

May 30, 2013

S.C. Court of Appeals

P.O. Box 11629

Columbia, SC 29211

Re: Motion for Reinstatement


Dear Clerk:

Enclosed please find my Motion for Reinstatement of my appeal in the Administrative Law Court. I have provided a copy of the Debit form from when I mailed my original brief on 11-29-12. With the above, I have also enclosed a copy of my November 28, 2012 brief.

I ask that all of the papers be clock stamped and that you please send me a copy of such back w/in the prepaid self-addressed envelope.

Thanks in advance.

Sincerely,



Tekoa Glover, # 271546

Kershaw Corr. Inst. / Smu-20

4848 Goldmine Hwy.

Kershaw, SC 29067

**RECEIVED**

JUN 04 2013

**SC Court of Appeals**

cc: General Counsel  
File.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE  
LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No.: 12-ALJ-04-0774-AP

Tekoa T. Glover, # 271546,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent  
**RECEIVED**

JUN 04 2013

MOTION FOR REINSTATEMENT  
RULE 231, S.C.A.R.

**SC Court of Appeals**

Appellant now moves to be heard by this Honorable Court on his motion for the Reinstatement of his appeal in the administrative law court. Appellant argues that the dismissal of his appeal on May 17, 2013, is in error. Appellant argues that he did in fact file a brief in this matter on November 28, 2012, with such being mailed to the Administrative Law Court and Respondent on November 29, 2012. Appellant has sent his Original Debit Form that was used for the extra postage in mailing such.

Appellant argues that he placed his brief in the possession of the Respondents by and through the Kershaw Corr. Inst., mailroom staff. Appellant further argues that he has had difficulties with the Kershaw Corr. Inst., mailroom staff and has ongoing actions which are supported by and with an extensive paper trail.

Appellant argues that the Respondent's failure to motion for dismissal of this appeal indicates that they are not in support of such. Respondents know that they were served with Appellant's brief in a timely matter, November 28, 2012.

Appellant has provided a copy of his November 28, 2012, Brief of Appellant. Please be advised that this is not a "per se copy" of the original Brief, because it was typed. That brief was typed from the formatted of the now submitted brief.

Appellant now asks that his motion for reinstatement be granted and that his appeal brief be ruled upon. Appellant further asks that the Respondent be Ordered to provide a complete record to include the transcripts.

For the foregoing reasons, Appellant requests that this motion be heard and granted by this Honorable Court, and that the Appellant's appeal be reinstated in the Administrative Law Court, pursuant to Rule 67, of the Administrative Law Court.

Respectfully Submitted,



Tekoa Glover, # 271546

Kershaw Corr. Inst. / SMU-20

4848 Goldmine Hwy.

Kershaw, SC 29067

May 30, 2013

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE  
LAW COURT

S. Phillip Lenksi, Administrative Law Judge

Care No.: 12-ALJ-04-0774-AP

Tekoa Glover, # 271546,

, Appellant .

vs.

South Carolina Department of Corrections,

, Respondent .

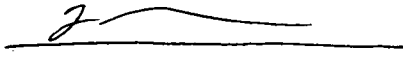
PROOF OF SERVICE

RECEIVED  
JUN 04 2013

SC Court of Appeals

I, Appellant, certify that I have served the Motion for Reinstatement on the South Carolina Department of Corrections, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 30, 2013, addressed to P.O. Box 21787, Columbia, SC 29221-1787.

May 30, 2013

  
Tekoa Glover, # 271546  
Kershaw R.C.I. / smu-20  
4848 Goldmine Hwy.  
Kershaw, SC 29067

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Tekoa Tobias Glover, 271546, )  
)  
Appellant, )  
)  
v. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
)

Docket No. 12-ALJ-04-0774-AP

**ORDER OF DISMISSAL**

Pursuant to ALC Rule 60, the Appellant was required to file a brief with the Administrative Law Court (Court) and to serve the same on all parties "within sixty-five (65) days after the date of assignment." The date of assignment in this case was November 9, 2012. Under Rule 60, the brief was due on or around January 14, 2013. The court has not received the Appellant's Brief.

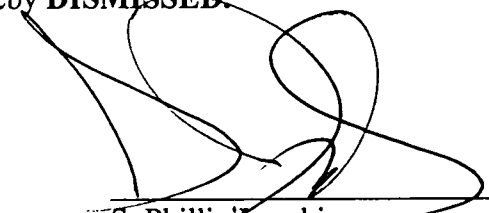
Rule 62, ALC Rules, entitled "Dismissal of Appeal" provides:

Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section (V)....

