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Jun 22 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 22-ALJ-04-0130
Appellate Case No. 2022-000871

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR REHEARING

On May 24, 2023, this Court affirmed the Administrative Law Court's conclusion that Appellant's grievance did not implicate a state-created liberty or property interest. On June 5, 2023, Appellant served a Petition for Rehearing, and by letter dated June 14, 2023, this Court ordered that Respondent file a Return to the Petition for Rehearing. This Return follows, and Respondent respectfully requests that this Court deny the Petition for Rehearing because this Court properly affirmed that Appellant did not have a state-created liberty or property interest in having hardcover books in prison.

In his Petition for Rehearing, Appellant argues that he has a "legitimate claim of entitlement" to having hardcover books because "[b]ooks such as religious and legal as well as

educational in content must be allowed to inmates for liberty interest in remaining free from unconstitutional rule imposition.” (Petition for Rehearing, p. 4). Appellant cites to the case of Sandin v. Connor, 515 U.S. 472 (1995) for this proposition. However, the Sandin case addressed the issue of disciplinary infractions in prison and the resulting segregation of an inmate. Sandin at 485-86. The Sandin court concluded that the inmate, who was segregated for thirty days following his convictions for three disciplinary offenses, did not have a protected liberty interest that would entitle him to minimal due process. Id. The Sandin case in no way supports Appellant’s assertion regarding hardcover books.

Appellant also cites to Bell v. Wolfish, 441 U.S. 520 (1979), a case involving, among other issues, a federal pretrial detention center’s prohibition on detainees receiving hardback books unless they are mailed directly from publishers, book clubs, or bookstores. Bell at 549-52. This case is distinguishable since it involved a specific First Amendment challenge. The Bell court did not address the issue of whether an inmate had a general state-created liberty or property interest in hardcover books.

Here, Appellant did not raise any assertions to the Department that his *own* religious, legal, or educational freedoms had been violated by the Department’s restriction on hardback books. (See R. p. 1 – Step 1 Grievance, where Appellant states only that “further concerns are that publications such a religious and legal books only available in hardcover versions that would be denied by this institutional rule would violate 1st Amend. rights to worship and legal review of grievances;” see also R. p. 3 – Step 2 Grievance, where Appellant makes only a vague statement that “[p]rocess violates due process, and 1st Amend. rights.”). Therefore, the only claim at issue in this case is whether Appellant had a general state-created liberty or property interest in having hardcover books in prison. Appellant submitted no applicable precedent supporting such an

assertion. Accordingly, the Administrative Law Court, and this Court, properly concluded that Appellant's grievance did not implicate a state-created liberty or property interest, and summary dismissal by the Administrative Law Court was appropriate. Compare Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 331-32, 605 S.E.2d 506, 508 (2004) (educational cassette tapes can be banned and declared contraband and inmate did not have state-created liberty or property interest in them).

CONCLUSION

For the reasons set forth above, Respondent respectfully asks that this Court deny the Petition for Rehearing.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



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

June 22, 2023

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RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, she mailed a copy of the Respondent's **Return to Petition for Rehearing** to Appellant via U.S. Mail addressed as follows: **Gregory Pencille, # 312332, Evans Correctional Institution, F4A-275, 610 Highway 9 West, Bennettsville, South Carolina 29512.**



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

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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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SC Court of Appeals

June 22, 2023

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Gregory Pencille, # 312332, v. South Carolina Department of Corrections
Appellate Case No. 2022-000871

Dear Ms. Kitchings:

Enclosed please find the Respondent's **Return to Petition for Rehearing**, along with a **Certificate of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: Gregory Pencille, # 312332
Evans Correctional Institution
F4A-275
610 Highway 9 West
Bennettsville, South Carolina 29512