B

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

CASE NUMBER: 2022-000934

TRAVON SIMUEL, 246568, Appellant

v.

South Carolina Dept of Corrections, Respondent

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SC Court of Appeals

RECORD ON APPEAL

Christina Catoe Bigelow
(Esquire)
S.C. Department of Corr.
4444 Broad River Rd
Columbia SC 29210-4012
Counsel For Respondent

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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM JUL 22 2021

STEP 1

INMATE NAME: Travon Simuel	**OFFICE USE ONLY**
SCDC NUMBER: 246568	**Grievance No.** TCI-0183
INSTITUTION: Turbeville	**Code: General** CLCL
HOUSING UNIT: Seloc A 239	**Policy**
WORK ASSIGNMENT: Menton	**Disc. Hear.**
	Class.
	PREA
	Date Received 7/23/21
	IGC Initials KC

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) REF# 21-020213

①Grievance: On or about 6/1/2021 I was classified as STG without Due process of law as a result of the actions and inactions of mailroom staff Ms. Bryant, Lt. Timmons of Contraband, Police Service Admin. Manager Ms. Angela Hardin, STG Unit Mr. Jeffery Scott and other staff whose names are unknown at this time. ②Supporting Facts: On or about March 22, 2021 a copy of my book Entitled: "Reflections and thoughts of Power" came into the mailroom Ms. Bryant flagged it as STG and turned it over to Lt. Timmons of Contraband, which I sent it to STG Unit at headquarters. On or about May 12, 2021 case worker Ms. Pough informed me that I was classified as STG. On June 2, 2021 I had my Family to call Ms. Angela Hardin of Police Service who stated the reason why they labelled me as a Five percenter was due to the symbol on the back of my book. The name of the symbol is Gye Nyame. I objected because I was given no formal notice nor an opportunity to be heard before being validated/classified as STG. ③Entitlement to Relief: I am entitled to relief because I am entitled to Due Process before being classified as STG. I am not a Gang member or Five percenter and any declaration that I am is Arbitrary and Capricious. The symbol on the back of the book is the Gye Nyame, which is a spiritual symbol and not affiliated with any such classification known as STG.

Travon Simuel 7/21/2021
Grievant Signature **Date**

ACTION REQUESTED: That the STG classification/validation be immediately removed from my record and my level (1) classification be returned. All that my books be returned to me immediately aswell!

ACTION TAKEN BY IGC: ☒ **PROCESSED** ☐ **UNPROCESSED** ☐ **OTHER**

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~See Warden's Decision On Back~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

(4)

K. Chestnutt 8/5/21
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

WARDEN'S DECISION AND REASON:

Simuel, Travon 246568 **TCI-0183-21**

I have reviewed your concern. In your grievance you allege on or about 6/1/21 that you were classified as STG without due process of law. You stated that on 3/22/21 a copy of your book "Reflections and Thought of Power" came into the mailroom and was flagged as STG because of the symbol on the back and turned over to Contraband and then the STG unit at Headquarters. You further allege that you were never notified of this validation, that it was only at your annual review you were told by your Caseworker that you would not be receiving your Level 1 Classification because of being labeled STG. You are requesting that the STG validation be removed and that your Level 1 Classification be returned. An investigation found that you have been in SCDC's STG system as a suspected Five Percenter since 7/5/05 from other institutions. Since all members concurred with the evidence that the book contained STG content, you were updated from being suspected to a Validated Five Percenter.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision

8/9/2

Warden Signature

☐ **I accept the Warden's decision and consider the matter closed.**

☒ **I do not accept the Warden's decision and wish to appeal.**

8/13/2021

Grievant Signature **Date**

8/10/21

IGC Signature **D**

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. **An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the ansv RTSM must be attached to the grievance when the grievance is filed.**
2. **Complete each section in its entirety writing only in the space provided for inmate use. No additional p will be permitted.**
3. **Only one (1) issue is to be addressed on each form.**
4. **Submit the completed form by placing it in the Grievance Box at your institution within eight (8) wo days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary Classification Review appeals must be submitted within five (5) working days of the hearing/review. D write in the space provided for the Warden's response.**
5. **If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible of within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in Grievance Box at your institution**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

AUG 02 2021

STEP 1

INMATE NAME: Travon Simuel
SCDC NUMBER: 246568
INSTITUTION: T.C.I
HOUSING UNIT: SA-229
WORK ASSIGNMENT: Mentor

OFFICE USE ONLY
Grievance No. TCI-0188-21
Code: General CLCL
Policy
Disc. Hear.
Class.
PREA
Date Received 8/3/21
IGC Initials KC

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) Kiosk# 21-0199668

Grievance: (Mailroom Staff) Ms. Bryant, (Contraband) Lt. Timmons, (Police Service Admin. Manager) Angela Hardin, (Director STG Unit) Jeffery Scott or whoever is Director and other staff whose names are unknown to me at this time are violating my First and Fourteenth Amendment rights whereas those persons and others who remain unknown to me at this time did on or about 6/1/2021 maliciously, sadistically, with the intent to deprive me of my constitutional and statutory rights, did arbitrarily and without regard for my rights, permanently label me as a Five Percenter STG with the intent to and did cause me permanent harm. Circumstances: On or about March 22, 2021 a copy of my book titled, Reflections and Thoughts of Power By: Akili Asafo came into the mailroom. Ms. Bryant flagged it as STG and turned it over to Lt. Timmons who sent it to STG headquarters. On or about May 12, 2021 Ms. Pough informed me that I was classified as STG Five Percenter. On 6/2/2021 my family called Angela Hardin of Police Services and she stated I was labelled a Five Percenter due to symbol on the back of my book. The symbol is the Give Nyame an Adinkra symbol which is spiritual and is clearly a misidentification. Entitlement to Relief: I am entitled to relief because it is unlawful and a violation of my Federal, State and constitutional and statutory rights for the SCDC staff named herein to label me as a Five Percenter STG member without any basis in fact or law, without any evidence and while knowing that their actions will, did and does cause me irreparable harm. And SCDC staff exceeded their authority

Travon Simuel 7/31/2021
Grievant Signature Date

ACTION REQUESTED: That the Five Percenter STG classification be immediately removed from my record and my level one classification be returned. Also that my books be returned to me immediately as well.

ACTION TAKEN BY IGC: ☒ PROCESSED ☐ UNPROCESSED ☐ OTHER

This grievance has been processed and returned to you as a duplicate to issues related in TCI-0183-21. Pursuant to GA-01.12 Inmate Grievance System "...**Inmates will only be allowed to submit one grievance per incident or circumstance.** You cannot continue to grieve issues related to this same issue if this continues, you will be added to the Grievance Limitations List. Your grievance is being processed. Also others should not be writing your grievances for you.

