 (2014)	<u>1</u>
Kleindienst V. Mandel, 408 U.S. 753 (1972)	<u>2</u>
Turner V. Safley, 482 U.S. 78 (1987)	<u>1</u>
United States ex. Rel. Wolfish V. U.S. 428 F. supp 333 (1977)	<u>1</u>
United States V. Playboy Entertainment Group, Inc. S29 U.S. 803, 120 Sect 1878 (2000)	<u>1</u>
Wolff V. McDonnell, 418 U.S. S39 (1974)	<u>1</u>

#### STATUTES

43 Fed. Reg. 30576 (1978) [codified in 28 CFR § 540.71]	<u>1</u>
S.C. Const. Art XII § 2	<u>1</u>

## ARGUMENT

Supplemented to Appellant Initial brief, appellant contends the following;

According to the South Carolina Constitution Art. XII § 2, The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and **shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.**

In deciding whether prison regulations which impinges on inmates' constitutional rights can be sustained as "reasonably related" to legitimate penological interest, the court shall consider: Whether there is valid, rational connection between prison regulation and legitimate governmental interest put forward to justify it; whether accommodation of asserted rights will have significant "ripple effect" on fellow inmates or prison staff; and whether there is a ready alternative to the regulation that fully accommodates prisoner's rights at de minimis cost to valid interests, Turner V. Safley, 482 U.S. 78 (1987). The "least-restrictive-means" standard requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden. Burwell V. Hobby Lobby Stores, Inc. S73 U.S. 682 134 Sect. 2751 (2014) further, if a less restrictive means is available for the government to achieve its goal, the Government **must** use it. United States V. Playboy Entertainment Group, Inc. S29 U.S. 803 (2000) 120 Sect. 1878, such as simply, removing the hard covers at the institution or if available for the publishers, bookstore, or book club to remove it.

If inmate who challenges prison regulations as a violation of constitutional rights can point to alternative regulations that would fully accommodate prisoners' rights at de minimis cost to valid penological interest; Then court may **consider** this as **evidence** that the regulation is not reasonably related to valid penological interests. Wolff V. McDonnell, 418 U.S. S39 (1974). There **must** be "mutual accommodations" between institutional needs and objectives and the provisions of the constitution that are of general applications. "Rights of sentenced inmates are measured by a standard of the Eighth Amendment cruel and unusual punishment, United States ex. Rel Wolfish V. U.S. 428 F. supp 333 (1977)."

Respondent enlightens Appellant with Bell V. Wolfish, 441 U.S. S20, S47, (1979). This case echoes Appellant's claims and sets forth a precedent.

The Bureau of prison's "Publisher Only" rule, which applies to all Bureau facilities, permits inmates to receive books and magazines from outside the institution only if the materials were mailed directly from the publishers or book club. 573 F2d, at 129-130. The Bureau of prison later amended its "publisher only" rule to permit the receipt of books and magazines from bookstores as well as publishers and book clubs 43 Fed. Reg. 30576 (1978) [codified in 28 CFR § 540.71]

In the Bell case, a warden at a pre-detainee facility stated, “serious” security and administrative problems caused when inmates receive bound items from unidentified sources outside the facility “and” prison officials would have to remove the covers of hardback books. The court ruled however, “there is relatively little risk that material received directly from a publisher, bookstore, or book club would contain contraband”. The Court of Appeals (2<sup>nd</sup> Circuit) rejected these security and administrative justifications and affirmed the District Courts’ order enjoining enforcement of the “Publisher Only” rule. The Court of Appeals, held that the Rule “**severely and impermissibly restricts the reading materials available to inmates and therefore violates their 1<sup>st</sup> Amendment and due process rights**” 573 F2d, 130. Where the Bureau regards hardback books, as the “more dangerous source of risk to institutional security” unless they are mailed directly from publishers, book clubs, or bookstores.

The court concluded that a prohibition against receipt of hardcover books unless mailed directly from publishers, book clubs, or bookstores does not violate 1<sup>st</sup> Amendment rights. That the limited restriction is a rational response by prison officials and properly balances 1<sup>st</sup> Amendment rights against legitimate governmental interests. Kleindienst V. Mandel, 408 U.S. 753 (1972).

The restriction, as it is, therefore allows soft bound books and magazines to be received from any source and hard cover books to be received from publishers, book clubs, and bookstores per precedent, per federal statutes/regulations. Any further restrictions imposed by the SCDC and/or Evans would therefore be too restrictive thereby violating inmates 1<sup>st</sup> Amendment rights, due process and would be considered a cruel and unusual punishment by the 8<sup>th</sup> Amendment. SCDC must rescind this prohibition as it violates these rights.

Furthermore, violation of these constitutional rights proves appellant properly asserted a State-created liberty and property interest and the ALC improperly dismissed appellant’s Appeals.

Respondent’s brief fails to address any claims raised by appellant, such as the agency retroactively applying a prohibition by blocking books then creating said prohibition. Points in respondent’s brief are peppercorn or are misrepresented;

**Respondent’s brief page 5:** “Appellant was given opportunity to surrender his hardcover books without penalty.”

**Appellant’s brief page 7:** “Staff has verbally rescinded parts of the memorandum; hardcover books already in the possession of the inmates prior to March 7, 2022 are not needed to be mailed out, Education/Vocation/College books that are hardcover can be possessed by inmates, NO amnesty boxes were provided.”

The memorandum and/or the grievance responses may have printed, "Opportunity was given," however, NO opportunity was given. Further penalty was clearly the loss of expenses of books ordered, postage to mail out, and constitutional depravities.

Also,

**Respondent's brief page 5:** "He also does not contend that the same content is not available in soft cover books or other formats."

**Respondent's brief page 3:** "(4) four of the books in this order were **only** available in hardcover versions..."

Further, does respondent intend by this statement that if books only available in a hardcover version are in some way immune from this unconstitutional prohibitive memorandum?

### CONCLUSION

Appellant simply contends that the SCDC acts on whims. Declaring whatever rules or prohibitions they create without oversight or research. They trample on what little rights the incarcerated have without consequence. It's clear that respondent points directly to the federal statute which contains legal argument and sets precedent. The SCDC intends to follow this statute with their policy/procedure manuals yet Evans chooses when, where, and how or NOT to apply these statutes.

Appellant prays this court notice these constitutional travesties, recognize appellant's issue as "State-created liberty and property interests" as the Bell case clearly establishes, order damages, and order remand to ALC for proper address or make any other order it deems appropriate.

August 25<sup>th</sup>, 2022



Gregory Pencille 312332  
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Appellant, Pro se

~~CONFIDENTIAL~~  
25<sup>th</sup> day of August 2022  
S. Cullow  
Secretary Public of South Carolina  
~~CONFIDENTIAL~~ 2/17/22

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**PROOF OF SERVICE**

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I certify that I have served Appellant's Reply Brief, Motion to supplement Record on Appeal, on all parties by depositing the same in the U.S. mail, postage paid or by placing in the institutions mailroom on August 25<sup>th</sup>, 2022 and addressed as follows:

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August 25<sup>th</sup>, 2022



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~~25th day of August~~  
*Susan Orella*  
Clerk of Court  
2/17/24

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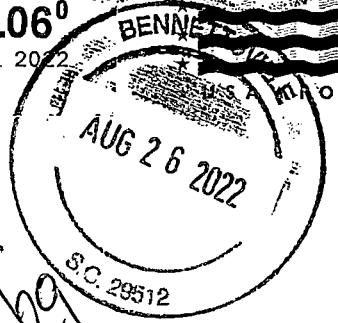


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