

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

Ralph King Anderson, III, Administrative Law Judge
Case No. 2020-000251

Kenneth Rivera, # 318979,
Appellant,

v.

South Carolina Department of Corrections,
Respondent.

RECEIVED

MAR 19 2020

SC Court of Appeals

INITIAL BRIEF OF APPELLANT

Kenneth Rivera #318979
BPCI- Wateree B# 225
4460 Broad River Road
Columbia, SC 29210

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STATUTES

S.C. Code Ann. § 24-9-20 (1976)
S.C. Code Ann. § 24-27-500 (1976)

OTHER AUTHORITIES

SCDC Policy/Procedure ADM-16.05 Food Service Operations
SCDC Policy/Procedure PS-10.05 Inmate Religion

STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Judge err in failing to see that Appellant dietary law of his religion was violated?
2. Did the Administrative Law Judge err in failing to see that SCDC violated their own policies?

STATEMENT OF THE CASE

1. On or during the month of April 2019 Appellant was confined to SCDC Broad River Correctional Institution Monticello Unit A #187.
2. During his confinement BRCI was on institutional lock down and given bag lunch meals for about 2 weeks.
3. Appellant is a Rastafarian and observe the Ital diet of his religion. Appellant noticed in these bag lunches meat products.
4. Appellant had to deny his meals and SCDC refuses to accommodate him with non-animal products.
5. Appellant has been a vegetarian for 10 years in SCDC, the Respondent are aware that he have been challenging his diet for 10 years.
6. On April 3, 2019; April 16, 2019; May 2, 2019 Appellant submitted to Food service ARTSM ("Automated Request TO Staff Member") to resolve the issue. see SCDC kiosk system.
7. On April 17, 2019, Appellant filed a Step 1 Grievance about the violation.

8. On June 26, 2019, Appellant received a denial of his Step 1 grievance from BRCI Warden Stephan.
9. On June 26, 2019; Appellant filed a Step 2 Grievance appealing the Warden's decision.
10. On August 27, 2019; Appellant Step 2 Grievance was denied for the same reasons of his Step 1 grievance.
11. On September 12, 2019, Appellant filed his Notice of Appeal to the Administrative Law Court ("ALC").
12. On December 5, 2019, the record on Appeal was filed.
13. On December 18, 2019, Appellant filed his Brief.
14. On January 15, 2020, SCDC filed a motion to Dismiss alleging Appellant has no state-created liberty interest in receiving a religious diet during a security lock down.
15. On February 3, 2020, Administrative Law Judge Ralph King Anderson, III, dismissed Appellant Appeal with prejudice.

ARGUMENTS

1. Respondent alleges that Appellant has no state-created liberty interest to a diet while on security lock down. But fail to see religion is a First Amendment right and Appellant diet must be honored. In Simmons v. Edmonds, 232 F3d 889 (2000) held:

"An inmate has the Constitutional right to obtain adequate nourishment from prison foods permitted by his religious dietary rules, unless the prison's failure to provide such food is reasonably related to a legitimate penological interest..."

2. However, during security lock down the ADA diet is honored but not vegetarians. SCDC is putting vegetarians health at risk by Appellant denying meals due to non-animal products.

3. Nowhere in SCDC Policy / Procedure ADM-16.05 Food Service Operations, does it state for SCDC to deny Appellant vegetarians meals during security lock down. In fact § 7.3.2 of said policy states:

"Recognized religious meal restrictions will be followed in accordance with SCDC Policy / Procedure PS-10.05, "Inmate Religion." Vegetarians may choose to eat the

the meat-free, animal-free, "Alternate Entree Diet."
The Food Service Specialist will record the participation
of all inmates who are approved to receive the alternate
entree diet. If any inmate(s) does not eat the required
90% of the meals in any month, the Food Service
specialist will notify the institutional chaplain in writing..."

4. Respondent admits that Appellant is a Rastafarian but
yet deny's the Ital law of his belief. Rastafarians observe a
diet called "Ital", which symbolizes a belief in life and an
avoidance of symbols of death. In Benjamin V. Coughlin, 905
F.2d 571 (1990) held:

"Prisoners have a right to receive diets consistent
with their religious scruples..."

5. Also in SCDC Policy/Procedure PS-10.05 Inmate Religion,
it does not state Appellant vegetarian diet is restricted during
security lock down. see § 12. Diets, Fasts, special Holy Day meals.
Also see Rivera V. Byers, 2013 WL 6018616.

