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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

ALC Case No. 13-ALJ-04-0456-AP

Appellate Case No. 2013-002692

David Bentley, # 337750,.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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RESPONDENT

THE STATE OF SOUTH CAROLINA
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RESPONDENT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

David Bentley, #337750,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0456-AP

Grievance No. LCI 0801-10

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (Department) pursuant to the Interstate Corrections Compact, S.C. Code Ann. § 24-11-20. Inmate argues that Department Policy GA-01.03 impinges on his constitutional rights, because the Department's policy regarding inmates' access to out of state legal materials is not reasonably related to a legitimate penological interest. Appellant further alleges that Department Policy GA-01.03 violates his equal protection rights and denies him his constitutionally guaranteed access to the courts, because the Department has not provided him with Oklahoma legal reference materials necessary for his use in pursuing his post-conviction relief (PCR) claim. Appellant also contends that he should be returned to Oklahoma because he alleges he was transferred without due process.

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest.

Constitutional Claims

Appellant alleges that Department Policy GA-01.03 impinges on his constitutional right to access to the courts and his right to equal protection. The ALC, as part of the executive branch, is without power to pass on a facial challenge to the constitutional validity of a statute,

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SC ADMIN. LAW COURT

regulation, or policy. However, a party must bring an as-applied challenge to a statute before the ALC in order to preserve the issue for any appeal. Travelscape v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). An as-applied challenge is an argument that the statute or regulation is unconstitutional as it has been applied to a specific party or class of individuals. Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 550 (2001). A facial challenge is a claim that a statute is unconstitutional on its face – that is, that it always operates unconstitutionally. Black’s Law Dictionary (8th ed. 2004) “challenge.” This tribunal has no authority to pass upon the constitutionality of a statute or regulation. Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000); however, the ALC does have the duty to determine if a statute is unconstitutional as it is applied to a limited class of persons. See Evans 543 S.E.2d 547 (dismissing action for failure to exhaust administrative remedies where claim that statute was unconstitutional as applied to a limited class of persons was not brought before the ALC). In this case, the policy, as applied to Appellant, is unconstitutional as it denies him access to legal materials required to properly prepare and file his PCR application with the state of Oklahoma.

Appellant has been denied access to courts

Appellant claims that by its application of DOC Policy GA-01.03, the Department has denied him meaningful access to the courts. In Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491 (1977), the United States Supreme Court held that “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” To establish a Bounds violation, the inmate must demonstrate that the shortcomings of the prison law library or the legal assistance program caused an “actual injury,” meaning that the shortcomings are hindering the inmate’s efforts to pursue a non-frivolous legal claim. See Lewis v. Casey, 518 U.S. 343, 349-50, 116 S.Ct. 2174 (1996). The Court has held that state officials could not interfere with an inmate’s attempts to prepare legal documents, e.g., Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969) or the inmate’s ability to file those documents e.g., Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640 (1941). In this case, the Department’s failure to provide Appellant with relevant Oklahoma legal materials has resulted in Appellant’s inability to prepare proper legal pleadings for his PCR application. Appellant has carried his burden to show actual injury as a result of SCDC’s law

library holdings. See Hendricks v. SCDC, 385 S.C. 625, 630 686 S.E.2d 191, 194 (2009) (explaining an inmate claiming denial of access to the courts must carry the burden to show that alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim in order to establish a constitutional violation). Appellant's denial of access to relevant Oklahoma legal materials has hindered his efforts to research and complete his PCR application to Oklahoma. Thus, Appellant has demonstrated that the Department's refusal to provide out of state legal materials necessary to file his post-conviction relief petition has resulted in an actual injury hindering his right to file his PCR petition. That refusal is a denial of Appellant's First Amendment right to access to the courts in violation of Bounds.

DOC Policy GA-01.03

Appellant also asserts that DOC Policy GA-01.03, as it has been applied to him, violates his First Amendment right to access to the courts and his right to equal protection. As discussed above, I agree that the appellant's right to access to the courts has been violated by the Department's application of the policy. SCDC's law library holdings are limited for budgetary reasons to materials related to South Carolina and federal law. Department policy allows inmates to request out of state legal materials by requesting the law library staff for the name and address of a legal aid organization or entity in the other state. After receiving the requested name and address, Appellant may correspond with the given legal aid organization or entity at his own expense. In his brief, Appellant asserts that he attempted to follow the procedures listed in the policy; however, he was instructed by the law librarian to contact the Department's Office of General Counsel. When Appellant did contact the Office of General Counsel, he was told that materials would not be provided to him. It was at this time that Appellant filed his Step 1 Grievance. In its brief, the Department did not dispute Appellant's claims that he followed the policy and instructions set forth by the Department.

