

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No. 23-ALS-04-0312-AP

Appellate Case No. 2024-000061

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Syncere Shabazz/Kenneth Rivera #318979
Appellant,
SC Court of Appeals

v.

South Carolina Department of Corrections,
Respondent.

INITIAL BRIEF OF APPELLANT

Counsel On Record

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January 25, 2024

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STATEMENT OF ISSUES ON APPEAL

1. Did The Administrative Law Court err in failing to find Respondents violated Appellant Due Process rights?
2. Did the Administrative Law Court err in failing to find that Appellant is a Rastafarian and no longer affiliated with gang membership?
3. Did the Administrative Law Court err in failing to find Respondent used old evidence to designate Appellant as a Security Threat Group ("STG") again?

STATEMENT OF THE CASE

On May 26, 2023 Appellant was escorted from his Restricted Housing Unit ("RHU") cell to the conference room of Broad River secured facility. While inside the conference room LT. Ward, Sgt. Russell and a unidentified Sgt. of SCDC Gang Task Force informed Appellant that he has a Designated Security Threat Group ("STG") hearing on June 5, 2023.

Appellant informed LT. Ward "I'm already a validated STG, no longer affiliated with Bloods, why are you bothering me with this double-jeopardy STG non-sense?" LT. Ward mentioned "we are updating the system and changing the language from validation to Designation. I know you are a Rastafarian but HQ still have you listed as a leader within Bloods."

LT. Ward informed Appellant that he will be placed on several restrictions, although this is not a disciplinary proceeding it is being treated like one." LT. Ward gave Appellant a copy of SCDC form 19-198 and said he will see him at the June 5, 2023 STG hearing.

During the STG hearing on June 5, 2023 Appellant was surrounded by several SCDC Cert team members, police service members, BRCI Warden, Two SCDC lawyers, and SCDC Gang Task Force.

Appellant was represented by SDC ineffective counsel substitute. SDC Gang Task Force presented no evidence showing that Appellant was still a leader within Blood. They formulated a narrative from Appellant Facebook page when he was in society from 2014 to show he's still in a gang. Respondent used Appellant validation record from 2006 to designate him as a STG.

With lack of evidence to support their claim, Respondent Designated him as a Blood leader. Appellant made several attempts since June 5, 2023 to retrieve all evidence against him to support Respondent their STG designation. Not one time did Respondent mention Appellant Rastafarian religion, nor did they address the fact that it is extremely hard not be associated with gang members when he lives around gang members everyday?

ARGUMENTS

1. Did The Administrative Law Court err in failing to find Respondent violated Appellate Due Process rights?

Respondent did not give Appellant an impartial Counsel representative. Mr. Wright presented no evidence in favor of Appellant. Appellant was found to be a Designated STG when Respondent knows in 2018

he requested Protective Concerns ("PCs") from Bloods because he no longer wanted to be a leader within that gang. In Koch v. Lewis, 96 F. Supp. 2d 949 (2000), the court held:

"The court found that the plaintiff might have a liberty interest in remaining free from the consequences of such validation. If so, the validation decision would have to be supported by some reliable evidence of current STG membership..."

2. Did the Administrative Law Court err in failing to find Respondent did not acknowledge his Rastafarian faith and no longer a Blood member?

Respondent fail to acknowledge that Appellant is a Rastafarian but designate his as an STG. In Cruz v. Beto, 405 U.S. 319, 322 (1972) held:

"The Supreme Court has held that 'reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty...'"

3. Did the Administrative Law Court err in failing to find Respondent used old evidence to designate Appellant as a Security Threat Group ("STG") again?

Respondent fail to respond to Appellant Production of documents and several attempts to produce new and valid evidence against him to designate Appellant as a STG. In *Pace v. Oliver*, 634 F.2d 1281 (7th Cir. 1981) held:

"Absolute bar on presentation of documentary evidence and production of prison records denied due process..."

CONCLUSION

Appellant include his designation of matter which include exhibits. For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

January 25, 2024

Respectfully submitted,
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