

KRCF 09120-14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

JAN 28 2016

SC Court of Appeals

STEP AUG 13 2014

INMATE NAME: James B. Weersing  
SCDC NUMBER: 273527  
INSTITUTION: Kershaw  
HOUSING UNIT: Mag B-10  
WORK ASSIGNMENT: Dorm

RECEIVED  
AUG 14 2014  
KERSHAW I  
GRIEVANCE

Grievance No. KRCF 0939-14  
Code: General  
Policy: MA/ML  
Disc. Hear.  
Class. PREA  
Date Received 8/14/14  
IGC Initials BK

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 4/11/14 Ms. Amerson sent my Religious Book to CRC Review; they held it violated Policy PS10.8 sec. 6.1.B; consider this policy in inapplicable in this situation cause it specifically concerns a ban on receiving correspondence/writing materials i.e. stamps, address labels, glitter, blank envelopes blank paper etc. The Religious Book I ordered in no reasonable way be considered correspondence/writing materials. The relevant and applicable Policy in this case is P.5-10.05 sec.10.1 "Inmates may receive and retain single copies of religious writings for their personal use. These can include scripture books, study materials ect.." The Religious Book in question (see attached evidence documents) clearly fits the PS-10.05 description.

It is extremely difficult for any reasonable and fair minded person to understand how and why supposedly trained and experienced Agency employees could be so confused over such easily understandable and clearly established agency policies.

Legally consider U.S.v. Hoechst Celanese Corp., 964 F. Supp. 967, 123 F.3d 216, 118 S.Ct. 2367 (5c.1996) "agency rules... cannot be construed to mean what the agency intended but did not adequately express.... but must be construed to mean what it actually said." Further, notice the Religious Freedom Restoration Act 42 USC § 2000 (b) holds the Agency must show it has a compelling governmental interest to deny my Religious book. Lastly consider Smith v. Ozmint, 578 F.3d 246 (4th Cir. 2009) "To meet it's burden to show a compelling interest, the S.C.D.C.'s first job is to take the unremarkable step of providing an explanation for the policy restrictions that take into account any institutional need to maintain good order, security and discipline or to control costs." Can you, in honesty say a Religious book is a threat?

ACTION REQUESTED: That I be given my book forthwith (ASAP) and that Ms. Amerson and all members of CRC be given reprimand and retraining to prevent this obvious religious persecution from happening in the future.

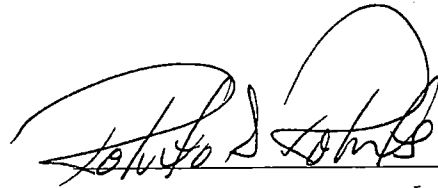
SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: see attached documents and notice Ms. Amerson was advised at the time I was 1st notified of denial not to destroy the book due to it be evidence, this is also been noted on Keeke Request. Note also CRC failed to review within allow time limits. Further actual notice of refusal was received 8/4/14.

James B. Weersing 8/12/14  
Grievant Signature Date


Inmate Weersing;  
 WARDEN'S DECISION AND REASON:

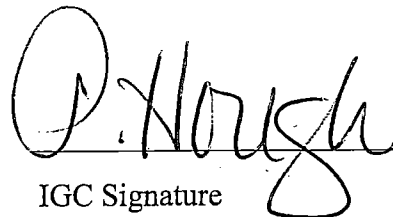
This is in response to KRCI-0939-14. All pertinent information and documentation has been reviewed. Per PS-10.08 Inmate Correspondence Privileges, all questionable material must be sent to the Correspondence Review Committee for approval prior to being given to the inmate. This was the situation with your item. As stated on the 10-6 Notice to Withhold form, your correspondence was deemed questionable. The CRC review is complete and you were notified that your correspondence was disapproved. I see no violation of any policy or procedure by the actions of the mailroom staff during this incident.

Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

  
 Warden Signature 9-2-14  
Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

  
 Grievant Signature 9/4/14  
Date

  
 IGC Signature 9/4/14  
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing in the Grievance Box within five (5) days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via placement in the Grievance Box.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 05 2014**

UUC  
9/9/14  
Office Use Only  
Grievance No. KCCJ-0939-14  
Code: General MA/ML  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 9/9/14  
IGC Initials JUN

INMATE NAME: James B. Weersing  
SCDC NUMBER: 273527  
INSTITUTION: Kershaw  
HOUSING UNIT: Mag-B-10  
WORK ASSIGNMENT: Dorm

SEP 08 2014  
KERSHAW I  
GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *Warden's Decision and Reason failed to address the issues raised in Step 1 grievance; notice no complaint was made against mailroom staff, also no "Reason" was given as to why the Religious publication was disapproved or why the wrong policy was used to deny it. Carefully consider Policy PS-10.08 Subsection G. does not even mention "Publications" which are covered in Subsection 9. The evidence documents submitted with grievance prove the item in question is a publication 39; not "Unauthorized Correspondence" 36. Note "Religious Material meets all criteria under proper 39 and also the criteria in Policy PS-10.05 section 10.1 which specifically authorizes it. Therefore disapproval violates S.C.D.C. Policy.*

*James B. Weersing* 9/14/14  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

A review of the SCDC Form 10-6, "Notice to Withhold Incoming/Outgoing Correspondence," indicates that your correspondence was determined to be questionable and therefore disapproved in accordance to SCDC Policy PS-10.08, "Inmate Correspondence Privileges", paragraph 6.1.8 because it contained blank paper/pages. It was not disapproved because of religion. Additional reasons for disapproval would include that the spiral binding, if removed, would be considered contraband. Additionally, in accordance with paragraph 19.4, "Upon receipt, the CRC will have 60 working days to review the correspondence." The CRC disapproved your correspondence on July 7, 2014 which was within the 60 working days guidelines for their review and response.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

*[Signature]* 11/5/15  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

*James B. Weersing* 11/16/15  
Grievant Signature Date

*[Signature]* 11/16/15  
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James Weersing, #273572,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-ALJ-04-0566-IJ

ORDER OF DISMISSAL  
**RECEIVED**  
JAN 28 2016  
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by James Weersing, the Appellant, who is incarcerated with the South Carolina Department of Corrections (SCDC).

The Appellant filed a Notice of Appeal informing this court that he is appealing "directly to the ALJ because [SCDC] has made the grievance process 'meaningless' and 'unavailable' due to their refusal to respond to Step 2 within allowable time limits." The Appellant filed a Step 1 grievance on August 14, 2014, however, the evidence indicates that the Appellant did not file a Step 2 grievance.<sup>1</sup> The Notice of Appeal does not contain a copy of a final decision of the Department which is the subject of the appeal, as required by ALC Rule 59(C).<sup>2</sup>

By failing to obtain a final decision from the Department, the Appellant has failed to exhaust his administrative remedies and has thus failed to meet the requirements of the Administrative Procedures Act for review by this court: "A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article I. § 1-23-380. S.C. Code of Laws, Annotated."

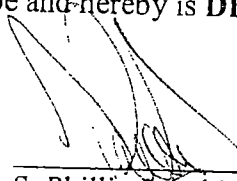
**FILED**

NOV 20 2015

SC ADMIN. LAW COURT

<sup>1</sup> The Appellant alleged that the Department prevented him from receiving a religious book he ordered. There is no indication as to when the Appellant received a denial of the Step 1 grievance, and no evidence that the Appellant filed a Step 2 grievance in this case.

Thus, this matter is not properly before this court. Therefore,  
**IT IS ORDERED** that this appeal be and hereby is **DISMISSED**.



S. Phillip Lenski  
Administrative Law Judge

November 20, 2015  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES  
COLUMBIA, SOUTH CAROLINA  
NOV 20 2015  
2015

State of South Carolina  
Administrative Law Court

**Motions for Reconsideration  
are Prohibited.  
See ALC Rule 65.**

James B. Weersing #273527	)	The Honorable Judge Lenski
Appellant	)	Case No. 15CO566-IJ
Vs.	)	Grievance No. KRCl 0939014
	)	
South Carolina Department of	)	
Corrections,	)	Motion: Per SCRCiv.P Rule 60,
	)	Review Due to Over site, Omission
	)	or Mistake
Respondent	)	
	)	

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Issues:

Please consider error arising from oversight, omission and / or mistake in Order of Dismissal filed Nov. 20, 2015, received Nov. 24, 2015. Appellant files these pleadings for the following legal and factual reasons:

