

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APR 16 2020

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

**SC Court of Appeals**

ALC Case No. 19-ALJ-04-0446-AP  
Appellate Case No. 2020-000251

Kenneth Rivera, #318979.....Appellant,

v.

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

**INITIAL BRIEF OF RESPONDENT**

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Annie Laurie Rumler**

Deputy General Counsel

Office of General Counsel

South Carolina Dept. of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-8508

**ATTORNEY FOR RESPONDENT**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF THE ISSUE ON APPEAL .....1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW .....3

ARGUMENT .....4

CONCLUSION.....7

**TABLE OF AUTHORITIES**

**CASES**

*Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).....4  
*Hendley v. Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996).....3  
*Kentucky Department of Corrections v. Thompson*, 490 U.S. 454 (1989).....6  
*McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001).....4  
*Simms v. Edmonds*, 232 F.3d 889 (4th Cir. 2000).....5  
*Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).....5  
*Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).....5  
*Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003).....4  
*Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748 (2005).....6  
*Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004).....4

**STATUTES**

S.C. Code § 1-23-610.....3  
S.C. Code § 24-1-90.....7

**STATEMENT OF ISSUE ON APPEAL**

**DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST?**

## STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Kenneth Rivera (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). On April 17, 2019, Appellant filed a Step One grievance asserting that he was being denied a vegan diet on days during which his institution served bagged lunches. *See Step One Grievance*. On June 17, 2019, SCDC denied the Step One grievance. *See Step One Grievance*. Thereafter, on June 26, 2019, Appellant filed a Step Two grievance appealing the disposition of his Step One grievance. *See Step Two Grievance*. On August 27, 2019, SCDC denied the Step Two grievance. *See Step Two Grievance*. Appellant appealed to the Administrative Law Court on September 7, 2019. *See* appellant’s Notice of Appeal to the ALC. Administrative Law Judge Ralph King Anderson, III dismissed that appeal on February 3, 2020. *See Judge Anderson’s Order*. This appeal follows.

## STANDARD OF REVIEW

S.C. Code § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

## ARGUMENT

### **THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL WHERE APPELLANT'S CLAIMS DID NOT IMPLICATE A STATE CREATED LIBERTY OR PROPERTY INTEREST.**

The ALC's jurisdiction to hear appeals from final agency decisions of the South Carolina Department of Corrections is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the South Carolina Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state-created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state-created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be

viewed as expanding the jurisdiction of the [ALC] in any other circumstance.”); *Slezak v. S.C. Dep’t of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC “may summarily dismiss those appeals that do not implicate an inmate’s *state created* liberty or property interest”) (emphasis added). Further, this Court has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. *Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

This appeal concerns a few weeks in April of 2019 during which Broad River Correctional Institution was operating under security lockdown procedures. *See* Appellant’s ALC Brief, p. 2. During a security lockdown, food service staff must make bagged lunches for every inmate in the institution and then deliver those lunches to the various housing units. This is much more time consuming than preparing food which will be served to the majority of the population in a central location. Additionally, they must take into account the medical dietary needs of some inmates when making these bagged lunches. For this reason, it is not always feasible for those staff to accommodate inmates’ religious dietary restrictions during security lockdowns. *See* SCDC’s Response to Appellant’s Step Two Grievance. Appellant, who was housed at Broad River Correctional Institution during this time, allegedly did not receive his religious diet. *See* Appellant’s ALC Brief, p. 3.

While Appellant does have a right to dietary options which conform to his religious beliefs, that right can be limited where doing so serves a legitimate penological interest. *Simms v. Edmonds*, 232 F.3d 889 (4th Cir. 2000). During the time period in question, Broad River Correctional Institution was operating under security lockdown procedures in order to

ensure that the inmates and staff remained safe. Food services staff had to provide nutritional meals to the entire population while operating under these procedures. This is a legitimate penological goal. Tasked with creating an individual bagged lunch for each one of the institution's inmates, of which there were over 1,000, and then delivering these lunches, they simply did not have the resources to accommodate religious dietary restrictions during that time. *See* SCDC's Response to Appellant's Step Two Grievance. Managing their limited resources by prioritizing only the specialized dietary needs of inmates whose health would otherwise be negatively impacted is a reasonable method of achieving their goal. As such, Appellant had no right to a special diet which conformed to his religious beliefs during this time period.

