

RECEIVED

Aug 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

---

Appellate Case No. 2018-002046

---

Quincy Allen, #6019,.....Appellant,

v.

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

---

***Petition for Rehearing***

---

Pursuant to Rule 221(a), SCACR, Quincy Allen petitions for rehearing because this Court overlooked or misapprehended the matters set forth in this petition.

Although this Court’s opinion cited *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 461 (1989) (“[S]tate law may create enforceable liberty interests in the prison setting.”), Slip Op., at 3, Mr. Allen expressly asked this Court to consider Justice Kennedy’s concurring opinion identifying this limitation of the holding in *Thompson*:

I concur fully in the opinion and judgment of the Court. I write separately to note that this case involves a denial of prison access to particular visitors, not a general ban on all prison visitation. Nothing in the Court’s opinion forecloses the claim that a prison regulation permanently forbidding all visits to some or all prisoners implicates the protections of the Due Process Clause<sup>[1]</sup> in a way that the precise and individualized restrictions at issue here do not.

---

<sup>1</sup> U.S. Const. Am. XIV; *see also* S.C. Const. Art. I, § 3.

490 U.S. at 465 (Kennedy, J. concurring) (footnote added). Brief of Appellant, at 7. Mr. Allen further argued his

appeal involves neither a “denial of prison access to a particular visitor” nor “a general ban on all prison visitation.” On the continuum between these two extremes, a permanent and complete ban on a broad category of visitors—anyone Mr. Allen did not know prior to his incarceration—is much closer to “a general ban on all prison visitation” than a “denial of prison access to a particular visitor,” thereby implicating the due process clause.

*Id.*, at 7-8.

This Court, much like the Department of Corrections in its pleadings and the court below, relies on *Thompson* to hold Mr. Allen does not have a liberty interest, regarding visitation, that was created by the State. *Thompson*, however, actually holds “an individual claiming a protected interest must have a legitimate claim of entitlement to it. Protected liberty interests ‘may arise from two sources—the Due Process Clause itself and the laws of the States.’” *Id.* at 460 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)). Although *Thompson* recognized “unfettered visitation” is not guaranteed by the Due Process Clause, the Court also reminded, “This is not to say that a valid conviction extinguishes every direct due process protection.” *Id.* Mr. Allen does not claim a right to “unfettered visitation.” Rather, he protests the SCDC denying him visitation to an entire class of visitors—anyone he met after his incarceration—without conducting an individualized determination. Because the SCDC failed to conduct an individualized determination, Mr. Allen has a liberty interest pursuant to the Due Process Clause<sup>2</sup> in visitation regarding the issue presented in this litigation.

---

<sup>2</sup> U.S. Const. Am. XIV; S.C. Const. Art. I, § 3.

This Court's opinion does not address the distinction between the facts before the Court in *Thompson* and the issue presented to this Court in the current appeal. The *Thompson* Court explained:

This particular litigation was prompted in large part by two incidents when applicants were denied the opportunity to visit an inmate at the reformatory. The mother of one inmate was denied visitation for six months because she brought to the reformatory a person who had been barred for smuggling contraband. Another inmate's mother and woman friend were denied visitation for a limited time when the inmate was found with contraband after a visit by the two women. In both instances the visitation privileges were suspended without a hearing. The inmates were not prevented from receiving other visitors.

*Thompson*, at 458. *Thompson* thus "involve[d] a denial of prison access to particular visitors, not a general ban on all prison visitation." *Id.* at 465 (Kennedy, J. concurring). "Nothing in the Court's opinion [in *Thompson*] forecloses the claim that a prison regulation permanently forbidding all visits to some or all prisoners implicates the protections of the Due Process Clause in a way that the precise and individualized restrictions at issue here do not." *Id.*

Here, the SCDC did not make an individualized determination specific to Mr. Allen and his proposed visitors. The SCDC banned an entire class of visitors. The suspension of visitation in *Thompson* was temporary. The ban in Mr. Allen's case is permanent. Mr. Allen asserts that placing a permanent ban on an entire class of visitors, without any individualized determination, implicates the protections of the Due Process Clause.

As discussed in Mr. Allen's reply brief, this Court's opinion allows the Department of Corrections to continue down a slippery slope the could lead to banning all visitation:

[M]any people sentenced to the SCDC associated with people who engaged in criminal conduct prior to their incarceration. They might have committed crimes together. They might have consumed illegal drugs together. Sadly, family members sometimes introduce a person to criminal activity or illicit

drug use. The SCDC could conclude that knowing an inmate prior to the inmate's incarceration and wanting to visit that inmate is a security concern and, therefore, prohibit visitors that knew the inmate prior to incarceration. If the SCDC decides to combine such a policy with the policy at issue in Mr. Allen's case, then the SCDC would effectively ban all visitation.

Reply Brief, at 3.

### CONCLUSION

For the foregoing reasons, this Court should grant rehearing, withdraw its opinion, and reverse the Administrative Law Court. Once this Court properly considers *Thompson*, the need to reverse becomes apparent.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

*Attorney for Quincy Allen*

August 19, 2021  
Greenwood, South Carolina

**RECEIVED**

**Aug 19 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

---

Appellate Case No. 2018-002046

---

Quincy Allen, #6019,.....Appellant,

v.

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

---

***Certificate of Service***

---

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2021-03-04-01, Section (c)(13), by emailing at copy to counsel, at their AIS email address, as reflected below:

Christina Catoe Bigelow, Esquire  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, SC 29210  
[bigelow.christina@doc.sc.gov](mailto:bigelow.christina@doc.sc.gov)

Annie Laurie Rumler, Esquire  
S.C. Department of Corrections  
PO Box 21787  
Columbia, SC 29210  
[rumler.annie@doc.sc.gov](mailto:rumler.annie@doc.sc.gov)

By s/E. Charles Grose, Jr.  
E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466

August 19, 2021  
Greenwood, South Carolina

**The Grose Law Firm, LLC**  
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.  
Phone: 864-538-4466 Fax: 864-538-4405  
E-mail: charles@groselawfirm.com  
Web: GroseLawFirm.com

August 19, 2021

**RECEIVED**

**Aug 19 2021**

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: *Quincy Allen v. South Carolina Department of Corrections*  
Appellate Case No. 2018-002046

Dear Ms. Kitchings:

Enclosed please find Mr. Allen's petition for rehearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.  
E. Charles Grose, Jr.

cc: Mr. Quincy Allen  
Christina Catoe Bigelow, Esquire  
Annie Laurie Rumler, Esquire