

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

109550

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Hon. Ralph K. Anderson III

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

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OCT 08 2026

SC Court of Appeals

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

**APPELLANT'S MOTION TO STRIKE UNPRESERVED ARGUMENTS OF
RESPONDENT**

Under Rule 240 SCACR, Appellant respectfully moves this Court to *decline to consider* the following arguments raised for the first time in Respondent's Initial brief. Respondent filed a motion to dismiss to the ALC on March 18, 2026. Alleging **only** that appellant's appeal failed to implicate a state-created liberty or property interest based on the 1st amendment, yet Respondent failed to state this violation was religious in nature.

Respondent in their Initial brief before this Court then argues new arguments not argued to or in the lower court. When a respondent raises an argument that was not presented to and ruled on by the lower court, the arguments are **not** preserved for review. "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." Jones v. Lott, 387 S.C. 339, 346 (2010). "A party may not argue one ground at trial and another

on appeal.” State v. Byram, 326 S.C. 107, 113 (1997). The arguments appear only in the Respondent’s brief and have no basis anywhere in the Record on Appeal;

- (p.6-7) 3rd argument – Jurisdiction of the ALC
- (p. 7) argument – Religious issues presented by Respondent (ln 16-21)

Under Rule 210 (c) of the South Carolina Appellate Court Rules (SCACR), the Record on Appeal must include only matter that was presented to the lower court or tribunal. The rule explicitly prohibits including any matter that was not previously presented to the lower court.

Unpreserved, never raised to or ruled on by the lower court Elam v. SCDOT, 363 S.C. 559, 571 (2004). “Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.”

Rule 210(h) bars the court from considering facts not in the Record; here there isn’t even a factual predicate.

“The Record on Appeal contains no transcript testimony, exhibit, pleading, or order supporting Respondent’s argument at [*above listed pages*]. The argument appears for the first and only time in Respondent’s Brief.” A respondent’s brief is limited to “any ground appearing on the record” (Rule 220(c), SCACR)

Respondent states in it’s brief (p. 7. Ln. 13-15), “In this case, the lower court promptly dismissed appellant’s appeal for failing to implicate a state created Liberty or property interest. Although there’s arguably a liberty interest in inmates practice of religion to the extent it does not interfere with security and safety,…”

Respondent contradicts their argument before the lower court by this statement in the Initial brief.

Appellant clearly asserts this above stated issue in his **Initial brief (p.8)** but feels he must now formally motion this Court on this matter.

Appellant prayer this Court not consider any portions of the Respondent’s Initial brief **not** before the lower court for the above reasons.

October 27, 2026



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THE STATE OF SOUTH CAROLINA

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Ralph K. Anderson, III, Administrative Law Judge

Case no. 26-ALJ-04-0035-AP

Appellate Case No. 2026-001052

GREGORY PENCILLE

Appellant

V.

South Carolina Department of Corrections

Respondent

AFFIDAVIT OF SERVICE

I hereby certify that on 02 day of October, 2026 in Bennettsville, South Carolina Appellant served the **APPELLANT'S MOTION TO STRIKE UNPRESERVED ARGUMENTS OF RESPONDENT** to ALL parties by depositing a copy of the same in the United States mail, postage prepaid, or in the mailroom of the undersigned's institutional mailroom addressed as follows;

Jenny A Kitchings, Clerk
SC Court of Appeals
P.O.Box 11629
Columbia SC 29211

SCDC
General counsel
P. O. Box 21787
Columbia SC 29221

October 02, 2026

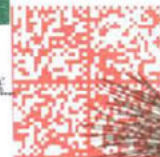
SWORN to and subscribed before me
this 2 Day of October, 2026
Sandra Butler (L.S.)
Notary Public
My Commission
Expires: 2/28/34


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