When a prison regulation impinges on inmates' constitutional rights, the regulation is valid only if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254 (1987). The Department's actions in refusing to provide the requested legal materials in this case are not reasonably related to a legitimate penological interest. While there will undoubtedly be some expense involved in providing the requested materials, that expense appears to be minimal. Appellant estimates that the cost to provide the requested materials would be less than \$100 and Respondent has not disputed that estimate. Therefore, I find that SCDC's

application of Policy GA-01.03 in this case to refuse the requested out-of-state legal materials cannot be upheld.

Moreover, the Interstate Corrections Compact overrides the Department's policy. S.C. Code Ann. § 24-11-20 Art. IV(e) (2007) states, "[t]he fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state." Clearly, if Appellant remained confined in the state of Oklahoma he would have unfettered access to legal materials with relevant Oklahoma law to complete his PCR application in a timely fashion.

Transfer to South Carolina under the Interstate Corrections Compact

Appellant's challenge to his confinement at SCDC should be denied for two reasons. First, the decision of the state of Oklahoma to house appellant within SCDC pursuant to the Interstate Corrections Compact is not reviewable by this Court. See S.C. Code § 24-11-20 Art. V(a) (2007) ("Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]"). Second, contrary to Appellant's argument, his transfer to SCDC did not implicate a state-created liberty interest. See Olim v. Wakinckona, 461 U.S. 238, 248, 103 S.Ct. 1741 (1983) ("[A]n interstate prison transfer... does not deprive an inmate of any liberty interest protected by the Due Process Clause in and of itself.").

Therefore, for the foregoing reasons, the Department's decision denying a review of the decision to transfer Appellant to South Carolina is **AFFIRMED**. The decision denying Appellant's grievance requesting the legal materials necessary to prepare and file his Oklahoma post-conviction relief petition is **REVERSED**.

Deborah Brooks Durden
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

November 26, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the emergency Mail Service addressee to the party(ies) or their attorney(s).
This 26th day of November 2013
By: A.S.G.
Judicial Law Clerk

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

David Bentley, # 337750,)	Docket No.: 13-ALJ-04-0456-AP
)	
Appellant,)	
	)	RESPONDENT'S BRIEF AND MOTION
v.	)	TO DISMISS
	)	Honorable Deborah Brooks Durden
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	
_____)	

STATEMENT OF FACTS

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of David Bentley ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC") pursuant to the Interstate Corrections Compact, S.C. Code Ann. § 24-11-20. Appellant filed a Step One Grievance on January 15, 2013 claiming he should be returned to Oklahoma. The grievance was promoted to the Step Two Level, and denied following investigation. Appellant received the final agency decision on May 24, 2013 and filed his Notice of Appeal on June 10, 2013. In his Notice of Appeal, appellant again argues he should be returned to Oklahoma because he alleges he was transferred without due process and SCDC does not maintain copies of Oklahoma legal reference materials.

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 361 S.C. 327; 605 S.E.2D 506 (2004) AND SKIPPER V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S.C. 267; 633 S.E.2D 910 (Ct. App. 2006).

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SC ADMIN. LAW COURT

The ALC's jurisdiction to hear this matter is derived from the decision of the

South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742

(2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest. SCDC reads Slezak as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest.

Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, the "ALJ should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006).

In the instant case, appellant complains of his transfer to South Carolina pursuant to the Interstate Corrections Compact, S.C. Code § 24-11-20. Appellant's challenge to his confinement in SCDC should be summarily dismissed for two reasons. First, the decision of the state of Oklahoma to house appellant within SCDC pursuant to the Interstate Corrections Compact is not reviewable by this Court. See S.C. Code § 24-11-20 Art. 5(a) ("Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state[.]"). Second, contrary to appellant's argument, his transfer to SCDC did not implicate a state-created liberty interest. See Olim v. Wakinekona, 461 U.S. 238, 248 (1983) ("[A]n interstate prison transfer, including one from Hawaii to California, does not deprive an inmate of any liberty interest protected by the Due Process Clause in and of itself.").

