

Mr. Gabriel Randolph #248729  
Perry CI-Q3-B123  
430. Oakland Rd.  
Pelzer. SC. 29669

The South Carolina Court Of Appeals  
Ms. Jenny A. Kitching; Clerk  
P.O. Box. 11629  
Columbia. SC. 29211

May 16, 2013

RE; Randolph vs. SCDC Case# 2012-213127

Dear, Court/Clerk

Enclose is motion of for rehearing when Appellant did send in  
a PROOF OF SERVICE.

Truly,

*Mr. Gabriel Randolph*

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MAY 22 2013

**SC Court of Appeals**

The South Carolina Court Of Appeals

Gabriel Randolph#248729  
Appellant,

.vs.  
South Carolina Department  
Of Correction  
Respondents,

Case No#2012-213127

Motion For Rehearing

On February,6.2013 the Appellant file Initial Brief with the PROOF OF SERVICE. Appellant ask the court to review Initial Brief and notice that the Proof Of Service is with the Initial Brief. The error can be simply by this court. Appellant has attached the entire Initial Brief with Proof Of Service.

May 16, 2013  
Pelzer.SC.

Mr.Gabriel Randolph#248729  
Perry CI-Q3-B123  
430.Oakland.Rd  
Pelzer.SC.29669

Certificate OF Service Case#2012-213127

I,Gabriel Randolph hereby certify that a copy of Motion For Rehearing was put into US.Mail on \_\_\_\_\_ prepaid & postage to below address:

South Carolina Department Of Correction  
Office General Counsel;Christoher Florian  
P.O.Box.21787  
Columbia.SC.29221

South Carolina Court Of Court Of Appeals  
Ms,Jenny A.Kitching;Clerk  
P.O.Box.11629  
Columbia.SC.29211

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MAY 22 2013  
SC Court of Appeals

MR. GABRIEL RANDLOPH # 24879  
Perry CI- SMU- BX22  
430. Oaklawn Rd. P  
Pelzer, SC. 29669

The South Carolina Court Of Appeal  
Ms. Jenny A. Kitching; Clerk  
P.O. Box 11629  
Columbia, SC. 29211

February 6, 2013

Re; Appellant's Initial Brief ; Appellate No# 2012-213127

Dear, Ms. Kitching; Clerk

Enclose Appellant's Initial Brief which I had put the wrong title of Petition For Writ Of Certiorari on January 2, 2013. Please clock file date original and send me a copy. If there any situation of you doing this, please don't hesitate to write above address.

Sincerely,  
Mr. Gabriel Randolph

cc; SCDC Office General Counsel

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MAY 22 2013

SC Court of Appeals

State Of South Carolina  
In The Court Of Appeal.

Appeal To Richland County

Ralph King Anderson III, Administrative Law Judge

Gabriel Randolph . . . . . Petitioner  
VS

South Carolina Department Of Correction . . . . . Respondent,

APPELLANT'S INITIAL BRIEF

Appellate case No# 2012-213127

Submitted By Pro'Se MR GABRIEL RANDOLPH #248729  
Perry Correction Institution  
430. Oaklawn Rd.  
Pelzer, SC. 29669

Pro'Se, Petitioner

February 6, 2012

South Carolina Dept. Of Correction  
Office Of General Counsel  
Robert M. Peele  
Christopher D. Florian  
P.O. Box, 21787  
Columbia, SC. 29221

Attorney For Respondents

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MAY 22 2013

**SC Court of Appeals**

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## Statutes

- SC. Code of Laws § 24-1-140
- SC. Code of Laws § 24-13-210

## Other Authority

- South Carolina Department Of Correction Policy OP.22-14, Inmate Disciplinary System. . . . . 3

## Issue Presented

1. Did the administrative law judge = "ALJ" err in due process right of petitioner having the right to call witness and document evidence at the disciplinary hearing?
2. Did the ALJ err in due process right of Counsel Substitute McCarthy did not do his duty by South Carolina Department of Corrections = "SCDC" Policy OP. 22-14 Inmate Disciplinary System?
3. Did the ALJ err in due process right of petitioner when Disciplinary Hearing Officer = "DHO" Turner was impartial during the disciplinary hearing?

## Statement

Petitioner Gabriel Randolph appeal to the South Carolina Administrative Law Court="ALC" pursuant to the Notice Of Appeal by petitioner who is incarcerated with "SCDC".

