THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Hon. Deborah B. Durden. ALJ

Appellate Case No. 2022-000871

GREGORY PENCILLE #312332 Appellant

V.

South Carolina Dept. of Corrections Respondent

REPLY BRIEF OF APPELLANT

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

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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 impringes 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 US 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 interests; Then court may **consider** this as **evidence** that the regulation is not reasonably related to 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. 520, 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's 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 predetainee 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 (2nd Circuit) rejected these security and administrative justifications and affirmed the District Courts' Rule **"severely and impermissibly restricts the reading materials available to inmates and therefore violates their 1st 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 1st Amendment rights. That the limited restriction is a rational response by prison officials and properly balances 1st 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 1st Amendment rights, due process and would be considered a cruel and unusual punishment by the 8th 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 4: "Staff has verbally rescinded parts of the memorandum; hardcover books already in the possession of the inmates prior to March 07, 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 notices these constitutional travesties, recognizes 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.

October ~~August~~ 03rd, 2022

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b). SCACR

October 03rd, 2022

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