Appellant also asserts he should be provided legal reference materials for Oklahoma because SCDC does not maintain those within its law library or within its subscription to Westlaw accessible by inmates. SCDC's law library holdings are limited for budgetary reasons to materials related to South Carolina and federal law. However, appellant may seek the appointment of counsel or other appropriate relief from an Oklahoma court. Appellant has not carried his burden to show actual injury as a result of SCDC's law library holdings. See Hendricks v. SCDC, 385 S.C. 625, 630, 686 S.E.2d 191, 194 (2009) (explaining an inmate claiming denial of access to the courts must show actual injury in order to establish a constitutional violation).

In the present case, SCDC has not taken appellant's state-created liberty interest as punishment in a major disciplinary hearing. Therefore, the ALC should dismiss this appeal.

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that this matter be dismissed pursuant to Rule 12(b)(1) and Slezak v. South Carolina Department of Corrections, 361 S.C. 327; 605 S.E.2d 506 (2004).

Respectfully submitted,



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September 17, 2012
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

David Shawn Bentley, #337750)	
Appellant.	)	Docket No. 13-ALJ-04-0456
	)	Grievance No. LCI- 801-10
Vs.)	
	)	Honorable Deborah Brooks Durden
South Carolina Dept. Of Corr.)	
Respondent.	)	NOTICE and
	)	MOTION FOR PRELIMINARY
	)	INJUNCTION

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed June 13, 2013 by David Shawn Bentley ("Appellant"), an Oklahoma sentenced inmate housed in the South Carolina Department of Corrections ("DOC") on a non-prisoner initiated interstate compact transfer.

Appellant has been and is currently denied access to Oklahoma statutory and procedural law associated with his conviction and sentence and the ability to collaterally attack it on post-conviction relief. Appellant has requested both DOC and Oklahoma authorities to provide materials required for this filing and has been denied by both. DOC failed to answer this issue in its final agency decision.

Appellant makes the following showing in support of a preliminary injunction:

- 1.) Appellant is likely to show at a trial that Respondents violated his First Amendment right of access to the court.
- 2.) Appellant is likely to and currently suffers irreparable harm if Respondents do not provide access to the court and forever bar Appellant from filing his Oklahoma State Post-Conviction Relief Application and

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SC ADMIN. LAW COURT

Certiorari thereupon; and subsequent Petition fro Writ of Federal Habeas Corpus.

3.) The threat of harm Appellant faces (procedural bar(s)) is greater than the harm DOC will face (minor resources) if the preliminary injunction is granted; and

4.) The preliminary induction serves a public interest in ensuring agencies of South Carolina protect the United States Constitutional rights of all individuals the state is responsible for directly.

Respondents have recently made electronic access via WESTLAW available in the institution and it would require minimal time and resources to make this information available to Appellant.

The Supreme Court in *Lewis v. Casey*, 518 U.S. 343 (1996), stated that in order to receive an injunction, a prisoner must show "actual or imminent" injury.

Appellant asserts that DOC's policy GA.01.03 suggests Appellant's First Amendment right of access to the courts demonstrates the intent to continue the actual have injury.

Appellant submits that he has made a sufficient showing on injury in being placed procedurally barred to warrant this Court to issue the injunction.

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PRAYER FOR RELIEF

Appellant specifically requests a preliminary injunction to order Respondents to immediately provide the following legal materials in electronic or print media:

- 1.) Oklahoma State Statute and Criminal Procedure governing post-conviction relief and certiorari thereafter; and
- 2.) United States Court of Appeals for the Tenth Circuit Case law governing federal habeas corpus cases emanating from Oklahoma.

WHEREFORE, based on the foregoing, Appellant respectfully prays this Honorable Court issue an Order to Show Cause for a Preliminary Injunction and issue the Preliminary Injunction for Respondents to provide the required legal materials for Appellant to attack his conviction and sentence..

September 4, 2013

ASB

David Shawn Bentley # 337750
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APPELLANT, pro se

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

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APPEAL FROM FINAL AGENCY DECISION
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Honorable Deborah Brooks Durden, Administrative Law Judge

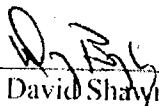
Case No. 13-ALJ-04-0456
Grievance No. LCI-801-10

David Shawn BentleyAppellant

V.