By filing an appeal, the Appellant has an obligation to advance a position. "There is a limit beyond which the court should not allow a litigant to consume the time of the court . . . ." Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990). Therefore, pursuant to ALC Rule 62, this matter is hereby **DISMISSED**.

**AND IT IS SO ORDERED.**

May 17, 2013  
Columbia, South Carolina

  
S. Phillip Lenski  
Administrative Law Judge

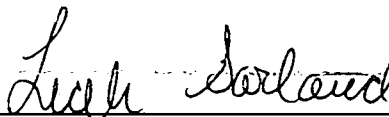
**FILED**

MAY 17 2013

SC ADMIN. LAW COURT

**CERTIFICATE OF SERVICE**

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland  
Law Clerk

May 17, 2013  
Columbia, South Carolina

**FILED**

MAY 17 2013

SC ADMIN. LAW COURT



November 28, 2012

COPY

Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

Re: Case No.: 12-ALJ-04-0774-AP

Dear Clerk:

Enclosed please find my brief for the filing of the original and copy of the same to be returned in the self-addressed envelope. I have served the S.C.O.C. with the same.

Thanks in advance.

Sincerely,



Tekoa Glover, # 271546

Kershaw Corr. Inst. / MA38

4848 Goldmine Hwy.

Kershaw, SC 29067

cc: General Counsel  
File.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Tekoa Glover, # 271546, Appellant,  
v.s.  
S.C. Department of Corrections, Respondent.

BRIEF OF APPELLANT

Case No.: 12-ALJ-04-0774-A0

The Appellant, Tekoa Glover, would now move this Honorable Court to be heard on his Appeal of the final agency decision of the S.C. Department of Corrections, Respondent, pursuant to the rules of the Administrative Law Court. The Appellant is a prisoner at Kershaw Correctional Institution. Appellant now alleges that his U.S. Constitutional and State Created liberty interest rights to Due Process of policies and procedures of Respondent have been violated.

### FACTS

While Appellant was housed at Wateree River Correctional Institution, he was charged with Possession of a Cell Phone or Other Type of Communications Device on 2-24-12, and received notice of such on 2-27-12. Appellant went before the Disciplinary Hearing officer, A. Brown, for the charge on 3-5-12. Appellant entered a not guilty plea to the charge of Possession of Cell Phone, but Appellant was found guilty of the charge Contraband Possession. Appellant was sanctioned to 360 days restriction of Property, Canteen, Phone, and Visit; plus 180 days of Disciplinary Detention. Appellant filed a Step 1 Grievance numbered WRCI-0220-12, on March 16, 2012. On 4-13-12, the grievance was denied, but modified to a reduction on 90 days of all Sanctions, due to the sanctions being excessive. Appellant was unable to be served the Step 1 response and the grievance was closed out on 5-8-12.

Also, while housed at Wateree River Correctional Institution, Appellant received a 10-6 form on 3-14-12, stating that a issue of Don Diva Magazine, Issue # 46, had been disapproved by the CRC (Correspondence Review Committee). Appellant then filed a Step 1 Grievance on 3-27-12. On 4-13-12, the grievance was denied. Appellant was unable to be served the Step 1 response and the grievance was closed out on 5-8-12. This grievance is numbered WRCI-0242-12.

Appellant had a Order To Report for May 7, 2012, to the Grievance Office. However, Appellant lost the Order To Report (OTR) prior to May 7, 2012. On May 7, 2012, Appellant, at approx. 8:40 a.m, informed the wing officer, Ofc. Bradley, that he'd lost his OTR. Ofc. Bradley then called to verify that Appellant was supposed to report to Grievance at 10am. Ofc. Bradley told me that she would

write appellant a pass for grievance. Ofc. Bradley had an incident where she maced several inmates and the wing went on lock-down. Appellant made attempts to get a pass to grievance when the unit was escorted to lunch, but failed. Appellant, however, did drop a Request to Staff Member in the mailbox, to Mr. Hough - Grievance Coordinator, stating the above.

On May 8, 2012, I again attempted to see Mr. Hough, by asking Ofc. Blackmon to call Mr. Hough. Ofc. Blackmon stated he was not permitted to call her, because only white shirts could make that call. Which took place at approx. 8:30 a.m. Later on at approx. 9:20 a.m., Appellant got Sgt. Wright to call Mr. Hough. Sgt. Wright went into the officers station on the south yard and made the call. Which went unanswered. Sgt. Wright told Appellant he would try again later. After leaving the gym, at approx. 10:30 a.m., Appellant asked Ofc. McIntosh to call Mr. Hough. Ofc. McIntosh said he couldn't make the call and we had a verbal altercation. As a result Appellant was placed in the holding cell until approx 1:30 p.m.

