THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 26 2026
SC Court of Appeals

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

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

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

FINAL REPLY BRIEF OF APPELLANT

Gregory Pencille, #312332
Evans CI F1B118
610 Hwy 9 West
Bennettsville, S.C. 29512
Appellant, Pro Se

TABLE OF CONTENTS

Cases.....2

Statutes.....3

Other.....3

Arguments.....4

Conclusion.....9

CASES

Al -Shabazz v. State, 338 S.C. 354, 382, 527 S.E.2d 742, 757 (2000).....6

Allen v. Allen, 439 S.C. 171, 886 S.E.2d 674 (2022).....9

Ellie, Inc. v. Miccichi, 358 s.c. 78, 99, 594 S.E.2d 485, 496 (SC app.2004)).....5

Farrow v. Stanley, 2005 WL 2671541 (D.N.H. Oct. 20, 2005) (D.N.H. 2005)
(Cited in 4th Cir.).....4

Faulkner v. Jones, 51 F.3d 440 (4th Cir. 1995).....8

Furtick v. S.C. Dep't of corrections.,374 SC 334, 340, 649 SE2d 35, 38 (2007).....6,8

Incumaa v. Stirling, 2014 WL958679,(4th cir. 2014).....4

Prison Legal News v. DeWitt2:10-cv-02594,(DSC 2011).....5,7

Pencille v. SCDC, 2023 WL 6292550, (SC app 2023).....6

R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.343 S.C. 424,
540 S.E.2d 113 (2000).....8

Sherbert v. Verner 374 U.S. 398 (1963).....5

Sierra club v. South Carolina Dept. Of Health and Environmental Control, 387 SC 424, 693
SE.2d 13 (SC App. 2010).....6

Slezak v. SCDC, 361 S.C. 331, 605 S.E.2d 508 (2004).....6

Smith v Collins, 964 F.3d 266, 274-275 (4th cir. 2020).....4

Smith v Ozmint, 2007 WL 858749, (4th cir. 2007).....4,5,7

Sutton v. Rasheed 2003 (323 F.3d 236).(3rd Cir. 2003).....4

STATUTES

RLUIPA (Religious Land Use of Institutionalized Persons Act).....7

Rule 208 of the South Carolina Appellate Court Rules (SCACR).....4,8

S.C. code Ann. § 1-32-10.....5

SC Code Ann. §1-23-610 (B)(a-f).....5

SC Code Ann.§24-27-500.....5,6,7

SCRFA (South Carolina Religious Freedom Act).....5,6

OTHER

SCDC Policy PS- 10.05.....5,6

SCDC Policy PS- 10.08.....5

ARGUMENT

ABOVE CAPTIONED APPELLANT ("Pencille"), pursuant to South Carolina Appellate Court Rule (SCACR) 208 (a) (3), replies to the Initial Brief of the Respondent as follows;

1).-Respondents argument erroneously limits implication of a state-created liberty or property interest to an allegation of being denied a "... specific religious book or item under the department 's new policy". **(Respondent's Initial brief pg. 6, line 8-10)**. Respondents position, of Pencille's claim that ALC should have permitted full briefs, is without merit, fails where;

(A)-Respondents argument cites no authority which circumscribes state created Liberty or property interest to a specific or one particular matter, as regards religion.

(i)- In fact, four (4) opinions of federal fourth circuit Court of Appeals and one (1) from the third circuit explain State-created liberty interest in the context of "conditions" and not **a** "condition" (see **Smith v Collins, 964 F.3d 266, 274-275 (4th cir. 2020)**; **Smith v Ozmint, 2007 WL 858749,*4pg (4th cir. 2007)** (explaining that a Court's inquiry "...focuses on the nature of the deprivation itself.") **Sutton v. Rasheed 2003 (323 F.3d 236).(3rd Cir. 2003)**: In this case involving a Nation of Islam member, the court protected access to religious texts specific to his faith without requiring the inmate to catalog every single text in the religion's canon. The ruling focused on the right to access materials central to the faith, not a specific list of titles. **Farrow v. Stanley, 2005 WL 2671541 (D.N.H. Oct. 20, 2005) (D.N.H. 2005) (Cited in 4th Cir.)**: Courts have recognized that denying a specific type of item (e.g., a sweat lodge or specific ceremonial objects) is a substantial burden even if the inmate possesses other generic religious items. The legal claim rests on the denial of the practice/item category, not a detailed manifest of missing property. **Incumaa v. Stirling, 2014 WL958679, *9pg (4th cir. 2014)** (explaining conditions of 'SMU' and light religious practices)). Furthermore, Upon several meetings with staff at Evans and several "Request to staff" forms submitted at Evans and to Columbia Headquarters, several specific religious books and items were specifically identified and requested, respondents assertion is made without fact. Thereby, Pencille's state-created liberty interests stated matters of "religious deprivation" which should not have been summarily dismissed in the ALC before consideration of matters within Pencille's step (1) one **(R. p.4)**and step (2) two **(R. p.6)** grievances that were actually not addressed.

