THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2018-002046

Quincy Allen, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

Initial Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant Quincy Allen

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional

QUESTIONED PRESENTED

Does Quincy Allen, a death sentenced inmate confined to the South Carolina Department of Corrections, have liberty interests in rehabilitation and visitation with members of the general public?

STATEMENT OF THE CASE

Quincy Allen is a death-sentenced inmate confined to the South Carolina Department of Corrections ("SCDC") at the Kirkland Reception and Evaluation Center. On March 15, 2018, Mr. Allen sent a Request to Staff Member stating:

> I'm requesting that you stop disapproving visitation applications just because the person didn't know me before my incarceration in August 2002. It's prejudicial and discriminating! The people that want to see [me] are my friends, and they have never been arrested and they don't have a criminal record. You're arbitrarily denying law abiding citizens the opportunity to take time out of their weekend, to come and see me, because they love and support me.

R. *.[1] On March 19, 2019, the SCDC responded:

> Be advised that <u>All</u> previous visitation applications have asked, "Did you know the inmate prior to incarceration?" We consider not knowing an inmate but wanting to visit a security concern. Therefore, I recommend that you communicate with them by mail/phone/messaging.

R. *.

On March 21, 2018, Mr. Allen submitted a Step 1 Inmate Grievance Form stating:

> I'm requesting that the SCDC Visitation Department Branch Chief's Office stop denying law abiding citizens the opportunity to visit me for the simple reason that we didn't know each other prior to August 2002. I've met people since August 2002 that have said that they'd now like to visit me.

[1] A blank copy of the SCDC Request for Visiting Privileges is found at R. *.

R. *. On March 30, 2018, the SCDC responded, "SCDC feels that not knowing an inmate prior to incarceration is a security concern." The SCDC once again suggested, "You still has [sic] the option to communicate with them by mail and phone." R. *.

On March 26, 2018, while the Step 1 Grievance was still pending, Mr. Allen sent a Request to Staff Member stating:

> A couple of my former attorneys are going to submit applications so that they can visit me as friends on the weekends. Will their applications be approved, even though they didn't know me before my incarceration, but they did get to know me since my incarceration, while they were representing me in the South Carolina court system, since 2002?

R. *. On March 28, 2018, the SCDC responded, "Again, if an individual didn't know you before incarceration, they are not eligible." The response added, "If they request to see you as an attorney, they go through a different office." R. *.

On April 4, 2018, Mr. Allen submitted a Step 2 Inmate Grievance Form pointing out:

> As a Death Row inmate, I'm not allowed to have contact visits, so SCDC's feeling of someone not knowing me, before August 2002, being a security concern, is null and void, in addition to being nonsensical. My former attorney, Michael Siem, and his wife Audrey were denied on their application to visit me on the weekend. We had contact visits when he was my attorney and now he's my good friend. SCDC's current practice is inhumane.

R. *. On May 8, 2018, the SCDC denied Mr. Allen's grievance and cited to its policy:

> SCDC Policy OP-22.09, "Inmate Visitation," states that "Inmate visitation is considered to be a privilege and is not considered a guaranteed right. Therefore, the SCDC reserves the right to suspend, restrict, deny, or terminate an inmate's or visitor's visitation privilege and/or telephone privilege due to legitimate concerns regarding the security and safety of the institution." Although you may wish to have certain persons of your choice to be eligible to visit you, your incarceration at SCDC has limitations that must be followed for a number of reasons included but not limited to security.

R. *.[2]

Mr. Allen appealed to the Administrative Law Court. He raised four issues on appeal:

> 1. The South Carolina Department of Corrections (SCDC) is using arbitrary and capricious unwritten policies and procedures to disapprove law-abiding citizens from visiting inmates.
>
> 2. The SCDC is disregarding and overlooking their written policies and procedures regarding visitation of inmates.
>
> 3. The SCDC is misapplying written policies and procedures in an overly broad and equivocal manner.
>
> 4. The SCDC deprived me of my right to due process in a fair grievance resolution.[3]

R. * (footnote added).

In his first argument, Mr. Allen argued the SCDC's prohibiting visitors he did not know before his incarceration "is arbitrary and capricious because it is not addressed in *any written policy or procedure* promulgated by the SCDC, which is legally significant because all of their other concerns dealing with visitation approval are addressed in writing." Mr. Allen pointed out that Mr. Siem was one of his prior attorneys, has known him "for over 7 ½ years," lives in Brooklyn, New York, and would prefer to visit "on weekends during personal visitation hours." Mr. Allen further pointed out:

> Brie Russell is a lawyer in Columbia, SC and I have gotten to know her family. Her mother and sister send me words of encouragement and books to keep my mind busy. I do not have a lot of family or friends in my life and rely on my current and former legal teams for friendship and

---

[2] A copy of the SCDC Policy OP-22.09 is found at R. *.

