

# The South Carolina Court of Appeals

Appeal from Administrative Law Court

Hon. Ralph H. Anderson III

**RECEIVED**

Case No. 19-ALJ-04-0277-AP JAN 06 2020

**SC Court of Appeals**

Gregory Perille, #312332, Appellant  
V.

Sc. Dept. of Corrections, Respondant

## MOTION TO STAY ISSUANCE OF WRIT OF SUPERSEDEAS, AND PETITION TO COMPEL A RESPONSE

This motion comes now by, Gregory Perille, Appellant, Pro Se, who duly swears and deposes the following as declaration of issues addressed and issues unanswered by the Administrative Law Court held by Hon. Ralph H. Anderson III, pursuant to Rule 225(a)(b)(c) SCACR and Rule 12(b) SCRCP, Rule 67 SCALCR, applicability of SCRCP and SCACR, "may be applied" in administrative law courts.

### DECLARATION

Appellant addressed the ALC by "Response to Respondant's motion to dismiss" [Enclosed] in which appellant requested pursuant to Rule 64 SCALCR oral argument, at the Judges discretion to further establish the record.

Respondant had filed a motion to dismiss pursuant to Rule 12(b)(6) SCRCF failure of pleading to state facts sufficient to constitute a cause of action, Appellant argued in his response that the entirety of his complaint is a "state-created liberty interest" which constitutes a cause of action and appellant was the only party to state facts sufficient to require remedy. The Dept. of Corrections clearly deprived appellant his right to practice his religious beliefs as well as other stated issues in his complaint. The court and the respondent did not respond to the appellants response.

According to Rule 12(b) SCRCF, On a motion asserting the defense numbered (6) six to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleadings are presented to and not excluded by the court, [non-response constitutes exclusion] the motion shall be treated as one for Summary Judgment and disposed of as provided in Rule 56 SCRCF, and all parties shall be given reasonable opportunity to present all material [Appellant contends by rules of evidence to have been the only party to present any admissible evidence] made pertinent to such a motion.

by Rule 56 SCRPC. In Rule 56, the adverse party may demand a right to trial by jury in a manner prescribed in Rule 38, 39. Where the issues are legal in nature, so that both parties would have a right to a jury trial, one party may not by invoking declaratory proceedings, deprive another party of his constitutional right to a jury trial [oral argument in this case] Leggette V. Smith 226 S.E. 403, 85 S.E.2d (1955) And where issues raised in proceedings for declaratory judgment are legal and not equitable in nature, they must be tried at law if either party insists upon it, and right of jury trial [oral argument] in what is essentially an action at law may not be denied merely because adversary asked that controversy be determined under declaratory procedure, code 1952 § 10-2001 to 10-2014, 10-2009,

When a complaint is dismissed for failure to state facts sufficient to constitute a cause of action, the dismissal is generally without prejudice; the plaintiff in most cases should be given an opportunity to file and serve an amended complaint. Rule 12(b)(6) SCRPC.

In considering a motion to dismiss, the court must accept the allegations of the complaint as true. Kriewel V. Espron 393 F.3d 1068, 1072 (2005) and the court must construe the pleadings in the light most favorable to the party opposing the motion and resolve all doubts in the pleader's favor. Berg V. Popham 412 F.3d 1122, 1125 (2005); S.C. code Ann § 17-27-70(b)

The court filed an order granting respondents motion to dismiss and dismiss "with prejudice" appellants appeal on Nov 27<sup>th</sup>, 2019, received by appellant Dec. 4<sup>th</sup>, 2019, without responding to appellants response dated Oct. 28<sup>th</sup>, 2019. Furthermore Appellant filed a response to Order and notice and demand on Dec 10<sup>th</sup>, 2019 [Enclosed]. The respondent and/or the court was given (30) thirty days to respond to the response dated Dec 10<sup>th</sup>, 2019. And Notice of Appeal was filed December 19, 2019.

## CONCLUSION

For the above stated facts and to the appellants "layman" understanding to the best of his knowledge of this situation. Appellant requests and prays this court will grant a stay of appeal in this entitled case and petition to compel a response from the respondent and the ALJ in compliance with Rule 10 SCACR to both responses the appellant had filed in the ALC. And also, believes an issuance of a writ of superseas pursuant to Rule 241 SCACR is needed in this case due to the misadvised ruling from the ALJ Hon. Ralph M. Adkins III, being dismissed "with prejudice" and granted without any admissible evidence by the respondents.

