

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 Reply Brief of Appellant

RECEIVED
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SC Court of Appeals

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Arguments 1

 I. Liberty Interest 1

 II. Arbitrary and Capricious..... 2

Conclusion 5

TABLE OF AUTHORITIES

Cases

Hewitt v. Helms, 459 U.S. 460 (1983) 1
Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454 (1989) 1, 2

Constitutional

S.C. Const. Art. I, § 3 1
U.S. Const. Am. XIV 1

IN REPLY

Quincy Allen replies to the South Carolina Department of Corrections (“SCDC”) Brief of Respondent as follows.

I. Liberty Interest.

The SCDC, much like the court below, relies on *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454 (1989) to argue Mr. Allen does not have a liberty interest, regarding visitation, that was created by the State. Brief of Respondent at 4-7. *Thompson*, however, actually holds “an individual claiming a protected interest must have a legitimate claim of entitlement to it. Protected liberty interests ‘may arise from two sources—the Due Process Clause itself and the laws of the States.’” *Id.* at 460 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)). Although *Thompson* recognized “unfettered visitation” is not guaranteed by the Due Process Clause, the Court also reminded, “This is not to say that a valid conviction extinguishes every direct due process protection.” *Id.* Mr. Allen does not claim a right to “unfettered visitation.” Rather, he protests the SCDC denying him visitation to an entire class of visitors—anyone he met after his incarceration—without conducting an individualized determination. Because the SCDC failed to conduct an individualized determination, Mr. Allen has a liberty interest pursuant to the Due Process Clause¹ in visitation regarding the issue presented in this litigation.

The SCDC’s brief does not address the distinction between the facts before the Court in *Thompson* and the issue presented to this Court in the current appeal. The *Thompson* Court explained:

¹ U.S. Const. Am. XIV; *see also* S.C. Const. Art. I, § 3.

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.

Thompson, at 458. *Thompson* thus “involve[d] a denial of prison access to particular visitors, not a general ban on all prison visitation.” *Id.* at 465 (Kennedy, J. concurring). “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 in a way that the precise and individualized restrictions at issue here do not.” *Id.*

Here, the SCDC did not make an individualized determination specific to Mr. Allen and his proposed visitors. The SCDC banned an entire class of visitors. The suspension of visitation in *Thompson* was temporary. The ban in Mr. Allen’s case is permanent. Mr. Allen asserts that placing a permanent ban on an entire class of visitors, without any individualized determination, implicates the protections of the Due Process Clause. As discussed below, the SCDC policy involved in this appeal is arbitrary and capricious.

II. Arbitrary and Capricious.

The SCDC argues its policy is not arbitrary and capricious because “Alice Mascio explained her reasoning for denying these visitors in her response to [Mr. Allen’s] Request to Staff Member stating, ‘not knowing an inmate but wanting to visit [is] a

security concern.”² Brief of Respondent at 7-8. Two hypotheticals illustrate exactly why this policy is arbitrary and capricious.

First, many people sentenced to the SCDC associated with people who engaged in criminal conduct prior to their incarceration. They might have committed crimes together. They might have consumed illegal drugs together. Sadly, family members sometimes introduce a person to criminal activity or illicit drug use. The SCDC could conclude that knowing an inmate prior to the inmate’s incarceration and wanting to visit that inmate is a security concern and, therefore, prohibit visitors that knew the inmate prior to incarceration. If the SCDC decides to combine such a policy with the policy at issue in Mr. Allen’s case, then the SCDC would effectively ban all visitation.

Second, the SCDC policy involved in Mr. Allen’s case does not operate as a complete ban of the proposed visitor from visiting the institution. For example, Inmate A knew Visitor A prior to his incarceration. Inmate B did not know Visitor A prior to his incarceration. Under the SCDC’s policy, Visitor A is allowed to visit Inmate A but not Inmate B. There is no rational reason to believe Visitor A poses a security risk for wanting to visit Inmate B while still allowing Visitor A entry to the institution to visit Inmate A.

Additionally, the policy at issue in Mr. Allen’s case is at odds with the SCDC’s values expressed by its volunteer program. A copy of the SCDC website for “Volunteers” is attached to this brief.³ The website states:

² This policy is not a written policy.

³ Found at <http://www.doc.sc.gov/programs/volunteers.html> (last viewed April 2, 2019).