IGC Signature 8/3/21
Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

WARDEN'S DECISION AND REASON:

Warden Signature

- ☐ I accept the Warden's decision and consider the matter closed.
- ☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date IGC Signature D

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the ans RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) wo days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinar Classification Review appeals must be submitted within five (5) working days of the hearing/review. D write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible o within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form i Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED
SEP 17 2021
INMATE GRIEVANCE

INMATE NAME: Travon Samuel
SCDC NUMBER: 246568
INSTITUTION: Turbeville ✓
HOUSING UNIT: SEloc, A. 239
WORK ASSIGNMENT: MENTOR

Office Use Only
Grievance No. TCI-0183-21
Code: General ~~Ethel IP~~ VI
Policy 7
Disc. Hear.
Class.
Date Received 9/28/2021
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am dissatisfied with the Wardens decision based on the that I was given NO Formal notice nor an opportunity to be heard before being Validated/Classified as an STG which violates Right to due process. Furthermore, the Warden's decision is arbitrary and capricious whereas, it allows those named off to label me an STG and deny me a classification and privileges that I've earned. In conclusion, how can I be updated from being suspected to a validated Five percenter without a Formal notice or a opportunity to be heard? That is a failure of due process of law.

Travon Samuel 8/13/2021
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated your due process rights were violated by not being afforded an opportunity to participate in a Security Threat Group (STG) Designation Hearing before being validated and classified as STG. You would like for the decision to be reversed and addressed according to proper procedure. Due to the nature of your appeal, pertinent staff at Turbeville Correctional Institution (TCI) were contacted. Pursuant to Restricted SCDC Policy OP-22.58 Security Threat Groups, dated 06/08/2021, a STG Member Designation Hearing is required. However, STG Member Designation Hearings were not required prior to 06/08/2021. Records indicate your validation date was 05/11/2021 and was a result of having sufficient evidence to meet the requirements of the above-stated policy prior to the policy being revised. You have failed to prove staff conducted their duties in a manner inconsistent with applicable policy and procedure.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Randall P. Hall — 10/11/21
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Travon Samuel 10/20/21
Grievant Signature Date

Courtney Ball 10-20-21
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the sp provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmat Grievance Procedure.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Travon D. Simuel, 246568,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO.___-ALJ-04-_____-____
GRIEVANCE NO.: TCI-0183-21

Notice is hereby given that Travon Simuel does hereby appeal the final decision of the South Carolina Department of Corrections dated 10-11-21 and received on 10-20-21, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

I am appealing the decision(s) of the responsible officials because my d process rights were violated before being validated/classified as an ST member. "An inmate who is classified as an STG member is notified of fact and given an opportunity to respond." I was given neither before be validated/classified as an STG member! Furthermore, this is SCDC's ST Policy cited/quoted from the following case: IN RE: LONG TERM ADMINIST SEGREGATION OF INMATES DESIGNATED AS FIVE PERCENTERS. UNITED STATES COURT OF APPEALS, 4th Circuit. NO: 98-7337 Decided: April 21, 1999 which further refutes the responsible officials claim that STG memb designation hearings were not required prior to June 8, 2021.

Travon Simuel
Appellant's Name

Travon Simuel
Signed

T.C.I / 1578 Clarence Coker Hwy
Mailing Address Turbeville, SC 29162

October 20, 2021
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Travon Simuel (your name), on the 20 day of October, 2021, in Turbeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Office of General Counsel

Address: P.O. Box 21787

City, State, Zip Code: Columbia, S.C 29221

Print your name Sign your name
(See reverse side for instructions)

(7)

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

2) **In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.**

Mr. TRAVON D. SIMVEL #246568
Applicant,

V.

SOUTH CAROLINA DEPT. OF CORRECTIONS
Respondent,

BRIEF

CASE NO: 21CO373

GRIEVANCE NO: TCI 183-

) Statement of The Issues On Appeal:

I was given NO Formal Notice Nor An Opportuni to be heard before being validated/classified as An STG Member which violates my Right to due Process of Law.

) Statement of The Case: On or About March 22,2 A copy of my book entitled, REFLECTIONS and Thoughts of Power" came into the mailroom shipped From Amazon. Ms. Bryant, MAILROOM STAFF MEMBER Flagged it For STG due to A symbol on the back of book and turned it over to Lt. Timmons of Contraban inwhich, he sent it to The STG Unit At HEADQUARTE

Suspected Five percenter since July 5, 2005 and that I was updated from being suspected to a validated Five percenter. which still goes right back to the issue of my due process of law being violated by being updated/validated/classified as an STG member without an STG member designation hearing and given no formal notice nor an opportunity to be heard. On August 13, 2021 I proceeded with Step 2. I received a response on October 20, 2021 from the responsible official stating that pursuant to Restricted SCAC Policy OP-22.5B Security Threat Groups, dated June 6, 2021, an STG designation hearing is required. However, STG Member designation hearings were not required prior to June 8, 2021. I did not Accept the Agency's Final decision on October 20, 2021 and Filed my Notice of Appeal on October 20, 2021 to The ALC.

(3) Argument: My right to due process of law was violated because I was given no Formal Notice nor an opportunity to be heard neither attended an STG member designation hearing before being validated/classified as an STG member. Upon my Family contacting Ms. Angela Hardin Administrative Manager of Police Services she informed them that my book was flagged due to the symbol on the back and I was validated/classified as a result thereof.

On or about May 12, 2021 Caseworker Ms. Pough told me at my annual review that I was classified/validated as an STG member and did I know why. I informed her that it was my first time hearing that I Imediately began to look into the matter. I then proceeded to send out kiosk messages to contraband: 21-020432.35, 21-02087078. Classification 21-02009209. Security: 21-02021370. On June 2, 2021 I had my Family to contact Ms. Angela Hardin of police services who stated the reason I was labeled as a Five percent STG member was due to the symbol on the back of my book. The name of the symbol is called, Gye Nyame which is an Adinkra symbol of The Akan people of Ghana, West Africa and is not in any way affiliated with an STG. Upon receiving a response from kiosk on July 21, 2021 I filed a Step 1. The Warden responded on August 9, 2021. I did not accept Warden Sharp's decision because he failed to address the issue of my right to due process of law being violated nor did he address the misidentification of the STG validation due to the initial reason my book was Flagged in the first place. Ms. Bryant never read my book yet the Warden made a reference to the content of my book which is an attempt to change the narrative from the symbol to the content. Furthermore, Warden Sharp stated, I have been in SCDC's STG systems as a

However, A proper inquiry into the symbols Origin and meaning by way of SCDC officials Following SCDC's STG protocols and procedures via an STG designation hearing and providing me with A notice and opportunity to be heard before being validated/classified would have given me an opportunity to prove that it was A simple misidentification No one from administration spoke to me prior The responsible officials response on my step 2 stated, that an STG Designation hearing was not required prior to June 8, 2021 and since I was validated on May 11, 2021 an STG designation hearing doesn't apply to me.