Appellant received notice that the above grievances, WRCI-0242-12 and WRCI-0220-12, were closed out for failure to participate. Appellant then filed a Step 1 grievance on the closing of his grievances, on 5-15-12, numbered KRCI-0675-12. On 5-18-12, the grievance was forwarded to the Inmate Grievance Branch for a response. On 8-7-12, the grievance no: KRCI-0675-12 was denied, thereby, being the Agency's final decision. Appellant now appeals the agency's final decision.

### GROUND ONE

Appellant was denied secured Due Process Rights at his 3-5-12 disciplinary hearing for the charge of Possession of a Cell Phone, which was reduced to Possession of Contraband.

In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court described how prison disciplinary procedures should be conducted in order to comply with constitutional due process requirements. *Wolff* holds five requirements for disciplinary hearings involving misconduct: 1) advance notice of the charge be provided 24 hours prior to the hearing; 2) that factfinders must provide a written statement of the evidence relied on and reasons for the disciplinary action; 3) that the prisoner be allowed to call witnesses and present documentary evidence in his/her defense; 4) counsel substitute be allowed when prisoner is illiterate or when the complexity of the issues makes it unlikely that the prisoner will be able to collect and present the evidence necessary for an adequate comprehension of the case; 5) an impartial disciplinary board.

Appellant was denied the right to call witnesses to his hearing. In accordance with SCAC Policy OP 22.14, § 8.2.4, Appellant sent a Request to Staff to the hearing officer on 3-3-12 requesting Lt. Laborn, who was over posting of institutional rules. Ms. Hunter, Librarian of Wateree, and Sandra Bower of Policy development. The hearing officer denied all of them, stating that she did not receive the request 24 hours prior to my hearing. Appellant argued that he'd placed the Request in the mailbox and that she would have received timely notice if she had not expedited the hearing. The hearing was scheduled for 3-7-12 as indicated on the SCAC Form 19-69, in the top righthand corner.

Denial of these witnesses was critical to Appellant's defense. Lt. Laborn would have testified that no institutional policy prohibited debit cards or debit card information. Ms. Hunter would testify that no S.C.D.C. policy existed that prohibited the same. Finally, Sandra Bower, would have testified that no S.C.D.C. policy existed prohibiting debit card or debit card information, but that the Agency was in the process of revising the policy to include such.

Appellant was denied this right by the hearing officer whom failed to state on the hearing record, 19-69 form her reasons for such a denial,

Appellant's defense was that there failed to exist any SCAC policy or procedure that prohibited him from reciting his debit card information to his girlfriend over the inmate phone system. After making it know that this was not a violation of the disciplinary policy of Possession of a cell phone, Warden Beckwith reduced the charge to Contraband. Yet the hearing officer stated he could not do it. Appellant argued that his actions had not violated any agency rule that was in written form.

S.C.D.C. Policy OP 22.14, § 1 states that "All rules and regulations in which a inmate may be punished for must be in written form and posted." There existed any rule in written form for the use of debit card information on 2-27-12, thus, Appellant could not be found guilty for an action that was not prohibited by a SCAC rule or regulation. As proof, review the revised policy of OP 22.14, dated July 2012. In which it now lists as a agency violation in written form. Had it been a rule violation, there would not have been any reason to add it into the new policy.

Convicting Appellant for an offense that was not previously considered a violation per policy, constitutes a due process violation. Forbes v. Trigg, 976 F.2d 308, 314 (7th 1992); Coffman v. Trickey, 884 F.2d 1057, 1060 (8th 1989); Frazier v. Coughlin, 850 F.2d 129 (2nd Cir. 1988); Riss v. Lape, 812 F.2d @ 1038; Richardson v. Coughlin, 763 F.Supp. 1228 (1991); and Grayned v. City of Rockford, 92 Sct 2294 (1972) (stating "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give

the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." There was no policy in place in written form and posted. Therefore, this charge must be dismissed.

Furthermore, during this time, on the S.C.D.C. website, there was a notice to family members for them not to send or provide inmate credit, debit, GreenDot cards etc. The website was scdc's page listed as [www.doc.sc.gov/family/sendingmoney.jsp](http://www.doc.sc.gov/family/sendingmoney.jsp). In which Appellant had no access to this website. Appellant attempted to obtain copies of this page, but the mail was refused, see enclosed 10-2 form, dated 3-3-12.

Ironically, SCDC Policy PS 10.08, Inmate Correspondence Privileges, § 6.1 and 6.1.1, states that "Any printed information from the South Carolina Department of Corrections' or any other correctional/penal institutional internet website, to include pictures scanned from a computer, regardless of the subject matter," is Unauthorized Correspondence.

