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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph K. Anderson, III

ALC Case No. 26-ALJ-04-0035-AP
Appellate Case No. 2026-001052

GREGORY PENCILLE, # 312332,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT'S GENERAL COMPLAINT THAT THE DEPARTMENT'S NEW POLICY REGARDING APPROVED VENDORS VIOLATED HIS CONSTITUTIONAL RIGHTS DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Gregory Pencille, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One Grievance on October 12, 2025, alleging that the SCDC's new policy concerning approved book vendors violated the First Amendment. Following the denial of his Step One Grievance, Appellant submitted a Step Two Grievance on November 26, 2025, which was also denied. Appellant appealed to the Administrative Law Court on January 30, 2026. On March 18, 2026, the Department submitted a Motion to Dismiss. On April 2, 2026, Administrative Law Judge Ralph King Anderson, III, issued an order granting the Department's Motion to Dismiss. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL WHERE APPELLANT’S GENERAL COMPLAINT THAT THE DEPARTMENT’S NEW POLICY REGARDING APPROVED VENDORS VIOLATED HIS CONSTITUTIONAL RIGHTS DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST.

Background

In his Step 1 Grievance to the Department, Appellant asserted that “denial of access to required religious materials needed for studies and worship for the Wiccan faith” due to the Department’s new policy on approved vendors created an “atypical hardship” on the practice of Appellant’s religion. (See Step 1). He also asserted that the new policy discriminates against any religion other than Christianity because all of the vendors are “Christian oriented/owned/biases businesses and do not offer correct or unedited books needed” in order to practice other faiths.¹ (See Step 1). Finally, he asserted that the new policy violates the First Amendment to the U.S. Constitution, the S.C. Religious Freedom Act, the S.C. Religious Restoration Act, RLUIPA, and various other laws and cases. (See Step 1). Appellant’s Step 1 Grievance also mentioned that he had requested via Kiosk message that certain religious books be donated to the chapel rather than to himself. (See Step 1).

In his Step 2 Grievance, Appellant complained that the response to his Step 1 did not address all of the issues he raised. (See Step 2). He also asserted that the new policy on approved vendors “places an onerous, excessively burdensome hardship on the practice of certain religious groups over others and violates all of the provisions he listed in his Step 1 Grievance. (See Step 2). Finally, he

¹ Appellant provided no evidence to support the notion that all of SCDC’s approved vendors are Christian owned/oriented/biased. The approved vendors are as follows: Hamilton Book, Books N Things Warehouse, Books2Inmates, SureShot Books Publishing, LLC, Barnes & Noble, and Books-A-Million. See <https://www.doc.sc.gov/family> under “Sending Books to an Inmate.”

asserted that the chapel receives donations from Christian-based groups and yet other faith groups are not allowed to donate outside of the approved vendor list. (See Step 2). Finally, Appellant also complained that although there was an exception in the new policy for educational purposes, there were no exceptions for legal or religious purposes. (See Step 2).

. In his Notice of Appeal, Appellant asserted that the Department violated his First Amendment rights, RLUIPA, and all other provisions cited in his Step 1 and Step 2 grievances. (See Notice of Appeal). He asserted that the Department's religion policy does not place an "approved vendor" limitation on books that may be possessed by inmates and/or donated to the chapel. (See Notice of Appeal). He also complained of the Department's failure to completely address all issues set forth in his Step 1 and Step 2 Grievances to include the issue that Appellant was seeking to have books donated to the chapel rather than having books ordered. (See Notice of Appeal). Finally, he reiterated his concern that Christian materials are being allowed to be donated by non-approved vendors and this discriminates against other religious faiths. (See Notice of Appeal).

In his Brief to this Court, Appellant presents the following issues: (1) Whether the ALC had jurisdiction to hear full briefs on policy change's application that infringed on Religious freedom rights constituting a "State-created liberty interest" being substantially burdened; (2) Whether ALJ abused discretion for failing to recuse himself due to conflict of interest for being judge over Appellant's previous religious freedom rights and discrimination case; and (3) Whether the Department's new policy on approved vendors restricts non-Christian faith publications and materials and therefore discriminates against non-Christian faith groups and violates the 1st, 8th, and 14th Amendment, RLUIPA, and state law regarding religious freedom. Note that Appellant's brief contains many alleged "facts" that were not in any record before the ALC and that are wholly unsubstantiated. (See Brief, p. 6-7).

Argument

As to Appellant's first argument, that the ALC should have permitted full briefs as opposed to granting the Department's Motion to Dismiss, this argument is without merit. Appellant claims that an allegation that a prison policy substantially burdens a sincerely held religious belief is "inherently a factual dispute." (See Brief of Appellant, p. 8). However, as Appellant acknowledges, if the record shows that no protected liberty or property interest is implicated, the ALC may summarily dismiss an appeal. See, e.g., Furtick v. S.C. Dep't of Corr., 374 S.C. 334, 340, 649 S.E.2d 35, 38 (2007) (summary dismissal is appropriate where the inmate's grievance does not implicate a state-created liberty or property interest). Here, as discussed below in more detail, Appellant failed to allege he was denied any specific religious book or item under the Department's new policy. Accordingly, there was no state-created liberty or property interest at issue, and the ALC properly issued a summary dismissal.

As to Appellant's second argument, that Judge Anderson should have recused himself because he ruled against Appellant in a previous case, this issue was not preserved for appellate review because Appellant did not raise this issue below. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.") (citation omitted) ; State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (in order for an issue to be preserved for appellate review, it must have been raised and ruled upon below). Regardless, it is not error for a judge to deny a motion for recusal based on the sole fact that the judge ruled against the same party in a previous case. See, e.g., Koon v. Fares, 379 S.C. 150, 157, 666 S.E.2d 230, 234 (2008).

Finally, as to Appellant's third argument, the jurisdiction of the ALC to hear this matter was

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 Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). The Sullivan court held that the ALC's jurisdiction was limited to cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; cases in which SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing; and cases in which an inmate's confinement implicates a state-created liberty or property interest. See Sullivan at 443-44, 586 S.E.2d at 127. In Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506, 508 (2004), the Supreme Court stated that the ALC must provide minimal due process for state-created liberty or property interests. However, the Slezak court also indicated that summary dismissal is appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. Slezak at 333, 605 S.E.2d at 509.

In this case, the lower court properly dismissed Appellant's appeal for failing to implicate a state-created liberty or property interest. Although there is arguably a liberty interest in inmates' practice of religion to the extent it does not interfere with security and safety, in this case, Appellant never identified any specific religious book or item that he was denied under the Department's new policy. His allegations were broad and general and gave the Department nothing to specifically rule upon. Accordingly, because neither the Department nor the lower court had any identified liberty or property interest to address, neither were in a position to make a determination regarding whether or not Appellant's constitutional rights were violated by the Department's new policy. Therefore, the ruling of the lower court should be upheld.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

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