Petitioner appeal the decision of SCDC in his Step One And Two Grievance in which his conviction for Exhibitionism And Public Masturbation "854", SCDC, Policy OP-22-14, Inmate Disciplinary System was affirmed. Petitioner

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appeal on the ground that his due process right were violated, and a violation of sanction with the loss twenty "20#" days Good Time Credit="GTC" and loss of twenty "20#" day GTC for the month of July 2011.

The ALJ affirmed decision of SCDC and petitioner appealed.

This petition follows.

## Argument

Did the administrative law judge = ALJ err in due process right of petitioner having the right to call witness and document evidence at the disciplinary hearing?

Petitioner file a SCDC Request To Staff Member = "RTSM" to DHO and Counsel Substitute on August 8, 2011. Petitioner follow the procedure of SCDC Policy Inmate Disciplinary System, OP-22-14 section 8 through 8.2.6; 9 through 9.7 and 15. through 15.7.3, which policy allow petitioner have witness and document evidence. The disciplinary transcript p03

DHO: This is your opportunity to tell us why you feel you're not guilty in case.

I/M: Did you receive a request from me?

DHO: I have no request from you, sir.

I/M: Um, I did send in a request form.

DHO: Do you have anything relative to the charge you wish to state?

I/M: Um...

C/S: When I interviewed, um, Inmate Randolph yesterday, he indi... he did have the form.

DHO: Okay. Did you...

C/S: I got a photocopy of it yesterday and I talked to him about his question and he then (inaudible) 19 BY. He said that the inmate that resides in (inaudible) BY 20, his name is Shawn Holback, SCDC Number 283843. He witnessed the event and he testified that Inmate Randolph in BY 19 was asleep the entire time (inaudible).

This show that counsel substitute did receive RTSM form and explain to DHO also DHO have knowledge of RTSM form. Petitioner request for document evidence of Cell Check Log of date July 30, 2011 and counsel substitute and DHO denied to get this document evidence, without

any explanation, which SCDC Policy OP-22-14 section 15. through 15.7.3 explain the DHO must explain why document evidence is excluded from disciplinary hearing. DHO did not explain why on (SCDC Disciplinary Report And Hearing Record = "DRHR" form 19-69).

The right to call document evidence and witness in one's behalf is of the due process right accorded in petitioner disciplinary proceeding Wolff v McDonnell 418 US 539 (1974). While this court recognizes the mischief that might be worked if this right is extended to extremes, in the petition at hand the document evidence / witness sought was document of respondent "SCDC" official, and there is no excuse for document evidence of Cell Check Log date July 30, 2011 to be absent at disciplinary hearing. This alone is ground for reversal.

A qualified right to call witness and present documentary evidence in one's behalf is one of the due process right accorded in inmate disciplinary proceeding by Wolff v McDonnell supra. Prison officials have considerable discretion in determining whether to permit and inmate's witness to testify Zaczek v. Hutto 642 F.2d 74 (4th Cir 1981). Court have upheld prison officials' decision to refuse to call witnesses whether the testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. Segarra v. McDade 706 F.2d 1301 (4th Cir 1983) Ward v. Johnson 690 F.2d 1098 (4th Cir 1982) and Brown v. Frey 889 F.2d 159 (8th Cir 1989). However, prison official must provide reason for their refusal to call a witness or present document evidence and that reason must be logically related to institutional safety or correctional goal Ponte v. Real 471 US 491 (1985). The burden of persuasion regarding the existence and sufficiency of these institutional concerns rests with prison official rather than the prisoner Smith v Massachusetts Dept Of Correction 936 F.2d 1390 (1st Cir 1991).

Prison official may choose to explain their decision at hearing or they may choose to explain it late. So long as the reason are logically related to institutional safety or correctional goals, the explanation should meet the due process requirement as outlined in Wolff and Ponte v Real 471 US at 497.

In this petition DHO has offered an explanation whatsoever for its refusal to consider the documentary evidence requested by petitioner. The ALJ ignore this argument on the petitioner,

6.

## Appellant Brief.

Did the ALJ err in due process right of Counsel Substitute McCarthy did not do his duty by South Carolina Department Of Correction =SCDC, Policy OP-22-14, Inmate Disciplinary System?

Petitioner follows policy OP-22-14 section 8. through 8.2.6 to received witness and document evidence for his defense at disciplinary hearing by filing RTSIM to DHO and counsel substitute. Counsel substitute did not do his duty require by procedure of policy OP.22-14 section 8. through 8.2.6. Counsel substitute did not get the document evidence of Cell Check Log date July 30, 2011. The entire disciplinary record reflect that counsel substitute did not do his duty.

