

20089

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 02 2012

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Department of Corrections

Shirley C. Robinson, Administrative Law Judge

#2012206946

Mekiel Mitchell #232904 Appellant,

vs.

South Carolina Department of
Corrections Respondents.

RECORD ON APPEAL

Mekiel Mitchell #232904
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010-1775

PRO SE APPELLANT

Christopher D. Florian
PO Box 21787
Columbia SC 29221-1787

David M. Tatarsky
PO Box 21787
Columbia SC 29221-1787

INDEX

| | |
|--|----|
| Index | i |
| Order of Dismissal (ALC) | 1 |
| Motion For Reconsideration (ALC) | 3 |
| Request To Staff Member Form (2/9/10) | 16 |
| Request To Staff Member Form (4/14/10) | 17 |
| Step-One Grievance Form (4/26/10) | 18 |
| Warden's Response (6/10/10) | 20 |
| Step-Two Grievance Form (6/11/10) | 21 |
| Notice of Appeal (ALC) (11/7/11) | 22 |
| Docket Assignment Sheet (11/16/11) | 24 |
| Certificate of Counsel | 25 |
| Certificate of Service | 26 |

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

| | | |
|---|---|------------------------------|
| Mekiel Mitchell, 232904, |) | Docket No. 11-ALJ-04-0888-AP |
| |) | Grievance No. PCI 0806-10 |
| Appellant, |) | |
| vs. |) | ORDER OF DISMISSAL |
| |) | |
| South Carolina Department of Corrections, |) | |
| |) | |
| Respondent. |) | |
| |) | |

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed November 14, 2011 by Mekiel Mitchell (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the decision of the Department denying his grievance in which Appellant complains that the Department’s mailroom wrongfully denied Appellant access to the books, magazines and newspapers he purchased for his own use. The Department responded that while an inmate is housed in SMU, the inmate is only allowed one book or magazine from the Department’s Library Services at any given time.

The ALC has subject matter jurisdiction when the Department disciplines an inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 441-42, 586 S.E.2d 124, 126 (2003); Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); Skipper v. S.C. Dep’t of Corr., 370 S.E. 267, 273-74, 633 S.E.2d 910, 914 (Ct. App. 2006). Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004) provided further clarification that this Court has jurisdiction of all inmate grievance appeals that have been properly filed. However, when the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35 (2007).

The Appellant has not alleged a deprivation of a state-created liberty or property interest in this matter. Therefore, the Court finds Furtick to be controlling in this matter and it is hereby **ORDERED** that this appeal is **DISMISSED, with prejudice.**

FILED

NOV 17 2011

AND IT IS SO ORDERED.

Shirley C. Robinson
SHIRLEY C. ROBINSON
Administrative Law Judge

November 17th, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has in fact served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 17 day of November 2011

By: *[Signature]*
Judicial Law Clerk

3

Mekiel Mitchell #232904
Sunter South #1152
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010-1775

PRO SE APPELLANT

ADMINISTRATIVE LAW COURT
CLERK OF COURTS OFFICE
1205 Pennington Street, Suite #224
Clyde A. Brown Building
Columbia, South Carolina
29201

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

RE: MITCHELL V. SCDC, #2011-ALJ-04-0883-AP

Dear Clerk,
Enclosed for filing are:

- (1). Notice Of Motion And Motion For Reconsideration;
- (2). Exhibit(s) (1) thru (6); and
- (3). Certificate of Service.

Thank you for this office's time and attention to these matters.

December 6th, 2011

Respectfully Submitted,

Mekiel Mitchell
Mekiel Mitchell #232409

cc: FILE
CLERK
PATRICK
ROBINSON

FILED
DEC 07 2011
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Mekiel Mitchell #232904,
Appellant,

#2011-ALJ-04-0888-AP

vs.

NOTICE OF MOTION AND
MOTION FOR
RECONSIDERATION

~~Motions for Reconsideration~~
are Prohibited.
~~By~~ ALC Rule 65.

South Carolina Department
of Corrections,
Respondents,

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 thereof
in the United States mail or by first class or a first class emergency
Mail Service addressed to the party (ies) or their attorney(s).
This 8 day of December, 2011
By: [Signature]
Judicial Law Clerk

This matter is before this Administrative Law Court
("ALC") Judge, where on November 17, 2011, the Honorable Shirley
C. Robinson, ALC Judge, has filed an Order of Dismissal
("Order"), **sua sponte**, holding that "when the grievance appeal
does not implicate a state-created liberty, or property interest,
the ALC may summarily dismiss the appeal at it's discretion."