Citation of Authority: 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 SCDC's STG Policy OP-21.01 states "that An inmate who is classified as an STG member is notified of that fact and given an opportunity to be This case/citation of SCDC's STG policy from twenty-two (22) years ago clearly refutes the responsible officials claim that STG members designation hearings were not required until June 8, 2021.

Conclusion: That the STG member classific Validation/label be immediately removed from my Record and that my books be returned to me and allowed to be mailed into the institution.

Certificate of Service

I, Travon D. Simuel hereby certify that a copy of the foregoing document 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:

Office of General Counsel
P.O. Box 21787
Columbia, SC 29221

Judge Robinson
S.C. Administrative Law C
1205 Pendleton St. Suite
Columbia, SC 29201

Turbeville, S.C. this 3rd day of December, 2021

Mr. Travon Simuel #346568
Travon Simuel
Turbeville Corr. Inst
1578 Clarence Coker Hwy
Turbeville, SC 29162

CC:

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Travon Simuel, #246568, Appellant, *v.* South Carolina Department of Corrections, Respondent.	)	Docket No.: 21-ALJ-04-0373-AP [Grievance No.: TCI 183-21] *Hon. Shirley Robinson* **RESPONDENT'S MOTION TO DISMISS**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the appeal of Travon Simuel ("Appellant"). The case was assigned on October 28, 2021. Respondent, South Carolina Department of Corrections ("SCDC"), filed the record on January 6, 2022. Appellant's brief was due by January 26, 2022. As of today's date, February 11, 2022, Appellant has not filed a brief.

ARGUMENT

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Supreme Court created a new avenue by which inmates could seek review of final decisions of SCDC in "non-collateral" matters, *i.e.*, matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the ALC. *Id.* at 373, 376, 527 S.E.2d at 752, 754. The language in Rule 60 states:

> Unless otherwise ordered, the party first noticing the appeal shall file an original brief within ninety (90) days after the date of the assignment. Within one-hundred-ten (110) days after the date of assignment, the respondent shall file an original brief in response. A reply brief may be filed within one-hundred-twenty (120) days after the date of assignment. The principal briefs shall not exceed ten (10) pages and the reply brief shall not exceed five (5) pages… At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.

(13)

Rule 62 states that:

> Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section . . . .

Here, although Appellant has filed a Notice of Appeal, pursuant to Rule 60, Appellant was required to file and serve an original brief "within ninety (90) days after the date of assignment." This case was assigned on October 30, 2021; therefore, Appellant's brief was due by January 26, 2022. Rule 62 provides that "upon motion of any party, or on its on motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure, *including the failure to comply with any time limits provided by this section*. R. Admin. L. Ct. 62.

Here, Appellant had an obligation to advance his position and has been given ample time to do so. Moreover, Appellant has not notified SCDC of any extenuating circumstances regarding his failure to file a brief. As of today's date, February 11, 2022, Appellant has failed to file a brief in support of his appeal. *See* Affidavit of Cheron Hess.

CONCLUSION

WHEREFORE, SCDC respectfully requests the Court dismiss this appeal.

Respectfully submitted,

Annie Rumler
Deputy General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

February 11, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Travon Simuel, #246568, *Appellant*, v. South Carolina Department of Corrections, *Respondent(s)*.	Docket No.: 21-ALJ-04-0373-AP [Grievance No.: TCI 183-21] *Hon. Shirley Robinson* **AFFIDAVIT OF CHERON HESS**

PERSONALLY APPEARED BEFORE ME, Cheron Hess, who, being duly sworn, states as follows:

1. I am employed by the South Carolina Department of Corrections Office of General Counsel as an Administrative Assistant. As an Administrative Assistant, I receive inmate briefs, motions, and other filings that are served on SCDC.

2. I have reviewed my files, specifically the file for the above-captioned case.

3. I have not received a brief from Appellant in any form in the above-captioned case.

Cheron Hess
Administrative Assistant
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221

Sworn to before me this 14th day
of February 2022.

Elizabeth McKay Tidwell
Notary Public for South Carolina
My Commission Expires: 4-29-2031

(15)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Travon Simuel, #246568, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	**Certificate of Service** Docket# 21-ALJ-04-0373-AP

I hereby certify that a copy of the foregoing motion was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Travon Simuel
Inmate Number: 246568
Turbeville Correctional Institution
Dorm-Room-Bunk: SA-0229-B

Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

February 14, 2022

16

February 24 2022

The Honorable Shirley Canty Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building, suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

REFERENCE: TRAVON SIMUEL, #246568, VS. SCDC
Docket NO. 21-ALJ-04-0373-AP

DEAR Judge Shirley Canty Robinson:

On February 22, 2022 I received Respondents Motion to Dismiss the above referenced case stating that I failed to submit a brief that was due by January 26, 2022. I reject the Motion to Dismiss based on the fact that I submitted my brief within a timely fashion on December 3, 2021 via Turbeville Correctional Institution mailroom and didn't miss the deadline. The Original was mailed to the above stated address and a copy was mailed to the Office of General Counsel. Furthermore, both briefs were notarized by the mailroom supervisor Mrs. Durant. Therefore, I'm confused as to why Respondent didn't receive a copy of my brief.

Your Honorable Judge Robinson For that matter did you receive the Original brief? If not, can you please check with your clerk as to see why and I ask the court to please halt my decision based upon the above referenced case while this matter is being thoroughly investigated.

My Family will also be contacting Ms. Cheron Hess with these concerns! Thank you your Honorable Judge Robinson.

Sincerely,

Travon Simms #246568

Appellant,

cc: Cheron Hess
Administrative Coordinator
Office of General Counsel
SCDC
P.O. Box 21787
Columbia, S.C 29221-1787

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Travon Simuel, 246568, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No.: 21-ALJ-04-0373-AP Grievance No.: TCI 183-21 **ORDER DENYING RESPONDENT'S MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Travon Simuel (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's decision denying his Step 2 Grievance. The Department now moves under ALC Rule 62 to dismiss this appeal because Appellant failed to timely file his brief pursuant to ALC Rule 60.