[3] On May 18, 2018, Mr. Allen inquired of the Office of General Counsel, "Why was Alice Marcio allowed to deny my informal resolution and then allowed to decide my Step 2 grievance final decision? She was not going to overrule herself, after Warden Willie Davis upheld her informal resolution response to me." R. *.

> support. They help me strive to continue to grow as a person even under my current circumstances. The conditions on death row do not allow for much human interaction and we do not even have a window to see outside. Ms. Russell's mother, father and sister would like to be able to visit me during regular visitation hours.
>
> Each of the individuals noted above are law-abiding, productive citizens and simply because I was not fortunate enough to have met them prior to my incarceration, the SCDC has denied the approval to be added to my visitation list. It should be noted that as a death row inmate I am not even permitted to have contact visitation with friends and family. All of my personal visits are in glass booths with telephone receivers.

R. * (emphasis original).[4] Mr. Allen then argued, "Because Question 6 [inquiring whether the person applying for visitation knew the inmate prior to his incarceration] is not addressed in any written policy or procedure, as the other 5 questions are, this should not be the sole basis for denying an individual the ability to be an approved visitor for an inmate." Mr. Allen informed the court below that the SCDC denying these visitors negatively impacts his "attitude," "mental health" and "outlook on life and [his] rehabilitation." R. *.

Mr. Allen addressed the SCDC written policy. In his first argument, Mr. Allen pointed out the SCDC policy encourages inmates to visit with friends and family and pledges to conduct visitation "in an accommodating manner." In his second argument, Mr. Allen pointed out the SCDC policy allows visitors to "be added to an inmate's visitation approved list at any time, provided that the addition of the visitor(s) does not cause the inmate to exceed the 15 visitor limit." Mr. Allen then pointed out that written policy allows the SCDC to "suspend, restrict, deny, or terminate an inmate's or visitor's

---

[4] Eighteen death row inmates are suing the SCDC in the United States District Court for the District of South Carolina regarding the conditions of confinement on death row. *Northcutt v. South Carolina Department of Corrections*, C/A 4:17-cv-03301-BHH-TER.

privileges and/or telephone privileges due to **legitimate concerns** regarding the security and safety of the institution." Mr. Allen then argued:

> The SCDC has no legitimate basis, nor any evidence whatsoever, for postulating that my proposed visitors are a threat to the security of the institution, staff, or others. None of them have a criminal record no have they ever been arrested. In fact each of them is a pillar within her/his community. The fact that they did not know me prior to my incarceration is not a legitimate concern for safety. This is entirely too broad to be the sole basis for a denial of a visitor being added to an inmate's approved visitor list.

R. * (emphasis supplied in ALJ brief).

The SCDC did not address the merits of Mr. Allen's arguments, but rather moved to dismiss pursuant to *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) and *Skipper v. S.C. Dep't of Corr.*, , 633 S.E.2d 910 (Ct. App. 2006) because Mr. Allen "has no liberty interest in having visitors that he did not know prior to incarceration." R. *.

Mr. Allen replied, pointing out his right to "rehabilitation" is "a state created liberty interest," pursuant to S.C. Const. Art. XII, § 2. *See also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). He argued one of the "primary goals" of the SCDC policy of "providing visitation to inmates is rehabilitation." He pointed out, "Many inmates, including [himself], are serving lengthy, sometime lifetime, sentences. Denying their ability to create and foster relationships over the course of their lives flies in the face of the stated Constitutional right to rehabilitation opportunities." R. *.

The Administrative Law Judge granted the SCDC's motion to dismiss, relying in large part, on *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454 (1989) to conclude "there is no state-created liberty interest in visitation, much less visitation with a specific persons of his choosing." The court below reasoned:

> Here, [Mr. Allen] has not been denied visitation. He has only been denied visitation with persons [he] did not know prior to his incarceration; however, he may communicate with these persons via telephone or letter. Therefore, a state-created liberty interest has not been implicated in this case, and this Court takes a hand off approach to internal prison matters.

R. *. This appeal follows.

STANDARD OF REVIEW

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. §1-23-610(B); *see also Howard v. S. Carolina Dep't of Corr.*, 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012).

ARGUMENT

Quincy Allen, a death sentenced inmate confined to the South Carolina Department of Corrections, has a liberty interests in rehabilitation and visitation with members of the general public.

