

THE STATE OF SOUTH CAROLINA

IN THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM S.C. ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

CASE NO. 2022-000934 **RECEIVED**

SEP 01 2022

TRAVON SIMUEL, 246568 Appellant **SC Court of Appeals**

v.

SOUTH CAROLINA DEPT' OF COLLECTIONS, Respondent

INITIAL BRIEF OF APPELLANT

Mr. Travon Simuel 246568
Turbeville Corr. Inst.
1578 Clarence Coker Hwy.
Turbeville SC 29162

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3.
STATEMENT OF ISSUES ON APPEAL	4.
STATEMENT OF THE CASE	6.
STANDARDS OF REVIEW	7.

ARGUMENTS

1. Whether TRAVON SIMUEL (Appellant) has a liberty interest in being free from and avoiding the label/stigmatization of being a validated security threat group (STG) member and its attendant consequences without being afforded due process of law -

2. Whether SCDC (respondents) actions in banning Appellants Book, "REFLECTIONS AND THOUGHTS OF POWER subtitled: Inspirational, Educational and Motivational Selections" By: Akili Asafo violated Appellants right to freedom of speech, due process and equal protection as secured by the Constitution of the United States -

3. Whether TRAVON SIMUEL (Appellant) should have been given a Notice/Opportunity to be heard and respond before being labeled and validated as an STG and prior to his book being censored/rejected -

TABLE OF AUTHORITIES

CASES

- * IN RE: LONG TERM ADMINISTRATIVE SEGREGATION OF INMATES DESIGNATED AS FIVE PERCENTERS - UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT NO. 98-7337 Decided April 21, 1999
- * Mark Melvin v. Thomas September 23, 2011
- * Prison Legal News, ET AL vs. Berkeley County Sheriff, ET AL - COMPLAINT

OTHER AUTHORITIES

- * First Amendment of the United States Constitution (Freedom of speech and expression)
- * Fifth Amendment of the United States Constitution (to not be deprived of life, liberty or property without due process of law)
- * Fourteenth Amendment of the United States Constitution (Equal protection of law)

STATEMENT OF ISSUES ON APPEAL

1. Did The Administrative Law Court Abuse its discretion by not finding that Travon Simuel (Appellant) has a liberty interest in avoiding the stigmatizing label/validation as an STG member and its attendant conditions that require procedural due process protections?

Ⓐ Although Appellant does not possess a liberty interest (Constitutional right) to a particular security custody status however, after Appellant has earned the privilege of attaining said custody status having committed no major misconduct, but is arbitrarily being deprived of said custody status without due process. Ⓑ STG validation is unsupported by any actual fact and Appellant is being irreparably harmed by being so labeled.

2. Did SCDC (Respondent) actions in banning, "Reflections and Thoughts of Power," violate Travon Simuel (Appellant) rights to freedom of speech and expression, due process, equal protection and property interest as secured by The Constitution of The United States?

- (A) Appellant's book of poetry does not describe how to ESCAPE, MAKE bombs or how to BREAK THE LAW nor does it disrupt the SECURITY PLAN OF THE FACILITY.
- (B) Prison officials should not reject books/publications simply because they disagree with their political viewpoint or other arbitrary reasons.

3. TRAVON Simuel (Appellant) and author of "Reflections and Thoughts of Lower" was never notified of the censorship/rejection as according to SCOC policy PS-10.08 "Inmate Correspondence Privilege" (A) None of the guidelines set forth in the policy were followed by SCOC (B) Nor did SCOC (Respondent) go according to the prevailing STM policy OP-21.01 at the time of Appellants' violation which was May 11, 2021. The new restricted SCOC STM policy OP-22.58 didn't go into effect until June 8, 2021 (SEE STEP 2 grievance responsible officials response) (C) Also to point out that contradicts Jeffrey Bowers affidavit which he states the new STM policy went into effect October 7, 2021. (SEE Affidavit of Jeffrey Bowers)

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal filed by Travon Simuel (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. Appellant appeals the decision of the South Carolina Administrative Law Court (ALC) in which, his freedom of speech, due process and equal protection under United States Constitutional rights were violated and he was not given a notice written or verbally before his book was banned from the facility neither before being labeled/validated as a Security Threat Group Member (STG).

STANDARDS OF REVIEW

- * Rights of a Stigmatized Prisoner
- * Fifth Amendment of The U.S. Constitution

ARGUMENT #1

Whether Appellant has a liberty interest in being free from and avoiding the label/stigmatization of being a validated (SIC) member and its attendant consequences without being afforded due process of law.

FACTS

On or about March 22, 2021 two copies of my book entitled, "Reflections and Thoughts of Power" by Akili Asafo was sent to Tuckerville Correctional Institution mailroom in which my family ordered from Amazon. Former Postal Director/Designee Ms. Bryant flagged my book as a security threat group publication and sent it to Contraband Supervisor Lt. Timmons who in turn sent my book to headquarters.