(ii)- While **Sherbert v. Verner 374 U.S. 398 (1963)** is cited in South Carolina contexts for protecting sincere religious beliefs , **Prison Legal News v. DeWitt2:10-cv-02594,(DSC 2011)** is the specific precedent for protecting access to religious materials for incarcerated persons in the state. The liberty interest was established because the facility's policy (and subsequent consent decree) recognized a right to religious materials generally. The court did not require inmates to enumerate every specific book (e.g., "Koran," "Torah") to trigger the protection; rather, the denial of any recognized religious text violated the established interest. **Smith v. Ozmint (D.S.C. 2006) / Prison Legal News v. Ozmint:** In litigation involving the South Carolina Department of Corrections, courts have found that broad denials of "outside religious materials" or "non-approved lists" constitute a substantial burden. The plaintiffs were not required to submit an exhaustive list of every book they wanted; rather, the policy of restriction itself was the violation. The court focused on the fact that the policy prevented access to unspecified texts that might be central to an inmate's faith.

(iii)- As Respondent's argument "...contain[s] no citations to supporting authority" ***(R. p. ,line)*** (see **Ellie, Inc. v. Miccichi, 358 s.c. 78, 99, 594 S.E.2d 485, 496 (SC app.2004))**, their position of claim being "without merit" fails.

(iv)- The jurisdiction of the ALC to hear full briefs as stated in **(Appellant's initial brief pg 7)**, and in the **(Respondent's initial brief pg 3)**, **SC Code Ann. §1-23-610 (B)(a-f)** Appellant clearly meets the Jurisdictional requirements.

2).- Respondent's Argument that "... there was no State-created liberty or property interest at issue, and the ALC properly issued a summary dismissal." **(Respondents brief pg.6, ln 10-11)** fails to acknowledge that;

(A)- Pencille's step (1) one **(R. p. 4)** grievance was based on SCDC's new policy PS-10.08, 9 **(R. p.28)** violating his state-created liberty interest pursuant to **South Carolina Religious Freedom Act (SCRFA)** codified under **S.C. code Ann. § 1-32-10**, and **SCDC policy PS- 10.05** (which Pencille cited in (Initial brief, pg. 6, ln.9-14) (***R. p. ,line)***, and this is important here because this Court has already stated that ***"Section 24-27-500 and SCDC Policy PS-10.05 create a liberty interest in religious practice.*** Section 24-27-500 applies SCRFA to prison regulations and SCDC Policy PS-10.05 **(R. p.30 Ln. 25)**provides, "Inmates will be given the opportunity to practice their religious faith to the extent that such

practice does not interfere with the security and safety of the institution, staff, or others." Accordingly, we find inmates have an interest in religious practice arising from state law and policy." (see **Pencille v. SCDC, 2023 WL 6292550, (SC app 2023)**.

(B)- The subject matter of Pencille's step one (1) **(R. p.4)** and step two (2) **(R. p.6)** grievances were not responded to by SCDC's grievance coordinator(s) as Pencille explained in **(Initial brief pg. 6, ln. 18-22)**.

