

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.

Final Reply Brief of Appellant

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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)

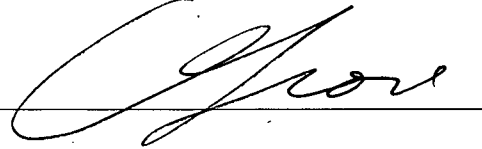
⁴ *Id.* at 2.

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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The Final Reply Brief of Appellant Complies with Rule 211(b), SCACR.



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