

STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

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Appeal From The S.C. Administrative Law Court

SC Court of Appeals

Matthew B. Fullbright, # 349468,

v.

Appellant,

S.C. Dept of Corrections,

Respondent.

APPELLATE CASE NO. 2014-001684

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I.** The South Carolina Department of Corrections unlawfully seized Appellant's legal mail and legal discovery, holding it outside of Appellant's presence for over sixty (60) days.

- II.** The South Carolina Department of Corrections unlawfully seizing, copying, censoring, editing, redacting, and removing vital portions of Appellant's legal mail/discovery, prohibiting Appellant's ability to investigate, present documents to courts, perfect his pending criminal appeal, etc., warrants immediate remedy.

STATEMENT OF THE CASE

This case is about the S.C. Department of Corrections seizing my legal mail/discovery, sending it miles away to be censored, edited, copied, etc., then giving it back to me in their "approved" version - bleeped, touched-up, with notes, reports, and files missing - making no venture to contact the sending attorney, ignoring and refusing attempts by my family, my friends, and myself to remedy these wrongs.

I need the discovery just as the trial judge ordered it to be given me, just the way my attorney sent it to me - Full, complete, unredacted, uncensored, and unedited. I need everything that the S.C. Department of Corrections ("SCDC"), took out and the originals which they modified.

I've been diligent in obtaining a complete copy of all legal Rule 5, SCRCrimP / Brady discovery, work-product, case-file and everything pertaining to State v. Matthew B Fullbright, January 23-27, 2012, Scott D. Robinson, Esq., representing me.

I discovered In Re Matter of Haddock, 321 S.E. 2d 601, 283 S.C. 116, S.C.(1984) and finally got my trial attorney Scott D. Robinson ("Mr. Robinson") to send the entire case-file, his work product, discovery - everything - to me.

The 3,000+/- page package of legal letters, documents reports, correspondence, discovery ("hereinafter legal discovery") arrived at Lieber Correctional Institution ("hereinafter Lieber C.I.") on August 19, 2013, I was called to the mailroom to sign for and receive it.

At the time I signed for it, it was seized in its entirety and sent to SCDC's Correspondence Review Committee ("hereinafter SCDC/CRC") for review, copying, censorship, redaction, and more.

I filed an emergency grievance on August 25, 2013 explaining that I had a criminal appeal pending in the S.C. Court of Appeals and that I needed the documents for that appeal - and that there was a risk of harm to my proceedings there and otherwise. The grievance was turned down by Ms. Ann Hallman as "not being an emergency." I submitted a second grievance clarifying what is considered an emergency grievance according to SCDC policy. Although correct, that grievance was also improperly unprocessed.

[*Note: At the time of writing this brief, the criminal appeal is still pending within the S.C. Court of Appeals.]

While my legal discovery was being copied, censored, etc., my friends, my family, and myself wrote several letters to various courts and SCDC, inquiring about the confiscation

ation of the legal discovery and the surrounding issues. We received vague, brief, unhelpful answers.

My legal discovery was under SCDC/CRC control for over sixty (60) days. The day my legal discovery was seized by Lieber C. I. mail room employee L. Bryant ("Ms. Bryant"), while at the mail room window/slot, I asked Ms. Bryant to please flip through it slowly so I could at least note its contents in detail before it was seized and taken out of my presence. She reluctantly agreed.

When the legal discovery came back from SCDC/CRC censorship/copying, etc., there were many, many, files, notes, photographs, letters, and more missing. It was missing approximately two-thirds of its former thickness.

I filed an emergency grievance about the missing contents, which went to Ann Hallman and was unprocessed. I filed another emergency grievance, also unprocessed.

SCDC's final decision is that the taking, censoring, redacting, removal of contents from, the copying of my legal discovery is not an emergency, no matter that these documents are needed right now, in court, by Appellant.

Receiving no remedy within SCDC, Appellant then Filed a timely appeal with the Administrative Law Court of South Carolina ("ALC"), and the case was assigned on December 18, 2013.

ALC PROCEDURAL HISTORY

For convenience, Appellant has listed relevant ALC Filings chronologically in the attached Designation of Matter to Be Included in the Record on Appeal.

Among the Filings listed, are included:

<u>Date, Certificate of Service</u>	<u>Document</u>
April 3, 2014	- "Respondent's Second Motion to Dismiss."
April 17, 2014	- "Appellant's Motion, Not to Dismiss."
May 6, 2014	- "Respondent's Return to Appellant's Initial Brief."
May 19, 2014	- "Appellant's Reply to Respondent's '6 May 2014 Return' and Motions to Dismiss."
May 21, 2014	- "ORDER OF REMAND" (By ALJ Carolyn C. Matthews).
May 28, 2014	- "SCDC Miscanstrues the ORDER OF REMAND."
June 8, 2014	- "Appellant's letter, Written to ALJ Carolyn C. Matthews, Explaining That 'SCDC is denying the ORDER.'"
June 26, 2014	- "Appellant's Letter: 'Will This Court (ALC) Enforce Its ORDER?'"
July 7, 2014	- "ALJ Carolyn C. Matthews: 'This Court no longer has jurisdiction.'"

Note For This Court's Review:

I, the Appellant was charged with two counts of murder and armed robbery, grand larceny, and conspiracy in October of 2009 in Anderson County.

The grand larceny and conspiracy charges are still pending.

I went to trial for all but the grand larceny and conspiracy (which are still pending) represented by Scott O. Robinson, Esq., ("Mr. Robinson"). The trial judge gave an order, during official proceedings, it's in my transcript: "... make sure he [Matthew B. Fullbright] gets all of his discovery. Photographs, reports, correspondence. I mean literally everything."

The same discovery the trial judge was just talking about encompasses all above mentioned charges. pending and tried. The same 3,000 +/- pages, correspondence, privileged information, lawyer work product, photographs, reports, etc. is the same legal discovery that was seized at Lieber Correctional Institution on August 20, 2013.