(C)- The lower ALC Judge Anderson did not give Pencille a chance to submit into the record factual points to support claim, of SCDC error in creating bias policy and procedure that frustrates Pencille's exercise of obtaining religious materials for practicing his recognized Wiccan faith, by granting SCDC's motion to dismiss prematurely and without considering Pencille's timely Response by (Motion to dismiss) **(R. p.12)** and /or without acknowledging Pencille's (Reply to Order of dismissal) **(R. p.17)** before Time for briefing in ALC was due; remand is thereby necessary for an adjudication of Pencille's above noted "state-created liberty interest" argument(s) which were not considered (see e.g., **Sierra club v. South Carolina Dept. Of Health and Environmental Control, 387 SC 424, 693 SE.2d 13 (SC App. 2010)**

As to the preservation issue of recusal. Appellant raised this issue to the very next and appropriate court. (Reply to order of dismissal) **(R. p.17)** It had just occurred at the ALC level and judge Anderson abused his discretion by not recusing himself due to the fact he summarily dismissed Appellant's previous case without determining whether a liberty or property interest exists, (likewise, prematurely) in error. As is stated in **Furtick v. S.C. Dep't of corrections.,374 SC 334, 340, 649 SE2d 35, 38 (2007)**. And this court agreed with Pencille in **Pencille v. SC Dept of corrections., No. 2023-UP-321, 2023 WL6292550(Nov.1, 2023), at footnote 10**.

3).- Respondent's Argument that "...the lower Court properly dismissed Appellant's appeal for failing to implicate a state-created liberty or property interest..." **(Respondent brief pg.7,ln 13-14)** fails where, as noted in ***Pencille v SCDC,*** supra, section **24-27-500**, S.C. code of laws, applies to SCRFA which Pencille consistently cited step (1) one grievance forward and SCDC policy PS-10.05 "... create a liberty interest in religious practice...". And "*The ALC relied on our supreme court's holding in Slezak to find Pencille's claim did not implicate a state-created liberty interest; however, we find the ALC's reliance on this case was misplaced because the items seized by SCDC in Slezak were "educational" cassette tapes, not "religious" cassette tapes.* **Slezak v 361 S.C. at 331-32, 605 S.E.2d at 508.**" Further, **Al -Shabazz v. State, 338 S.C. 354, 382, 527 S.E.2d 742, 757 (2000)**). "*[A]n inmate's complaint must encompass an infringement of a liberty interest that*

imposes an atypical and significant hardship on the inmate to trigger due process guarantees and judicial review." Id. A claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal." Therefore, the lower court improperly dismissed Pencille's appeal summarily.

4).- Respondent's argument suggesting Pencille should have "...identified any specific religious book or item that he was denied under the department's new policy." **(Respondents Initial brief pg.7, line 15-17),** the approve vendors are not able to distribute or sell their Wiccan religious materials necessary for Pencille's practice in SCDC mainly because there are legitimate companies/organizations created by sincere Wiccan adherents which do not distribute their materials through vendors that SCDC deems as "approved" by the SCDC policy (see **Pencille's initial brief pg. 12 line 5-38).** Pencille further, submitted a "request to staff" to administrative Department Sharon Patterson requesting that three (3) named Wiccan material vendors be approved, yet headquarters (e.g. Sharon Patterson) still fails to respond to Pencille's request. *(Request to Staff)**(R. p.-)** requested as supplemental evidence to be included on Record on Appeal.

Under **RLUIPA** and **SC Code Ann.§24-27-500** once a Constitutional religious violation is claimed, the Strict Scrutiny standard applies and the burden of proof shifts to the respondent to prove denial of religious books and materials is the "least restrictive" means of furthering a "compelling government interest", **(Appellant Brief pg 10-12)** " if prison officials ban religious books without demonstrating a legitimate penological reason (safety or security), the policy violate these laws". While **Prison Legal News v. DeWitt2:10-cv-02594,(DSC 2011)** is the specific precedent for protecting access to religious materials for incarcerated persons in the state, the liberty interest was established because the facility's policy (and subsequent consent decree) recognized a right to religious materials generally. The court did not require inmates to enumerate every specific book (e.g., "Koran," "Torah") to trigger the protection; rather, the denial of any recognized religious text violated the established interest. **Smith v. Ozmint (D.S.C. 2006) / Prison Legal News v. Ozmint:** In litigation involving the South Carolina Department of Corrections, courts have found that broad denials of "outside religious materials" or "non-approved lists" constitute a ***substantial burden.*** The plaintiffs were not required to submit an exhaustive list of every book they wanted; rather, the policy of restriction itself was the violation. The court focused on the fact that the policy prevented access to unspecified texts that might be central to an inmate's faith.