Winston Churchill once said, “We make a living by what we do, but we make a life by what we give.” Volunteers are special people who unselfishly donate their time and energy towards inmates in need. They are the cherished resources of the South Carolina Department of Corrections. They supplement staff, provide programs and services that might not otherwise be available, and bridge the gap between the community and the correctional setting. There are no special education, race, sex, religion, or marital status requirements — just a desire to work with those less fortunate and a willingness to learn and follow the rules.

The SCDC volunteers provide inmates counseling, education, mentoring, pre-release preparation, recreation, and religious programs. Volunteers instruct seminars and sponsor Alcoholic Anonymous and Narcotics Anonymous groups. In essence, volunteers are a part of inmates’ rehabilitation. Volunteers must “[s]ubmit an application” and “[a]bide by all Agency policies, in particular, the contraband policy.”⁴

That Mr. Allen has meet people that take an active interest in his personal growth, development, and rehabilitation speaks well of both Mr. Allen and his new friends. Mr. Allen acknowledges his proposed visitors must submit applications for visitation, otherwise qualify for visitation, and abide by all Agency policies. Mr. Allen merely asks this Court to require the SCDC to make that individualized determination.

(conclusion on next page)

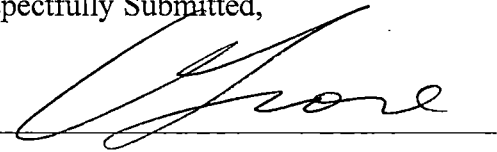
⁴ *Id.* at 2.

CONCLUSION

For the reasons set forth in the Brief of Appellant and this reply brief, 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



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Attorney for Appellant Quincy Allen

April 4, 2019
Greenwood, South Carolina

Search

VOLUNTEERS

Department of Corrections Volunteers: *Changing the Future*



Thousands of volunteers work with inmates at the S.C. Department of Corrections every year. Among them are volunteers with Gospel Express Ministries, seen in the photos above and below.

Winston Churchill once said, "We make a living by what we do, but we make a life by what we give." Volunteers are special people who unselfishly donate their time and energy towards inmates in need. They are the cherished resources of the South Carolina Department of Corrections. They supplement staff, provide programs and services that might not otherwise be available, and bridge the gap between the community and the correctional setting. There are no special education, race, sex, religion, or marital status requirements — just a desire to work with those less fortunate and a willingness to learn and follow the rules.

Frequently Asked Questions:

What do prison volunteers do?

How can you become a volunteer?

How do I contact a chaplain at an institution?



What do prison volunteers do?

- **Counseling:** Individual, group and family.
- **Education:** Volunteers serve as tutors teaching inmates basic reading and writing skills.
- **Mentoring:** Volunteers serve as role models by mentoring an inmate who has not received an outside visit in the last year.
- **Pre-Release Preparation**
- **Recreation:** Volunteers serve as coaches or referees for numerous team sports. Also, community teams compete against inmate teams in various sports.
- **Religious Programs:** Volunteers serve as leaders of worship services, study groups and

QUICK LINKS

Points of Contact

Institutions

Employment

Volunteers

Business Partners

General Counsel



Report Sexual Abuse or Sexual Harrassment



Report Offender Usage of Cell Phones / Social Media

instructional classes. They also participate in religious celebrations.

- **Seminars:** Volunteers serve as instructors who teach a variety of classes on how to cope with incarceration and how to effectively re-enter into one's community. For example, topics include anger management, job interviewing skills and parenting skills, etc.
- **Staff Assistance:** Volunteers help perform clerical and administrative functions.
- **Substance Abuse:** Volunteers serve as sponsors of Alcoholic Anonymous and Narcotics Anonymous groups that help inmates cope with the problem of addiction.

Back to Top

How can you become a volunteer?

- Contact the Volunteer Coordinator, who is generally the Chaplain, at the institution where you wish to provide volunteer services.
- **Submit an application** and agree to go through a personal interview.
- Attend an orientation/training session that is appropriate to the services rendered. Registered Volunteers are trained in the rules, regulations and needs of the institution. Guest Volunteers are briefed prior to providing their services.
- Abide by all Agency policies, in particular, the contraband policy, the employee/inmate relationship policy, the hostage policy and the media contact policy.
- Recognize that correctional employees will monitor your contact with inmates.
- Respect all inmates' privacy.
- Ask questions if you have them.