Even assuming, for the sake of argument, that Appellant did have a liberty interest in receiving a religious diet during this time period, that liberty interest is not one which is state-created. The United States Supreme Court, in *Kentucky Department of Corrections v. Thompson*, articulated the test by which a court can determine if a state has created a liberty interest. 490 U.S. 454, 109 S. Ct. 1904, 104 L. Ed. 506 (1989). The Court stated that a state creates a liberty interest by (1) "establishing 'substantive predicates' to govern official decision-making" and (2) mandating a certain outcome "be reached upon a finding that the relevant criteria have been met." *Id.* at 462, 109 S. Ct. at 1909 (internal citation omitted). In *Town of Castle Rock, Colorado v. Gonzales*, the Supreme Court further clarified the second prong of the *Thompson* test stating that a person is not entitled to, and thus has no property interest in, a benefit "if officials have discretion to grant or deny it." 545 U.S. 748, 748, 125 S. Ct. 2796, 2798-99, 162 L. Ed. 2d 658 (2005).

South Carolina law does not address the provision to inmates of meals which conform with their religious beliefs. However, under the authority granted him by S.C. Code § 24-1-90, the Director of the Department of Corrections has promulgated policies regarding provision of religious diets within SCDC institutions: SCDC Policy ADM-16.05, "Food Service Operations" and PS-10.05 "Inmate Religion." These policies do establish procedures by which an inmate may qualify for religious meal service. However, they do so only in the context of regular meal service within the institutional cafeteria. Neither of these policies mandate the provision of a religious diet to inmates during a security lockdown. As was explained to Appellant, religious dietary restrictions are accommodated "only when it is feasible to do so." See SCDC's Response to Appellant's Step Two Grievance. As such, neither part of the *Thompson* test is satisfied and Appellant has no state created liberty interest in receiving a diet which conforms with his religious restrictions during a security lockdown.

Because no state created liberty or property interest is implicated in this case, Administrative Law Judge Anderson's February 3, 2020 Order dismissing this appeal on this basis was proper and should be upheld.

### **CONCLUSION**

The Administrative Law Court's decision below is supported by substantial evidence and is neither effected by legal error nor clearly erroneous in view of the whole record. Thus it should be upheld.

Signature block on following page.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**



---

**ANNIE LAURIE RUMLER**

South Carolina Bar # 101851  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

April 13, 2020

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 19-ALJ-04-0446-AP  
Appellate Case No. 2020-000251

**RECEIVED**  
APR 16 2020  
SC Court of Appeals

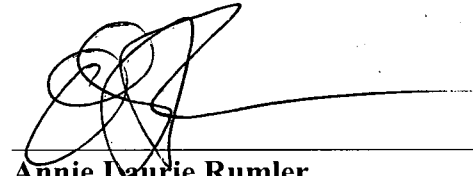
Kenneth Rivera, #318979.....Appellant,

v.

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

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Kenneth Rivera, #318979, Dorm-Room-Bunk: WA-0225-B, Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina, 29210.



**Annie Laurie Rumler**  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-8508

April 13, 2020



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

April 13, 2020

**RECEIVED**  
APR 16 2020  
SC Court of Appeals

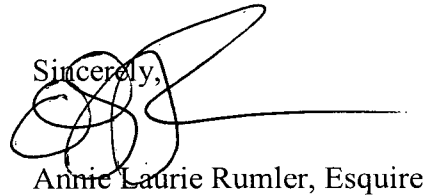
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Reference: App. Case No.: 2020-000251 (*Kenneth Rivera, #318979*  
*v. South Carolina Department of Corrections*)

Dear Madam Clerk:

Enclosed, please find the original and one copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal. Please file the originals and return a clocked stamped copy of each to me in the enclosed self-addressed stamped envelope. Thank you.

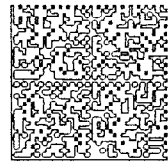
Sincerely,



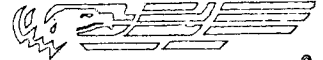
Annie Laurie Rumler, Esquire

Enclosure

cc: Kenneth Rivera, #318979



U.S. POSTAGE » PITNEY BOWES



ZIP 29221 \$ 002.00<sup>0</sup>  
02 4W  
0000338207 APR. 13 2020



**SOUTH CAROLINA**

DEPARTMENT OF CORRECTIONS

*Office of General Counsel*

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787

**RECEIVED**

APR 10 2020

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211