

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-40-03811

Kenneth Rivera, #318979

South Carolina Dep't of Corrections

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: s/Damon C. Wlodarczyk

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

RICHLAND COUNTY
 FILED
 2020 JAN 29 PM 1:20
 CLERK OF COURT
 COURT HOUSE
 COLUMBIA, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kenneth Rivera, #318979,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2019-CP-40-03811

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS**

2020 JAN 29 PM 1:20
FILED
C.P., G.S., & C.R.

RICHLAND COUNTY
FILED

This matter came before the Court for a hearing on the Defendant's Motion to Dismiss the Complaint. Present at the hearing was the Plaintiff, who is proceeding *pro se*. Also present was Damon C. Wlodarczyk on behalf of the Defendant. After reviewing the record and hearing arguments from both sides, the Court grants the Defendant's motion for the reasons set forth herein.

Plaintiff is an inmate currently incarcerated within the South Carolina Department of Corrections ("SCDC"). Plaintiff filed a Summons and Complaint on July 10, 2019, and subsequently had a copy delivered to SCDC by the Richland County Sheriff's Department. A copy of the Summons and Complaint were not delivered by registered or certified mail to the S.C. Attorney General's Office as required by Rule 4(d)(5), SCRCP.

Plaintiff's Complaint alleges that in April 2019, during an institutional lockdown, SCDC employees served Plaintiff animal products when he alleges to be a vegetarian. Plaintiff further alleges being served animal products violated his religious belief as a Rastafarian under the S.C. Tort Claims Act and the First Amendment to the U.S. Constitution. Plaintiff seeks declaratory relief, actual damages, and punitive damages.

Prior to filing an Answer, Defendant filed and timely served a Motion to Dismiss alleging there were no facts alleged giving rise to a cause of action pursuant to the S.C. Tort Claims Act or a federal claim against SCDC.

In considering a Motion to Dismiss, the Court is to “construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” If the facts alleged and inferences therefrom would entitle the plaintiff to any relief, then dismissal under 12(b)(6) is not proper. *See Freemantle v. Preston*, 398 S.C. 186 (2012).

I. Plaintiff's Complaint fails to state a cause of action under the S.C. Tort Claims Act.

“The Tort Claims Act waives sovereign immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties”. *See Pike v. South Carolina Dep't of Transp.*, 343 S.C. 224, 540 S.E.2d 87 (2000); S.C. Code § 15–78–40. “The Act does not create a cause of action. *See Summers v. Harrison Constr.*, 298 S.C. 451, 381 S.E.2d 493 (Ct.App.1989); *see also Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 444 S.E.2d 498 (1994)(Tort Claims Act does not create new substantive cause of action against government entity). Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act.” *Id.*

In order for Plaintiff to be able to recover against a state agency, he must have suffered a “loss” as defined by the Act. The Tort Claims Act specifically defines loss:

“Loss” means *bodily injury*, disease, *death*, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code § 15-78-30(f).

After reviewing the pleadings in the light most favorable to the Plaintiff, there are no allegations to suggest Plaintiff suffered a bodily injury, disease, death, or damage to

tangible property and, therefore, he has not suffered a “loss” as defined by the Act. The Motion to Dismiss is granted as to Plaintiff’s claim for the alleged violation of the S.C. Tort Claims Act.

II. Plaintiff’s Complaint fails to state a cause of action under the 42 U.S.C. § 1983.

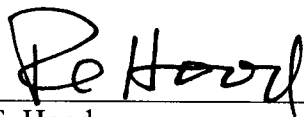
Alleged violations of the U.S. Constitution are enforceable through a private cause of action under 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *Mills v. Greenville County*, 586 F. Supp. 2d 480, 485 (D.S.C. 2008). However, in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), the United States Supreme Court stated that states and state agencies are not “persons” as defined by 42 U.S.C. §1983 and, therefore, are not subject to suit under section 1983.

As the Plaintiff has brought an action against the agency, SCDC, which is not subject to suit under 42 U.S.C. § 1983, the Motion to Dismiss is granted as to Plaintiff’s claim for the alleged violation of First Amendment to the U.S. Constitution.

III. Conclusion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant’s Motion to Dismiss the Complaint is GRANTED, and Defendant’s Complaint is dismissed WITH PREJUDICE.

IT IS SO ORDERED.



Robert E. Hood
Presiding Judge

Columbia, South Carolina

January 29, 2020