

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

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SC Court of Appeals

FINAL BRIEF OF APPELLANT

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

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STATUTES

S.C. Code Ann. § 24-9-20 (1976)

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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 lunches meals for about 2 weeks.
3. Appellant is a Rastafarian and observe the Ital diet of his religion. Appellant notice in these bag lunches meat products.
4. Appellant had to deny his meals and SCDC refuse's to accommodate him with non-animal products.
5. Appellant has been a vegetarian for 10 years in SCDC, the respondents are aware that he has been challenging his diet for 10 years.
6. On April 3, 2019, April 16, 2019, and 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 his Step 1 Grievance about the violation.
8. On June 26, 2019 Appellant received a denial of his Step 1 Grievance from BRCI Warden Stephen.
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 SCPC 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 Brief/Appeal with prejudice.

ARGUMENTS

1. Respondent's alleges that Appellant has no state-created liberty interest to a diet while on security lock down, but fail to see that religion is a First Amendment right and Appellant diet must be honored. In Simmons v. Edwards, 232 F.3d 889 (2000) has 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... "

However, during security lock down the ADA diet is honored but not vegetarians. SCDC is putting vegetarians health at risk by not providing Rastafarians or any vegetarian non-animal products. Nowhere in SCDC Policy/Procedure ADM-16.05 Food Service Operations, does it states for SCDC to deny vegetarians meals during security lock down, In fact § 7.3.2 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 meat-free, animal-free, "Alternate Entrée Diet." The Food Service Specialist will record the participation of all inmates who are approved to receive the alternate entrée 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 Chaplin in writing..."

2. 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) the Court held:

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

Also in SCDC Policy/Procedure PS-10105 Inmate Religion it does note state inmates vegetarian diet is restricted during security lock down. See § 12: Diets, Fasts, Special Holy days meals. Also See Rivera v. Byars, 2013 WL 6018616.

CONCLUSION

Appellant ask this court to see his record on Appeal, he also ask this court to see to it that SCDC honor his diet. For the reasons stated, this court should reverse the judgment of the Administrative Law Court.

May 18, 2020

Respectfully Submitted,

Kenneth Rivera

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies
with Rule 211 (b), SCACR.

May 18, 2020

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