

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Sebastian P. Lenski, Administrative Law Judge

Appellate Case No. 2023 – 001291

John Garvin..... Appellant,

v.

South Carolina Department of Corrections Respondent.

PETITION FOR REHEARING

Pursuant to Rule – 221(a), SCACR, John Garvin petitions for rehearing because this Court has ignored and overlooked and/or misapprehended the matters set forth in this petition.

Although this Court’s opinion cited *Allen v. S.C. Dep’t. of Corr.*, 439 S.C. 164 (2023) (examining whether SCDC’s denial of an inmate’s request for visitors whom he did not know prior to his incarceration violated a state-created liberty interest and finding that “SCDC’s visitation policy lack[s] ‘explicitly mandatory language’ requiring a particular outcome when factual predicates are met”), Slip Op., at 2, Appellant Garvin expressly asked this Court to consider his argument within his reply brief that:

“SCDC’s visitation policy [uses] explicit[] mandatory language requiring a particular outcome when factual predicates are met. SCDC’s policy expressly states visitors deemed to be a security risk will not be permitted to visit inmates and that visitation is not a guaranteed right. See S.C. Dep’t. of Corr. Policy/Procedure, No. OP-22.09, Inmate Visitation § 1.4 (Aug. 1, 2016). [Although], this policy vest SCDC with wide discretion; thus, it does [] mandate

an outcome. Since there is [a] mandated outcome there [is a] state-created interest in visitation with [Appellant’s family members and friends].” quoting *Allen*, 434 S.C. 114, 119 (Ct. App. 2021)(citations and quotation marks omitted).

See Brief of Appellant, at 2.

Appellant Garvin further argued within his reply brief that:

““SCDC’s argument that, “Appellant’s proposed visitors failed to fully complete the 19-127 (the visitation application form) because they failed to include the social security numbers of the proposed visitors.” See Respondent’s Brief at pp. 5 – 6. This argument does not have a leg to stand on and it fails, because SCDC’s 19-127 visitation form, specifically states that, “If you do not wish to provide your social security number (SS#); please complete the form, leaving off the number and attach a “photocopy” of your driver’s license/State ID.).” See R. 28. SCDC’s 19-127 visitation form also states that, “[t]he ONLY minors (under 18 yrs. of age) that may apply to visit are the inmate’s children, brothers/sisters, step-children, grandchildren, or step-children. The relationship Must be verified by attaching a “photocopy” of the minor’s long-form, certified birth certificate.” See R. 28. Clearly, the language used in SCDC’s 19-127 visitation form, is the same language that SCDC policy OP-22.09 §§ 5.1, 5.3, and 5.3.1, uses and “mandates an outcome” for visitors to visit with inmates at an SCDC correctional institution that will be approved to visit. See OP-22.09 § 5.1. So contrary, to the Respondent’s argument that, Appellant grandchildren’s “father[, JaJuan Garvin,] failed to provide their social security numbers on the visitation application,” has no merit to it, whatsoever. Because SCDC’s 19-127 visitation forms gave him the option not to.”

Id., at 3.

This Court, much like the Department of Corrections in its pleadings, relies on *Allen*, *Supra.*, to hold that, “the ALC did not err in determining [Appellant] Garvin’s appeal failed to implicate a state-created liberty or property interest because SCDC policy did not mandate an outcome for SCDC to approve his prospective visitors’ applications without fully completing the application and providing all the requested information.” *Allen*, however, actually holds “[a]n inmate claiming a protected interest must have a legitimate claim of entitlement to it.” See 434 S.C. at 119. In *Allen*, *supra.*, it also ruled that SCDC’s policy mandates, does not permit inmate visitation with persons the inmate did not know prior to incarceration when relevant criteria are

met. *Id.* But in Appellant Garvin’s case, it does “explicitly mandates an outcome based on the existence of relevant criteria.” Whereas, SCDC’s visitation policy does present “explicit[] mandatory language” requiring a particular outcome when factual predicates are met for family members to visit with inmates. See SCDC policy OP-22.09 §§ 5.1, 5.3, and 5.3.1.

This Court’s opinion does not address the distinction between the facts that was before the Court in *Allen* and the issue that’s presented to this Court in the current appeal. The *Allen* Court explained:

“ [A] State creates a protected liberty interest by placing substantive limitations on official discretion.’ This language means if the regulation explicitly mandates an outcome based on the existence of relevant criteria then the State has created a liberty interest. Based on this, we must examine whether SCDC’s policy mandates SCDC to permit inmate visitation with persons the inmate did not know prior to incarceration when relevant criteria are met. We find it does not.”

Allen, 434 S.C. at 119. *Allen, supra.*, involves a denial of an inmates visitation with persons the inmate did not know prior to incarceration when relevant criteria are met. The Court stated that the policy vests SCDC with wide discretion; thus, it does not mandate an outcome. Since there is no mandated outcome there was no State-created interest in visitation with persons *Allen* did knowingly prior to his incarceration.

Here, SCDC has made an individualized determination specific to Appellant Garvin and his grandchildren, who’s father¹ would not provide there social security number on the visitation form. The ban is permanent until said grandchildren provide their social security numbers.

As discussed in Appellant’s reply brief, “[t]he social security act, does not list SCDC or any other State Department of Corrections as a State agency that is permitted to utilize a social security number for the purpose of identifying an individual. Therefore, SCDC’s denial of


¹ Please note that the father and his wife did not provide their social security numbers on their visitation form, to whereas, there visitation forms were approved with no problems.

Appellant grandchildren's visitation forms for not providing their social security numbers, is unlawful pursuant to section 7 of Pub.L. 93-579(a)(1), the Privacy Act of 1974, as amended, 5 U.S.C. § 552a note (Disclosure of Social Security Number).

CONCLUSION

For the foregoing reasons, this Court should grant rehearing, withdraw its opinion, and reverse the Administrative Law Court's Order. Once this Court properly considers *Allen*, the need to reverse becomes apparent.

DATED: July 13, 2025

RESPECTFULLY SUBMITTED,

John Garvin # 355509, Pro-se.
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Jul 14 2025

SC Court of Appeals

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CERTIFICATE OF SERVICE

I, John Garvin, certify that I have serve a **PETITION FOR REHEARING** on the Court to be delivered, by via e-mail on July 14, 2025, addressed to the Hon. Jenny A. Kitching, Clerk of S.C. Court of Appeals, at e-mail: ctappfilings@sccourts.org and also delivering to Respondent’s a filed date-stamped copy by depositing in the United States Mailbox to be delivered via United States First Class Postage Priority Mail on or about July 15, 2025, addressed to Ms. Christina Catoe Bigelow, of SCDC Office of General Counsel at P.O. Box # 21787, Columbia, S.C. 29221-1787.

DATED: July 14, 2025



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