FILED

DEC 9 / 2011

5

Petitioner seeks this ALC to reconsider the merits of it's previous Order, dated November 17, 2011, and served upon Appellant, via Institutional Legal Mail Services, on November 28, 2011. Especially where Petitioner takes a stance and position in which there has occurred a deprivation and infringement to the First, Fifth, and Fourteenth Amendments to the United States Constitution. (See Articles I, §3; and I, §14, of the South Carolina Constitution). This position is taken where this matter has been summarily dismissed, with prejudice, and without benefit of briefing, presentation of evidence and argument; and no opportunity of judicial review upon the merits of the claims.

STATEMENT OF THE CASE

Mekiel Mitchell #232904 ("Appellant"), is an inmate within the custody and control of the South Carolina Department of Corrections ("Respondents") for the offense of Murder. A conviction was had in the Court of General Sessions, Charleston County, on May 22, 1996. Appellant is serving a life sentence without possibility of parole.

On February 9, 2010, Appellant served a Request To Staff Member (RTSM) Form upon Ms. Bratton, Education Department,

6

Perry Correctional Institution ("PCI"), attempting to informally resolve the issue of denial of publications and reading materials that were educational or intellectually stimulating. Appellant is an Afro-American male, whom strives to improve the value of his self, through educational driven literature. The matters provided by the Special Management Unit ("SMU")(lock-up), were fictional based and racially balanced. (See Exhibit (1)).

On April 14, 2010, Appellant served a RTSM Form upon, Michael McCall, Warden, PCI, attempting to resolve the issue of denial to reading materials that are not penologically restricted, and are available to the general public, without regard to censorship or propoganda observances. (See Exhibit (2)).

On April 26, 2011, Appellant initiated his Step-One Grievance, challenging the denial of educational materials and publications, i.e., U.S. Mail Services Magazines, newspapers, books, dictionaries and educational correspondences courses, where such have the propensity of rehabilitative purposes. In This Step-One Grievance, Appellant raised such claims under the protection of the First Amendment.

On May 25, 2010, Warden McCall, responded to the alleged First Amendment violations by stating, "All Agency policies comply with applicable state, federal and local statutes and with case law ... Therefore, your grievance must be denied at

7

this level." A copy of this Step-One Grievance was served upon Appellant, via the Inmate Grievance Coordinator ("IGC"), on June 10, 2010. (See Exhibit (3)).

On June 11, 2010, Appellant filed a Step-Two grievance/appeal, stating the reasons for objecting to the warden's denial on the Step-One issues. On October 10, 2011, David M. Patarsky, Esquire, and Chief General Counsel for Respondents, executed a "final agency decision". It was Respondents position that "Since filing this grievance, you are no longer housed at Perry CI, nor are you confined in SMU. Therefore, I consider this matter resolved." This decision was served upon Appellant, via Lee Correctional IGC, on October 14, 2011. (See Exhibit (4)).

On November 7, 2011, Appellant served a Notice of Appeal into this ALC, seeking judicial/appellate review of the Respondent's "final agency decision". The challenged issues raised were: (1) Did SCDC and Perry CI violate Appellants First and Fourteenth Amendment rights to the U.S. Constitution when it denied Appellant the right to purchase & receive thru the mail magazines, books and newspapers of Appellant's choice?; (2) Does SCDC's absolute prohibition on pre-paid mail ordered subscriptions, magazines, newspapers, and books applied to administratively segregated inmates violates the Appellant's 1st and 14th Amendment of the United States Constitution/: and (3) Does Appellants release from administrative segregation

8

or re-location to another prison within SCDC, other than the prison in which complaint was originally experienced and grievance renders Appellants complaint/grievance moot? (See Exhibit (5)).

On November 16, 2011, the Clerk of Courts Office for the ALC served a notice as to the docket number, ALC Judge, and list of procedural rules. This was served upon Appellant, via Institutional Legal Mail Services, on November 23, 2011. (See Exhibit (6)).

On November 16, 2011, the Honorable Shirley C. Robinson, ALC Judge, executed an Order, summarily dismissing this matter, holding that "the grievance appeal does not implicate a state-created liberty or property interest, the ALC may summarily dismiss the appeal at it's discretion." FURTICK V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 374 S.C. 334, 649 S.E.2d 35 (2007). (See Exhibit (7)). This Order was served upon Petitioner, via Institutional Legal Mail Services, on November 28, 2011.

Appellant is now before this ALC, in a motion for reconsideration, in light of the claims and alleged deprivations to due process; access to the courts; and freedoms assured pursuant to the protections of the First Amendment.

I. Did the ALC erred by finding that Appellant's grievance/complaint did not implicate a state-created liberty

9

or property interest?

The First Amendment to the United States Constitution provides: "Congress shall make no respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

This ALC has made a ruling that, due to its application to this current case, has been incorrectly permitted to summarily dismiss this matter. Such a dismissal, especially upon the holding within the Order, is contrary to the most minimum of due process protections; has the propensity to be repetitive in it's application; and deprives Appellant of the most basic of First Amendment concerns.

