

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, #6019,..... Appellant,

v.

South Carolina Department of Corrections,..... Respondent.

Response in Opposition to the South Carolina Department of Corrections Motion to Strike Certain Documents from the Record on Appeal

Quincy Allen responds to the South Carolina Department of Corrections (“SCDC”) Motion to Strike Certain Documents from the Record on Appeal (“Motion”).

1) The SCDC contends that certain documents included in the Record on Appeal are not properly before this Court. These documents are the Request to Staff Member Alice Mascio dated March 26, 2018 (R. 18), the Request to Staff Member directed to the Office of General Counsel dated May 18, 2018 (R. 23), the Inmate Correspondence from Sherman Anderson to Mr. Allen dated June 4, 2018 (R. 25), and a blank SCDC Form 19-127 Request for Visiting Privileges (R. 27-28). The SCDC, however, acknowledges Mr. Allen “did attach copies of these documents to the brief he filed with the Administrative Law Court.” Motion at p. 2. These documents are discussed in Mr. Allen’s brief in the court below. R. 4-10.

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2) Rather than contending these documents were not presented to the court below, the SCDC argues these documents should not be included in the record on appeal because other Administrative Law Judges, in other cases, have excluded from consideration documents the parties attached to their briefs. Motion at p. 2. Although the SCDC has not provided this Court or undersigned counsel with copies of those lower court orders from other cases, it appears that the Administrative Law Judges in those cases issued rulings regarding whether the documents at issue in those cases would be considered. The Administrative Law Judge in this case did not address this issue in his final order. R. 1-3. Nor did the SCDC move the court below to disallow these documents. Because the SCDC did not obtain a ruling on this issue, in this case, from the court below, this issue is not preserved for appeal. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 28 (Ct. App. 2006) (“As a general rule, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal.”).

3) Additionally, the SCDC waived this issue by not asserting it in a timely manner. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387-88 (1992) (“A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended.”). As seen, the SCDC acknowledges Mr. Allen “did attach copies of these documents to the brief he filed with the Administrative Law Court.” Motion at p. 2. Thus, there is no dispute that Mr. Allen placed those documents in the record in the court below. Two of the three Administrative Law Judge orders cited by the SCDC in its motion, at p. 2, were

decided prior to the date of the order on appeal in this case. Thus, the SCDC was aware it could bring a motion in the court below to seek an order excluding those attachments from the record, but it chose not to make that motion. Also, the SCDC did not raise this issue when Mr. Allen filed his designation of matter to be included in the record on appeal in this Court and designated, “Mr. Allen’s Brief in the Administrative Law Court, including in [sic] all attachments.”

4) The SCDC’s reliance on Rule 210(c), SCACR is misplaced because, as SCDC concedes, Mr. Allen “did attach copies of these documents to the brief he filed with the Administrative Law Court.” Motion at p. 2.

5) The SCDC cannot establish prejudice resulting from these documents being included in the record before this Court. The Request to Staff Member Alice Mascio dated March 26, 2018 (R. 18) was responded to by Ms. Mascio. The Request to Staff Member directed to the Office of General Counsel dated May 18, 2018 (R. 23) is stamped “Received May 24, 2019 Inmate Grievance.” Inmate Correspondence from Sherman Anderson to Mr. Allen dated June 4, 2018 (R. 25) is a document generated by the SCDC. The blank SCDC Form 19-127 Request for Visiting Privileges (R. 27-28) is a SCDC form that is identical to the form completed by one of the citizens the SCDC did not allow to visit Mr. Allen that is included in the Record on Appeal, at pp. 59-60. Thus, the SCDC is neither surprised nor prejudiced by any of these documents.

This Court, therefore, should deny the SCDC’s Motion to Strike Certain Documents from the Record on Appeal.

(signature on next page)

Respectfully Submitted,

By  _____

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August 23, 2019
Greenwood, South Carolina

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Certificate of Service

I certify that I have served this pleading 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



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August 23, 2019

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

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

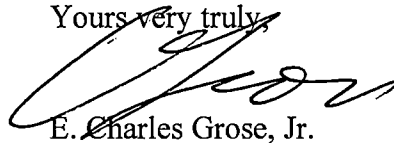
Dear Ms. Kitchings:

Enclosed please find Mr. Allen's Response in Opposition to the South Carolina Department of Corrections Motion to Strike Certain Documents from the Record on Appeal, 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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