Rule 60(A) requires that the party first noticing the appeal file an original brief within ninety (90) days after the date of assignment. SCALC Rule 60(A).

Rule 62 provides that:

> Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section . . .

SCALC Rule 62.

This case was assigned to the undersigned on October 28, 2021. Appellant filed his brief with the ALC on December 4, 2021, and attached a certificate of service evidencing he served the same on the Department at PO Box 21787 Columbia, SC 29221. The Department filed the Record on Appeal on January 6, 2022. On February 14, 2022, the Department filed its motion seeking dismissal of this appeal based upon Appellant's failure to file a brief. Appellant filed a response to the motion on February 24, 2022, contending he served his brief on the Department on December 3, 2021.

In this instance, while the Department contends it has not received Appellant's Brief, there is evidence in the record that Appellant served his brief of the Department. Thus, Appellant does not appear to be at fault for the Department not receiving Appellant's Brief. Accordingly, the

The State of S
FIL
MAR 02
Adm

(19)

court is denying the Department's Motion to Dismiss and giving Appellant ten days from receipt of this order to reserve his brief on the Department. The Department will then have twenty days to file Respondent's Brief.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

March 2nd, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies), or their attorney(s).

This 2 day of March 2022

By: _____
Judicial Law Clerk

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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Travon Simuel, SCDC # 246568, Appellant, *v.* South Carolina Department of Corrections, Respondent.	)	Docket No.: 21-ALJ-04-0373-AP [Grievance No.: TCI-0183-21] *Hon. Shirley C. Robinson* **RESPONDENT'S MOTION TO DISMISS**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Travon Simuel ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing SCDC's final agency decision of October 11, 2021 that denied Appellant's Step 2 grievance.

On July 21, 2021, Appellant filed a Step 1 grievance asserting that he had been improperly classified as a validated member of a security threat group (STG). On August 9, 2021, SCDC denied the Step 1 grievance. Thereafter, on August 13, 2021, Appellant filed a Step 2 grievance again asserting that he had been improperly classified as a validated member of a security threat group (STG). On October 11, 2021, SCDC denied the Step 2 grievance, and this appeal followed.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586

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S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (*1*) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (*2*) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (*3*) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (*2*) and (*3*), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Recently, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC "should" dismiss the appeal. *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

ARGUMENT

This case should be dismissed under *Slezak* and *Skipper*. Appellant has no liberty interest in having a particular security or custody status as long as the security or custody status does not implicate a constitutional right or exceed the limits of his sentence. *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). Appellant's classification as a validated member of a security threat group does neither.

Appellant asserts that his procedural due process rights were violated when he was classified as a validated member of a security threat group. Record, pp. 1-2; Appellant's Brief, pp. 1-4. Specifically, Appellant asserts that his due process rights were violated because he was not given formal advance notice or an opportunity to be heard. Appellant's Brief, p. 3. Appellant had no due process rights during this process so his argument is without merit.

x- At no point in this process

The United States Court of Appeals for the Fourth Circuit ruled in *Slezak* that the federal constitution does not impose any due process requirements on security or custody status determinations by prison officials. 21 F.3d 590 (4th Cir. 1994). The court said,

> The federal constitution itself vests no liberty interest in inmates in retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement is within the sentence imposed and is not otherwise violative of the Constitution. Within these limits, so far as the federal constitution is concerned, the security and custody classification of state prison inmates is a matter for state prison-official discretion whose exercise is not subject to federal procedural due process constraints.

Id at 594 (internal quotations and citations omitted). The custody decision here did not exceed the sentence imposed upon Appellant or violate the constitution in any other way. Thus, this decision was not subject to federal due process requirements.

The *Slezak* court then went on to say that due process can be required by state law in these types of decisions where a security or classification decision gives rise to a state-created liberty interest. The court articulated the test as follows,

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> [E]ven if a state law regime mandates both a detailed procedural process for making classification decisions, and substantive criteria to be used in making those decisions, no constitutionally protected liberty interest is thereby created if under the regime either the primary decisionmaker or any reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria.

Id at 595 (internal citation omitted). There is no state law which dictates any sort of procedural process or substantive guidelines for classification decisions made by SCDC. In fact, SC Code § 24-1-130 vests "exclusive management" of the state's prison system in SCDC's Director. One of the ways SCDC's Director goes about managing the state prison system is through SCDC policies. SCDC Policy OP-21.01 Security Threat Groups was the relevant policy in effect when Appellant was classified as a validated member of a security threat group on May 11, 2021. Supp. Record, pp. 1-2.[1] This policy did give procedural and substantive guidelines for the STG validation process. However, it did not mandate any particular outcome, even where the substantive criteria were met. Supp. Record, p. 1. It did not require that the inmate be given any type of notice or opportunity to be heard. Supp. Record, p. 1. This policy is not a state law and thus does not create a state-created liberty interest. However, even if it was a state law with the potential to create a state-created liberty interest, it would not do so under *Slezak* because participating officials had discretion regarding the decision to validate the reviewed inmate as a security threat group member.

Appellant has no state-created liberty interest in the decision at issue in this appeal and thus did not have due process rights during this process. As such, this classification is a matter best left to the discretion of prison officials. *Brown v. Evatt*, 322 S.C. at 194. Because no state-created liberty or property interest is implicated in this case, the Court should dismiss this appeal, with prejudice.

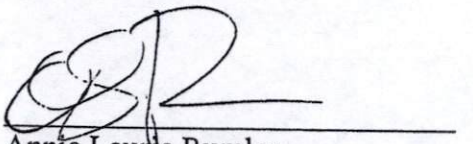
[1] OP-21.01 Security Threat Groups was superseded by SCDC policy OP-22.58 Security Threat Groups on October 7, 2021.

CONCLUSION

No state-created liberty or property interest is implicated in this case. Thus, the Court should dismiss this appeal pursuant to *Slezak* and *Skipper*.

Respectfully Submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



Annie Laurie Rumler
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

Columbia, South Carolina
March 30, 2022

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

TRAVON SIMUEL, SCDC# 246568 Appellant, V. South Carolina Department of Corr., Respondent	Docket No: 21-ALJ-04-0373-A Grievance No: TCI-0183-21 Hon. Shirley C. Robinson Response Brief to Responden Motion to Dismiss

Statement of the Case

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Travon Simuel (Appellant), a prisoner incarcerated with the South Carolina Dept. of Corrections (SCDC or Department). Appellant is appealing SCDC's Final Agency decision of October 11, 2021 that denied Appellant's Step 2 grievance.