Let us address the First Amendment claim as raised by Appellant, throughout the course of the grievance proceedings, that has been held to not interfere with any form of liberty or property interests.

Prisoners have a liberty interest in the receipt of their subscription mailings sufficient to trigger procedural due process guarantees. KRUG V. LUTZ, 329 F.3d 692, 696-97 n.4 (9th Cir. 2003). And the issue raised within these matters which

were complained, was based upon the fact that there was a total denial to newspapers, dictionaries, magazines, ethical or educational literature. Such shortcuts are offensive to the Constitution. This type of ban has been determined to be a "short cut" as a means of systematically and arbitrarily denying inmates of their First Amendment rights. Such bans on all publications is a shortcut that greatly circumscribes the universe of reading materials accessible to inmates and appears not sufficiently related to any legitimate and neutral penological objective. SHAKUR V. SELSKY, 391 F.3d 106, 115-16 (2nd Cir. 2004)(relying on the language of THORNBURGH's).

In THORNBURG V. ABBOTT, 490 U.S. 401, 416-17, 109 S.Ct. 1674 (1989), the United States Supreme Court held that a ban on all publications was a shortcut that greatly circumscribes the universe of reading materials accessible to inmates and appears not sufficiently related to any legitimate and neutral penological objective.

Respondent's have gone as far as to ban or exclude, to inmates housed in the SMU portion of the facility, publications such as Prison Legal News, and for reasons other than its contents, and courts have continuously overturned these exclusions. PRISON LEGAL NEWS V. LEHMAN, 397 F.3d 692 (9th Cir. 2005); JACKLOVICH V. SIMMONS, 392 F.3d 420 (10th Cir. 2004); PRISON LEGAL NEWS v. COOK, 236 F.3d 1145 (9th Cir. 2001); WATERMANN V. COMMANDANT, U.S. DISCIPLINARY BARRACKS, 337

F.Supp.2d 1237, 1242-43 (D.Kan. 2004); and MINIKEN V. WALTER, 973 F.Supp.2d 1356 (E.D.Wash. 1997).

The policy/procedure/practice of an absolute exclusion for all SMU portions of Respondents facilities, is offensive without due respect to the concerns within the First Amendment arena. MURPHY V. MISSOURI DEP'T. OF CORRECTIONS, 372 F.3d 979, 986 (8th Cir. 2004); and HOPKINS V. COLLINS, 548 F.2d 503, 504 (4th Cir. 1997). And simply because Respondents would raise issues about preventing fires, protecting plumbing or preventing flooding the tiers, is not sufficient to overcome the protections and safeguards in the setting of the First Amendment rights. KINCAID V. RUSK, 670 F.2d 737, 743-45 (7th Cir. 1982)(ban on pictorial magazines, newspapers, and soft/hard cover books, designed to prevent fires and protect plumbing, violates the first amendment); and PARNELL V. WALDREP, 511 F.Supp. 764, 767-68 (W.D.W.C. 1981)(similar to KINCAID). Especially where this ALC must take under consideration that tobacco products, i.e., cigarettes, lighters, matches, rolling papers, etc., are contraband on all Respondents properties. And Appellant does not argue that these types of products may be accessible, but as a whole, mostly to the general population. SMU facilities are isolated and heavier restrictions severely limit this type of contraband to almost zero percent.

The issue to consider, as relates to the policy/procedure/practice, in a total ban on publications is "whether

the regulation and policies here 'still permit a broad range of publications to be sent, received and read." ASHKUR V. CALIFORNIA DEP'T. OF CORRECTIONS, 224 F.Supp.2d 1253, 1259 (N.D.Cal. 2002)(under TURNER, "[r]egulations to be viewed with caution include those which categorically prohibit access to a broad range of materials"), aff'd 350 F.3d 917, 923-24 (9th Cir. 2003). The total ban of magazines and newspapers is offensive to First Amendment rights and protections: GREEN V. FERRELL, 801 F.2d 765, 772 (5th Cir. 1986); MANN V. SMITH, 796 F.2d 79, 82-83 (5th Cir. 1986)(ban on all newspapers and magazines violates First Amendment); HUTCHINGS V. UNFREINER, 421 F.Supp. 886, 895 (N.D.Fla. 1976); MANICONE V. CORSO, 365 F.Supp. 576, 577 (E.D.N.Y. 1973); POWLOWSKI V. WULLICH, 81 Misc.2d 895, 366 N.Y.S.2d 584, 590 (N.Y.Sup. 1975); VAN CLEAVE V. UNITED STATES, 854 F.2d 82, 84 (5th Cir. 1988)(ban on newspapers stated a constitutional claim); and MARTIN V. TYSON, 845 F.2d 1451, 1454 (5th Cir. 1988)(ban on newspapers raised a triable issue). Yet, the ban complained of within the Step-One and Step-Two Grievances stated a direct and total denial of those protected matters. This alone should have demonstrated the grave injustice committed by this summarily dismissal. especially where the courts have struck down a complete ban on newspapers and magazines as offensive to the First Amendment.