In The State of South Carolina

Case No. 19-ALJ-04-0277-AP

Gregory Perille, #312332, Appellant  
V.

S. Dept. of Corrections, Respondent

RECEIVED  
JAN 06 2020  
SC Court of Appeals

## SUPERSEDEAS BOND

This order hereby commands the Dept. of Corrections,  
Respondent to:

- 1) Refrain from all retributive acts towards Appellant  
Gregory Perille.
- 2) Refrain from religious discrimination against Appellant.
- 3) Allow Appellant free exercise of his religious beliefs,  
use of religious materials and oils, allow proper space and times  
to worship and proper foods for religious feasts.

Or;

Respondant obtain an Appeal Bond in the amount  
of \$255,000.00 in damages and costs.

~~Date to be subscribed before me~~

the 31 day of \_\_\_\_\_

(Notary Public of South Carolina)

Commission Expires \_\_\_\_\_

Court ordered by \_\_\_\_\_

Certificate of Service

I hereby certify that the undersigned on the 31<sup>st</sup> day of December, 2019 in Beaufortville South Carolina served a copy of Appellant's motion to stay, Issuance of writ of supersedeas, and petition to compel a response on all parties by depositing the same in the US. mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Jenny A. Hutchings, Clerk  
SC. Court of Appeals  
P.O. Box 11629  
Columbia, SC. 29211

SC. General Counsel, S.C.  
P.O. Box 21787  
Columbia SC 29221

RECEIVED

JAN 06 2020

SC Court of Appeals

SCALL  
Judge R. K. Anderson III  
1205 Reflection Sh suite 224  
Columbia, SC. 29201

Date: December 31<sup>st</sup>, 2019

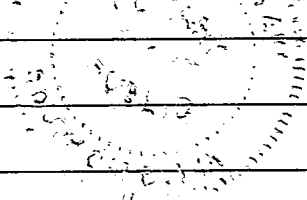
Gregory Runkle #312332  
Evers LE F4A 275  
810 Hwy 9 west  
Beaufortville SC 29512  
Appellant, Pro Se

Witnessed and subscribed before me

on 31 day of Dec 2019

(Notary Public of South Carolina)

Commission Expires 11/7/20

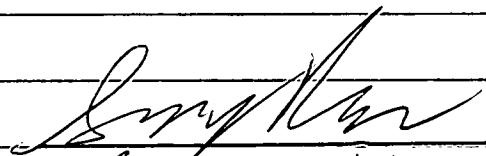


# BELIEF REQUESTED

- A) Place appellants notice of appeal in abeyance, until;
- B) The ALC (Lower Court) is compelled and properly responds to the (2) two timely filed responses of the appellant, and
- C) The ALJ denies respondents motion to dismiss due to it failing to comply with court rules, or
- D) allow appellant pursuant to Rule 12(b)(6) SCRPC (give an opportunity to file and serve an amended complaint); or
- E) order the Lower Court to hold an oral argument, evidentiary hearing, or jury trial as requested by appellants.

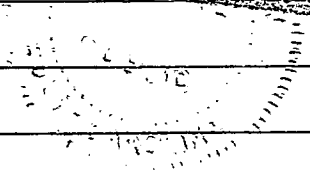
All declarations above are true and correct under penalty of perjury to the best of the undersigned's knowledge and is in the interest of justice.

Date: December 31<sup>st</sup>, 2019



Gregory Perille #312332  
Evans CI F4A 275  
610 Hwy 9 west  
Barnstowville, SC, 29512

Notary Public for South Carolina  
Commission Expires 2/17/24  
31 day of Dec 2019  
S. Perille



(14)

State of South Carolina  
In the Administrative Law Court

Gregory Penelle, #312732

Appellant,

V.

SC, Dept of Corrections,

Respondent.

Docket No. 19-ALJ-04-0277-AP

Grier. No. LEECI-135-19

Hon Ralph. K. Anderson III

Response to Order and  
Notice and Demand

Comes now, Gregory Penelle, Appellant, Pro Se, who duly swears and deposes his response to Order and Notice and Demand, in which the Department's motion to dismiss is granted and Appellant's appeal is dismissed with prejudice.

AFFIDAVIT

The order filed November 27<sup>th</sup>, 2019, is clerically incorrect, misconstruing facts and appellant's arguments and is per incuriam.

Pursuant to SC. Code Ann § 1-23-606 (e) which directs Administrative Law Judges to conduct appellate review in the same manner prescribed in SC. Code Ann § 1-23-380. The court may affirm or remand. Dismissal with prejudice should not be

appropriate for this court.

