

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-ALS-04-0446-AP

Appellate 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

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STATEMENT OF ISSUE ON APPEAL

Did the Administrative Law Court Improperly Dismissed Appellant's Appeal Where Appellant's Religion was violated?

STATEMENT OF THE CASE

This matter is before the S.C. Court of Appeals pursuant to the appeal of Kenneth Rivera ("Appellant") from the Administrative Law Court ("ALC"). Appellant at all times mentioned in this appeal is incarcerated within the South Carolina Department of Corrections ("SCDC"). On April 17, 2019, Appellant filed a step one grievance asserting that he was being denied a vegetarian diet during institutional lock down. On June 17, 2019, SCDC denied the step one grievance. Thereafter, on June 26, 2019, Appellant filed a step two grievance appealing the denial of the step one grievance. On August 27, 2019, SCDC denied the step two grievance. Appellant appealed to the Administrative Law Court on September 7, 2019. Administrative Law Judge Ralph King Anderson, III dismissed that appeal on February 3, 2020. This Appeal follows. ("see Amended Record on Appeal").

STANDARD OF REVIEW

42 U.S.C. § 2000cc (1) provides the applicable standard of review:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution...

S.C. Code of Regulations R. 61-84.1305 (B)

If special diets are required, the necessary equipment for preparation of those diets shall be available and utilized...

42 U.S.C. 2000bb § 2 (3)

governments should not substantially burden religious exercise without compelling justification.

ARGUMENT

Did the Administrative Law Court improperly dismissed Appellant's Appeal where Appellant's religion was violated?

The ALC erred in dismissing Appellant's appeal without regarding the facts of his appeal. In April of 2019 Broad River Correctional Institution ("BRCI") had problems with its cafeteria therefore, the institution was giving bag lunches for two weeks. Appellant is a Vegetarian who doesn't consume any animal base products; dairy products, or sugar products.

Appellant is a Rastafarian who abides by the "Ital law" of his belief. As a Rastafari he is not to consume animal products and for two weeks in April of 2019 he had to decline said bag lunch meals, due animal products. Respondent's as well as the ALC are in violation of 42 U.S.C. § 2000bb § 2 (3), 42 U.S.C. § 2000cc (1).

In Respondent's argument they proclaim that it's time consuming to prepare vegetarian bags due to 1,000 inmates bag lunches they must prepare. However, they further state that they prepare ADA bag lunches which is also time consuming. Pursuant to S.C. Code of Regulations R. 61-84.1305 (B) "If special diets are required, the necessary equipment for preparation of those diets shall be available and utilized."

Appellant is a Rastafarian and according to his faith he is not to consume meat products, pursuant to SCDC Policy/Procedure P.S. 10.05 Inmate Religion § 12.2; and SCDC Policy/Procedure ADM-116.05 Food Service Operations § 7.3.2. Nowhere in Respondent's Final Brief do they mention any procedure where it states "Vegeterians are to consume meat during institutional lock down," nor do they provide any evidence to support their claim.

SCDC Policy/Procedure OP-22.07 Institutional Lockdown is a restricted policy to the Appellant. Respondent's have yet to produce any section where they have the authority to violate appellant belief. In Moore v. Janing, 427 F. Supp. 567 (1976) the court held:

"Prison inmates have right to notice of rules which govern prisoner conduct, rights and privileges..."

Procedure OP-22.07 Institutional Lockdown is kept secret from appellant nor do respondent's quote any section to support their argument. Respondent's constantly violates the law and Appellant faith in Jones v. Carter, 915 F.3d 1147 (02/15/2019) the court stated:

"When the State forces a prisoner to choose between adequate nutrition and religious practice, it is imposing a substantial burden on his religious practice under the RLUIPA..."

Here Respondent's have no justification to violate Appellant First Amendment nor have they met their burden by proving any legal standard to support their argument. See Reed v. Bryant, 719 Fed Appx 771 (12-13-2019); Wilson v. United States, 332 F.R.D. 505 (8-19-2019); and Appellant's Amended Record on Appeal.

CONCLUSION

Respondent's Final Brief proves nothing to justify violating Appellant's First Amendment. Appellant ask this court to grant his relief in his original brief, dismiss Respondent's Final brief. For all evidence please see Appellant's Amended Record.

July 14, 2020

Respectfully Submitted,
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CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised order concerning Personal Identifying Information and other Sensitive Information in Respondent's Court Filings."

Signature block on following page.

July 14, 2020

Respectfully Submitted,

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