In JACKLOVICH V. SIMMONS, 548 U.S. 521, 533, 126 S.Ct. 2572 (2006), the Tenth Circuit Court of Appeals upheld the

regulation that banned all, but, publications/communications of a "primary religious text" for the first 120 days of detention ... yet, on appeal the United States Supreme Court reversed and remanded stating: "we fail to see how a four-month complete denial of access to constitutionally protected materials (regardless of behaviour) furthers behaviour management or rehabilitation." See also SPESLMAN V. HOPPER, 95 F.Supp.2d 1267 (S.D.Ala. 1999) (struck down the ban on newspapers and magazines in administrative segregation).

In furtherance of this argument, and as raised in the Step-One & Two grievances, the denial of these matters further infringes upon rehabilitative concerns. Yet, this ALC never reviewed the issues and claims, which may be substantiated by the dates this Order was filed and executed. There has been no competent judicial/appellate review relating to these matters. This further deprives Appellant of the ability to preserve his claims and arguments for appellate review by our highest state courts, under the "issue preservation" standard. STATE V. HILES, Opinion No. #26674 (filed June 22, 2009) (citing STATE V. FORRESTER, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (issue preservation required for appellate review)).

Appellant would take one more position concerning this matter. If an inmate does not have the opportunity to see the denied publications, i.e., magazines, newspapers, books, etc., then that inmate does not have an effective manner in

14

which to challenge the decision to withhold and/or deny the publication. Also, while the inmate may be free to notify the publisher, and seek assistance in challenging the prisons authorities decision, the publishers First Amendment right must not depend on that alone. MONTCALM PUBLISHING, CO. V. BECK, 80 F.3d 105, 109 (4th Cir. 1996).

The issue at bar is one that clearly has established the very chilling or freezing of the First Amendment. Yet, when faced with the opportunity for Respondents to correct the practice/policy/procedure, to conform with these standards, their only resolution was to ignore the mandated rights that have been adamantly upheld by all our circuits. This ALC has turned a blind eye to this matter by summarily dismissing this case, where there exists triable issues of fact in which this Appellant could prevail upon.

Appellant would respectfully demand that this ALC rescind its original Order, and remand this case to its jurisdiction for review of the claims properly exhausted within the grievance proceedings. Granting Appellant an opportunity and enjoyment to present this case before this court.

15

CONCLUSION

Wherefore, Appellant respectfully demands that this ABC reconsider it's Order of Dismissal, and rescind said Order, granting Appellant an opportunity to preserve claims, where there exists triable issues of fact and constitutionally protected deprivations.

December 6th, 2011

Respectfully Submitted,

Mekiel Mitchell

Mekiel Mitchell #232904
Sumter South #1152
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010-1775

PRO SE APPELLANT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

| | | |
|-----------------|------------------|----------|
| TO: NAME: | TITLE: | DATE: |
| Ms. Bratton | Education Dept. | 2-9-2010 |
| INMATE'S NAME: | SCDC #: | |
| Mekiel Mitchell | 232904 | |
| INSTITUTION: | LIVING QUARTERS: | |
| Ferry C/I | S.M.U. D4-5 | |

Ms.

I AM REQUESTING your attention to ^{THE} following issue I have with this institutions library services. I have turned in library request for books that I am instrested in Books reading, Books that are both educational and intellectually stimulating. HOWEVER, All i have gotten in ~~my~~ return from your library is fiction noval which I don't read or find stimulating and educational. I have requested Books on AFRO-CENTRIC thoughts, AFRICAN AMERICAN History, AFRICAN AMERICAN sociology and psychology and also NEWS WEEK, TIME MAGAZINE and BLACK ENTERPRISE MAGAZINES to KEEP ME ABREAST AND AFACE OF CURRENT EVENTS, CHANGES in the GOVERNMENT AND CURRENT trends, but have not received Anything I've requested. Why can't I get these reading materials? Why aren't you atleast filling my request for these magazines? IN fact NONE of the fiction NOVALS that HAS BEEN SENT up here ARE RELEVANT to my AFRICAN AMERICAN EXPERIENCE. They ARE ALL white PEOPLE NOVALS written by whites for the ENTERTAINMENT of EUROCENTRIC AudiENCES. I am not so inclined. I want to educate myself on the AFRICAN CULTURAL EXPERIENCES and cannot do so with fiction NOVALS. Why ARE you All NOT sending me the Books and MAGAZINES I RE-quested? PLEASE respond at your EARLIEST CONVICIENCE. THANK you and HAVE A BLESSED DAY.