STATEMENT OF FACTS

1. In seizing Appellant's confidential legal casefile, SCDC utilized a document with no SCDC/Administrative Form number, "EXHIBIT C", and this Form contains unconstitutional language.
2. SCDC seized Appellant's legal casefile and kept it in SCDC's possession for over sixty (60) days.
3. During SCDC's control of Appellant's legal casefile, documents were removed from the casefile and sent to Marshall H. Fullbright, Appellant's Father.
4. SCDC has quoted policy in lower court filings that simply does not exist.
5. Appellant has a pending criminal appeal within the S.C. Court of Appeals; That appeal and other pending litigation and investigations are in need of documents which SCDC removed and edited to the point of uselessness from Appellant's legal casefile.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. Exhaustion Requirements Within SCDC Agency And How Each Requirement Was Met By Appellant:

According to SCDC Policy GA-01.12 "INMATE GRIEVANCE SYSTEM," there are two types of grievances that SCDC inmates can file:

1. Emergency Grievances; and
2. Standard (Non-Emergency Grievances).

Each type has a different exhaustion requirement. Appellant met Administrative Exhaustion Requirements for both types of grievances as Appellant will show, using SCDC's own filings below in the ALC, and other documentation.

1. Emergency Grievances

SCDC Policy GA-01.12 "Inmate Grievance System" (hereinafter "Grievance Policy") § 14. EMERGENCY PROCEDURE;

Section 14.1:

An emergency will encompass, but is not limited to, situations, actions, or conditions in which any person's health, safety, or welfare is threatened or in serious danger. It is the responsibility of the grievant to demonstrate the factors creating the substantial risk of personal injury or other serious and irreparable harm. **The Institutional Grievance Coordinator will fax a copy of the grievance to the Chief/Designee, Inmate Grievance Branch, to determine if a substantial risk of serious harm is present and warrants the grievance being processed as an "emergency."** [Emphasis in original]

By reading that excerpt of SCDC policy we can positively determine that:

1. An emergency... is not limited to situations, actions, or conditions in which any person's... welfare is threatened or in serious danger.
2. The grievant bears the responsibility of demonstrating an emergency situation.
3. All emergency grievances are fixed directly to the Chief/ Designee of Inmate Grievance Branch, i.e., ANN HALLMAN.
4. An emergency exists if there is a substantial risk of serious or irreparable harm.

Designation of Matter EXHIBITS D-2, 3, 4, 5, and 6 are the four emergency grievances filed by Appellant, all meeting the necessary emergency criteria.

Let's look at LCI-1258-13 [EXHIBIT D-2, 1 pg.]. Appellant explained and demonstrating an emergency situation:

"That discovery [seized by SCDC] is pertinent to my appeal process at this immediate time. I have several conflicts of record, various meritorious issues, and other appeal/court issues and matters that are intimately involved with said discovery, some are time sensitive. I am unable to perfect my appeal as a result of my legal discovery being confiscated."

That grievance was unprocessed by SCDC because:

"You have failed to attach the answered Request to Staff Form regarding your informal resolution attempt on this issue as is required in GA-01.12 Inmate Grievance Procedures."

But, see Respondent's Return to Appellant's Initial Brief, dated May 6, 2014, PAGE TWO, FOOTNOTE TWO, at the very bottom of the page:

"According to SCDC Policy GA-01.12 § 13.2 "Inmates must make an effort to informally resolve a grievance by EITHER submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff."

In Appellant's initial emergency grievance under the section "SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT" Appellant explained that an informal resolution was attempted by Appellant speaking with Lieber Mail Room Employee Ms. L. Bryant AND by going to Major Nettles' office and speaking to him, where also Captain Sheppard and my dorm Lieutenant McGhee were all present, all being appropriate staff.

The Request to Staff issue was exhausted.

Next exhaustion:

The Request To Staff member to Branch Chief Ms. Ann Hallman within (10) ten days, appeal, exhaustion requirement:

Let's start by looking at SCDC Policy GA-01.12.

As quoted by Appellant, above, at the bottom of page 8, above, Section 14.1 makes it clear that all emergency grievances are faxed from the Institutional Grievance Coordinator (from the prison), to the Branch Chief (who is Ann Hallman, located in Columbia, S.C., at SCDC headquarters). Appellant can show this Court, this is what happened in this appeal by looking at EXHIBIT D-3 (Grievance LCI-1317-13, page 1 of 2), at the bottom in the "ACTION TAKEN BY IGC" Section, which states "... the Central Grievance Office determined grievance # LCI-1258-13 was NOT AN EMERGENCY as you failed to state any upcoming court deadlines or how you will be harmed by following normal timeframes."

That means that the grievance LCI-1258-13 was faxed to Branch Chief Ann Hallman at the Central Grievance Office, and she determined there was no emergency situation and stating the reasons.

The rest of the response says that an appeal of the grievance can be sought through a Request to Staff within

ten (10) days, however, this is incorrect.

Just as Appellant showed the conflicting requirements of the Request to Staff Member, above, allow Appellant to show yet another conflicting SCDC requirement:

SCDC Policy GA-01.12 § 14, deals with emergency grievances, Section 13 deals with all other grievances.

Section 14, 4:

"If the grievance is determined not to be an emergency, it will be faxed [back] to the Institutional Grievance Coordinator, who will note in his/her response that the grievance was not deemed to be an emergency, and the grievance will then be routinely processed through the system as if it were a normal grievance."

Again, on this same requirement, look at the following contradictions by SCDC Staff Attorney Daniel J. Crooks III,

First, SCDC wants to have the appeal (when the case was before the ALC) dismissed because Ann Hallman needed to review the grievance/Request to Staff, claiming that Ms. Hallman never got to see the grievance,

See Respondent's May 28, 2014 letter of reply to ALJ Carolyn C. Matthews' REMAND, page one, First paragraph:

"This letter is in response to the Court's May 21, 2014 Order of Remand in the above referenced case. In the Order, the Court remanded the case as a REQUEST TO STAFF TO ANN HALLMAN. However, because the documents were sent directly to the Department's Correspondence Review Committee, Ms. Hallman was not privy to the contents of the mailing Mr. Fullbright received. Therefore, I have construed the Court's Order as one requiring the Department to respond to Mr. Fullbright's access to the materials taken on August 20, 2013."