NO ONE INFORMED ME OF MY BOOK BEING REJECTED / CENSORED WRITTEN OR VERBALLY NOR OF ME BEING VALIDATED / CLASSIFIED AS AN STG MEMBER. TWO MONTHS LATER ON OR ABOUT MAY 12, 2021 MY CASEWORKER MS. ROUSH INFORMED ME DURING MY ANNUAL REVIEW THAT MY CLASSIFICATION LEVEL HAD BEEN CHANGED FROM A (CIP1) TO A LEVEL 2 BECAUSE I WAS UPDATED FROM A SUSPECTED STG TO A VALIDATED (STG) MEMBER ON MAY 11, 2021.

I BEGAN TO DO MY RESEARCH AND INQUIRE AND NOT GETTING ANYWHERE I HAD MY FAMILY TO CONTACT MS. ANGELA HARDIN (ADMINISTRATIVE MANAGER) OF POLICE SERVICES ON OR ABOUT JUNE 2, 2021 WHO STATED, " THAT THE REASON I WAS LABELED / VALIDATED WAS DUE TO THE SYMBOL ON THE BACK OF MY BOOK. THE NAME OF THE SYMBOL IS THE GYE NYAME WHICH IS AN ADINKRA SYMBOL AND HAS NO AFFILIATION TO AN (STG.)

THE INITIAL REASON THE BOOK WAS FLAGGED WAS DUE TO THE SYMBOL. LATER IN THE STEP 1 GRIEVANCE WRITEN SHARP SUGGESTS THE CONTENT OF THE BOOK, STILL TO THIS DAY SCDC OFFICIALS HAVE NOT SPECIFICALLY STATED WHICH PREM, PASSAGE OR PARAGRAPH JUSTIFIES THE VALIDATION.

Rights of a Stigmatized prisoner states, specifically that courts should always find that stigma is present when a prison imposes a label on an inmate that: (A) implies that he has committed a criminal act or has a mental disorder; (B) is unrelated to the elements of his crime(s) of conviction; (C) carries a significant risk of adverse consequences to the inmate. When such stigma exists, courts should consistently find that the inmate at issue has a liberty interest in avoiding the stigmatizing label and its attendant conditions that requires procedural due process protections.

Furthermore, providing procedural due process protections to prisoners who are thus stigmatized is a step towards ensuring that prisons classify and treat inmates for what they have done, not based on who the prison system imagines them to be!

The stigmatizing label as an (SGL) member can irreparably harm/damage appellant from being able to move down in custody status to a level one or go to a designated facility. Also upon release appellant can be denied certain employment, housing and benefit opportunities by having said label attached to him.

STANDARD OF REVIEW

- * First Amendment of The United States Constitution (Freedom of Speech and Expression)
- * Fifth Amendment of The United States Constitution (to Not be deprived of life, liberty or property without due process of law)
- * Fourteenth Amendment of The United States Constitution (Equal protection of law)
- * Mark Melvin v. Thomas Sept. 23, 2011
- * Prusac Legal News, ET AL v. Berkeley County Sheriff, ET AL-Complaint

ARGUMENT # 2

Whether SCOC (respondents) actions in banning appellants book violated appellants right to Freedom of speech and Expression, due process and Equal protection as secured by the Constitution of The United States.

FACTS

The ban on Appellant's book violates his First Amendment of the United States Constitution and does nothing to protect the "safe and secure operation" of correctional facilities. In addressing prisoner's First Amendment rights, the U.S. Supreme Court has clarified that "prison walls do not form a barrier separating prison inmates from the protections of the Constitution." Furthermore, "the First Amendment protects the flow of information to prisons, including the right of publishers, friends and other third parties to reach prisoner audiences."

Appellant is the author of the book and is free to express his political viewpoints, as long as, they don't advocate racial violence, a violent political ideology or disrupt the secured flow and safety of inmates and staff.

Appellant has both a physical/ intellectual property interest violations under the Fifth Amendment to the United States Constitution and he asks this court to protect them. Just because Appellant has been an STG suspect since July 5, 2005 everything he thinks, believes or says shouldn't be considered STG content!

Appellant asks this court to hold SCDC (Respondent) to the same standards laid out in *Mark Melvin v. Thomas* and *Prison Legal News, ET AL v. Berkeley County Sheriff* -

STANDARD OF REVIEW

* IN RE: LONG TERM ADMINISTRATIVE SEGREGATION OF INMATES DESIGNATED AS FIVE PERCENTERS - U.S. COURT OF APPEALS, FOURTH CIRCUIT NO. 98-7337 DECIDED April 21, 1999

* *Mark Melvin v. Thomas*

* SCDC Policy PS-10.08 "INMATE CORRESPONDENCE PRIVILEGE"

* SCDC STG Policy OP-21.01

ARGUMENT # 3

Whether Appellant should have been given a notice of censorship / rejection before book being banned also a notice/opportunity to be heard before being labeled and validated as an STM member -

FACTS

Appellant was never informed by the Institutional Postal Director/Designee Ms. Bryant or any other official that his book was not permitted and as to why it wasn't.