Respectfully,
MEKIEL MITCHELL

DISPOSITION BY STAFF MEMBER:

PC1.0806.10

| | |
|-------|------------|
| DATE: | SIGNATURE: |
| | |

17

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

| | | |
|---|------------------|---------|
| TO: NAME: | TITLE: | DATE: |
| WARDEN Michael McCall | | 4-14-10 |
| INMATE'S NAME: | SCDC #: | |
| MEKIEL MITCHELL | 232904 | |
| INSTITUTION: | LIVING QUARTERS: | |
| PERRY C/I | S.M.U. D4-5 | |
| <p>WARDEN McCall, I want this request to serve as a notice to you in regards to the issue that I now bring forth.... Here at Perry on S.M.U, prisoners in long term segregation are not allowed to have radios, magazines nor newspapers. Prisoners in S.M.U are also not allowed to receive magazines and books thru the mail from publishers in violation of our 1st Amendment to the U.S. Constitution. However this request now before you pertains solely to me and how your procedure violates and infringes on my rights.... I have sent several request to Ms. Bratton in education, request several titles of non-fiction and received in return only fiction titles that are of no interest or intellectually stimulating to me.. I have requested magazines and newspaper to exercise my freedom to access the press from the library here at Perry and have been denied because both are prohibited by S.C.D.C. and Perry C/I policies and procedures. As a result I am experiencing isolation a deepening of ignorance and isolation which is developing into having a psychologically deteriorating effect on me. I am unaware of what's going on at anytime in our government, in international affairs and I am unaware of any changes in law or trends in our society. For news, I have to rely on books your ill-informed, officers apolitical officers who usually seem to disinterested in the news as you are in ensuring that I have access to it. The fact that inmates in general population can receive books, magazines and newspaper thru the mail, and have access to radios and T.V's but this same access is denied S.M.U. prisoners me is discrimination. For educational purposes I should be allowed access to books that are of my choice and intellectually stimulating. This library at Perry does not have an extensive selection and nearly all of its titles are non-fiction, therefore I should be able to exercise my right to order books, magazines and newspapers from publishers on my own. Placement in S.M.U. for the purpose of punishment must not include the denial of educational or informative books mediums. Such a policy is draconian, violates my 1st Amendment and defies legal precedent in Thornbough v Abate and Turner v Safely. I am asking you to immediately add address this issue. You have been put on notice.</p> | | |
| DISPOSITION BY STAFF MEMBER: | | |
| PCI-0806-10 | | |
| DATE: | SIGNATURE: | |
| | | |

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

18

STEP 1

INMATE NAME: Mekiel Mitchell
SCDC NUMBER: 232904
INSTITUTION: PERRY 9/1
HOUSING UNIT: S.M.U. II DX-5
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. 06-10
Code: General
Policy CP-22.12
Disc. Hear. _____
Class. _____
Date Received 4/29/10
IGC Initials mt

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) *I am grieving S.C.D.C. AND PERRY 9/1 policy AND PRACTICE OF DENYING my right under the 1st Amendment of the U.S. Constitution to RECEIVE through the U.S. postal mail SERVICE MAGAZINES, NEWS PAPERS, BOOKS, DICTIONARIES AND EDUCATIONAL CORRESPONDENCE COURSES THAT ARE REHABILITATIVE, informat. AND INTELLECTUALLY stimulating to AND for ME. IN DECEMBER 2009 I WAS SENTENCED to 18 months to SERVE in S.M.U. S.M.U. policy does not allow me to ORDER AND RECEIVE through the mail ANY books OR MAGAZINES. HOWEVER, I CAN RECEIVE A BOOK FROM the PRISON LIBRARY ONCE A WEEK; but THERE ARE WEEKS WHERE WE AREN'T GIVEN ANY books AT ALL. AND EVEN though S.C.D.C. policy PERMITS ME to RECEIVE ONE MAGAZINE from the PRISON LIBRARY PER WEEK, PERRY 9/1's WARDE. McCall DOES NOT allow ME to, citing SECURITY REASONS (Flooding AND FIRE); REASONS that GENERAL COUNSEL AND JON OZMIT CONSTATES in their overall policy promulgation. I HAVE BEEN writing this LIBRARY AT PERRY 9/1 REQUESTING books by SPECIFIC Authors AND SPECIFIC titles THAT ARE stimulating to ME. I requested books on AFRICAN History, AFRICAN AMERICAN Political MOVEMENTS, AFRICAN Psychol. ECONOMICS AND SCIENCE but WAS SENT only FICTION NOVELS thus FAR. THATS ALL PERRY 9/1 LIBRARY SENDS to S.M.U. is FICTION NOVELS. I Do NOT READ FICTION by choice. I HAVE A right to READ literature of my choice AS long AS its CONTENTS DOES NOT pose A threat to logical penological interest. This is my 1st Amend right.*

ACTION REQUESTED: *That S.C.D.C. AND WARDEN McCall here at PERRY 9/1 RESCIND this UNCONSTITUTIONAL AND MENTALLY debilitating PRACTICE OF DENYING ME the right to ORDER book, NEWS PAPERS AND MAGAZINE through the mail IMMEDIATELY. This DRACONIAN practice is UNCONSTITUTIONAL AND should be DECLARED AS such.*

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

There is no other recourse....