CONCLUSION

Appellant attach exhibits A-F. For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

March 14, 2020

Respectfully Submitted,
Kenneth Rivera
Kenneth Rivera #318979
BRCI - Wateree B # 225
4460 Broad River Road
Columbia, SC 29210

Inmate Request - General

Today's Date: 8/22/19 9:12

Name: RIVERA, KENNETH DARRELL
Booking #: SCB0030306
Permanent #: SCP0030306

Reference #: 19-01217056
Date Requested: 04/11/19 13:40
Request Type: Food (Cafeteria and Food)
Requested By: Kiosk

Request Details: PEACE I AM WRITING REGARDING THESE BAG LUNCHES. I AM A VEGAN AND DONT CONSUME ANY ANIMAL PRODUCTS BUT THE PAST TWO DAYS I RECEIVED BAGS WITH MEAT PRODUCTS. Y DID THIS OCCUR

Disposition: Complete
Officer:
Disposition Date: 04/16/19 15:28

Request Responses

Date	Author	Note
04/16/19 15:29	c059214	During this time we only honor ADA diets.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APR 17 2019

Exhibit B

INMATE GRIEVANCE FORM



STEP 1

INMATE ROOM: BRCI Kenneth Rivera

SCDC NUMBER: 318979

INSTITUTION: Broad River C.I.

HOUSING UNIT: Monticello B-187

WORK ASSIGNMENT: Wardkeeper

Grievance No. BRCI 0340.19

Code: General FBIKS

Policy _____

Disc. Hear. _____

Class. _____

PREA _____

Date Received 4-19-19

IGC Initials SO

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I, Kenneth Rivera, #318979 is the grievant of this grievance. On the date of April 17, 2019 at 8:38am I did state the facts. I am a vegan and do not eat or consume animal products. The Food Service Division stated via kiosk "We only honor ADA during lockdown". The past week I've been giving meat products, I have to forfit my meals due to this.

ACTION REQUESTED: I Am requesting to have non-meat products everytime we receive bag lunches.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

19-01217056

Kenneth Rivera 4-17-19

Grievant Signature

Date

Exhibit C

WARDEN'S DECISION AND REASON:

BRCI-0340-19

Your grievance has been reviewed. In it you stated you adhere to a Vegan Diet. You would like to be served items that are consistent with Veganism. Pursuant to ADM-16.05 Food Service Operations, "The SCDC recognizes the importance of proper nutrition to maintain the health and well-being of inmates. The Agency will, therefore, ensure that the food served to inmates is in keeping with all applicable state and federal statutes, DHEC Regulations, and the "Recommended Dietary Allowances" as defined by the National Academy of Sciences, National Research Council". Currently SCDC offers Therapeutic Diets for qualified persons, which is reviewed and approved through Medical. A list of approved therapeutic diets will be maintained in each institutional cafeteria. Vegan Diets have not been approved as a choice of dietary preferences at SCDC. You may consult with Medical to discuss dietary options that may apply to your request.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

[Signature] 6/17/19
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

[Signature] 6/26/19
Grievant Signature Date

[Signature] 6/26/19
IGC Signature Date

Served by [Signature] 6/26/19

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing in the Grievance Box within five (5) days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via placement in the Grievance Box.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

476

JUL 12 2019

Exhibit D

STEP 2

INMATE NAME: Kenneth Rivera
SCDC NUMBER: 318979
INSTITUTION: Broad River C.I. ✓
HOUSING UNIT: Monticello A # 212
WORK ASSIGNMENT: Ward Keeper

Office Use Only
Grievance No. BRCF-0340-19
Code: General FDIFS
Policy _____
Disc. Hear. _____
Class. _____
Date Received 6/26/19
IGC Initials BW

JUL 26 2019
JUL 03 2019

6/19/19

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I, Kenneth Rivera #318979 is the grievant of this appeal. On June 26, 2019 at 12:30pm I did appeal the warden's decision. Nothing warden stephon stated has anything to do with my grievance. Giving me "A Vegan meat products is against Kosher law." since when do Vegans eat meat? I do not eat meat period....

Kenneth Rivera 6/26/19
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your grievance has been reviewed. In it you stated you adhere to a Vegan Diet. You would like to be served items that are consistent with Veganism when bag lunches are served. You were informed of South Carolina Department of Corrections' current policy regarding dietary needs. Requirements are met by the Agency pursuant to ADM-16.05 Food Service Operations which states, "The SCDC recognizes the importance of proper nutrition to maintain the health and well-being of inmates. The Agency will, therefore, ensure that the food served to inmates is in keeping with all applicable state and federal statutes, DHEC Regulations, and the "Recommended Dietary Allowances" as defined by the National Academy of Sciences, National Research Council". Security-related concerns may cause normal operations to be modified in an institution. Special arrangements will be made by the Food Service Nutritionist or designee to ensure that the medical dietary needs of the inmates are met. Service of therapeutic diets will be limited to diabetics, hypoglycemics, and renal inmates for meals when emergency feeding practices are employed. Religious diets will be provided only if the circumstances make it feasible to do so. Meals (whether hot meals or sack meals) will be wholesome and nutritious and will be prepared and served according to dietary guidelines and Food Service regulations as they relate to your dietary plan approved by Medical. Various items are sold in the institution Canteen, when accessible to offenders, as an alternative to food items served through Food Service.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Relie Alan 8-27-19
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Exhibit E