Furthermore, this court has biased and prejudiced the Appellant by granting respondent's motion to dismiss without proper evidence or fact of Law due to the lack of admissible or substantial evidence when in fact respondent had filed No brief, No record on appeal, and No testimony under oath or affirmation. A "motion" even a motion to dismiss must be supported by affidavit which respondent has not done. Appellant's filings all have been sworn to and/or Notarized and are the only substantial evidence admissible on the record. Therefore, this court has made a grievous error and a miscarriage of Justice and must be corrected within (30) thirty days of receipt of this response. This Notice is not in any way or form to be construed as a motion to reconsider. The Judgment was decided per incurram and imposes no duties, confers no rights, creates ~~no~~ office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it, [16 Am Jur 2d § 177] and is void.

It is further presumed that any and all issues not addressed or rebutted in respondent's motion to dismiss or the subsequent order are therefore Granted in Appellant's favor and an Order should be drafted, issued, and signed by Judge Anderson III stating:

the issues defaulted by respondent and granted by acquiescence to Appellant within (30) thirty days of receipt of this paper.

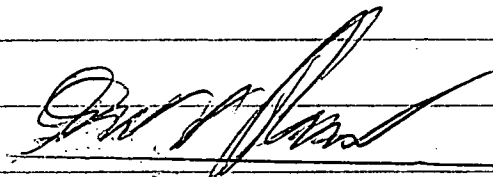
## CONCLUSION

Appellant concludes this response and Notice with full Faith that this court will comply with the conditions set here in with in the allotted time or rebut, point-for-point by sworn affidavit of respondent. No response within (30) thirty days to this notice and demand will signify acquiescence to its terms and may result in further punitive and criminal damages. Notice is therefore given.

I certify under penalty of perjury under the laws of this state in accordance with 28 USC § 1746(1) that the facts provided in this document are true, correct, and complete to the best of my knowledge and belief,

Date: December 10<sup>th</sup>, 2019

~~Notary Public~~ and subscribed before me  
on 10 day of December, 2019  
S. Auttaw  
(Notary Public of South Carolina)  
Commission Expires 11/7/24



Gregory Pencille, #32372

Appellant, Pro, Se,

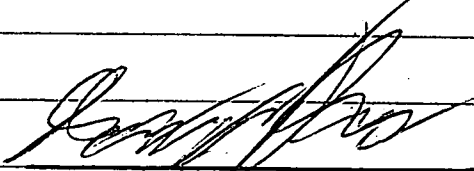
## Certificate of Service

~~10<sup>th</sup>~~ I hereby certify that the undersigned on the 10<sup>th</sup> day of December, 2019 in Bennettsville, South Carolina served a copy of the Appellant's Response to order and Notice and demand on all parties in this matter by depositing the same in the US mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

SC. General Counsel  
SCDC  
P.O. Box 21787  
Columbia, SC, 29221

SCALC  
Judge R. K. Anderson III  
1205 Pendleton St. Ste 224  
Columbia, SC. 29201

Date: December 10<sup>th</sup>, 2019

  
Gregory Perille, 312532  
Appellant, Prose

State of South Carolina  
In The Administrative Law Court

Gregory Pinckley, 312332  
Appellant,

Docket No. 19-ALJ-04-0277-AP  
Griev. No. LFECI 135-19

V.

Hon. Ralph K. Anderson III

SC Dept of Corrections,  
Respondants,

Response To Respondants  
Motions To Dismiss

Comes Now, Gregory Pinckley, Appellant,  
Pro Se, who duly swears and deposes his  
response to respondents motion to dismiss pursuant to  
Rule 63 SCAJR. Also, if deemed necessary  
an oral argument pursuant to Rule 64 SCAJR  
to further establish the record in this matter.

## ARGUMENT

Where respondent states "There is no  
state-created liberty interest implicated by appellants  
allegations". Appellant contends that the entirety of  
his brief in fallibly explains per curiam the  
state-created liberty interest. A constitutional  
violation caused by the actions of a state  
agency are clearly "state created liberty interests".