So, to be clear, ALJ Matthews has ORDERED SCDC to have Ann Hallman look at the grievance/Request to Staff written by myself, the Appellant, thus curing any and all exhaustion requirements. However, SCDC misconstrues the ORDER. Contrast the above quote with this one:

Respondent's Second Motion to Dismiss, dated April 3, 2014, Filed with the ALC, page three, bottom paragraph:

"Instead of complying with the instructions on the grievance form, Appellant prematurely filed a Notice of Appeal in this Court seeking relief in the form of the Court's review of the unprocessed Step 1 Grievance. As this Court is aware, THE PURPOSE OF ALLOWING ANN HALLMAN, INMATE GRIEVANCE BRANCH CHIEF, TO REVIEW THE UNPROCESSING OF A GRIEVANCE IS TO ALLOW HER TO EVALUATE WHETHER UNIQUE CIRCUMSTANCES EXIST SUCH THAT THE UNPROCESSED GRIEVANCE

should be RE-OPENED and PROCESSED."

Emphasis is Appellants.

Back in April of 2014, Mr. Crooks / SCDC was trying to have the appeal within the ALC dismissed (incorrectly) because Ann Hallman never reviewed the grievance, although that is wrong - Ms. Hallman did review Appellant's grievance after it was faxed to her - even if it were correct, ALJ Matthews ORDERED SCDC to do just that - Have Ann Hallman review the grievance as a Request to Staff - therefore, no exhaustion issues exist.

In fact, so many contradictions belong to SCDC in the lower Court, for judicial economy, and because the few examples of SCDC's incorrectness should be enough, Appellant moves now from proving all exhaustion requirements were met, to the ensuing arguments.

ARGUMENT ONE

THE S.C. DEPARTMENT OF CORRECTIONS UNLAWFULLY SEIZED APPELLANT'S LEGAL MAIL AND LEGAL DISCOVERY, HOLDING IT OUTSIDE OF APPELLANT'S PRESENCE FOR OVER SIXTY (60) DAYS.

Appellant, after much diligence, has found no case law, Statutes, Rules, Regulations, Policies, Constitutional Provisions or Enacted law that would come close to justifying what SDC has done regarding Appellant's legal mail/legal documents/legal discovery, etc., which I will call the "casefile" for convenience.

Seizing, editing, and removing portions of Inmates' privileged correspondence between them and their attorneys is a common practice, widespread throughout the prisons of this State and Appellant will show this. In other words, this is no accidental oversight. These are SDC staff ATTORNEYS - who should be very familiar with and knowledgeable of vital laws regarding Inmates.

Especially when Constitutional Issues and penological issues are at odds or conflict, Prison administration and personell, by law must take great care to ensure the Constitutional provisions guaranteed to

Inmates are not infringed upon, abridged or violated.

Here is what the laws of our Country say, as given by United States Supreme Court Justices:

"There is no iron curtain drawn between the Constitution and the prisons of this country. Prisoners have been held to enjoy ... right of access to the courts. Younger v. Gilmore, 404 U.S. 15 (1971), aff'g Gilmore v. Lynch, 319 F.Supp 105 (ND Cal. 1970); Johnson v. Avery, 393 U.S. 483 (1969). Ex Parte Hull, 312 U.S. 546 (1941). Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination. Lee v. Washington, 390 U.S. 333 (1968). Prisoners may also claim the protections of the Due Process Clause. They may not be deprived of life, liberty, or property without due process of law. Haines v. Kerner, 404 U.S. 519 (1972); Wilfording v. Swenson, 404 U.S. 249 (1971); Screws v. United States, 325 U.S. 91 (1945).

As cited from Waff v. McDonnell, 418 U.S. 539 (1974),

From page 556.

Here are laws set forth by the People of the United States in the United States Constitution:

Const. Amend. IV, "The right of the people to be secure in their ... papers, and effects, against UNREASONABLE

Searches and seizures, SHALL NOT BE VIOLATED, but upon probable cause, SUPPORTED BY OATH OR AFFIRMATION."

Const. Amend. V, "No person shall... be deprived of life, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW."

Const. Amend. VI, "In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusations; to have compulsory process for obtaining witnesses in his favor; and the right to the assistance of counsel for his defense."

Const. Amend. VIII, "... nor cruel or unusual punishment inflicted."

Const. Amend. XIII, "Neither Slavery NOR involuntary servitude, except as a punishment for crime whereof the party shall have been DULY CONVICTED, shall exist within the United States, or any place subject to their jurisdiction."

Const. Amend. XIV, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof [APPLIES TO APPELLANT], are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

* Capitalized portions by Appellant for emphasis. *

Pursuant to the Supreme Court's decision in Mathews v. Eldridge, 424 U.S. 319 (1976), when the government seeks to deprive an individual of "liberty" or "property" interest, the courts must consider the following factors in determining what administrative safeguards are required by Due Process: First, the private interest that will be affected by the official action, second, the **RISK OF AN ERRONEOUS DEPRIVATION OF SUCH INTEREST THROUGH THE PROCEDURES USED**, and the probable value, if any, of additional or **SUBSTANTIVE PROCEDURAL SAFEGUARDS**, and finally, the government's interest, including the ~~State~~^{UBF} Function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

State v. Binnard, 400 S.C. 156, 733 S.E.2d 890, (S.C. 2012)
("Due Process requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation of liberty or property may occur.")

As mandated in the U.S. Constitution, much U.S. Supreme Court cases, etc., this case/appeal clearly

Involves substantive and procedural Due Process issues, as well as liberty and property interests.

"When effort of state prisoner to obtain state appellate review of his conviction is frustrated by the confiscating of his legal papers by prison officials, there is violation of Due Process clause of the Fourteenth Amendment of the United States Constitution."