Clearly a due process violation occurred in this matter. The conviction for contraband for my providing debit card info must be overturned. Even the website doesn't prevent me from giving debit information. It prohibits family from giving it to me.

## GROUND TWO

Appellant was denied due process to the Grievance Policy, thus, denying Appellant of his constitutional right for redress.

---

Appellant argues that he has a state-created liberty interest at stake in his appeal because the Respondent has elected to provide policies that fall under the Sandin v. Conner, 115 S.Ct. 2293 (1995) analysis. Appellant asserts that he contends that the Respondent does not have to provide a grievance system for inmates. However, because the Respondent chose to implement a grievance system, a system set with mandatory language, Appellant has a state-created liberty interest at that point. This liberty interest arises from what the Respondent does, as opposed to what the Respondent has written down in policy.

Appellant argues the SCDC Policy GA. 01.12, "Inmate Grievance System" provides that a Step 2 grievance must be filed within 5 days of receipt of a step 1 response. Appellant argues that the policy fails to stipulate any closing of the grievance for failure to participate prior to the 5 day expiration period.

In the case at bar, Appellant submitted good cause as to why he failed to report to the

grievance office above. Appellant made it known that he did not wish to abandon his grievance in several ways. First, Appellant made several different attempts to get staff members - Ofc. Bradley; Ofc. Blackmon; Sgt. Wright; and Ofc. McIntosh to get him to the grievance office. Next Appellant submitted a Request to Staff the same day by placing it in the mail / grievance box. Finally, Appellant went ahead and submitted a Step 2 grievance on 5-17-12 after allowing Mr. Hough ten days to respond to his 5-8-12 Request to Staff, in accordance with policy GA 01.12.

Appellant argues that he has a constitutionally secured right to redress of the grievance against the government under the First Amendment. These rights cannot be denied without providing due process. Therefore, Appellant's appeal must be granted in his favor.

## CONCLUSION

Appellant argues in closing, that the Respondents' policies of OP 22.14 and GA 01.12, have the purpose of providing universal agency policy and procedure to be followed in similar situations and incidents. Appellant has a due process right to these policies because, one, they are in written form; and two, they are written in mandatory language. Therefore, the Respondents are required to follow their own policies and procedures in order to secure Appellant's due process rights.


The policies serve the purpose of benefit to the inmate that it governs and actions by prison officials which encompass or create due process standards or criteria. When an agency fails to adhere to its own policy and/or established precedent governing said policy, it amounts to a total and complete denial of due process or the "Process Due." U.S. v. Coercis, 440 U.S. 741 (1999) (failure to adhere to administrative regulations promulgated to protect constitutional rights is itself a violation of due process). The failure of the Respondents to follow the procedures and guidelines set forth by OP 22.14 and GA 01.12, offends the Supreme Court's intentions set forth in Wolff, supra and Lewis v. Smith, 855 F.2d 736 (11th Cir. 1988).

As a result of the Respondents failing to follow their own clearly established policy, their ruling cannot stand, and this Court must strike it down. U.S. v. Morgan, 193 F.3d 252 (4th Cir. 1999); U.S. ex rel Accardi v. Shaughnessy, 74 S.Ct. 499 (1954);

and U.S. v. Heffner, 420 F.2d 809 (4th Cir. 1969). Where the entire procedural framework is created, but then not followed by an agency, it is then unconstitutional.

For the above stated reasons, the disciplinary conviction must be overturned.

Respectfully Submitted,



Tekoa Glover, # 271546

Kershaw Corr. Inst. / MA-32

4848 Goldmine Hwy.

Kershaw, SC 29067

November 28, 2012

Kershaw, SC 29067

State of South Carolina  
In the Administrative Law Court

Tekoa T. Glover, #271546,  
Appellant,

vs.

South Carolina Department of Corrections,  
Respondent.

Case No.: 12-ALJ-04-0774-AP

PROOF OF SERVICE

I, Tekoa T. Glover, Appellant in the above named action, hereby certify that I have this day served my "Brief of Appellant" upon the Administrative Law Court, 1205 Pendleton Street, Suite 224, Columbia, SC 29201, by depositing one original and one copy of the same for the copy to be returned in the provided self-addressed prepaid envelope with a clock stamping of such. Appellant further serves the S.C. DC.-Respondent in this action at P.O. Box 21787, Columbia, SC 29221-1787, by depositing all of the above in the legal mail system of Kershaw Corr. Inst., via a SCDC agency, on this day.

Submitted,



Tekoa Glover, #271546

Kershaw Corr. Inst. / MA-38

4848 Goldmine Hwy.

Kershaw, SC 29067

November 28, 2012