South Carolina Department of CorrectionsRespondents

APPELLANT'S ORIGINAL BRIEF



David Shawn Bentley
#337750
Lieber Corr. Inst. SA-01
P.O. Box 205
Ridgeville, SC 29472-0205

APPELLANT / PETITIONER, pro se

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SC ADMIN. LAW COURT

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ISSUE(S) ON APPEAL

- I. THE DEPARTMENT OF CORRECTIONS POLICY GA-01.03 IMPINGES ON APPELLANT'S CONSTITUTIONAL RIGHTS WHERE IT IS NOT REASONABLY RELATED TO A LEGITIMATE PENOLOGICAL INTEREST.
- II. THE DEPARTMENT OF CORRECTIONS POLICY GA-01.03 VIOLATES THE EQUAL PROTECTION OF APPELLANT COMPARED WITH PRISONERS CONVICTED IN SOUTH CAROLINA.
- III. THE DEPARTMENT OF CORRECTIONS DENIES THE FUNDAMENTAL CONSTITUTIONAL RIGHT UNDER THE FIRST AMENDMENT OF ACCESS TO THE COURTS BY REFUSING TO PROVIDE LEGAL MATERIALS TO CHALLENGE [HIS] CONVICTION IN STATE AND FEDERAL COURT.
- IV. APPELLANT WAS TRANSFERRED TO SOUTH CAROLINA WITHOUT NOTICE OR DUE PROCESS AND IS IMPEDED FROM REHABILITATION OR SOCIAL CONTACT WITH FAMILY AND IS UNABLE TO BE PRESENT FOR COURT APPEARANCES.
- V. RESPONDENT DEPRIVED APPLICANT OF HIS RIGHT TO REDRESS GRIEVANCES BY FAILING TO ADDRESS SUBSTANCE OF APPELLANT'S GRIEVANCE.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

David Shawn Bentley, #337750)	
Appellant,	)	Docket No. 13-ALJ-04-0456
	)	Grievance No. LCI- 801-10
Vs.)	
	)	APPELLANT'S ORIGINAL BRIEF
South Carolina Dept. Of Corr.)	
Respondent,)	
)	
)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed June 13, 2013 by David Shawn Bentley ("Appellant"), an Oklahoma sentenced inmate incarcerated in the South Carolina Department of Corrections ("DOC") on a non-prisoner initiated interstate compact transfer. Appellant asserts that the DOC violates his First Amendment right to access to the courts by refusing to provide Oklahoma state statutory law and procedure concerning Post-Conviction Relief and United States Court of Appeals for the Tenth Circuit regarding same, to allow Appellant to litigate his Oklahoma state post-conviction and subsequent federal habeas corpus.

JURISIDIDCTION

This Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decision in *Al-Shabazz v. DOC*, 338 S.C. 354, 527 S.E. 2d 742 (2000).

PROCEDURAL HISTORY

Appellant filed a Step One agency grievance on July 12, 2010 at Lieber Correctional Institution. The original grievance was lost by Respondents as evidenced by the January 7, 2013 correspondence of the Inmate Grievance Coordinator. Appellant refiled Step One on January 15, 2013. The Grievance was automatically forward to Step Two on January 22, 2013 (See Step One and Two).

Respondent answered Step Two on only one issue, completely omitting the court access claim, on May 5, 2013. The Notice of Appeal in this matter was filed on June 13, 2013.

FACTUAL BACKGROUND

Appellant was sentenced to thirty (30) years on a blind guilty plea in Cleveland County, Oklahoma, on June 5, 2009, for the offense of first-degree rape. He was placed in Lexington Assessment and Reception Center.

On October 28, 2009 Appellant was transferred to South Carolina without notice or due process and against his will. Appellant has no family or connections to South Carolina. He was placed in Kirkland R&E for 39 days for processing. His numerous questions regarding his transfer were ignored. He has no communication regarding his transfer but through his DOC caseworker, who only act to "forward" any information.

Appellant requested Oklahoma state materials at the institutional law library and was informed to contact DOC General Counsel. Appellant received via the librarian a negative response.

Appellant filed a Step One Grievance requesting Oklahoma materials to file his PCR and return to Oklahoma. The DOC "lost" the initial grievance and Appellant submitted a second Step One. That grievance was automatically forward to Step Two.

The "Responsible Authority" failed to answer the grievance regarding the denial of access to the courts based on lack of legal materials issue.

STANDARD OF REVIEW

South Carolina Code Ann. § 1-23-380 (5) (Supp. 2010) states in pertinent part that Court may remand the case for further proceedings. The Court may 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; or (f) arbitrary or capricious.

ARGUMENT

I. The Department of Correction's Policy GA-01.03 impinges on Appellant's Constitutional rights where it is not reasonably related to a legitimate penological interest.

