

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

David Bentley, #337750,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0456-AP

Grievance No. LCI 0801-10

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DEC - 2 2013

ORDER GENERAL COUNSEL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (Department) pursuant to the Interstate Corrections Compact, S.C. Code Ann. § 24-11-20. Inmate argues that Department Policy GA-01.03 impinges on his constitutional rights, because the Department's policy regarding inmates' access to out of state legal materials is not reasonably related to a legitimate penological interest. Appellant further alleges that Department Policy GA-01.03 violates his equal protection rights and denies him his constitutionally guaranteed access to the courts, because the Department has not provided him with Oklahoma legal reference materials necessary for his use in pursuing his post-conviction relief (PCR) claim. Appellant also contends that he should be returned to Oklahoma because he alleges he was transferred without due process.

The ALC's jurisdiction to hear this matter is 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 Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest.

#### **Constitutional Claims**

Appellant alleges that Department Policy GA-01.03 impinges on his constitutional right to access to the courts and his right to equal protection. The ALC, as part of the executive branch, is without power to pass on a facial challenge to the constitutional validity of a statute,

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regulation, or policy. However, a party must bring an as-applied challenge to a statute before the ALC in order to preserve the issue for any appeal. Travelscape v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). An as-applied challenge is an argument that the statute or regulation is unconstitutional as it has been applied to a specific party or class of individuals. Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 550 (2001). A facial challenge is a claim that a statute is unconstitutional on its face – that is, that it always operates unconstitutionally. Black’s Law Dictionary (8<sup>th</sup> ed. 2004) “challenge.” This tribunal has no authority to pass upon the constitutionality of a statute or regulation. Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000); however, the ALC does have the duty to determine if a statute is unconstitutional as it is applied to a limited class of persons. See Evans 543 S.E.2d 547 (dismissing action for failure to exhaust administrative remedies where claim that statute was unconstitutional as applied to a limited class of persons was not brought before the ALC). In this case, the policy, as applied to Appellant, is unconstitutional as it denies him access to legal materials required to properly prepare and file his PCR application with the state of Oklahoma.

**Appellant has been denied access to courts**

Appellant claims that by its application of DOC Policy GA-01.03, the Department has denied him meaningful access to the courts. In Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491 (1977), the United States Supreme Court held that “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” To establish a Bounds violation, the inmate must demonstrate that the shortcomings of the prison law library or the legal assistance program caused an “actual injury,” meaning that the shortcomings are hindering the inmate’s efforts to pursue a non-frivolous legal claim. See Lewis v. Casey, 518 U.S. 343, 349-50, 116 S.Ct. 2174 (1996). The Court has held that state officials could not interfere with an inmate’s attempts to prepare legal documents, e.g., Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969) or the inmate’s ability to file those documents e.g., Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640 (1941). In this case, the Department’s failure to provide Appellant with relevant Oklahoma legal materials has resulted in Appellant’s inability to prepare proper legal pleadings for his PCR application. Appellant has carried his burden to show actual injury as a result of SCDC’s law

library holdings. See Hendricks v. SCDC, 385 S.C. 625, 630 686 S.E.2d 191, 194 (2009) (explaining an inmate claiming denial of access to the courts must carry the burden to show that alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim in order to establish a constitutional violation). Appellant's denial of access to relevant Oklahoma legal materials has hindered his efforts to research and complete his PCR application to Oklahoma. Thus, Appellant has demonstrated that the Department's refusal to provide out of state legal materials necessary to file his post-conviction relief petition has resulted in an actual injury hindering his right to file his PCR petition. That refusal is a denial of Appellant's First Amendment right to access to the courts in violation of Bounds.

### **DOC Policy GA-01.03**

Appellant also asserts that DOC Policy GA-01.03, as it has been applied to him, violates his First Amendment right to access to the courts and his right to equal protection. As discussed above, I agree that the appellant's right to access to the courts has been violated by the Department's application of the policy. SCDC's law library holdings are limited for budgetary reasons to materials related to South Carolina and federal law. Department policy allows inmates to request out of state legal materials by requesting the law library staff for the name and address of a legal aid organization or entity in the other state. After receiving the requested name and address, Appellant may correspond with the given legal aid organization or entity at his own expense. In his brief, Appellant asserts that he attempted to follow the procedures listed in the policy; however, he was instructed by the law librarian to contact the Department's Office of General Counsel. When Appellant did contact the Office of General Counsel, he was told that materials would not be provided to him. It was at this time that Appellant filed his Step 1 Grievance. In its brief, the Department did not dispute Appellant's claims that he followed the policy and instructions set forth by the Department.

When a prison regulation impinges on inmates' constitutional rights, the regulation is valid only if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254 (1987). The Department's actions in refusing to provide the requested legal materials in this case are not reasonably related to a legitimate penological interest. While there will undoubtedly be some expense involved in providing the requested materials, that expense appears to be minimal. Appellant estimates that the cost to provide the requested materials would be less than \$100 and Respondent has not disputed that estimate. Therefore, I find that SCDC's

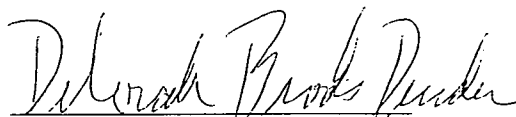
application of Policy GA-01.03 in this case to refuse the requested out-of-state legal materials cannot be upheld.

Moreover, the Interstate Corrections Compact overrides the Department's policy. S.C. Code Ann. § 24-11-20 Art. IV(e) (2007) states, "[t]he fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state." Clearly, if Appellant remained confined in the state of Oklahoma he would have unfettered access to legal materials with relevant Oklahoma law to complete his PCR application in a timely fashion.

### **Transfer to South Carolina under the Interstate Corrections Compact**

Appellant's challenge to his confinement at SCDC should be denied for two reasons. First, the decision of the state of Oklahoma to house appellant within SCDC pursuant to the Interstate Corrections Compact is not reviewable by this Court. See S.C. Code § 24-11-20 Art. V(a) (2007) ("Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]"). Second, contrary to Appellant's argument, his transfer to SCDC did not implicate a state-created liberty interest. See *Olim v. Wakinekona*, 461 U.S. 238, 248, 103 S.Ct. 1741 (1983) ("[A]n interstate prison transfer...does not deprive an inmate of any liberty interest protected by the Due Process Clause in and of itself.").

Therefore, for the foregoing reasons, the Department's decision denying a review of the decision to transfer Appellant to South Carolina is **AFFIRMED**. The decision denying Appellant's grievance requesting the legal materials necessary to prepare and file his Oklahoma post-conviction relief petition is **REVERSED**.



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 26, 2013  
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 hereto, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).  
This 26<sup>th</sup> day of November 2013  
By: R. S. G.  
Judicial Law Clerk

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