

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Dvrden, Administrative Law Judge

Docket No. 23-ALS-04-0038-AP

Appellate Case No. 2023-000578

RECEIVED

MAY 05 2023

South Carolina Department of Corrections, Respondent  
SC Court of Appeals

v.

Kenneth Rivera # 318979, Appellant.

INITIAL BRIEF OF APPELLANT

Kenneth Rivera # 318979

BRSF-SA # 240

4460 Broad River Road

Columbia, South Carolina 29210

Pro Se Appellant

Counsel on Record

Joseph R. Shankibangab

Office of General Counsel

PO Box 21787

Columbia, SC 29221-1787

TABLE OF CONTENTS

Table Of Authorities

Statement Of Issues On Appeal

Statement Of The Case

Arguments

Conclusion

April 26, 2023

Kenneth Rivera  
Kenneth Rivera #318979  
BRSF-SA #240  
4460 Broad River Rd.  
Columbia, SC 29210

LEGAL MAIL

2  
K2

# TABLE OF AUTHORITIES

## CASES

Ramos v. Lamm, 634 F.2d 570-71

Johnson-El v. Schoemehl, 878 F.2d 1043, 1055 (8th Cir. 1984)

Jackson v. State of Arizona, 885 F.2d 639, 641 (9th Cir. 1984)

## SCDC POLICY ADM-16.05

### "FOOD SERVICE OPERATIONS"

Section 2.3.18

Section 7.4.1

JAM JADE

## STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Judge err in failing to adjudicate this action in the favor of the appellee?
2. Did the Administrative Law Judge err in failing to hear all the facts in this case?

## STATEMENT OF THE CASE

1. On November 6, 2022 Appellant Kenneth Rivera # 318979 while housed in The Congaree Unit of Broad River Secured Facility written a Step 1 grievance.
2. Appellant written this Step 1 grievance after receiving a reply back via Kiosk RTSM about being served dirty food trays.
3. In his Step 1 grievance he mentions "Since Congaree unit been receiving hard food trays I have been noticing the food trays are not clean (left over food from prior meals still in them)" see exhibit #1
4. In Warden Kenneth Nelson response he declares that "the food service specialist inspects the food trays daily," If so there should not be any left over food in the hard trays.
5. On December 6, 2022 Appellant filed a Step 2 to Warden Nelson November 30, 2022 response.
6. On January 10, 2023 Appellant received a response claiming all food trays are washed in "180 degree water," therefore his grievance is denied.
7. Appellant Appealed this denial to the Administrative Law Court and this appeal was filed on February 23, 2023.

JAM JADEL

8. On March 20, 2023 Appellant appeal was dismissed by Judge Durden due to the fact that "Food trays" did not create a State liberty or property interest.

9. Appellant appeal Judge Durden dismissal to the SC Court of Appeals to resolve this matter.

JAM JAGEL  
LEGAL MAIL

6  
12

## ARGUMENTS

In Ramos v. Lamm, 639 F.2d at 570-71 the court held...

"Prison food must be prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it..."

In Johnson-El v. Schoenmehl, 878 F.2d 1043, 1055 (8th Cir. 1984)

"Constitution requires maintenance of kitchen sanitation and personal hygiene of kitchen workers..."

In Jackson v. State v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989)

"allegations of unsanitary food and polluted water stated an Eighth Amendment claim..."

SCDE Policy ADM-16.05 Food Service Operations 10/14/2022

Section 2.3.18 - Ensuring all inmates workers receive proper training, and that training is documented.

Section 7.4.1 - Daily Inspections by food service specialists

JIAN JADEJ

## CONCLUSION

For the reasons stated, this court should reverse the judgment of the Administrative Law Court.

April 26, 2023

Counsel on Record

Joseph R. Shakibanash  
Office of General Counsel  
PO Box 21787  
Columbia, SC 29221-1787

Kenneth Rivera  
Kenneth Rivera #318979  
BRSF-SA #240  
4460 Broad River Rd.  
Columbia, SC 29210

RECEIVED

MAY 05 2023

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 23-ALS-04-0038-AP

Appellate Case No. 2023-000578

South Carolina Department of Corrections, Respondent,

v.

Kenneth Rivera #318979, Appellant.

### PROOF OF SERVICE

I certify that I have served the Final Brief of the Appellant on all parties involved including Joseph R. Shakibanasab by depositing a copy of it in the United States Mail, postage prepaid, on April 26, 2023 to be mailed to SDC and all parties involved:

April 26, 2023

Joseph R. Shakibanasab  
Office of General Counsel  
PO Box 21787  
Columbia, SC 29221-1787

Kenneth Rivera  
Kenneth Rivera, #318979  
BRSF - SA #240  
4460 Broad River Rd.  
Columbia, SC 29210

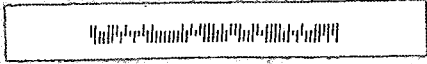
JAM JADELL

Kenneth Rivera #318479

BRSP-SIA #240

4460 Broad River Rd.

Columbia, SC 29210



**RECEIVED**

MAY 02 2023

BACI  
MAILROOM

**RECEIVED**

MAY 05 2023

SC Court of Appeals

SC Court of Appeals  
Jenny Abbott + Kitchings, Clerk  
P.O. BOX 11629  
Columbia, South Carolina 29211