DOC Policy GA.-01.03 is not reasonably related to a legitimate penological interest where the Supreme Court mandates the availability of post-conviction relief procedures, *see Case v. Nebraska* 381 U.S. 336 (1965), yet the DOC policy in question bars the Appellant from access to materials to file his PCR application in Oklahoma.

DOC Policy GA.-01.03- Inmate Access to the Courts (June 1, 2004), states in pertinent part(s):

§ 1. General Provisions: Inmates housed within the South Carolina Department of Corrections will have access to law materials through established core... law libraries... In compliance with *Lewis v. Casey*, all inmates will be provided access to law tools to: 1) challenge or appeal their sentence, directly or collaterally; and 2) challenge the conditions of their confinement. (Emphasis supplied).

§ 14. Materials Not Available in the Law Library: The core law libraries contain all of the necessary information for inmates to 1) challenge or appeal their sentence, directly or collaterally.

§ 21. Out-of-State legal Materials. In order to have access to statutes and case law of other states that are not provided in the SCDC law library, an inmate must first make a request in writing asking for the address of a legal aid organization or entity from that state. The law librarian will obtain the address of one legal aid entity from that state and give it to the inmate. The inmate may then correspond by mail at his/her own expense with that or any other aid organization.

Appellant submits DOC regulation GA.-01.03 is not reasonably related to a legitimate penological interest.

“Reasonably related” means the rule is somewhat likely to do whatever it is intended to do. A rule/regulation restricting out-of-state housed inmates from access to legal materials for filing and litigating their case regarding their convictions and sentences is not reasonably related to security. “Natural governmental interest” means that the prison’s goals must not be related to its dislike of a particular group or idea. The prison cannot pick or choose which legal materials to grant access to and yet agree to house a prisoner in such a group [out-of-state].

The DOC does not leave another way open for Appellant to exercise his First Amendment right of access to the Court.

The regulation have would not drastically affect the resources of the DOC where the prison law library has electronic WESTLAW access and the one (1) volume of law governing Oklahoma PCR procedures would cost the DOC less than \$100.00.

Appellant asserts that GA.-01.03 fails the analysis applied in *Turner v. Safely*, 482 U.S. 78 (1987) and does not meet a legitimate penological interest where it denies out-of-state housed prisoners their First Amendment right of access to the courts with materials to file and challenge their conviction and sentences directly or collaterally.

II. The Department of Correction's Policy GA.-01.03 violates the equal protection of Appellant compared with prisoners convicted in and housed in the State of South Carolina.

Appellant asserts that GA. 01.03, on its face, and as applied is facially neutral because it has a disparate impact on those not sentenced in South Carolina, both in First Amendment access to the courts and as a wealth disparity against indigent inmates who cannot correspond "at their own expense" with an entity other than a clerk of court. See *San Antonio Independent School Dist. V. Rodriguez*, 411 U.S. 1 (1973).

Appellant suggests the holding of *Lewis v. Casey*, [518 U.S. 343] be extended to the context of out-of-state legal materials being available to challenge sentences of prisoners sentenced in another state but housed in South Carolina.

Respondents violate the Fourteenth Amendment Equal Protection Clause in the construction and implementation of GA-01.03 as it relates to the class of out-of-state housed prisoner's access to legal materials in which to challenge their convictions and sentences directly or collaterally.

III. The DOC denies Appellant the fundamental constitutional right, under the First Amendment, of access to the courts by refusing to provide legal materials to challenge [his] conviction and sentence in state and federal court.

Under the aegis of GA-01.03 Respondents have denied Appellant access to, in failing to provide appropriate legal materials to file and litigate his Oklahoma PCR prior

to the June 5, 2014 expiration of the statute of limitations, and subsequent federal habeas corpus. Respondents are imposing arbitrary obstacles to Appellant asserting federal constitutional rights. Respondents are essentially abridging and impairing Appellant's right to apply for and exhaust state collateral proceedings as a prerequisite to applying to a federal court for a writ of habeas corpus.

In *Bounds v. Smith*, 430 U.S. 817 (1977) the Supreme Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners adequate law libraries or adequate assistance from persons trained in the law." *Id.* at 828.

Bounds did not create an abstract, free-standing right to a law library or legal assistance; rather, the right that *Bounds* acknowledge was the right of access to the courts. *Id.* at 821, 828. To establish a *Bounds* violation, the "actual injury" that an [Appellant] must demonstrate is that the alleged shortcomings of the prison law library or legal assistance program have been hindered, or are presently hindering his efforts to pursue a nonfrivolous legal claim.