To expound on the issues and arguments already raised in appellants Initial Brief, RLUIPA, defines religious exercise to include "any exercise of religion, whether or not compelled by, or control to, a system of religious beliefs," 42 USC § 2000cc-5(2)(A). "A person may assert a violation of [the RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief against a government". 42 USC § 2000cc-2(a) [Emphasis added],

To plead a violation of the 1<sup>st</sup> Amendment's free exercise clause, an inmate must merely allege that defendants burdened practice of his religion by preventing him from engaging in conduct mandated by his faith. USCA const. Amend 1<sup>st</sup>

In considering the motion to dismiss, the court must accept the allegations of the complaint as true. Albright V. Oliver, 560 US 266, 114 S. Ct. 807, 127 LEd 2d 114 (1994), Hishon, 467 US at 23, 104 S. Ct. 2232, Krauel V. Espn, 393 F.3d 1068, 1072 (2005). The court also must construe the pleading in the light favorable to the party opposing the motion and resolve all doubts in the pleader's favor. Serkins V. McKritchen, 395 US 411, 421, 89 S. Ct. 1843, 1849, 23 LEd. 2d 404 (1969), Berg V. Popham 412 F.3d 1122, 1125 (2005), moreover, P. 60 S. pleadings are held to a less stringent standard than those drafted by a lawyer. Haines V. Turner, 404 U.S.

519, 520, 92 S.Ct. 594, 596, 30 L Ed 2d, (1972) (per curiam).

Jackson V. Carey, 353 F.3d. 750, 752 (2003). And the complaint should not be dismissed if it states a claim under any legal theory, even if the plaintiff erroneously relies on a different legal theory. Haddock V. Bd of Dental Examiners of Cal, 777 F.2d. 462, 464, (1985). In opposition to motion to dismiss, the Plaintiff clarifies his claim is brought under RLOIPA.

Both State and Federal constitutions assure religious freedom without secular interference, USCA const. Amend 1, 14, const Art 1 § 2, Pearson V. Church of God, 318 SC, 417, 458 SE. 2d. 68.

Furthermore, Respondent cites McNeil V. SDC, 404 SC. 186, 743 SE.2d. 843 (2013). In which the court ruled it would have remanded for further proceedings. Court must consider whether case posed a novel issue and whether the facts should have been developed further. As by Rule 64 SCACR Oral arguments. And/or the "ALC, as fact finder, was authorized to visit site that was subject of petition and draw its own conclusions therefrom. Bisher V. SC. Dept. of health environment control, 393 SC. 198, 712 SE.2d. 428 (2011). Issue preservation is required in administrative appeals. Home medical systems V. SC. Dept. of revenue. 382 SC. 556, 677 SE.2d 582. (2009). As per judgment by Judge Ralph. H. Anderson III, in Gateway V. SDC 416 SC. 304, 785 SE.2d 600 (2017). An issue that is not raised to an administrative agency

is not preserved for appellate review by the ALC; even if the issue has been addressed by the agency, it is not preserved if the appellant did not raise it. Appellant has raised all issues (see supplemental brief) for preservation. Therefore, respondent's argument is moot and motion to dismiss should be denied.

As to Respondent's argument about appellant being transferred to another prison ~~and~~ arguing Wolff v. McDonnell, 418 US 539 (1974) and Meachum v. Fano, 427 US 215, 226-28 (1976) allegedly protecting the agency's reason or lack of reason to transfer, Appellant was protected from transfer due to an act at the time, pending Federal Habeas petition by Rule 23 FRAP. The transfer was therefore in violation of a federal rule and vindictive, which is in fact a, "state-created liberty <sup>Interest</sup> violation".

## CONCLUSION

Therefore, Respondent's motion to dismiss should be denied for all above reasons and those stated in Appellant's brief. And, The ALJ should rule in favor of Appellant's Appeal.

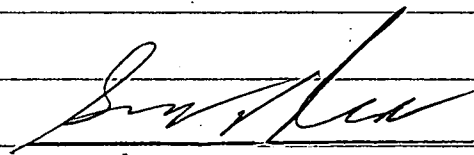
Certificate of Service

I hereby certify, that I, Gregory Penelle, Appellant Pro Se, on the 28<sup>th</sup> day of October, 2019 in Bennettsville, South Carolina served a copy of Appellants Response to Respondants motion to Dismiss on all parties in this matter by depositing the same in the US. mail, postage paid, or in the mailroom of the undersigned's institution and addressed as follows:

SC. General Counsel  
P.O. Box 21787  
Columbia, SC 29221

SCALC  
Judge Ralph K. Anderson III  
1205 Pinckney St Suite 224  
Columbia, SC 29201

Date: October 28<sup>th</sup>, 2019

  
Gregory Penelle, #312332  
Appellant, Pro Se