"Appellant has a right to be notified of an incoming publication/Correspondence that is being censored/and or rejected by the Institutional Postal Director/Designee."

SCDC Policy PS-10.08 "Inmate Correspondence Privilege" clearly explains the guidelines and procedures for SCDC officials and The Correspondence Review Committee. Appellant was never notified verbally or in writing and if it wasn't for his annual review he still wouldn't have been aware and began to do his investigation.

That is a clear violation of Appellants First, Fifth and Fourteenth Amendments to the United States Constitution. How could Appellant properly prepare a defense and response if he was not informed properly of the censorship / rejection?

These are basic procedural due process requirements, in which, SCOC (Respondent) denied to Appellant without justification.

IN RE: LONG TERM ADMINISTRATIVE SEGREGATION OF INMATES DESIGNATED AS FIVE PERCENTERS - UNITED STATES COURT OF APPEALS 4th Circuit NO. 98-7337 Decided April 21, 1999. A citation of SCOC's STG Policy which was the prevailing policy at the time of my validation on May 11, 2021. Policy DP-21.01 states, "that an inmate who is classified as an STG member is notified of that fact and given an opportunity to respond."

This case and citation of SCOC's STG Policy from twenty-three (23) years ago clearly refutes the responsible officials claim that STG designation hearings were not required until June 8, 2021. If Appellant would have been properly notified accordingly via an STG designation hearing ect before being validated and given the opportunity

To be heard Appellant could have proved it was a simple misidentification about the meaning of symbol on the back of his book.

First, Respondent stated in The Order Granting Respondents Motion to Dismiss that Appellant did not file a response to Jeffrey Bowers Affidavit. Appellant did not file a separate response however, he did respond to the Affidavit in his Response Brief to Respondents Motion to Dismiss on page (5) 2nd paragraph.

Jeffrey Bowers alleges that two (2) of the policy criteria were present; that I possessed STG publications and correspondence identifying an STG affiliation. I ask the Court what in my book is considered STG specifically and in detail? And how does it or should I say my thoughts and expressions harm other prisoners/staff and cause disorder/ violence?

SCDC (Respondent) is clearly weaponizing the fact that I was an STG suspect since 2005 and utilizing that as the only justification to validate me as an STG. Appellant points out also that he has never been charged with any type of STG literature of any sort to justify being a suspect or validation!

CONCLUSION

The Discriminatory Censorship /
Rejection of Appellant's Book By SCDC
(Respondent) while refusing to provide
Notice -

The labeling / stigmatization of
Appellant clearly violated constitutionally
protected rights such as: Liberty and
property interest, Due process, Freedom
of speech and Equal protection of law -

Appellant asks the Court to uplift
the book on his book from the facility,
that the two (2) copies of his book that
were rejected be returned and that
Appellant's level one (1) custody status be
restored!

Respectfully Submitted,
Thom S. #246568
Timon Simmel #246568
Timbeville Correctional Inst.
1578 Clarence Collier Hwy.
Timbeville SC 29162

CERTIFICATE OF SERVICE

RECEIVED

SEP 01 2022

SOUTH CAROLINA COURT OF APPEALS

SC Court of Appeals

I, TRAVON SIMUEL hereby certify that a copy of the foregoing brief was on the below stated date served upon all parties of record by placing a copy of the same in the United States mail, postage prepaid, and sent to their last known addresses as follows:

Jenny Abbott Kitchings
Clerk for Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Christina Catherine Bigelow
(Esquire)
S.C. Dept of Corrections
4444 Sandriver Rd
Columbia SC 29210-4012

Turbeville, S.C. this 29th day of August 2022

SWORN to and subscribed before me this

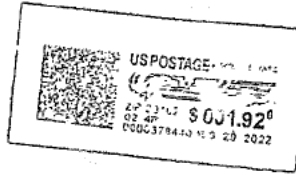
_____ day of _____

Notary Public for South Carolina

My Commission Expires: _____

Respectfully Submitted,
Travon Simuel
TRAVON SIMUEL #246568
Turbeville Corr. Inst
1578 Clarence Collier Hwy
Turbeville, SC 29162

McTravon Simrel #246568
Tumberville Cour. Inst.
Unit Seloc. A. 209
1578 Clarence Collier Hwy
Tumberville SC 29162



RECEIVED
SEP 01 2022
SC Court of Appeals

Jenny Abbott Kitchings
Clerk for Court of Appeals
P.O. Box 11679
Columbia, SC 29211