On July 21, 2021, Appellant filed a Step 1 grievance asserting that he had been improperly classified as a validated member of a security threat group (STG). On August 9, 202 SCDC denied the Step 1 grievance. Thereafter, on Augus 13, 2021, Appellant filed a Step 2 grievance again asserting that he had been improperly classified as a validated member of a security threat group (STG). On October 11, 2021, SCDC denied the Step 2 grievance, and this appeal followed. (26)

Standard of Review

The ALC's jurisdiction to hear this matter is not derived entirely from the decision of The South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C 354, 527 S.E 2d 742 (2000). As Respondent Alledges, but also Skip v. SC Dept of Corr, 370 S.C 267, 633 S.E 2d 910 (Ct. App. and Slezak v. SCDC the same cases, inwhich, the Respondent is asking the Court to dismiss my Appeal. Appe is aware that the ALC can dismiss an inmates case tha does not involve a state-created liberty or property inter

The Due process clause of the Fourteenth Amendment prohibits a state from depriving "any person of life, liberty property without due process of law. My right to proce Due process means that the Prison must provide me wit "some amount of protection (like a hearing or Notice) bef the prison does something that harms my life, liberty, property. With regard to the meaning of "life, liberty and property," perhaps the most notable development is the Court's expansion of the notion of property beyond Real or personal property. Goldberg v. Kelly 397 U.S 254

Courts have also found Due Process violations whe prisoners are disciplined without the chance to get witness testimony, have a hearing or present evidence. Courts have also found Due Process violations when punishment is based on vague claims of (STG) gang affiliation. Ayers v. Ryan 152 F.3d 77 (2d cir. 1998); Taylor v. Rodriguez, 238 F.3d 188 (2d Cir 2001).

In Appellants case his book being his (actual property/ Intellectual property) titled: Reflections and Thoughts of Power Subtitled: Inspirational, Educational and Motivational Selections; Gente Poetry was confiscated at Turbeville prison mailroom and banned from the prison without notice, hearing and justification as to why.

Prisoners generally have the right to receive books, magazines and newspapers by mail: Prison authorities can generally decide to censor a publication for reasonable goals related to public safety or security, but cannot reject publications because they disagree with their political viewpoint or for other arbitrary reasons. Prisons and jails may ban material that describes how to build weapons, instructs how to escape or instructs how to break the law. They can also ban magazines or publications that contain nudity or pornography. Appellants book contains none of the above so why was it banned? Furthermore, prison officials cannot prevent your friends and relatives from buying you books and magazine subscriptions. Lastly, myself and the sender have the right (not privilege) to be notified if the incoming publication is being censored or rejected! Prison officials must follow special procedures and give enough of a reason for their censorship decision to allow you to challenge that decision. I (Appellant) was given no notice of rejection of incoming publication or that my book was being censored for that matter nor was I given a notice or opportunity to be heard before being validated as an STG. Appellant asks the court that his procedural protections of due process at a minimum be protected. Wolff v. McDonnell, 418 U.S 539 (1974). Appellant also asks the court that his freedom of speech not be infringed upon and that his constitutional rights are equally protected as all other citizens/prisoners.

Argument

Respondent is continuing to falsify the record by attempting to interpret Appellants argument for him. I understand that I have no liberty interest in having a particular security or custody status as long as the security or custody status does not implicate a constitutional right or [illegible] of his sentence. Kenyon v. Hyatt 322 S.C 189

Appellant merely highlights The Action Request in The Step 1 Inmate Grievance Form. That is mere a part of Action requested not my argument.

According to The First Amendment of The U.S Constitution prisoners have a right to Freedom of Speech. Appellant has a Right to Freely Express him as long as he's not putting incarcerated people, STAFF in danger. This means that prison officials may not punish you simply because they disagree with your political beliefs. Sostre V. McGinnis, 442 F.2d 178 (S.D N.Y 1972). To justify any restrictions on your right to express your beliefs, prison officials need to satisfy The Turner Test. Appell First Amendment rights are clearly being violated and not protected. Appellant asks the Court is a Turner Test necessary in his case?

According to Ms. Angela Hardin (Admin. Manag of Police Services) my book was Flag because of th symbol on the back of it by Former mailroom Superv Ms. Bryant. SCOC officials refuse to address whether the symbol is a Five percent symbol that's why the b was Flagged. Can Respondent answer the question

Appellant has the Right to be notified if an incoming publication is being is being censored/and or rejected. Prison officials must follow special procedu and give enough of a reason for their censorship decision to allow me to challenge that decision. I was given no notice or opportunity of censorship Rejection nor was I given a notice or opportunit prior to being validated as an STG. which is a violation of minimal due process.

Respondents entire argument is without merit and rests solely on the fact that I was labeled an STG suspect in 2005, seventeen years ago, so according to SCOC officials I don't have the sam rights as ordinary prisoners because of that label.

However, a proper inquiry into the symbols origin and meaning by way of SCDC officials following SCDC's STG protocols and procedures via an STG designation hearing and providing me with a notice and opportunity to be heard before being validated/classified would have given me an opportunity to prove that it was a simple misidentification. No one from administration spoke to me prior the responsible officials response on my step 2 stated, that an STG Designation hearing was not required prior to June 8, 2021 and since I was validated on May 11, 2021 an STG designation hearing doesn't apply to me.

Citation of Authority: 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 SCDC's STG Policy OP-21.01 states "that an inmate who is classified as an STG member is notified of that fact and given an opportunity to be

This case/citation of SCDC's STG policy from twenty-two (22) years ago clearly refutes the responsible officials claim that STG members designation hearings were not required until June 8, 2021.

Conclusion: That the STG member classification/label be immediately removed from my record and that my books be returned to me and allowed to be mailed into the institution.

My thoughts created my book (Intellectual Property) so therefore whatever I think, believe or say is STG according to Respondent. At what point does SCDC officials have to follow SCDC policies, procedure and guidelines that they established?

Chief of Intelligence Operations Jeffrey Bowers states on the record that SCDC STG policy OP-21.01 was superseded by STG Policy OP-22.58 on October 7, 2021. which I want to point out to the Court contradicts his own colleague, being the responsible Official who responded to my Step 2 Inmate Grievance Inwhich, he stated STG Policy OP-22.58 went into effect June 8, 2021. Which is Four(4) months before Jeffrey Bowers supposed Revision date. Respondent is once Again Falsifying the Record! To the point, OP-21.01 STG policy was the prevailing policy at the time of my validation which states, "that an inmate who is classifie as an STG member is notified of that fact and given an opportunity to respond before being validated Appellant was not charged with anything nor given a notice or opportunity to respond anywhere in this process. Jeffrey Bowers alledges that Two (2) of the policy criteria were present; that I possessed STG publications and correspondence Identifying a STG Affiliation and that I was a suspected member since 2005 therefore he approved recommendation for validation. I ask the Court what in my book is consid STG specifically and in detail and how does it or should I say my thoughts and expressions harm oth prisoners/staff and cause disorder/violence?