DeWitt v. Pail, 366 F2d 682 (CA9, 1966)

The U.S. Constitution, certain case law, and other laws make it clear that that casefile was privileged and confidential (why else is it marked as such from the sending Court or Attorney?). It belonged to Appellant, and being beyond confiscation and seizure, without a reasonable objective, SCDC violated many Federal and State laws, rules, and Constitutional provisions the very moment it was taken. Then more violations occurred as SCDC began redacting, copying, editing, and sending portions of it around the State.

Now, since the entire legal casefile was from my trial attorney, Scott D. Robinson ("Mr. Robinson"), was legal and incoming, let's review the Federal standards and tests set forth by the U.S. Supreme Court as they

discharged their duties to balance prison officials' objectives and prisoners' Constitutional Rights.

As we review these cases and standards critical to Appellant's case/appeal before this Court, we will also examine Appellant's offered EXHIBITS. As the following EXHIBITS will show, greatly supporting Appellant's Argument One, SCDC KNEW ALL ALONG that seizing and especially censoring any portion of Appellant's casefile was unlawful.

Appellant thinks it best to have SCDC tell This Court, in SCDC's own words, through lower court filings and Appellant's EXHIBITS, that they did not follow their own policy, and knowingly violated State and Federal law.

Looking first to the many attempts of Appellant, Appellant's Friends and Family - we pleaded with SCDC, asking over and over, "how and why have you stripped this man of the very tools that were given to him by judges and attorneys to perfect his criminal appeal, what laws and policies allow this?"

We all received vague, ambiguous answers, except one. For the Court to see our prayers and implorations to SCDC see "EXHIBITS A-1 and 2"; "E-5, 6, 7, 9, 10, 11"; and "F-1 through 17."

Those EXHIBITS, as you can see, are Request to Staff Forums, letters from my family, my friends and myself, and other documents, attempting to remedy all of this. However, SCDC failed to correct these wrongs.

Now, back to that one reply made by SCDC.

It is absolutely vital to this appeal.

Please now see "EXHIBIT J-1 and 2" (2 pgs.). In this EXHIBIT, which I'll call "EXH-J", SCDC staff attorney Shanika Johnson goes into detail regarding the seized casefile. Let's review the culpatory excerpts from "EXH-J" as written by attorney Shanika Johnson:

(pg. 1, bottom of first paragraph) - "As it relates to Mr. Follbright's legal mail, the facts and holdings in Wolff v. McDonnell, 418 U.S. 539, 579, 94 S.Ct. 2963, 41 L.Ed. 935 (1974), support SCDC's actions. In Wolff, inmates challenged the inspection of their legal mail...in the presence of the inmate does not amount to censorship and that opening the mail is justified to ensure the absence of contraband."

SCDC has just stated matter-of-factly (perhaps to use the best place to hide is the 'right in-front of-you' approach), unequivocally, that legal mail, to and from attorneys must be opened in the

presence of the inmate. What benefit is there to even have the Inmate present if the legal material is going to be ultimately confiscated? Far from Ms. Johnson's/SCDC's assertion, Wolff MAKES IT CLEAR - no ambiguities - Inmates' legal mail/legal materials may be searched for contraband in the Inmate's presence, if no contraband is found, the ENTIRE CONTENTS MUST be given to the Inmate.

Breaking the Court's holding in Wolff, SCDC has broken Federal and State law by seizing and censoring my privileged casefile.

Here are the authorities cited by attorney Johnson ("Ms. Johnson") in "EXH-J": Wolff, above; Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254; Montayne v. Haymes, 427 U.S. 236, 242, 96 S.Ct. 2543; Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194; Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577.

The SCDC Policy given is PS-10.08 "INMATE CORRESPONDENCE PRIVILEGES", but gives no specific sections within PS-10.08. However, in that paragraph it states: "Inmate correspondence... that is considered **questionable** by the mailroom will be forwarded to the Correspondence Review Committee..." Appellant will address SCDC policy and applicable exhibits in a few. First though, the five S.Ct. cases,

1. Hudson and Smith, above, deal with various privacy issues involving prisoners. Nowhere in these cases, will we find the S.Ct. giving a ruling or "thumbs-up" to seizing an Inmate's legal mail/legal materials and/or removing papers from it, copying or censoring it.

2. Regarding Montayne, *Supra*, SCDC quotes "the Due Process Clause does not itself subject an Inmate's treatment by prison authorities to judicial oversight."

But SCDC has just cited a case in Appellant's favor because in that same sentence, right above, is the controlling Factor: "If an Inmate's Constitutional rights are not violated..." [the emphasis is mine].

SCDC HAS VIOLATED THOSE RIGHTS.

3. Regarding Wolff, as stated already by Appellant, the only thing Appellant can further add, since SCDC is saying, by Ms. Johnson quoting, that SCDC cannot take legal mail out of my presence, or censor it, is: **EXACTLY!** In the presence of the Inmate, the legal mail may be inspected for contraband. SCDC has cited a case opposing and contrary to what they've done.

4. Lastly Turner. Since the legal casefile was incoming, restrictions on it fall under the Turner standard. Since the Turner standard deals with censoring I'll cover it in my Argument two.

All of these cases, ones like them, even the majority of cases regarding Inmates' legal mail, attorney-client privileged correspondence, and such, deal with opening it in the Inmate's presence, searching it for contraband, scanning it to ensure it is, in fact, legal mail, etc.

All of that is understandable as they are legitimate

security and penological interests and are reasonable.

But, there are no cases, etc., that exist, that supports them seizing, copying, censoring, redacting, and mailing parts of my legal casefile to my family, and who knows who else? The S.C. Attorney General? Other legal experts who can study the attorney notes and other documentation which SCDC kept, destroyed, etc.?