Mekiel Mitchell 4-26-1

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

[Signature] 5/12/10

IGC Signature Date

NA

Grievant Signature Date

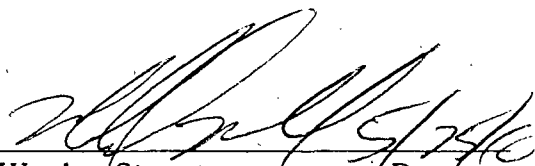
- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

WARDEN'S DECISION AND REASON:

All Agency policies comply with applicable state, federal, and local statutes and with case law. The Office of Policy Development is responsible for establishing and maintaining an efficient system whereby all policies governing the operation of the SCDC are developed and reviewed. The policy you allege to be unconstitutional is reviewed annually and approved by the Agency Director.

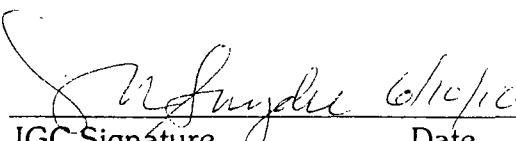
Therefore, your grievance must be denied at this level.

If you are not satisfied with my decision, see #5 below.


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.

Mehiel Mitchell 6-10-10
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.

Exhibit (3)

Prisoner Grievance Form
Step 1. Continued...

