

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James B. Weersing #273527 )

Appellant, )

vs. )

South Carolina Department of Corrections, )

Respondent. )

**RECEIVED**

JUL 06 2016

NOTICE OF APPEAL  
SC Court of Appeals

DOCKET NO 16 -ALJ-04- 394 - AP  
GRIEVANCE NO.: KRCI-1290-15

Notice is hereby given that James B. Weersing does hereby appeal the final decision of the South Carolina Department of Corrections dated 3-28-16 and received on 4-12-16, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Basic premise of inmates cause is the undisputed fact S.C.D.C. employees confiscated state-issued, authorized inmate property and without lawful authorization altered property, thus making it contraband in violation of criminal law § 24-3-950. In so doing employees violated multiple agency policies, state statutes and SC, U.S. Const. Rights. Agency's response to Step 1 and 2 failed to address the merits raised by grievances, thus violating multiple aspects of due process such as regress of grievances, equal protection, fair hearing and impartial adjudication. Unlawful confiscation of jackets during adverse weather is alleged to have been cruel and unusual punishment violating the 8<sup>th</sup> Amend. Notice non-answer directly violates § 1-23-350, § 1-23-380 thus mandating appellate review under 1-23-610.

James B. Weersing #273527

Appellant's Name

KRCI SB-15

4048 Goldmine Hwy.

Mailing Address

Kershaw, S.C. 29067

City, State, Zip Code

James B. Weersing  
Signed

5-4-16

Dated

**CERTIFICATE OF SERVICE**

I hereby certify that I, J. Weersing (your name), on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: General Counsel S.C.D.C.

Address: 44 Broad River Rd / P.O. Box 21787

City, State, Zip Code: Columbia, S.C. 29221-1787

Print your name: James B. Weersing  
(See reverse side for instructions)

Sign your name: James B. Weersing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP NOV 02 2015

INMATE NAME: <u>James B. Weersing</u>	<u>(LW)</u>	OFFICE USE ONLY
SCDC NUMBER: <u>273527</u>		Grievance No. <u>K902 1290-15</u>
INSTITUTION: <u>Kershaw</u>		Code: General <u>CE/CS</u>
HOUSING UNIT: <u>MB-10</u>		Policy _____
WORK ASSIGNMENT: <u>Dorm</u>		Disc. Hear. _____
		Class _____
		PREA _____
		Date Received <u>11/4/15</u>
		IGC Initials <u>JW</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) *Note P.TSM #15-8046*

22 gave unsatisfactory nonresponsive answer. O.P. 22.03 and 524-3-950 hold jackets are issued officially and authorized, per OP 22.03 under "Authorized Property for Inmates; Jacket 1." Therefore jackets are a cognizable property interest protected in state law. 524-1-130 states the director is responsible for clothing decisions and OP 22.14 allows confiscation of authorized property only under specific criteria, therefore taking jackets requires a change of policy per GA-01.01 holds only the Director can change or alter policy. Per 51-23-140 it must be published and OP 22.35 sec. 1.29 requires inmates receive written notice. Therefore I have met my burden to show taking of jackets at annual Shakedown was an arbitrary deprivation of my property denying due process per Scott v. Greenville Co. 716 F.3d 1409 (4th 1993) Further I claim "deliberate indifference to basic human need which violates the 8th amend., this violation is directly linked to the unlawful and unauthorized seizure of jackets during cold, windy and rainy weather when they were authorized to be worn. These action should have been done lawfully and done during the summer when jackets are unneeded and unauthorized for wear. Note Swift v. Lewis, 901 F.2d 730 (1990) holding where easy alternatives are clear, it is convincing evidence of unreasonable agency action and see U.S. v. Playboy Ent. Group Inc. 529 U.S. 803 (2000) holding if less restrictive means are available the agency must use them. Notice: per State law 51-23-350 response is required to be specific as to applicable law, facts and reason for decision.

James B. Weersing 10/30/15  
 Grievant Signature Date

ACTION REQUESTED: all jackets unlawfully taken be returned in the original condition taken, inmates reimbursed for pain and suffering and staff be disciplined for intentional and unlawful violations of policy, law and constitutional rights.

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

You have failed to indicate the kiosk reference number from the answered Request to Staff Form regarding your informal resolution attempt on this issue as is required in GA-01.12 Inmate Grievance Procedures. You may re-file on a new grievance form within 8 days of receiving a response on the kiosk to the Request to Staff Form which you should have submitted within 8 working days of the incident as your informal resolution attempt to AWG/GRM

(over) IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

WARDEN'S DECISION AND REASON:

This is in response to KRCI-1290-15. All pertinent information and documentation has been reviewed. Nothing has been found to support your allegation that your coat was confiscated without a valid reason. The decision was made to confiscate and remove the hoods off of all coats due to SCDC no longer issue coats with hoods. Every effort was made by the commissary to make the alterations and return the coats back to inmates as soon as possible. I see no violations of any policies or rights by the actions of the commissary during this incident.

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

*[Handwritten Signature]* 2/10/16  
Warden Signature Date

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

*[Handwritten Signature]* 2/18/16  
Grievant Signature Date

*[Handwritten Signature]* 2/18/16  
IGC Signature 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 or Kiosk reference number 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 it in the Grievance Box at your institution within eight (8) working 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) working 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP FEB 19 2016

DUE  
2/23/16

Office Use Only

INMATE NAME: James B. Weersing

SCDC NUMBER: 273527

INSTITUTION: Kershaw

HOUSING UNIT: SB-15

WORK ASSIGNMENT: Dorm

Grievance No. KR01-1290-15

Code: General CE/CS

Policy Disc. Hear. \_\_\_\_\_

Class PREA \_\_\_\_\_

Date Received: 2/22/16

IGC Initials: JW

Date Received: \_\_\_\_\_

IGA Initials: \_\_\_\_\_

AP

RECEIVED

FEB 22 2016

FEB 29 2016

KERSHAW INMATE GRIEVANCE

INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): "Decision violates policy time-limits and shows disregard of basic law; burden is his to prove my allegations are false. See *Brightstar v. S.C.D.C.*, WL 9529192 (S.C. App. 2004) as to due process (14th Amend) violation by failure to rule on merits. "Decision" ignores deliberate indifference to basic need (8th Amend.) Warden's bear conclusions provide no basis in fact or law, this non-answer violates S.C. statutes § 1-23-350, § 1-23-390 and § 1-23-610 which directly apply to S.C.D.C. Grievant argues this is standard agency procedure which essentially renders the states grievance process meaningless and futile violating the State and Fed. Const. Grievant Signature James B. Weersing Date 2/18/16

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your grievance. You state that the taking of jackets during the annual inventory was an arbitrary deprivation of your property denying due process. You further claim "deliberate indifference" to basic human need which violates the 8th amend. As a result of SCDC no longer issuing jackets with a hood, the decision was made to make alterations to remove all of the hoods from the jackets that were previously issued. You were informed that your jacket would be returned to you when the alteration was completed. Additionally, you have not shown that SCDC Staff have performed their job duties inappropriately. The Warden addressed your concerns appropriately on your SCDC 10-5, Step 1 Inmate Grievance Form.

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.

Division of Programs & Services

Responsible Official Signature

[Signature]

Date 3-28-16

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.

Grievant Signature James B. Weersing Date 4/12/16

IGC Signature [Signature] Date 4/12/16

(SEE REVERSE SIDE FOR INSTRUCTIONS)