Now on to SCDC Policy. Appellant has already shown on page 22 above, SCDC staff attorney Shanika Johnson has stated, that even legal mail is subject to SCDC Correspondence Review Committee ("SCDC/CRC") scrutiny and ^{4BF} censorship. Ms. Johnson cites SCDC Policy PS-10.08 "Inmate Correspondence Privileges," section 20, "Questionable Correspondence." To further ensure that we are in the correct place in SCDC Policy, not only by Ms. Johnson's admission, let's look at Appellant's "EXHIBIT-B". This "EXHIBIT-B" is an SCDC Form 10-6 "Notice To Withhold Incoming/Outgoing correspondence," ("10-6"). The "10-6" is mentioned not used in any other place in SCDC policy except SCDC policy PS-10.08 § 20 ("20"), involving questionable correspondence.

So, to make absolutely clear, SCDC is restricted to the use of the 10-6 and § 20. Not just because Ms. Johnson in EXH-J quotes § 20 (and no other policy), but also because Lieber Mail room employee L. Bryant ("Ms. L. Bryant") utilized the 10-6.

Before continuing it must be noted: Neither § 6 "Unauthorized Correspondence" or § 7 "Inspecting/Reading/Scanning Incoming/Outgoing Correspondence" of PS-10.08 apply or can apply at all. Here's why: First, § 6 and § 7

can utilize ONLY SCDC Form 10-7 "NOTICE OF REJECTED INCOMING/OUTGOING CORRESPONDENCE."

Appellant's legal casefile was determined as "questionable," not rejected, which would have been returned and a 10-7 Form used.

Before we review PS-10.08 § 20: Appellant shows a hurdle in SCDC's case that SCDC cannot overcome, which SCDC has placed in the way, and that is "EXHIBIT - C."

"EXHIBIT-C" has no REQUIRED SCDC FORM NUMBER, name, or other identification, so for understanding I'll refer to it as "EXH-C/Photos Form." This is a false document. It exists nowhere in SCDC policy, how can it? How would one search for it without an administratively assigned form number? In the front of every SCDC policy is a list of forms and their applicable numbers.

*Note: The false "EXH-C/Photos Form" was the ONLY document in this entire appeal SCDC utilized to administer the taking of, seperating of, maintaining, procedures, etc. involving things removed/seperated by SCDC/CRC.

The EXH-C/Photos Form was utilized (not the 10-6) by SCDC to explain the "Procedures for maintaining crime scene photos and/or autopsy photos", which is at the top in big, bold letters. The problem: This language is nowhere in SCDC Policy PS-10.08 or ANY OTHER SCDC Policy.

The EXH-C/Photos Form offers further contradictions. Look at the portion, lower-left, written by SCDC employee Ms. L. Bryant. It states: "Inmate Fullbright the 10-6 dated August 20, 2013 was approved by the CRC with stipulation."

But, she goes on to write: "... because of Policy 6.1.13." This all contradicts. Remember, SCDC utilized the 10-6, ONLY APPLICABLE to § 20. "Questionable Correspondence", not § 6 "Unauthorized Correspondence."

Ms. L. Bryant cites 6.1.13. as the reason for seizing and 10-6 as the SCDC Form, let's now read SCDC Policy PS-10.08 § 6.1.13:

"Inmates will be prohibited from receiving any type of personal identification/documents (or copies thereof) such as driver's license, identification cards, birth/marriage certificates, Military Discharge Form DD214, diplomas, and/or other similar documents. If these documents are received in the mail, the mailroom employee will forward them FOR INCLUSION IN THE INMATE'S INSTITUTIONAL RECORD. INMATES WILL BE PERMITTED TO RECEIVE THE REMAINDER OF THE CORRESPONDENCE with a completed SCDC Form 10-7, "Notice of Rejected/Incoming/Outgoing Correspondence," identifying the document(s) removed and noting that it has been forwarded for inclusion in his/her institutional record."

On the EXH-C/Photos Form Ms. L. Bryant refers to SCDC Policy PS-10.08 § 6.1.3., which as we've just seen does NOT mention anything about photos, utilized the SCDC Form 10-7, AND, most importantly specifies that the Inmate will be given the remainder of all contents not rejected.

Plus, on the EXC-C Photos Form, it reads in all capitals, and bold letters right in the center: ***** NOTE: THE MATERIAL SHOULD NOT BE MAINTAINED IN THE INMATE RECORD. *****

But, on that same form Ms. L. Bryant cites 6.1.13 which says: IF these documents are received in the mail they are to be placed in the Inmate's record!

Further, since Ms. L. Bryant cites 6.1.13, and if it does apply, then they should have removed any "sensitive" documents in my presence and given me the remainder of my casefile and filled out a 10-7 AND contacted my attorney! Wow!

I mean, it's on, and on, and on. In fact, SCDC contradicts itself so many times, I must move on. Appellant believes it plenty so far.

Now, according to administrative law, as this Court is aware, all forms utilized to officially administer policy must be prescribed a form number, that is enough in itself to defeat any "reasons" or "justifications" SCDC offers for using this form to utilize policy, i.e., seizing my discovery.

As for the SCDC Policy PS-10.08 § 20. "Questionable correspondence" as quoted by attorney Shanika Johnson in EXH-J, let's now look at that,

§ 20.1.6 - This section is on prohibition of sexually explicit content and material.

"This prohibition shall not apply to patently medical, artistic, anthropological, or educational commercial publications, including, but not limited to National Geographic, works of art displayed in public galleries, anatomy texts, or comparable materials."

Meaning that, even if they WERE ALLOWED to seize and remove from my presence my legal casefile (which they

are are not), and if the many conflicting and contradicting statements, documents, etc., did not exist on behalf of SCDC as they do now, and this policy alone would have been followed, nothing could be withheld from Appellant. As it now stands, SCDC treats National Geographic magazines with a higher standard than legal materials.

Nowhere in the language of any SCDC Policy will you find the words "SEPERATED FROM THE REST OF LEGAL MATERIALS" or any "PROCEDURES" dealing with legal, mail, autopsy photographs, attorney-client privileged, materials, as on EXH-C / Photos Form.