PC1-0806-10

19

I HAVE REQUESTED NEWS WEEK, TIME MAGAZINE, FORBES, JET AND EBONY MAGAZINE, NATIONAL GEOGRAPHIC AND SCIENCE BUT HAVE RECEIVED NONE FROM PERRY C/I LIBRARY DUE TO WARDEN McCALL'S DRACONIAN "NO MAGAZINE ON S.M.U." POLICY. IN FACT, PERRY C/I DO NOT HAVE A SUBSCRIPTION TO MOST OF THESE MAGAZINES. AND WHERE THEY DO HAVE A SUBSCRIPTION TO THESE MAGAZINE(S) IT IS ONLY ONE (1) SUBSCRIPTION AND THAT SUBSCRIPTION IS FOR THOSE IN GENERAL POPULATION WHO HAVE THE OPPORTUNITY TO FREQUENT THE LIBRARY. SO EVEN IF WARDEN McCALL RESCINDED HIS DRACONIAN BAN ON MAGAZINES FOR S.M.U., WITH ONLY ONE SUBSCRIPTION TO ANY MAGAZINES MEANS THAT GENERAL POPULATION WOULD GET THAT MAGAZINE FIRST THEN AFTER A MONTH OR SO SEGREGATION WOULD GET IT AFTER THE NEWS CONTAINED IN THEM WOULD NO LONGER BE CONSIDERED CURRENT! I ATTEMPTED TO ORDER LAW BOOKS TO IMPROVE MY KNOWLEDGE AND SKILLS IN LITIGATION OF THE LAW WHICH WOULD FACILITATE MY CHALLENGES TO BOTH MY CONVICTION AND CONDITION OF CONFINEMENT, BUT WAS DENIED, BECAUSE I WAS TOLD THAT POLICY ONLY PERMITS ME TO RECEIVE LAW BOOKS FROM THE PRISON LIBRARY DESPITE THE FACT THAT THE LIBRARY DOES NOT HAVE THE TITLES THAT I DEEM RELEVANT AND EDUCATIONAL, AS WELL AS CURRENT LAW AND PRACTICES OF THE S.C. APPELLANT COURT... FURTHERMORE, S.C.D.C. CURTAILED FUNDING THE PURCHASE OF NEW AND RELEVANT LAW BOOKS IN 2002, THUS HAMPERING PRISONERS RESEARCH AND ABILITY TO STAY AHEAD AND ABREAST OF CURRENT CHANGES IN S.C. LAW. INMATES IN GENERAL POPULATION ARE ABLE TO PURCHASE THRU THE MAIL ANY LEGAL/LAW BOOK THEY WISH TOO BUT THE SAME RIGHT IS NOT EXTENDED TO ME WHILE ON S.M.U. AND IS THUS DISCRIMINATION! NO PRISON POLICY SHOULD DENY PRISONERS THEIR CONSTITUTIONAL RIGHT TO LAW BOOKS THE PRISONER CHOOSES TO ORDER. I'VE REQUESTED A DICTIONARY FROM THE LIBRARY TO MAKE IMPROVEMENTS TO MY VOCABULARY AND SPELLING, BUT NEVER RECEIVED ONE AFTER SEVERAL REQUEST. S.M.U. POLICY DOES NOT PERMIT ME TO ORDER MY OWN. THE ENGLISH LANGUAGE WHICH IS THE OFFICIAL LANGUAGE OF THIS COUNTRY AND MY ABILITY TO SPEAK, PRONOUNCE AND SPELL CORRECTLY IS THE BENCHMARK OF CIVILITY, LIBERTY, AND CULTURE. TO DENY A PRISONER A RIGHT TO RECEIVE, ACCESS AND OR PURCHASE SOMETHING AS SMALL BUT AS ESSENTIAL AS A DICTIONARY IS TO DENY THAT PRISONER THE ONE TRUE TOOL OF CIVILIZATION — THE GREAT COMMAND OF THE ENGLISH DICTIONARY! ALSO I DESIRE AND ATTEMPTED TO ORDER AN EDUCATIONAL COLLEGE CORRESPONDENCE COURSE AS WELL AS CORRESPONDENCE IN ARABIC AND SPANISH MATERIAL BUT WAS UNABLE TO ORDER/RECEIVE IT BECAUSE S.C.D.C. S.M.U. POLICY DOES NOT PERMIT IT..... I AM NOT PERMITTED TO HAVE A WALKMAN NOR ANY NEWS PAPERS ACCORDING TO POLICY AND PROCEDURES HERE AT PERRY C/I SO I CANNOT EXERCISE MY CONSTITUTIONAL RIGHT TO STAY ABREAST AND INFORMED OF CURRENT EVENTS, TRENDS, CHANGES AND HAPPENINGS IN THE WORLD AND IN MY OWN GOVERNMENT. IN FACT, THERE ARE PRISONERS HERE ON S.M.U. WITH ME NOW WHO'VE BEEN IN SOLITARY CONFINEMENT FOR AS LONG AS TEN YEARS AND AS RECENT AS TWO YEARS WHO HAVE NEVER SEEN A PICTURE OF BARAK OBAMA, THE FIRST AFRICAN-AMERICAN PRESIDENT BECAUSE OF THIS BAN ON MAIL PAPERS, BOOKS AND MAGAZINES. NOR HAVE THEY BEEN ABLE TO WITNESS ANY OTHER HISTORICAL APPOINTMENTS MADE BY PRESIDENT OBAMA. THIS IS A VERY SERIOUS DILEMMA AND HIGHLIGHTS THE MENTAL DEBILITATION, THAT I AM IN FEAR OF EXPERIENCING, BUT WHICH IS INEVITABLE UNDER S.C.D.C. AND PERRY C/I UNCONSTITUTIONAL BAN ON THE ABOVE READING MATERIALS TO S.M.U. PRISONERS. PERRY PUTS OUT A MONTHLY NEWSLETTER THAT IS CONSTRUCTED BY THE HEAD GRIEVANCE COORDINATOR AND HARDLY EVER CITES ITS SOURCE WHICH COULD SIMPLY BE HER OPINION OF EVENTS AND THUS UNTRUE OR A MIS-REPRESENTATION OF THE FACTS. FURTHERMORE, THIS NEWS LETTER IS INADEQUATE AND ONLY SERVES TO FRUSTRATE MY QUEST TO REMAIN INFORMED, RELEVANT AND CONNECTED TO THE REAL WORLD. THEREFORE, I SUFFER IMMENSE AND ABJECT EDUCATIONAL AND PSYCHOLOGICAL DETERIORATION AS A CONSEQUENCE OF THIS BAN ON THE MAIL ORDERING OF BOOKS, MAGAZINES AND NEWS PAPERS BY S.C.D.C. AND WARDEN McCALL HERE AT PERRY C/I. S.C.D.C. HAS BY WAY OF THIS BAN MADE SAID DENIAL OF ACCESS TO THESE MATERIALS THRU THE MAIL APART OF MY PUNISHMENT FOR BEING PLACED ON S.M.U. THUS S.C.D.C. AND WARDEN McCALL ARE COMMITTING CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF MY 8th AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION AS WELL AS A VIOLATION OF MY 1st AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION.

MEKIEL MITCHELL
4-26-10

EXHIBIT (3)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

Due 6/15/10 **21**

STEP 2

INMATE NAME: Mekil Mitchell
SCDC NUMBER: 232904
INSTITUTION: PERRY CI Lee
HOUSING UNIT: S.M.U. DX-5
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. PCI-0806-10
Code: General _____
Policy OP-22.12
Disc. Hear. _____
Class. _____
Date Received 6/22/10
IGC Initials ms