Your Honor in the interest of Justice, Appellant prays for judgement against The Respondent

Conclusion

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Respectfully submitted.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

TRAVON SIMUEL 246568,
Appellant

Vs.

SOUTH CAROLINA DEPT OF CORR.,
Respondent

Certificate of Service

Docket # 21-ALJ-04-0373-AP

I hereby certify that a copy of the Foregoing motions were/was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Honorable Judge Robinson
S.C. Administrative Law Court
1205 Pendleton St. Suite 224
Columbia, SC 29201

Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Dept. of Corr.
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

Turbeville, S.C this 11th day of April, 2022

SWORN to and subscribed before me this
11 day of April, 2022.
Bridget Tolliver-Driscoll
Notary Public for South Carolina
My Commission Expires: March 15, 2031

Travon Simuel #246568

Travon Simuel #246568
Turbeville Corr. Inst.
1578 Clarence Coker Hwy
Turbeville, S.C 29162

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Travon Simuel, 246568, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No.: 21-ALJ-04-0373-AP Grievance No.: TCI 183-21 **ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Travon Simuel (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's decision denying his Step 2 Grievance in which he complains his due process rights were violated because he was not given a formal hearing notice or opportunity to be heard before he was classified as a security threat group (STG) member due to a symbol on the back of his book.

DISCUSSION

The Department now moves the ALC to supplement the record with an affidavit of Jeffrey Bowers, Chief of Intelligence Operations. Per his affidavit, Mr. Bowers reviews inmates for validations as members of a STG and approved the recommendation for Appellant to be validated as a member of a STG on May 11, 2021. Appellant did not file a response to this motion. After careful review, the court finds the affidavit is relevant and necessary to make an informed decision.

The Department additionally moves the ALC to dismiss this appeal with prejudice under *Slezak* and *Skipper* contending no state-created liberty or property interest has been implicated. Appellant filed a response in opposition to the Department's motion. In his response, Appellant states that he understands, pursuant to *Brown v. Evatt*, he has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). However, Appellant argues that Department policy requires the Department to give him an opportunity to respond before being validated as a STG member and that the Department's reason

The State of South Carolina
FILED
JUN 10 2022
Administrative Court

(33)

for his STG validation implicates his First Amendment Right to freedom of speech. Specifically, Appellant contends his book was flagged due to the symbol on the back and he is only being punished because the Department disagrees with his political beliefs.

The court carefully reviewed and considered the Department's motion and Appellant's response in opposition. The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). *Slezak v. South Carolina Department of Corrections* provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. 361 S.C. 327, 605 S.E.2d 506 (2004). However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (2012).

For the purpose of establishing jurisdiction, a state-created liberty or property interest exists when (1) an inmate is disciplined and punishment is imposed, or (2) when an inmate alleges prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 441, 586 S.E.2d 124, 126 (2003). Additionally, this Court has jurisdiction when an inmate contests the Department's decision to permanently deny the inmate's parole eligibility. *Id.* Finally, under certain circumstances, an inmate may have a state-created liberty interest in "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *see Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (applying *Sandin* to resolve a condition of confinement claim).

In this appeal, both parties concede that Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. *See Brown*, 322 S.C. at 194, 470 S.E.2d at 851. Instead, Appellant argues his due process rights were violated when he was not given an opportunity to be heard or respond before being validated as a STG member. However, "...the security and custody classification of state prison inmates is a matter for state prison-official discretion whose exercise is not subject to federal procedural due process constraints." *Slezak v. Evatt*, 21 F.3d 590, 594 (4th Cir. 1994). Thus, there are no due process requirements on security or custody status

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determinations by prison officials. Furthermore, there is no South Carolina state law creating a liberty interest in a particular security or custody status. *Id.* at 594. ("But such a liberty interest to retain or attain a particular security or custody classification may be created by state law having a very specific quality.").

Additionally, Appellant argues his First Amendment Right to freedom of speech is implicated because the Department confiscated his book without notice, hearing, or justification. This court disagrees. The appellate courts of this State have recognized that the adoption and enforcement of policies and practices that are necessary to preserve order, discipline and security in prisons are within the province of correctional officials. *See State v. Blick*, 325 S.C. 636, 642, 481 S.E.2d 452, 455 (Ct. App. 1997).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Department's Motion to Supplement the Record is **GRANTED**.

IT IS FURTHER ORDERED that the Department's Motion to Dismiss is **GRANTED**, and this appeal is **DISMISSED, with prejudice.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

June 10th 11, 2022
Columbia, South Carolina

Certificate of Service
This is to certify that the undersigned has served the above action upon all parties to this cause by depositing a copy thereof in the United States mail, postage paid, or via interagency Mail Service addressed to the parties at their addresses.
This 10 day of June, 2022
By

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NOTICE OF APPEAL FROM ADMINISTRATIVE LAW COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

DOCKET NO: 21-ALJ-04-0373-AP
GRIEVANCE NO. TCI 183-21

TRAVON SIMUEL #246568, Appellant

V.

SOUTH CAROLINA DEPT. OF CORRECTIONS, Respondent

NOTICE OF APPEAL

TRAVON SIMUEL APPEALS the decision of The Honorable Shirley C. Robinson dated JUNE 10, 2022 Appellant recev a copy of this decision on JUNE 15, 2022.