In short, SCDC seized Appellant's casefile on August 20, 2013, notified me of that via a 10-6 Form, gave the casefile back, after a sixty (60) plus day review period by SCDC/CRC, along with a false document that cannot be shown as to its origin or recognition.

In closing argument one, I ask the Court to please look at "EXHIBITS - H-1 through 7." These are documents regarding two other Inmates' legal casefiles, attorney work-product, etc. being seized.

"EXHIBITS H-1 through 4" belong to my then (August 20, 2013) roommate, who also had several documents missing after SCDC/CRC review. Note on EXHIBIT H-4, Ms. L. Bryant states that his photos were placed in The Warden's Office, the same place mine were placed.

Now see "EXHIBIT H-6." Why was Tyrone Jenkins'

Crime scene photographs placed in his PROPERTY?

See? There is clearly no rhyme or reason to how SCDC takes, seizes, redacts, copies, etc. when it comes to Appellant's or other Inmates' legal casefiles.

Is it this policy or that? Is it a 10-6 Form or a 10-7? Is it to be placed in the Warden's Office or property control?

The last exhibit of argument one speaks for itself, it is Appellant's "EXHIBIT I". This "EXHIBIT I" is a memorandum from Ms. Tina Kellett of SCDC's General Counsel's Office regarding a legal envelope that was "inadvertently opened" belonging to Inmate William Burnett. Upon the General Counsel's Office of SCDC realizing "what had happened", they "did not read the contents" and "contacted his attorney for him."

Then why didn't SCDC realize what they did after all of my timely and correct Emergency Grievances, all of our letters and Requests to Staff Forms were given to them?

How did they never think to call my sending attorney?

ARGUMENT TWO

THE S.C. DEPARTMENT OF CORRECTIONS UNLAWFULLY COPIED, CENSORED, EDITED, REDACTED, AND REMOVED VITAL PORTIONS OF APPELLANT'S LEGAL MAIL AND LEGAL DISCOVERY, PROHIBITING APPELLANT'S ABILITY TO INVESTIGATE, PRESENT DOCUMENTS TO COURTS, PERFECT HIS CRIMINAL APPEAL, ETC., WARRANTING IMMEDIATE REMEDY.

As established in Argument One, SCDC Policy PS-10.08 §20 is the policy which SCDC administered, when seizing my legal casefile. But what laws did SCDC apply to censor, edit, copy, redact, shorten, abridge, and remove documents from it?

Now that we're sure that only policy PS-10.08 §20 applies to not only seizing, but CENSORING legal mail, let's examine it along with the 10-6 Form, EXH-C/Photos Form, and Appellant's offered EXHIBITS.

To keep this short; It's not in there.

Nowhere in SCDC Policy, Federal or State law, Statutory provisions, matters of/in equity, will we find the justification of seizing, but ESPECIALLY CENSORING, Editing, Copying, Removing, Etc., anything in, out, of, or pertaining to Appellant's legal correspondence and casefile.

Not a single word in SCDC policy even comes close to justifying carting my casefile off-site, spreading it out on tables, making copies of it, sending parts of it around the State, as if the casefile were some frenzied, multi-author book editing project.

This case definitely, automatically implicates and directly involves State AND Federal liberty and property interest(s).

As for case law, since the legal mail was incoming, its restrictions and so forth fall under the Turner standard as required by Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254, mentioned in EXHIBIT-J, which is Ms. Johnson's letter.

Also, Wolff, which states that "legal mail must be opened in the presence of the Inmate."

Let's apply Turner and Wolff to what SCDC has done here. But first, SCDC Policy PS-10.08 § 7.2:

"All incoming LEGAL and PRIVILEGED mail will be opened and inspected in the presence of the Inmate by mailroom staff or their designee. Legal or privileged mail may be scanned/read when approved by the Warden or higher Operational Authority, the Inspector General, or the General Counsel, based upon previous abuse of mail privileges or other good cause."

Appellant has NEVER abused any mail privileges. And, that policy is for SCANNING to ensure that the material is legal mail.

Getting back to the Turner standard. This is a four (4) prong test - (a) through (d). Appellant now lists those prongs, and how each applies to Appellant's case.

Prong (a): "Whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection cannot be so remote as to render the regulation arbitrary or irrational;"

Appellant's analysis of Prong (a): The governmental interest is definitely not neutral, and it's arbitrary. SCDC cannot make a "valid, rational connection" nor justify seizing and using a magic marker on my legal casefile, like some coloring book, as to render many documents useless. Their actions are also anti-neutral in that the casefile involves a pending criminal appeal, pending charges in Anderson County, S.C., as well as various personal investigations ongoing, all hindered by SCDC's taking, and copying of my legal casefile. Look at "EXHIBITS K-1, 2, and 3." These are actual documents that returned from SCDC's/CRC's review. SCDC Mailroom Coordinator, Maria Heggins' name is on it! What all went on down at SCDC headquarters while they had control of my casefile? What is "Rm. 103?" Look at the copy of an SCDC document of some type overlapped on "EXHIBIT K-1!" ARBITRARY!

Prong (b): "Whether there are alternative means of exercising the asserted constitutional right that remain open to inmates, which alternatives, if they exist,

will require a measure of judicial deference to the corrections officials' expertise."

Appellant's analysis of Prong (b): There exists no alternative to receiving my confidential and privileged casefile from my attorney. Who/how else could achieve this? My constitutional rights have been violated. No one else can correspond with and from my attorney, but my attorney and I.

Prong (c): "Whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on Inmates' liberty, and on the allocation of limited prison resources, which impact, if substantial, will require particular deference to corrections officials; and"

Appellant's analysis of Prong (c): There is zero impact on prison staff. SCDC allows occult books, murderous cartoons, comic books, and graphic novels to be ordered by Inmates. These depict killings, sexually explicit and violent, along with other materials that, according to the guidelines in this appeal, should not be allowed.

However, the impact on Inmates are tremendous. It affects my liberty and property interests. SCDC has removed the tools I need to appeal properly.