Respondent argues that Pencille has not listed specific titles or items, yet, law states this is not required. Respondent further States," his allegations were broad and general and gave the department nothing to specifically rule upon." Again, several requests were made and the Department has record. **(R. pgs. 21, 22. -paper request to Warden 03/19/2026)** Respondent again asserts falsehoods. The interest is created by the policy

itself guaranteeing access to religious materials broadly (e.g., "inmates may possess religious texts"), not by the inmate's ability to list every specific text in their legal filing. Naming specific items (e.g., "the Koran was denied") demonstrates that the state's policy substantially burdens a sincere religious exercise. The state's policy creates the liberty interest by mandating access to religious materials. ***An appellant need only allege that they were denied access to materials necessary for their religious exercise; they do not need to catalog every specific book or item to invoke the constitutional or statutory protection.*** **Faulkner v. Jones, 51 F.3d 440 (4th Cir. 1995).** This precedent establishes that liberty interests are created by mandatory state regulations (e.g., policies stating inmates "shall" have access to religious materials). Once such a policy exists, the inmate need only show they were denied "religious materials" generally **(R. pgs. -,- . Religious material order summary, order invoices)**; they do not need to prove the state failed to provide a specific, named book to trigger the interest.

5).- **Respondent's initial brief p.4-5,** acknowledges several issues Appellant raised at every stage of his grievance yet, Respondent then only briefly addresses three. All other issues laid out by both parties should therefore be uncontested by Respondent. Under **Rule 208 of the South Carolina Appellate Court Rules (SCACR)**, respondents are generally bound by the appellant's statement of the case and must file a brief conforming to specific requirements.

If a respondent fails to argue an issue in their brief, or if the argument is merely conclusory, the court may deem the issue abandoned. As established in **R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.343 S.C. 424, 540 S.E.2d 113 (2000)**, an issue is considered abandoned if the brief provides only a conclusory argument without sufficient legal or factual support. Consequently, the appellate court may refuse to consider that defense or argument when rendering its decision.

Respondent's brief states, "Accordingly, there is no state-created Liberty or property interest that issue, and the ALC properly issued a summary dismissal." **(Respondent Initial brief pg 6, Ln. 10,11)** Yet, states later, "although there is arguably a liberty interest in inmates practice of religion to the extent it does not interfere with security or safety in this case appellant never identified a specific religious book or item he was denied under department's new policy." **(Respondent brief pg 7, Ln. 14-15).**

Respondent attempts to manipulate **Furtick v. S.C. Dep't of corrections.,374 SC 334, 340, 649 SE2d 35, 38 (2007)** by attempting to exclude, "but it retains jurisdiction to determine whether such an interest exists." **Allen v. Allen, 439 S.C. 171, 886 S.E.2d at 674 (2022)** "A claim the implicates a state-created liberty or property interest is not

required for the ALC to have subject matter jurisdiction over the appeal." The ALC clearly retaining jurisdiction to hear Briefs.

As with all other responses by the Respondent, they continually fail to argue and/or address the paramount issues;

- Appellant was attempting to have books "donated" To the Chapel **(R. p.20),**
- Appellant had ordered, upon approval, Specifically named Religious items, **(R. pgs. -,-,-,-,-)** and those items arrived at Evans. And they had to be mailed out at Pencille's cost. ******And are now lost in the mail, never reached any destination.*
- All other issues laid out, yet not addressed in Pencille's step one (1) **(R. p. 4)** grievance, forward and preserved by Respondents noted "background" in **(Respondents Initial brief pgs 4-5).**

Respondent's Initial Brief like all previous Agency's responses fails to argue fully the issues at hand.

As to **Respondents Initial brief pg 5, Ln. 21-23)** states," alleged facts being wholly unsubstantiated", these "facts" are public knowledge that Respondent and other agencies released. Does Respondent claim these facts are lies? If so, why does SCDC put forth falsehoods to the public?

CONCLUSION

WHETEFORE, based on the foregoing, this court should so Grant request for Relief as stated within conclusion of his initial brief.

October 19, 2026

Gregory Pencille #312332
Evans CI F1B-118
610Hwy9west
Bennettsville SC 29512
Appellant, Pro se

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED
OCT 26 2026
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

CERTIFICATE OF COUNSEL

The undersigned certified that this final brief complies with rule 211(b), SCACR

October 19, 2026

Gregory Pencille #312332
Evans CI F1B-118
610 Hwy 9 west
Bennettsville SC 29512
Appellant, Pro se