The "actual injury" requirement derives ultimately from the doctrine of standing. *See Lewis v. Casey*, 518 U.S. 343, 349-50 (1996) (internal citations omitted).

In the cases to which *Bounds* traced its roots, the Court protected that right by prohibiting state officials from actively interfering with inmate's attempts to prepare legal documents; *e.g.*, *Johnson v. Avery*, 393 U.S. 483-484, 489-90 (1969); or to file them, *e.g.*, *Ex parte Hull*, 312 U.S. 546, 547-549 (1941).

Inssofar as the right vindicated by *Bounds* is concerned, "meaningful access to the courts is the touchstone," 430 U.S. at 823. The Appellant must go one step further and demonstrate that the alleged shortcomings in the law library hinder[ed] his efforts to pursue a legal claim.

This demonstration is present in Appellant's (1) inability to obtain appropriate PCR applications; (2) to timely file pursuant to Oklahoma statutory requirements; or (3) to know Oklahoma PCR procedure or criminal elements upon which to predicate his PCR.

The right of access upon which *Avery v. Johnson* was promised is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 579 (1974).

Appellant contends that the total lack of access to state of conviction [Oklahoma] post-conviction materials is attributable to an unconstitutional South Carolina state policy [GA. 01.03]. Appellant asserts he has made a prima facie, or sufficient demonstration that Respondent DOC is currently prevented from access to the Oklahoma courts because his capability of filing an application for post-conviction has been impeded. Without the correct state law and procedure governing Oklahoma PCR, Appellant is denied access to the courts on collateral review and federal habeas review.

IV. Appellant was transferred to South Carolina against his will and is impeded from rehabilitation or social contact with family.

Appellant asserts that he was transferred to South Carolina without notice or opportunity to be heard. Such a transfer violates the Interstate Compact Agreement.

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Appellant has no family in South Carolina and no social contacts, thus affecting his possibility of rehabilitation. Appellant is essentially exiled from his home in the most onerous, cruel and unusual fashion.

Appellant suggests Respondents are responsible for protecting the due process rights of prisoners from other states housed in South Carolina and are liable to initiate the opportunity to be heard or make that process available.

V. Respondent has failed to answer Appellant's grievance in full.

Appellant asserts that his original [and second] grievance clearly state: "S.C. does not and refuses to provide Oklahoma state law and cases or 10th Circuit Court of Appeals cases in print media or on computer access and this is a denial of access to the court."

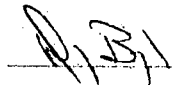
Respondents only addressed the out-of-state transfer issue [see Step Two].

Pursuant to South Carolina Constitutional Art. § 3 and DOC policy GA- 01.12 Grievance Procedure, Appellant has state-created rights to have his grievances adequately addressed.

Further, our Supreme Court, in *Al-Shabazz, supra*, created the system of Appellant review with the ALC to ensure review of DOC final agency decisions.

CONCLUSION

WHEREFORE, based on the foregoing facts and arguments and based on the evidence in the record as a whole, where substantial rights of Appellant have been prejudiced by the final agency decision of the DOC, Appellant respectfully prays this Honorable Court modify that decision, or in the alternative, remand for further proceedings with instructions.



David Shawn Bentley
#377750
Lieber Corr. Institution SA-01
P.O. Box 205
Ridgeville, S.C. 29472

September 5, 2013

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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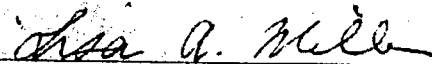
MEMORANDUM

TO: Lieber Classification
FROM: Lisa A. Miller, State Classification
SUBJECT: Time Sheet from Oklahoma (ICC)
DATE: June 17, 2010

Enclosed is a time sheet from Oklahoma for inmate David Bentley, SCDC #337750, who is being housed in SCDC under the Interstate Corrections Compact (ICC). This time sheet shows how much time Inmate Bentley has left to serve on his Oklahoma sentence. I am including a copy to be filed in Inmate Bentley's Warden's Jacket. Please make sure Inmate Bentley is also given a copy of this information.

Your consideration in this matter is appreciated.