JUN 14 2010
RECEIVED
JUN 29 2010

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): **FIRST I APPEAL WARDEN M'CALL'S RESPONSE b/c COMPLETE IGNORES my COMPLAINT ABOUT THE INADEQUACY OF PERRY'S LIBRARY. M'CALL CIRCUMVENTS THE ISSUES I ADDRESSED ABOUT PERRY LIBRARY NOT SENDING THE READING MATERIAL I REQUEST FROM IT ON A WEEKLY BASIS, THE FACT THAT PERRY'S READING SUPPLY CONSIST OF MAINLY NO FICTION NOVELS, AT PERRY WE ARE NOT ALLOWED WALKMANS AND THAT HE WARDEN M'CALL HAS CURTAILED THE RECEIPT OF MAGAZINES FROM THE GENERAL POPULATION LIBRARY TO I/M'S HOUSED IN S.M.U. HE ALSO FAILED TO ADDRESS THE IRREGULARITY IN WHICH LIBRARY BOOKS ARE SENT TO S.M.U. b/c SOMETIMES WE DON'T RECEIVE BOOKS FOR 2 WEEKS; MEANING WE ONLY RECEIVE IT TWICE A MONTH MOST TIMES WE RECEIVE BOOKS THAT WE'RE SUPPOSE TO RECEIVE TWICE A WEEK. LAST OF ALL IS M'CALL'S ASSERTION THAT THIS UNCONSTITUTIONAL BAN COMPLIES WITH APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND WITH CASE LAW. THIS IS AN OUT RIGHT LIE AND THIS SHALL BE PROVEN TO BE A LIE AND VIOLATION OF MY CONSTITUTIONAL RIGHTS IN FEDERAL COURT IF IT IS NOT CORRECTED BY THIS AGENCY.**
Mekil Mitchell 6-11-10
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concern has been reviewed. Change 7 of OP-22.12, Special Management Unit, dated August 15, 2005, provides a list of authorized property that an inmate can have in his possession while housed in SMU. You are only allowed one book or magazine from Library Services at any given time. Since filing this grievance, you are no longer housed at Perry CI, nor are you confined in SMU.

Therefore, I consider this matter resolved.

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]
Signature Date 10/10/11

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.

Mekil Mitchell 10/14/11 [Signature] 10/14/11
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Exhibit (4)

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.**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael J Mitchell

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALJ-04- -

GRIEVANCE NO.:

Notice is hereby given that Michael Mitchell # 232904 does hereby appeal the final decision of the South Carolina Department of Corrections dated Oct 10, 2011 and received on Oct 14, 2011, 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 Does S.C.D.C. Absolute prohibition in pre-paid mail ordered subscription magazines, newspapers and books applied to administratively segregated inmates violate the Appellants' 1st and 14th Amendment of the U.S. Constitution?
② Does Appellants' release from Administrative segregation or re-location to another prison within S.C.D.C. other than the prison in which complaint was originally experienced, nullify and render Appellants' complaint/grievance moot?

Michael L. Mitchell
Appellant's Name

Michael Mitchell
Signed

990 Dimock Hwy
Mailing Address
Bishopville, SC 29010

November 7th 2011
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Michael Mitchell (your name), on the 7th day of November 20 11, in Bishopville (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: S.C.D.C. office of General Counsel
Address: 4444 Broad River Rd
Columbia, SC
City, State, Zip Code:

Print your name Sign your name
(See reverse side for instructions)

Page 2 of 2

Exhibit (3)



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.**

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 |
|-------------|---------------|-------------------|------------------|--------------|------------|-------------|---------------|-----------------|
| 11C0888 | 232904 | MEKIEL | MITCHELL | PCI 806-10 | DOC | 11/14/2011 | 11/16/2011 | ROBINSON |

FILED

NOV 16 2011

SC ADMIN. LAW COURT

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.

Exhibit (4)

24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Department of Corrections

RECEIVED

JUL 02 2012

SC Court of Appeals

Shirley C. Robinson, Administrative Law Judge

#2012206946

Mekiel Mitchell #232904 Appellant,

vs.

South Carolina Department of
Corrections Respondents.

CERTIFICATE OF COUNSEL

Pro se counsel certifies that the Record on Appeal contains all material proposed to be included by any parties and not any other material.

June 15, 2012



Mekiel Mitchell #232904
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010-1775

CERTIFICATE OF SERVICE

I hereby certify that I have served the: (1) Record on Appeal; (2) Certificate of Counsel; and (3) Certificate of Service, upon Respondents counsel of record, by depositing a copy of the same in the United States Mail, First Class postage affixed thereupon, addressed as follows:

RECEIVED

JUL 02 2012

SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
Christopher D. Florian, Deputy General Counsel
Post Office Box 21787
Columbia, South Carolina
29221-1787; and

SOUTH CAROLINA COURT OF APPEALS
CLERK OF COURTS OFFICE
Tanya A. Gee, Clerk
Post Office Box 11629
Columbia, South Carolina
29211-1629.

June 15, 2012



Mekiel Mitchell #232904
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010-1775

PRO SE APPELLANT