JUNE 29, 2022

Cheran Hess (Admin. Coord.)
OFFICE OF GENERAL COUNSEL
SCDC
4444 Broad River Rd
[illegible] SC 29721-1787

(36)

Travon Simuel #246
TCI/Unit Selol A
1578 Clemence Cir
Turbeville, SC 291

LETTER TO THE APPELLATE COURT CLERK FILING THE NOTICE OF APPEAL

June 29, 2022

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Travon Simuel #246568, Appellant v.
South Carolina Dept. of Corr., Respondent
Docket No. 21-ALJ-04-0373-AP

Dear Ms. Kitchings,

Enclosed for Filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of service of the Notice of Appeal on the Respondent

(2) A Copy of the order Judgement which is (are) to be challenged on appeal

(3) The Filing fee of $250.00 was mailed via money order U.S. Postal on June 28, 2022 by Family member Lashelia Dolford

cc: Judge Shirley C. Robinson
Cheryn Hess

(37)

Sincerely,
Travon Simuel #246568

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C Robinson, Administrative Law Judge

DOCKET NO: 21-ALJ-04-0373-AP

TRAVON SIMVEL #246568 _____ Appellant
SOUTH CAROLINA DEPT OF CORR. _____ Respondent

PROOF OF SERVICE

I TRAVON SIMVEL hereby certify that a copy of the FORESOING NOTICE OF APPEAL WERE/WAS, this DATE, served upon the Following individuals by placing a copy of the SAME VIA MAIL to his/her last known address: Judge Shirley C. Robinson, 1205 Pendleton St. Suite 224, Columbia SC 29201 - Cheron Hess, Office of General Counsel, P.O. Box 2178 Columbia, SC 29221-1787 - Jenny Abbott Kitchings, Clerk of Court For Court of APPEALS, P.O. Box 11629, Columbia SC 29211

TURBEVILLE, S.C this 29 dy of JUNE,

SWORN to and subscribed before me this
29 day of JUNE, 2021
Notary Public for South Carolina
My Commission Exp. March 15, 2031

(38)

Jenny Simvel
TRAVON SIMVEL #246568
1578 CLARENCE COKER
TURBEVILLE SC 29162

IN THE SOUTH CAROLINA
COURT OF APPEALS

Travon Simuel #246568, Appellant V. South Carolina Dept of Corrections, Respondent	MOTION FOR EXTENSI OF TIME TO FILE INITI BRIEF Appellant Case No. 2022-000931

TO THE HONORABLE COURT OF APPEALS:

I, Travon Simuel, Appellant requests an extention of time within which to file the initial brief for the above stated case number.

Appellant asks the court that the time be extended from July 30, 2022 to August 30, 2022 for the reason that the majority of the housing Units here at Turbeville Correctional Institution were on quarantine for the past (3) three weeks and recently was uplifted which made access to the law library impossib

Therefore, Appellant respectfully asks this Court to Grant his Motion for Extention of Time.

(39)

Respectfully Submitted,
246568
Travon Simuel 24

CERTIFICATE OF SERVICE

S. C COURT OF APPEALS

I, Truman Simuel, hereby certify that a copy of the Foregoing Document 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, SC 29211

Christina Catoe
(Esquire)
S.C. Dept of C
4444 Broad River
Columbia SC 2921

Turbeville S.C this 22nd day of July 2022

(40)

Respectfully Submitted
Truman Sim 2465
Truman Simuel
T.C.I. Unit Selec
1578 Clarence Cate
Turbeville SC 291

The South Carolina Court of Appeals

Travon Simuel, #246568, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2022-000934

The Honorable Shirley C. Robinson
Trial Court Case No. 2021ALJ040373AP

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until August 29, 2022.

FOR THE COURT

BY _____, deputy
CLERK

Columbia, South Carolina

FILED
Aug 05 2022

cc:
Travon Simuel, 246568
Christina Catoe Bigelow, Esquire

(41)

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

TRAVON SIMUEL, 246568 Appellant

V.

SOUTH CAROLINA DEPT OF CORRECTIONS, Respondent

INITIAL BRIEF OF APPELLANT

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

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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?
(A) 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. (B) STG validation is unsupported by any actual Fact and Appellant is being irreperably 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 flow of the facility.
(B) Prison officials should not reject books/publications simply because they disagrees with their political viewpoint or other Arbitrary reasons.

3. Travon Samuel (Appellant) and Author of "Reflections and Thoughts of Power" was never notified of the censorship/rejection as according to SCDC policy PS-10.08 "Inmate Correspondence Privilege" (A) None of the guidelines set forth in the policy were followed by SCDC (B) Nor did SCDC (Respondent) go according to the prevailing STG policy OP-21.01 at the time of Appellants validation which was May 11, 2021. The new Restricted SCDC STG 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 Jeffery Bowers affidavit which he states the new STG policy went into effect October 7, 2021. (SEE Affidavit of Jeffery Bowers)

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal Filed by Travon Simvel (Appellant), an inmate incarcerated with the South Carolina Department of Corrections, Appellant appeals the decision of the South Carolina Administrative Law Court (ALC) inwhich, his freedom of speech, due process and equal protection under United State 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).

STANDARD 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 (STG) 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 Tuberville 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. POUSH INFORMED ME during MY ANNUAL REVIEW that MY CLASSIFICATION LEVEL had BEEN changed FROM A (GP1) 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 Warden Sharp suggests the content of the book. Still to this day SCDC officials have not specifically stated which POEM, 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 stigatizing label as an (STG) 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.

(51)

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

* Prison Legal News, ET AL v. Berkeley County Sheriff, ET AL-Complaint

ARGUMENT # 2

Whether SCDC (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 Appellants 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 SAFTEY 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 Mink 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

* Mink 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 STH 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 writting 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 vidation 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, SCDC (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 SCDC's STG Policy which was the prevailing policy at the time of my validation on May 11, 2021. Policy OP-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 SCDCs 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.

Last, Respondent stated in The Order Granting Respondents Motion to Dismiss that Appellant did not File a Response to Jeffery Bowers Affidavit. Appellant did not File a seperate response however, he did respond to the Affidavit in his Response BRIEF to Respondents Motion to Dismiss on page (5) 2nd paragraph.

Jeffery 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 harms 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 liberature of any Sort to justify being a suspect or validation!

Conclusion

The Discriminatory Censorship / Rejection of Appellants 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 ban on his book from the Facility, that the two (2) Copies of his book that were rejected be returned and that Appellants level one (1) Custody status be restored!

Respectfully Submitted,
Travon Simvel #246508
Travon Simvel #246508
Turbeville Correctional Inst.
1578 Clarence Coker Hwy.
Turbeville SC 29162

(58)

CERTIFICATE OF SERVICE

SOUTH CAROLINA 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 Catoe Bigelow
(ESQUIRE)
S.C. Dept of Corrections
4444 Broad River 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: _____

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Respectfully Submitted,
Travon Simuel

Travon Simuel #246568
Turbeville Corr. Inst
1578 Clarence Cotter Hwy
Turbeville, SC 29162

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

Teavon Simuel, 246568, Appellant

v.

South Carolina Dept. of Corrections, Respondent

DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Book "Reflections and Thoughts of Power" By: Akili Asafo
2. STEP 2 Grievance Form dated 10/20/21
3. Affidavit of Jeffrey Bowers
4. Response brief to Respondents Motion to Dismiss page 5, 2nd paragraph
5. Order Granting Respondents Motion to Dismiss

I Certify that this designation contains no matters which is irrelevant to this appeal.