South Carolina Department of Corrections
Division of Support Services
DAILY ALTERNATE DIET ROSTER

BROAD RIVER CORRECTIONAL INSTITUTION

DATE: October 21, 2019

Name	SCDC#	Diet	Bkfst	Dinner	Supper	Snack	Index
GREENWOOD							
KELSEY, JOSEPH G.	217218	VEGETARIAN		At Work			1004
WHIPES, PRINCE D.	356225	VEGETARIAN		CHAPEL	At Work		938

Total Alternate Trays This Unit = 2

10/21 10/21 10/21

MARION							
BLASSINGAME, TIMOTHY	213064	VEGETARIAN					864
JOHNSON, CURTIS T.	337543	VEGETARIAN					110
MOORE, ROBERT	155652	VEGETARIAN					724
MULLINS, TERRANCE	302684	VEGETARIAN					771
TAMISO, SAYER A.	370196	VEGETARIAN					980

Total Alternate Trays This Unit = 5

10/21

MONTICELLO							
BROWN, JOSHUA T.	286520	VEGETARIAN					945
CANNON, DONTELLE D.	317657	VEGETARIAN					886
COOK III, WORTH E.	293532	VEGETARIAN					761
GRIFFIN, TERRANCE	327735	VEGETARIAN					101
JOHNSON, KADEEM S.	350533	VEGETARIAN					1047
MEADOWS, WILLIAM D.	375319	VEGETARIAN					954
PARKER, KEVAN D.	379381	VEGETARIAN					808
RIVERA, KENNETH D.	318979	VEGETARIAN					1087
WRIGHT, RAYON D.	370455	VEGETARIAN					258

Total Alternate Trays This Unit = 9

MOULTRIE							
BELCHER, CRANDALL C.	292796	VEGETARIAN					944
DIGGS, BRIAN A.	248964	VEGETARIAN					314
PATTERSON, JAMES B.	217543	VEGETARIAN					631
WASHINGTON, LOWELL J.	240109	VEGETARIAN					686

Total Alternate Trays This Unit = 4

10/21 10/21 10/21

FOOD SERVICE SPECIALIST ON DUTY:

E. Barber

SC 20-69 (Rev. January 2004)

Breakfast

Dinner

Supper

Snack

ATTENTION: WHEN A DIET OR SNACK BAG IS RECEIVED IT MUST BE INITIALED.
CHECK MARKS ARE NOT ACCEPTABLE AND CAN NOT BE COUNTED!

Exhibit F

South Carolina Department of Corrections
Division of Support Services
DAILY ALTERNATE DIET ROSTER

BROAD RIVER CORRECTIONAL INSTITUTION

DATE: October 21, 2019

Name	SCDC#	Diet	Bkfst	Dinner	Supper	Snack	Index
MURRAY							
ANDERSON, JAMES E.	256077	VEGETARIAN		UNIT	UNIT		194
MADDOX, BRANDON	373215	VEGETARIAN					793
RAMEY, JOSHUA G.	379617	VEGETARIAN					760
WIGGINS, KENNIER J.	265346	VEGETARIAN		UNIT	UNIT		616

Total Alternate Trays This Unit = 4

10/21

WATEREE			Bkfst	Dinner	Supper	Snack	Index
BUTLER JR, SHELTON L.	339834	VEGETARIAN					848

Total Alternate Trays This Unit = 1

10/21

10/21

10/21

FOOD SERVICE SPECIALIST ON DUTY:

E. Barber

SCDC 20-69 (Rev. January 2004)

Breakfast *[Signature]*
Dinner *[Signature]*
Supper *[Signature]*
Snack *[Signature]*

**ATTENTION: WHEN A DIET OR SNACK BAG IS RECEIVED IT MUST BE INITIALED.
CHECK MARKS ARE NOT ACCEPTABLE AND CAN NOT BE COUNTED!**

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PROOF OF SERVICE

I certify that I have served Appellant Initial Brief on SCDC by depositing a copy of it in the United States Mail, postage prepaid, on March 14, 2020, addressed to attorney of record Annie Rumber, P.O. Box 21787, Columbia, SC 29221-1787.

March 14, 2020

Kenneth Rivera

Kenneth Rivera # 318979

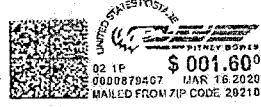
BRCI - Wateree B # 225

4460 Broad River Road

Columbia, SC 29210

Kenn
Brett

4460 Broad River Road
Columbia, SC 29210



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Columbia, SC 29211

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