S/



Lisa A. Miller

Attachment

cc: ICC File
Central Record

INMATE REQUEST TO
STAFF MEMBER

25

TO: Lisa A. Miller, State Classification	DATE: July 26, 2010
FROM: David Bentley	SCDC NO: 337750
Lieber Correctional Institution	Edisto Unit, B-28
<p>I have received a copy of a memorandum from you to Lieber C.I. Classification on the subject of my time sheet from Oklahoma. The memorandum states that I am being housed in SCDC under the Interstate Corrections Compact (ICC). I have questions concerning this ICC situation and I hope you will provide me with some answers or else direct me to someone who will.</p> <p>Why was I transferred from Oklahoma to South Carolina under the ICC? I have never applied, nor do I qualify, for transfer pursuant to the ICC. So why was I taken from my home state and my family and brought here without my consent? Who (in Oklahoma and South Carolina) gave authorization for such a transfer without my consent? What is the name and position of the person employed by the South Carolina Department of Corrections who will be responsible for my transfer back to the Oklahoma Department of Corrections?</p> <p>Since I have never given my consent for transfer to South Carolina under the ICC, I demand that I be transferred back to the Oklahoma Department of Corrections immediately.</p> <p>Thank you,</p>	
DISPOSITION BY STAFF MEMBER:	
SIGNATURE:	DATE:

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

David Shawn Bentley, #337750)
)
 Appellant,)
)
 vs.)
)
 South Carolina Dept. of Corr.)
)
 Respondent.)
)
)

Docket No. 13-ALJ-04-0456
Grievance No. I.CI- 801-10

Honorable Deborah Brooks Durden

APPELLANT'S AFFIDAVIT
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

Personally appeared before me the *pro se* Appellant, who deposes and says:

- 1.) I am the Appellant/Petitioner in the above-captioned review of a final agency decision from the Department of Corrections ("DOC").
- 2.) I was sentenced in the state of Oklahoma on June 5, 2009.
- 3.) That on October 28, 2009 I was transferred to the State of South Carolina DOC without notice and against my will.
- 4.) That under Oklahoma law, I have five (5) years, (June 5, 2014), in which to file my application for post-conviction relief (PCR).
- 5.) That I have requested legal materials to file and pursue my PCR from the Cleveland County Clerk of Court and was informed those materials must be obtained through the South Carolina DOC (See Step 1, documents subject of Motion to Expand Record).
- 6.) That I have requested both the institutional [Lieber] law librarian and General Counsel to provide Oklahoma State law and procedure to file and pursue my PCR.
- 7.) That to date, no access has been provided to me, or forms made available, to file my PCR in Cleveland County Oklahoma.

FILED

SEP 05 2013

SC ADMIN. LAW COURT

- 8.) That based on the DOC's refusal to supply the necessary legal materials I am unable to file my PCR.
- 9.) That if I do not file my Oklahoma PCR by June 15, 2014, my PCR and federal habeas corpus will be procedurally barred.
- 10.) That I have no other avenues, options or resources in which to pursue this matter.
- 11.) I am indigent and unable, to hire legal representation or mail legal materials where I do not have an active case number.

DSB

David Shawn Bentley # 337750
 Lieber Corr. Institution SA-01
 P.O. Box 205
 Ridgeville, S.C. 29472

APPELLANT, *pro se*

SWORN TO AND SUBSCRIBED before me

this 5th day of September, 2013

Luchean Bryant

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: May 26, 2020

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

28

INMATE NAME: David Bentley
SCDC NUMBER: 337750
INSTITUTION: LCT
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. LCT-0801-10
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 1/22/13
IGC Initials AA
FGA

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Due to the time frame of this grievance, it has been forwarded for Step 2 response.

A Hardin 1/22/13
for Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your complaint. You may submit a request to return to Oklahoma through your classification caseworker. The decision for you to return to the State of Oklahoma must be made by the State of Oklahoma. The SCDC will abide by the decision of the State of Oklahoma in this matter in accordance with SC Code 24-11-20.

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.

J. G. Gaston 5-5-13
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.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

29

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

30

INMATE NAME: David Bentley
SCDC NUMBER: 337750
INSTITUTION: Lieber CI
HOUSING UNIT: Steno A-01
WORK ASSIGNMENT: PE-2

Office Use Only
Grievance No. LCI-0801-10
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received _____
IGC Initials _____

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I was transferred to S.C. from Oklahoma without notice or due process.
I object to being housed in S.C.
Oklahoma law states I have only 5 years to file a PCR and must be present in the state to file. That date is by June 2014.
S.C. does not and refuses to provide Oklahoma State law and cases on 10th Circuit Court of Appeals cases in print media or on computer access and this is a denial of access to the court.