Talking about limited resources in Prong (c),

it costs a lot more to send Inmates' casefiles to SCDC/CRC, where manhours are spent hacking away with pens and magic markers, using copying machines and paper shredders, where it is reviewed and handled for months.

Then there are all of the cases which spawn from these criminative actions of SCDC. Look at this very appeal, it's undue litigation.

Think of all of the money saved by SCDC by calling the sending attorney and removing the photographs, etc., in the presence of the Inmate. Within minutes, everything is packaged and sent back to the attorney.

Prong (d): "Whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prisoner's rights at de minimis costs to valid penological interests being evidence of unreasonableness."

Appellant's analysis of Prong (d): SCDC's response is exaggerated. Think about it, when publications are unapproved, SCDC NOTIFIES THE PUBLISHER, there is no censorship. Consider SCDC Policy PS-10.08 § 6.1.11:

"Inmates will be prohibited from maintaining possession of any financial statements. When statements, other than year-end are received in the mailroom, Inmates will be sent an SCDC Form 19-45, "Order to Report", to REVIEW THE STATEMENT AT THE MAILROOM WINDOW.

After review, the statement may be FORWARDED at the Inmate's expense TO AN ADDRESS PROVIDED BY THE INMATE OR PROCESSED PURSUANT TO SCDC Policy/Procedure OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property."

Which means that SCDC handles with more care, tax documents, allowing Inmates' the option to go through the tax documents in/at the mail-room and send any unauthorized portions to an address of the Inmate's choice. Appalling!

Every prong of the Turner standard has been shown by Appellant to be in favor of Appellant's case, and clearly violated, each and every one, by SCDC.

This IS AN EMERGENCY SITUATION!

It always has been as I explained to SCDC in all of my grievances [EXHIBITS D-1 through 6.]

See Appellant's "EXHIBIT G." This is a price quote from S.L.E.D. It will cost Appellant \$826.20 to replace just the S.L.E.D. documents that SCDC has marked out and tampered with.

My trial attorney, Mr. Robinson, sends the entire legal casefile, including his and my working file, lawyers' notes to me because it's my file, it belongs to me in its entirety.

But SCDC states "No, we shall be the final deciders as to what Mr. Fullbright needs to declare his innocence or perfect his appeal."

IF SCDC is allowed to unlawfully seize my legal documents, take them out of my presence, take stuff out, hold parts in their possession, edit it and so on, then they are above our constitutions and all courts which clearly oppose such things.

IF SCDC can do these things without remedy, the adversarial process, with its appeals, are a useless formality, a frivolous hoop to jump through, nothing more.

I mean, look at "EXHIBIT E-8." This is Warden Joseph L. McFadden telling Appellant there are six (6) photos and a bank statement in their possession.

Now look at "EXHIBIT E-15." This is an actual S.L.E.D. document from my casefile. This lone document shows nine-hundred-thirty-eight (938) photographs in said casefile. In fact, there are more than that. Who's right? The Warden, or S.L.E.D.?

IF SCDC had given me my casefile and I had found documents to be excluded, I could have contacted my attorney to remedy that. Now - It's one giant mess and SCDC is liable.

SCDC says everything was given back to me. Oh yeah? See "EXHIBITS N-1 through 17." These are the actual documents that "somehow" found their way out of SCDC's control, mailed out the SAME EXACT DAY that they sent Appellant's discovery back to Appellant.

The documents are attached to the envelope they were sent in, and affidavits from my

Father Marshall H. Fullbright, as he got it out of the mailbox, He was absolutely shocked, Appellant was horrified. You just have to see those EXHIBITS to believe them.

Look at the magic marker censorship. Why did SCDC arbitrarily edit my co-defendant's name? I cannot use these documents now.

I can only stress how disturbing that is. This is only one of many reasons that cases like Wolff make it clear that legal mail or legal materials should NOT BE SEIZED or REMOVED From the Inmate's presence.

Who had access to it? Who has access to it? Where are the copies?

The answer: Attorneys. SCDC Staff Attorneys who have litigated far too long not to know better.

They all became privy to my sensitive information. What happens now on Federal Habeas Corpus if Appellant needs to attach to the § 2254 application the very photographs in SCDC's possession? If they attach them, do they then, represent me at that point?

The reason SCDC didn't consider this an emergency is found in "EXHIBIT D-3" in the "ACTION TAKEN BY IGC" section, halfway down the paragraph. It states: it's "NOT AN EMERGENCY as you failed to state any upcoming court deadlines or how you will be harmed by following normal

time frames." WOW! SCDC is here requiring Appellant to break down and explain and litigate the issues involving the casefile! To waive my attorney-client privilege and state my case before them!

What they've quoted there is SCDC's own demise in this case. Say I had a court appearance or deadline for documentatur/Filing Fall within the sixty-plus (60+) days that SCDC had control of my casefile. It'd be too late! The damage would have been done.

I need that entire casefile now before my pending criminal appeal is finalized.

I am prejudiced RIGHT NOW!

They want Appellant to follow a normal time-frame for a non-emergency grievance.

See "EXHIBIT M-1 and 2" Appellant submitted this grievance on 2-22-2012. The response came back on 4-30-2014! Two years later. As this Court is aware, since this Court is where my pending criminal appeal is filed, an appeal can be over and gone, and the remittitor sent down, see Rule 208, SEACR.

My decision to raise issues at my future PCR hearing, and perhaps, thus, waive certain parts and facets of the attorney-client privilege that exists between Appellant and his trial or appellate attorney, has been compromised.

RIPENESS FOR THIS COURT'S REVIEW:

The court below neither explained or even acknowledged the constitutional violations present in this case.