As a volunteer, you can work with inmates directly by becoming either a Registered or Guest Volunteer. Registered Volunteers commit to scheduled weekly visits, whereas, Guest Volunteers perform a specific service either on a one-time-only or once-a-month basis. You can also serve inmates indirectly, for example, by assisting the Volunteer Services Branch with projects or an institution with chapel fund raising efforts, etc.

NOTE: Volunteers must be at least 18 years old or have written parental consent and be accompanied by an adult who is an approved Department of Corrections' volunteer.

Applications completed to volunteer with the South Carolina Department of Corrections Volunteer Program should be mailed to the institutional Chaplain/Volunteer Coordinator location, where you would like to provide services.

Questions: Call Inmate Services (803) 896-8858

Back to Top

Contact Information:

Headquarters

Islamic Affairs

P. O. Box 21787
 4444 Broad River Road
 Columbia, SC 29210
J. Michael (Mike) Brown (803) 896-8504
Branch Chief of Pastoral Services

Broad River Road
 P.O. Box 21787
 Columbia, S.C. 29210
Trevor Faulk (803) 896-2893

Chaplains

Ordered by institution. Click on the institution name for driving directions

Name	Institution	Phone Number
Cleveland Stokes	Allendale	(803) 734-0653
(Vacant)	Allendale	(803) 734-0653
Steven Hendricks	Broad River	(803) 896-2133
Lester Drayton, Jr.	Broad River	(803) 896-2893
Timothy Jones	Broad River	(803) 896-3110
Trevor Faulk	Broad River (Muslim)	(803) 896-3110
Larry Truitt	Camille-Graham	(803) 896-1252
(Vacant)	Camille-Graham	(803) 896-1796
Artemas Woods, Jr.	Evans	(803) 896-4931
(Vacant)	Evans	(803) 896-4970
Aaron Aidoo	Goodman	(803) 896-1780
Steven Miller	Kershaw	(803) 896-3383
Gerald (Gerry) Potoka	Kershaw	(803) 896-3354
Michael Cannon	Kirkland	(803) 896-2063
(Vacant)	Kirkland	(803) 896-2062
Jefferson Kwamina-Crystal	Leath	(803) 896-1000
Edward McKnight	Lee	(803) 896-2485
Norton Newsome	Lee	(803) 896-2484
(Vacant)	Lee (Muslim)	
James Cuttino	Lieber	(803) 896-3711
Edward Moultrie	Lieber	(803) 896-3739
(Vacant)	Lieber	
Jimmie Keller	Livesay	(864) 594-4915
Jason Kersh (vc)	Livesay	(864) 594-4915
Lance Neal (vc)	MacDougall	(803) 734-0459
(Vacant)	Manning	(803) 935-6081
Bobby Hankerson	McCormick	(864) 443-2116
Nedenia Parker-Barber	McCormick	(864) 443-2116
Norma Bartelle (vc)	Palmer	(803) 734-9487
Larry Epps	Perry	(864) 243-4700
David Petre	Perry	(864) 243-4700
Eliud Omwange	Ridgeland	(803) 896-3249

Phillip Wren	Ridgeland	(803) 896-3248
Pythias Chabala	Trenton	(803) 896-3051
Ange Kouadio	Turbeville	(803) 896-3155
Ava Harris	Turbeville	(803) 896-3154
Carolyn (Traci) Bennett	Tyger River	(803) 896-3546
Russell (Russ) Painter	Tyger River	(803) 896-3632
Sherman McBeth	Wateree River	(803) 896-3428
Carrie Smallwood	Wateree River	(803) 896-3429

(vc) denotes Volunteer Coordinator

Back to Top

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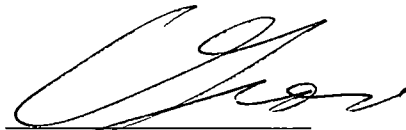
v.

South Carolina Department of Corrections, Respondent.

Certificate of Service

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

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The Honorable Jenny Abbott Kitchings
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Re: *Quincy Allen v. South Carolina Department of Corrections*
Appellate Case No. 2018-002046

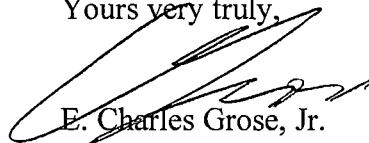
Dear Ms. Kitchings:

Enclosed please find Mr. Allen's Initial Reply Brief of Appellant, along with a certificate of service.

Thank you for your attention to this matter. 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: Mr. Quincy Allen
Annie Laurie Rumler, Esquire

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