As seen, the Administrative Law Judge relied on *Kentucky Dep't of Corr. v. Thompson* in upholding the SCDC's unwritten policy of denying inmates visitation with

an entire class of visitors—anyone Mr. Allen did not know prior to his incarceration. Therefore, it is important to understand the holding in *Thompson*, including the limitations of that holding. Justice Blackmun, writing for the majority, described the issue before the High Court:

> This particular litigation was prompted in large part by two incidents when applicants were denied the opportunity to visit an inmate at the reformatory. The mother of one inmate was denied visitation for six months because she brought to the reformatory a person who had been barred for smuggling contraband. Another inmate's mother and woman friend were denied visitation for a limited time when the inmate was found with contraband after a visit by the two women. In both instances the visitation privileges were suspended without a hearing. The inmates were not prevented from receiving other visitors.

490 U.S. at 458. The issue before the Court, accordingly, involved "[t]he denial of prison access to a particular visitor" which has long been held to be "well within the terms of confinement ordinarily contemplated by a prison sentence." *Id.* at 461 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). Justice Kennedy, in his concurring opinion, identified the limitations of the holding in *Thompson*:

> I concur fully in the opinion and judgment of the Court. I write separately to note that this case involves a denial of prison access to particular visitors, not a general ban on all prison visitation. Nothing in the Court's opinion forecloses the claim that a prison regulation permanently forbidding all visits to some or all prisoners implicates the protections of the Due Process Clause[5] in a way that the precise and individualized restrictions at issue here do not.

490 U.S. at 465 (Kennedy, J. concurring) (footnote added).

Mr. Allen's appeal involves neither a "denial of prison access to a particular visitor" nor "a general ban on all prison visitation." On the continuum between these two extremes, a permanent and complete ban on a broad category of visitors—anyone Mr.

---

[5] U.S. Const. Am. XIV; *see also* S.C. Const. Art. I, § 3.

Allen did not know prior to his incarceration—is much closer to "a general ban on all prison visitation" than a "denial of prison access to a particular visitor," thereby implicating the due process clause.

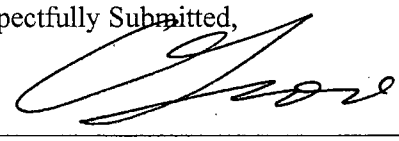
As argued in the court below, Mr. Allen has a right to "rehabilitation" that is "a state created liberty interest," pursuant to S.C. Const. Art. XII, § 2. This constitutional provision mandates the SCSC provide rehabilitation for inmates, which includes visitation. The SCDC policy, in fact, is "to enable an encourage inmates, consistent with security and classification requirements, to visit with family and friends. . . . in an accommodating manner." R. *. In his appeal to the Administrative Law Court, Mr. Allen identified five people he believes qualify as visitors under the SCDC's written policy. The relief requested by Mr. Allen would merely prohibit the SCDC from "disapproving visitation applications just because the person didn't know [him] before [his] incarceration." R. *. The individual visitors still would be subject to the ordinary visitor application process and the SCDC visitation policy. The visitors still would be subject to the SCDC's security measures, and the visitation would be in accordance with Mr. Allen's classification as a death row inmate. The SCDC still would be able to "suspend, restrict, deny, or terminate an inmate's or visitor's privileges and/or telephone privileges due to legitimate concerns regarding the security and safety of the institution." *See* R. *. Rather than categorically banning a class of visitors, the SCDC would be required to make the "individualized" determination that was at issue in *Thompson,* 490 U.S. at 465 (Kennedy, J. concurring).

(conclusion on next page)

CONCLUSION

For the forgoing reasons, this Court should reverse the Administrative Law Judge and remand for a determination on the merits because Quincy Allen has liberty interests in rehabilitation and visitation with members of the general public.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Quincy Allen

February 4, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2018-002046

Quincy Allen, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

Certificate of Service

I certify that I have served the Initial Brief of Appellant, with a corrected cover page, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

Annie Laurie Rumler, Esquire
Office of General Counsel
S.C. Department of Corrections
PO Box 21787
Columbia, SC 29221-1787

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

February 8, 2019
Greenwood, South Carolina

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

February 8, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Quincy Allen v. South Carolina Department of Corrections*
Appellate Case No. 2018-002046

Dear Ms. Kitchings:

When I filed Mr. Allen's Initial Brief of Appellant, the cover page contained errors. Enclosed please find Mr. Allen's Initial Brief of Appellant, with a corrected cover page, along with a certificate of service.

Thank you for your attention to this matter. I apologize for any inconvenience to the Court or counsel. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

cc: Annie Laurie Rumler, Esquire (via overnight mail)
Mr. Quincy Allen

The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211