S.C. Code 1-23-380

"The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (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 1-23-610 (B)

"The review of the ALJ's order must be confined to the record. The court may not substitute its judgement for the judgment of the ALJ... it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

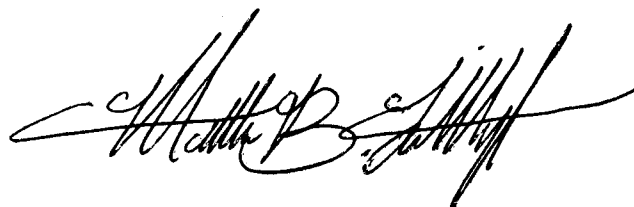
- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

- (e) clearly erroneous in view of the reliable, probative, and substantive evidence on the whole record; or
(f) arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Please, Appellant prays, modify the lower courts decisions, rule in favor of Appellant, as his State and Federal property and liberty interests and constitutional rights have clearly been violated.

A remand to SCDC will accomplish nothing, SCDC has made it clear that they will misconstrue court ORDERS.

This is an emergency situation.



Matthew B. Fullbright,
Appellant, Pro Se

#349468

@ Lieber C.I.

Ridgeville, S.C. 29472


CONCLUSION

Appellant respectfully requests of This Court to ORDER the Following relief:

1. That The S.C. Dept of Corrections pay all costs (if there be any) for retrieving, replacing, copying and shipping an entire, complete, unredacted, unedited copy of my casefile - including all work-product, Rule 5/Brady materials, and everything as was sent by my trial attorney Scott D. Robinson;
2. That SCDC hand over to me the entire contents of 1. above upon its arrival, opening it in my presence and not take it out of my presence;
3. That, before being forced to sign my name, acknowledging its completeness, I, the Appellant, be allowed to review the contents thoroughly, ensuring that nothing is missing of the documents described in 1. above;
4. That if any papers, documents, photographs, etc., be found to be absent or missing from 1. and/or 3. above, SCDC pay any fees/costs in procuring and providing them to Appellant;
5. That all pecuniary cost thus far spent by Appellant, such as the S.C. Court of Appeals \$100.00 Filing Fee, \$25.00

motion fees, copying fees, material fees (paper, pens, envelopes, etc.), and any other fees as is fair according to this Court;

6. That Appellant be allowed to maintain as many legal boxes in his cell, as is necessary to contain the legal casefile, after a complete copy is furnished him. Currently, Appellant is approved for two (2), and Appellant is not in control of how much legal material is involved; OR,
7. That Appellant is afforded a new trial, since any appeals after this point is moot, all confidentiality is compromised, copies were made, of the legal casefile, some were sent to Appellant's Father, Marshall H. Fullbright, some were sent to perhaps the Attorney General's Office of S.C.



Matthew B. Fullbright
Appellant, Pro Se

349468

@ Lieber C. I.

Ridgeville, S.C. 29472

January 9, 2015

CERTIFICATE OF SERVICE

I, Matthew B. Fullbright, the undersigned and Appellant in Appellate Case No. 2014-001684, hereby certify that I have served the INITIAL BRIEF OF APPELLANT in the foregoing action by depositing copies, via U.S. mail, to the mailroom here at Lieber C. Inst., on these parties:

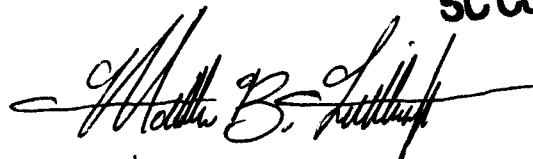
1. SCDC / Off. of General Counsel, 444 Broad River Rd., Columbia, S.C. 29221;
2. P.O.A. Marshall H. Fullbright, 106 Dogwood Dr., Belton, S.C. 29627;
3. P.O.A. Wanda M. Shearer, P.O. Box 212243, Columbia, S.C. 29221;

This 12th day of January, 2015,

RECEIVED

JAN 20 2015

SC Court of Appeals



Matthew B. Fullbright,
Appellant, Pro Se,
349468,
@ Lieber C.I.,
Ridgeway, S.C. 29472

Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RECEIVED January 11, 2015

JAN 20 2015

SC Court of Appeals

Re: Matthew B. Fullbright v. SCDC; Appellate Case No. 2014-001684;
Initial Brief of Appellant; Incidents and Delays.

Dear Clerk:

There have been two recent and unfortunate events in my Dorm-Edisto - resulting in 24 hour confinement, with us not being allowed to go anywhere, i.e., zero movement.

I think one of the gentlemen has died as a result of the latest event. The law library is bringing our books to the dorm, and since we cannot go to the mailroom, I can only mail this out as soon as I am able.

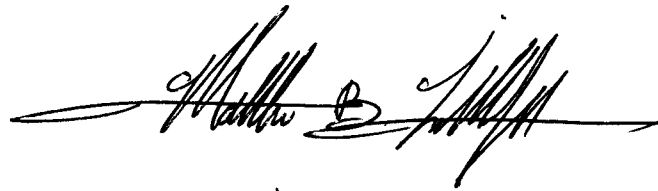
Through no Fault of Appellant's, this Initial Brief may be mailed out very close to January 15, 2015 - the deadline set by this Court. I will mail it first chance.

I pray this is speedily remedied. This will be The State's last chance to remedy, leaving an Emergency Federal Injunction, the only remaining recourse.

This case has been hindered and impeded and has so many obstacles prevent its perfection.

Appellant thanks This Court for Fairness, a chance to remedy this emergency situation, and hopefully an end to the impediments to my criminal appeal and other legal endeavors.

Grateful For My Rights,
I Am,

A handwritten signature in black ink, appearing to read 'Matthew B. Fullbright', written over a horizontal line.

Matthew B. Fullbright,
Appellant Pro Se,
*349468
@ Lieber C.I.
Ridgeway, S.C. 29472

CC: SCDC, Off. of Gen. Counsel,
P.O.A., Marshall H. Fullbright,
P.O.A., Wanda M. Shearer,
File.

AMS

29472

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JAN 14 2015

MAIL ROOM

LIEBER C.A.

The South Carolina Court of Appeals

P.O. Box 11629

Columbia, S.C. 29211

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JAN 20 2015

SC Court of Appeals