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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Administrative Law Court

H.W. Funderburk, Jr., Administrative Law Judge

Case No. 21-ALS-04-0103-AP

Appellate Case No. 2021-000439

Kenneth Rivera, #318979, Appellant,

v.

South Carolina Department of Corrections, Respondent.

INITIAL BRIEF OF APPELLANT

Attorney On Record
The Office of General Counsel
SCDC
P.O. Box 21787-1
Columbia, SC 29221-1787

Kenneth Rivera
Kenneth Rivera #318979
BRCE - Wateree B #225
4460 Broad River Rd.
Columbia, SC 29210

May 21, 2021

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Antonelli v. Sheehan, 81 F.3d 1422-1432 (7th Cir. 1996)

OTHER AUTHORITIES

SCDC Policy/Procedure PS-10.08 Inmate Correspondence Privileges

Also see § 8.1 Delivery of Incoming mail

Bryan V. Werner, 516 F.2d 233-238 (3rd Cir. 1975)

Antonelli v. Sheehan, 81 F.3d 1422-1432 (7th Cir. 1996)

STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court err in failing to grant Appellant's Notice of Appeal?

STATEMENT OF THE CASE

On September 16, 2020 Broad River Correctional Institution ("BRCI") was placed on quarantine due to the Covid-19 outbreak at the institution. Since October 2020 Appellant incoming Legal/Privilege Correspondence have been delivered once a week. I have missed court deadlines due to late delivery of legal Correspondence. On several dates Appellant submitted several "ARTSM" to various staff to resolve this matter. ("see SCDC Automated Request to Staff member...")

ARGUMENTS

1. Because Respondent could have resolved the late delivery of legal/privilege correspondence Appellant's First Amendment right was violated.

In Rowe v. Shake, 196 F3d 778-782 (7th Cir. 1999) the Court held:

"Prison regulations or practices that affect a prisoner's legal mail are of particular concern because of the potential for interference with a prisoner's right of access to the courts..."

2. Respondent late delivery of correspondence is in violation of their own policy/procedure.

In SCDC Policy/Procedure PS-10.08 Inmate Correspondence Privileges states:

"§ 5.1 Delivery: All incoming mail will be delivered to the mailroom or designated area for processing. SCDC goal is to distribute letters to inmates within 48 hours of receipt, and packages within 7 days..."

CONCLUSION

For The reasons stated, this Court should reverse the judgment of the Administrative Law Court.

Appellant asks this Court to do a In Camera Review

On SCDC Kiosk system for the following RTSM:

20-01758938; 20-017654440; 20-01788478, 20-01791654;

20-01798511; 21-01817956; 21-01823144; 21-01825713;

May 21, 2021

Respectfully Submitted,

Kenneth Rivera

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H.W. Funderburk, Jr., Administrative Law Judge

Case No. 21-ALS-04-0103-AP

Appellant Case No. 2021-060439

Kenneth Rivera #318979, Appellant,

v.

South Carolina Department of Corrections, Respondent.

CERTIFICATE OF SERVICE

I, Kenneth Rivera do hereby certify that I placed a copy of Appellant's Initial Brief and Designation of Matter in the United States mail, postage prepaid to be delivered to South Carolina Court of Appeals P.O. Box 11629 Columbia, SC 29211.

May 21, 2021

Kenneth Rivera

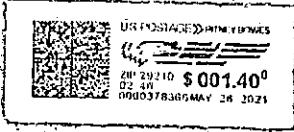
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