- 1.) Your Honor appears to overlook ALC Rule 36(A) holding agency "Shall" (Mandatory Language) file the record within 45 days of notice. Due notice was given by Appellant's ALC filings, see Certificate of Service in prior pleadings. Therefore, Order of Dismissal was filed prior to receipt of record from agency and proper adjudication would lawfully impossible.
- 2.) Note mistake in "Order" footnote 1; stating in part, "There is no indication as to when the Appellant received denial of Step 1..." however Appellant's appeal filing contained a copy Step 1 with "Decision" dated 9/2/14, see "Exhibit E." from filing. Also consider "and no evidence that the Appellant filed a Step 2 Grievance in this case. "; but note SCRCv.P Rule 12(b)(6) holding courts are to consider well plead allegations as true or see same in Fabian v. Linsey, 765 S.E.2d 132 (SC 2014). Legally, Appellant's allegations of agency default is proof per se; the burden would now be on the Agency to show failure to exhaust.
- 3.) Note mistake in para.2 last sentence of "Order" which reads in part, "The Notice of Appeal does not contain a copy of a final decision of the Department...". It is illogical and ludicrous to demand a party to enclose a document that his pleadings argue is in the hands of the respondent and of which no final decision had been reached.
- 4.) Lastly not same sentence, "ALC Rule 59(c) 2; "Order" contains no footnote 2.

Conclusion and Relief:

May Your Honor consider enclosed Motion to Supplement written prior to receipt of "Order" and attached copy of Step 2 which was signed on 11/5/15; well after Appellant gave Agency due notice of this Appeal on or about 10/15/2015. Consider response was finally made 14 months after Step2 was filed.

Please see "Order" para. Sentence 2, "... the evidence indicates the Appellant did not file a Step 2 Grievance. The question now becomes what evidence did you Honor use to base your judicial decision? In good conscience can you say your "Order" was not made in error, based on both the law and the facts?

Therefore, Appellant asks "Order" be rescinded and that you Honor adjudicate this case fairly and lawfully abased on the merits and without further bias and prejudice.

Date: 11/25/15

Respectfully Submitted,

*James B. Weersing Pro Se*

cc: ALC Chief Admin. Judge

James B. Weersing # 273527

SCDC

KRCI Magnolia B - 10

file

4848 Goldmine Hwy.

Kershaw, SC 29067

Certificate of Service

I do hereby certify and affirm on the 25<sup>th</sup> of Nov., 2015, I placed with the Agency mailroom copies of two (2) Motions and an evidence document to be sent to the ALC Clerk of Court a 1205 Pendleton Street, Columbia, S.C. 29201 and due notice to S.C.D.C. Attn: General Counsel, at 4444 Broad River Rd., Columbia, S.C. 29221

Sworn to by: *James B. Weersing*

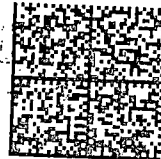
STATE OF SOUTH CAROLINA  
**Administrative Law Court**  
EDGAR A. BROWN BUILDING  
1205 PENDLETON STREET, SUITE 224  
COLUMBIA, SOUTH CAROLINA 29201

**LEGAL MAIL**

Kershaw

DEC 22 2015

KerCI  
MAILROOM



U.S. POSTAGE >> PITNEY BOWES



ZIP 29201 \$ 000.70<sup>5</sup>  
02 1W  
0001392766 DEC. 21 2015

James B. Weersing #273527  
KRCI MB-10  
4848 Goldmine Hwy.  
Kershaw, SC 29067

PS50

To: Clerk of the Administrative Law Court  
Case No: 15CO566-IJ  
1205 Pendleton Street  
Columbia, S.C. 29221

**RECEIVED**

JAN 28 2016

**SC Court of Appeals**

From: James B. Weersing  
#273527 K.R.C.I.  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067

**RE: Notice to Clerk of Appeal and Request for Related Documents**

This memo serves a Notice of this Appellants need to comply with the Rules of the S.C. Appeals Court as to making arrangements for transcripts of any and all hearings held concerning case No: 15CO566-IJ and S.C.D.C. Grievance No. K.R.C.I. 0939014. I don't reasonably believe any hearing was held in this matter but I will require written notice of same<sup>3</sup> for the Court.

Further, I ask that you send me any filings in this case made by the Agency, such as the record an appeal or any other records, as per Rules 58, 59 and 60; The Agency has negligently failed to serve me as required.

Please consider this letter and enclosed documents as compliance with Rule 66 as to "Appeal of Final Order." Thank you in advance for your prompt response to this serious legal matter.

Dated: 1/21/16

Signed: James B. Weersing