In, Eng v Coughlin 858 F.2d 889 (2<sup>nd</sup> Cir 1988), The court decided a prisoner who has been transfer between facilities has right to substantive assistance in preparing a defense. Also in Fox vs Coughlin 893 F.2d 475 (2<sup>nd</sup> Cir 1990), Court held that prison authorities may not refuse to interview an inmate's request witness without assigning a valid reason. The inmate Fox supra ask his hearing officer to interview seven witnesses who had been present when the inmate allegedly pushed, and officer interviewed five of the witness, but declined to interviewed two other because he believed that their testimony would be "redundant".

The court concluded that when an official refuse's to conduct an interview the burden is not upon the inmate to prove the official's conduct was arbitrary and capricious, but upon the official to prove the rationality of his position. The court rejected the hearing officer's proffered reason for refusing to interview the witness, noting that he had no reason to believe that the testimony of the two witness would be redundant.

This case is therefore easily distinguished from Bedoya vs Coughlin 91 F.3d 349 (2<sup>nd</sup> Cir 1996) in which the inmate waived his right to have a witness testify at a disciplinary hearing "by failing either to reiterate his request for testimony when given the opportunity or to object to the close of the hearing. In this petition the petitioner did not waive his document evidence.

and DHO and counsel substitute denied petitioner document evidence.

Did the ALJ err in due process right of petitioner when Disciplinary Hearing Officer = "DHO" Turner was impartial during the disciplinary hearing?

Disciplinary transcript reflect that DHO was impartial throughout the hearing. Disciplinary transcript p.5

IJM: No. Can you ask, um, can you make sure my record... my Inmate Request Form is in the record?

DHO: He has already stated he got you request form, sir, and he took care of your witness issues. It's clearly on the record. Ms. Sloan, is the content of your report true and correct as written?

Petitioner try ask simple question to DHO receiving RTSM form and reply was not call for and not professional of a DHO. The DHO did not go by procedure of policy OP-22.14 which make totally impartial toward petitioner, which, when viewed in light of the failure to allow present document evidence is require a reversal of this disciplinary conviction. The disciplinary transcript reflect that petitioner never had opportunity present document evidence.

Disciplinary transcript p.5

DHO: With that understanding, the information that will be used to support the charge against you will be the Incident Report, previously read into the record, testimony of your accuser during the hearing. I have provided you the opportunity to make a statement, present evidence, call witness on your behalf and I am prepared now to recess this hearing and arrive at a decision. You'll step acrossed, I'll be with...

Petitioner prove that DHO was impartial when he made statement that I had opportunity to present document evidence when I was denied by counsel substitute and DHO.

CONCLUSION

Petitioner writ of certiorari be granted, and all petitioner  
GTC of 20# day and GTC of 20# day for month July 2011.  
be return to petitioner and conviction of charge 854,  
Exhibitionism And Public Masturbation be VACATED.

Respectfully submitted Mr Gabriel Randolph

Mr. Gabriel Randolph # 248729  
Perry CI - SMU - B24  
430. Oaklawn. Rd  
Pelzer. SC. 29669

Date, January 2, 2013

Sworn or affirmed to and subscribed  
before me this 21<sup>st</sup> day of December 2012  
Stuart M. M... ..

Notary Public

My Commission Expires January 7 2016

State Of South Carolina  
In The Court Of Appeal.

Ralph King Anderson III, Administrative Law Judge

Gabriel Randolph I. - - - - - Petitioner,  
vs  
South Carolina Department Of Correction - - - - - Respondent,

Appellate case No# 2012-213127

PROOF OF SERVICE

I, Gabriel Randolph hereby certify that I served the within Appellant Initial Brief on South Carolina Court of Appeal and Respondents by depositing copy of the same in the United State Mail postage and prepaid addressed to his attorneys; on February 6, 2013

South Carolina Department Of Correction  
Office Of General Counsel; Staff Attorney  
Robert M. Peele  
Christopher D. Florian  
P.O. Box 21787  
Columbia, SC. 29221

South Carolina Court Of Appeal  
Jenny A Kitching; Clerk  
P.O. Box. 11629  
Columbia, SC. 29201

February 6, 2013

Submitted By <sup>MR.</sup> Gabriel Randolph # 248729  
Perry CI-SMU-BX22  
430. Oaklawn Rd  
Pelzer, SC. 29669

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