September 9th 2022 (60) Teavon Simuel #246568

CERTIFICATE OF SERVICE

SOUTH CAROLINA COURT OF APPEALS

I, Travon Simvel hereby certify that a copy of the foregoing document 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 Catoe Bigelow
(Esquire)
S.C. Dept of Corrections
4444 Broad River Rd
Columbia, SC 29210-4012

Tumberville S.C. this 9th day of September, 2022

Respectfully Submitted,
Travon Simvel #246568
Travon Simvel #246568
Tumberville Corr Inst
157B Clarence Coker Hwy
Tumberville SC, 29162

(61)

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 21-ALJ-04-0373
Appellate Case No. 2022-000934

TRAVON SIMUEL, # 246568,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Travon Simuel, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One Grievance on July 21, 2021, disputing his classification as being gang affiliated without due process of law based upon a symbol on the back of his book. Following the denial of his Step One Grievance, Appellant submitted a Step Two Grievance on August 13, 2021, which was also denied. Appellant appealed to the Administrative Law Court on October 20, 2021, and on June 10, 2022, Administrative Law Judge Shirley C. Robinson issued an Order of Dismissal. In this Order, the judge found that Appellant's grievance did not implicate a state-created liberty or property interest. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

In his Brief, Appellant makes three distinct arguments, two of which are not preserved for review. His first argument is that he has a liberty interest in not being labeled a validated STG group member without being afforded due process of law. (See Brief of Appellant, p. 2). Secondly, he argues that SCDC's actions in banning his book violated his rights to freedom of speech, due process, and equal protection. (See Brief of Appellant, p. 2). Thirdly, he argues that he should have been provided notice and an opportunity to be heard before being labeled a validated STG member and prior to his book being "censored." (See Brief of Appellant, p. 2).

The only argument that is preserved for review is Appellant's argument that he raised in his Step 1 and Step 2 grievances; that is, that the Department violated his due process rights by classifying him as a validated STG member without providing him notice and an opportunity to be heard based upon a symbol on his book. (See Step 1 and Step 2 Grievances). The other arguments are not preserved where they were not made in the Step 1 and 2 Grievances. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, the issue must have been raised to and ruled upon below, raised by the appellant in a timely manner, raised with sufficient specificity); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) ("A defendant must object at his first opportunity to preserve an issue for appellate review."); Wierszewski v. Tokarick, 308 S.C. 441, 444 n. 2, 418 S.E.2d 557, 559 n. 2 (Ct.App.1992) ("An issue is not preserved for appeal merely because the trial court mentions it.").

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Regarding his preserved argument, the ALC properly dismissed Appellant's appeal on the ground that Appellant does not have a state-created liberty or property interest in any particular security or custody level. The jurisdiction of the ALC to hear this matter was derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). The Sullivan court held that the ALC's jurisdiction was limited to cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; cases in which SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing; and cases in which an inmate's confinement implicates a state-created liberty or property interest. See Sullivan at 443-44, 586 S.E.2d at 127. In Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 332 605 S.E.2d 506, 508 (2004), the Supreme Court stated that the ALC must provide minimal due process for state-created liberty or property interests. However, the Slezak court also indicated that summary dismissal is appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. Slezak at 333, 605 S.E.2d at 509.

In Brown v. Evatt, the South Carolina Supreme Court pointed out that the "federal constitution vests no liberty interest in inmates retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the Constitution." 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). The Brown court further noted that "the security and custody classification of state prison inmates is a matter for state prison official discretion whose exercise is not subject to federal procedural due process constraints. Id. After acknowledging that a liberty interest in retaining or attaining a particular security or custody classification may be created by state law if it places

substantive limits on official discretion, the Brown court found that no constitutionally protected liberty interest is created if under the state law regime either the primary decisionmaker or any other reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria. Id. at 195, 470 S.E.2d at 851. Finally, the court held that neither South Carolina statute statutes nor SCDC's operational classification regulations create a protected liberty interest because base-line classification decisions are only recommendations which are subject to discretionary review and rejection by higher-level prison officials. Id.

Here, there is no state law which dictates any sort of procedural process or substantive guidelines for classification decisions made by SCDC. In fact, S.C. Code § 24-1-130 vests "exclusive management" of the state's prison system in SCDC's Director. One of the ways SCDC's Director goes about managing the state prison system is through SCDC policies. SCDC Policy OP-21.01 (Security Threat Groups) was the policy in effect when Appellant was classified as a validated member of a security threat group on May 11, 2021. (See Supp. ALC Record, pp. 1-2). This policy did give procedural and substantive guidelines for the STG validation process, but it did not mandate any particular outcome, even where the substantive criteria were met. (Supp. Record, p. 1). It also did not require that the inmate being reviewed be given any type of notice or opportunity to be heard. (See Supp. Record, p. 1). This policy is not a state law and thus does not create a state-created liberty interest. However, even if it was a state law with the potential to create a state-created liberty interest, it would not do so under Slezak because reviewing officials had discretion regarding the decision to validate the reviewed inmate as a security threat group member. (See Affidavit of Jeffrey Bowers, p. 1).

Appellant has no state-created liberty interest in his classification as a validated STG member and did not have due process rights during the decision making process. As such, his classification is a matter best left to the discretion of prison officials. Brown v. Evatt, 322 S.C. at 194, 470 S.E. 2d at 851. Accordingly, because Appellant's grievance did not implicate a state-created liberty or property interest, the ALC properly dismissed the appeal on that ground.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: _____

CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

September 28, 2022

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 21-ALJ-04-0373
Appellate Case No. 2022-000934

TRAVON SIMUEL, # 246568,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent submits that the following should be included in the Record on Appeal:

(1) Step 1 and Step 2 Grievance forms;
(2) All documents from the ALC Record, including the Affidavit of Jeffrey Bowers and Respondent's Motion to Dismiss dated March 30, 2022; and
(3) ALC Order of Dismissal.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

CHRISTINA CATOE BIGELOW
Deputy General Counsel
S.C. Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

September 26, 2022

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 21-ALJ-04-0373
Appellate Case No. 2022-000934

TRAVON SIMUEL, # 246568,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Travon Simuel, # 246568, Turbeville Correctional Institution, SA-0229, 1578 Clarence Coker Highway, Turbeville, South Carolina, 29162.**

Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

September 28, 2022

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

CASE NUMBER: 2022-000934

CERTIFICATE OF COUNSEL

I, Travon Simuel shall certify that the record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,
Travon Simuel 246568

Travon Simuel 246568
Turbeville Correctional Inst.
1578 Clarence Coker Hwy.
Turbeville, S.C. 29162