ACTION REQUESTED:

Immediate return to the State of Oklahoma.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Several requests to classification and the law library.

[Signature] 1-15-13
Grievant Signature Date

ACTION TAKEN BY IGC:

Fwd to Step 2 level.

- I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.

[Signature] 1/22/13
IGC Signature Date
N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

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.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. 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 the Institutional Grievance Coordinator.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE BRANCH

RESPONSE TO INMATE CORRESPONDENCE

INMATE: David Bentley, SCDC#337750
INSTITUTION: Lieber CI
FROM: Angela Hardin, Inmate Grievance Administrator
SUBJECT: LCI-0801-10
DATE: January 7, 2013

A review of the your grievance history shows LCI-0801-10 was filed by you on 7/12/10 regarding a 7/12/10 issue alleging you needed to be transferred back to Oklahoma since there were no law books in SCDC to assist you in fighting your case. The original grievance cannot be located; therefore, by copy of this letter if you wish to pursue this issue, please complete the attached grievance form and return it to my attention in the Inmate Grievance Branch within 15 days from the date of this letter; otherwise this grievance will be closed.

s/ Angela M. Hardin
Angela M. Hardin
Inmate Grievance Administrator

cc: file-

Dear Appellant:

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case Number	Inmate Number	Inmate First Name	Inmate Last Name	Grievance No	Respondent	Filing Date	Date Assigned	Judge Last Name
13C0456	337750	DAVID	BENTLEY	LCI 801-10	DOC	6/13/2013	6/27/2013	DURDEN

FILED

JUN 27 2013

ADMIN. LAW CLERK

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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David Bentley # 337750)

Appellant,)

vs.)

South Carolina Department of Corrections,)

Respondent.)

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-
GRIEVANCE NO.: LCI-0801-10

Notice is hereby given that David Bentley does hereby appeal the final decision of the South Carolina Department of Corrections dated 5/5/13 and received on 5/24/13, 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)):

- 1) DOC failed to address the issue raised in Step 1 Grievance of denial of access to the court where SCDOC fails to and refuses to provide access to Oklahoma state and Federal law for Appellant to file his Oklahoma PCR prior to lapse of statute of limitations
- 2) DOC failed to provide Oklahoma state and federal law to Grievant to file his PCR
- 3) Appellant, an Oklahoma prisoner, is wrongfully housed in South Carolina where he was not afforded any due process protections prior to being transferred to South Carolina

David Bentley #337750

Appellant's Name
Lieber Corr. Inst
PO Box 205

Mailing Address
Ridgeway, SC 29472
City, State, Zip Code

Signed Paul By

Dated June 10, 2013

FILED
JUN 13 2013 17
ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I hereby certify that I: David Bentley (your name), on the June day of 2013 in Ridgeway (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. Dept. of Corrections

Address: PO Box 21787

City, State, Zip Code: Columbia, SC 29221-1787

David Bentley

Print your name

Paul By

Sign your name

(See reverse side for instructions)

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) **In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.**

David S. Bentley # 337750

LEI Stone A-01

P.O. Box 205

Ridgeville, SC 29472

Cleveland County Court Clerk

Honorable Rhonda Hall

200 S. Peters Ave.

Norman, OK 73069

Mrs. Hall,

I am writing this letter to request the application and forms for PCR. I also want to request a copy of the Oklahoma Criminal Law Title 22 § 1080 et. seq.

We have no forms,
you will need to use your
law library copies of Criminal Law

Thank you
P. Bentley

CERTIFICATE OF COUNSEL

I, counsel for Appellant, do hereby certify that this **Supplemental Record on Appeal** contains only that material requested by this Court in its July 25, 2016 letter. I further certify that I have complied, to the best of my ability, with the South Carolina Supreme Court's "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



CHRISTINA CATOE BIGELOW
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

COUNSEL FOR APPELLANT

July *28*, 2016

RECEIVED

AUG 01 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

ALC Case No. 13-ALJ-04-0456-AP

Appellate Case No. 2013-002692

RECEIVED
AUG 01 2016
SC Court of Appeals

David Bentley, # 337750,.....Respondent,

v.

South Carolina Department of Corrections.....Appellant.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Supplemental Record on Appeal** to David Bentley, # 337750, Lieber Correctional Institution, Post Office Box 205, Ridgeville, South Carolina, 29472.



Christina Catoe Bigelow
Deputy General Counsel
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

August 1, 2016