

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Chief Administrative Law Judge Ralph King Anderson, III

Case No. 11-ALJ-04-0707-AP

Pedro Wise # 269017,.....APPEALANT,
V.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.....RESPONDENT.

RECEIVED
JUN 19 2013

APPELLANT INITIAL REPLY BRIEF

SC Court of Appeals

Pedro Wise # 269017
Palmetto A # 42
4848 Goldmine Hwy.
Kershaw SC 29067

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STATEMENT OF THE ISSUES ON APPEAL

Did the Respondent properly investigate the case appeal pursuant to SCDC Policy OP. 22-14 under section 19.3

State of South Carolina
Court of Appeals

Pedro Wise #269017
Petitioner

v.

South Carolina Department
of Corrections
Respondent

APPELLANT'S INITIAL

REPLY BRIEF

The petitioner, Pedro Wise ("Petitioner"), would respectfully move this Honorable Court. The petitioner is a prisoner housed at Kershaw Correctional Institution, a facility of the South Carolina department of Corrections ("SCDC"), and files this action in *Farma Pauperis* under 28 U.S.C. 1915. The petitioner alleges that his constitutional rights have been violated by SCDC arising from a prison disciplinary hearing. The petitioner's petition for habeas relief is as follows:

STATEMENT OF CASE

While the petitioner is being housed at Kershaw Correctional Institution he was charged with Possession of a Cell Phone (898) on 3-21-11. Petitioner appeared before the institutional Disciplinary Hearing Officer ("DHO") on 4-12-11 and was found guilty of 898 second offense. The petitioner was sanctioned by the DHO one (1) year security detention unit ("SMU"), two (2) years revocation of all privileges (visitation, property, and canteen). A grievance was filed 4-18-11 (step 1) (the Inmate

Grievance Coordinator ("IGC") refused to file all ~~the~~ issues raised and only Certain issues was reviewed). An additional step 1 grievance against the IGC for failing to file the grievance correctly. The disciplinary appeal was denied. A step 2 was filed on or about 5-18-11, it was denied by SCDC on 8-4-11. A timely notice of appeal was filed on 8-23-11 to the S.C. Administrative Law Court, the appeal was summarily dismissed by the ALC without argument from wither party citing Slezak v. S.C.D.O.C. 361 S.C. 327, 605 SE2d 506 (2004). This position results from the above actions by SCDC and the ALC.

Argument I

The Petitioner has been deprived of his constitutional right to due process under the Wolff criteria as set forth by the U.S. Supreme Court.

Wolff v. McDonnell, 481 US 539, 94 Sct 2963 (1974), the Supreme Court held that due process in a prison disciplinary proceeding involving serious misconduct requires:

1) that advance notice of the charge be provide 24 hours prior to the hearing;

2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action;

3) that the inmate should be allowed to call witnesses and present documentary evidence; provided there is no undue hazard to institutional safety or correctional goals;

- 4) that counsel substitute should be allowed to help illiterate inmates; and
- 5) that the person hearing the matter be impartial.

Argument II

Petitioner's Due Process rights were knowingly and willingly violated where as Petitioner was convicted unto a (898) charge without the charging employee or anyone seeing the Petitioner with any thing to support this claim.

(See Incident report (19-29 A) form).

Argument III

Charging Employee stated that the incident took place at headquarters but Petitioner was not at headquarters at the time this so-called incident was supposedly had taken place.

(Please see Incident Report (19-29 A) form under location of incident, and see Kershaw Roaster dated for March 21, 2011)

Argument IV

Several errors was made in the completion of the (19-29 A) Incident Report form that totally contradicts SCDC Disciplinary policy and procedures op.22-14 such as: 1) The charging employee did not list any evidence whatsoever on the (19-29 A) incident Report form. 2) The charging employee stated that the location of incident was at headquarters. 3) The charging Employee did not mention the Petitioner SCDC number in the narrative part of the Incident Report. 4) The charging Employee failed to give a

general location of the incident. These four (4) issues violates the Petitioner's rights and SCDC Disciplinary Hearing Policy and Procedures.

(Please see Incident Report (19-29 A) form and see policy op.22-14 under Section 3.2)

Argument V

The D.H.O. Ms. Sellers used a copy of a Crime Stoppers report and a copy of an E-mail that she claimed to have to base her decision off of but neither form was submitted into evidence according to the Incident Report form; which is a violation of SCDC Disciplinary Hearing Policy.

(Please see Policy op.22-14 under section 3.2 (Disciplinary Hearing Policy), See (19-29 A) Incident Report form and see 19-69 (Disciplinary record and Hearing record form).

Argument VI

Facebook was not an official S.C.D.O.C. charge until 2012.
(See Policy op.22-14 Amended for 2012)

Argument VII

The charging Employee stated on the Incident Report form that Petitioner was on Facebook but when asked at the hearing on tape if he (charging Employee) had seen or witnessed the Petitioner on Facebook and the charging Employee stated "No." So how can the D.H.O. Ms. Sellers based her decision off the charging Employee's written statement and verbal testimony, where as the charging Employee never stated that he saw, witnessed, or

discovered anything to support this (898) claim or allegation that was brought forth against Petitioner.

(Please see Transcript and/or Review the tape from the hearing (tape 221 side B) starting at 263 and ended at 424, see Incident Report form and Disciplinary Report and Hearing Record form)

Argument VIII

I.G.C. Ms. Hough failed to properly investigate the circumstances behind this charge and I.G.C. and Warden C. Reynolds up held the D.H.O. Decision knowing that the D.H.O.'s Decision violated Petitioner's process Due Rights and SCDC Policy and Procedures.

(Please see step 1 grievance)

Argument IX

The I.G.C. Ms. Hough failed to address the issues that the Petitioner raised dealing with policy op.22-14 under section 3.2

(Please see step 1 grievance and Warden's response and Policy op.22-14 under section 3.2)

Argument X

Responsible official froze Petitioner's Due Process whereas the responsible official upheld the D.H.O.'s and Warden's decision via Petitioner's Step 2 grievance after having knowledge of Petitioner's Step 1 grievance.

(Please see Step 2 grievance)

Argument XI

Responsible official failed to address and investigate the claims that the Petitioner raised. Instead the Responsible official responded to issues and claims that Petitioner did not raise.

(please see step 2 grievance)

Argument XII

Responsible official failed to respond in timely manner according to grievance policy.

(Please see Step 2 grievance and policy GA.01-12)

Conclusion

FOR the former arguments presented, Petitioner is praying that the offense of (898) be overturned and vacated.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

3/29
Tues

Page of

Kershaw Correctional Institution

Report: <u>3/22/11</u>		Time of Report: <u>8:59 AM</u>	
Reporting Official: <u>INV. Sylvia Robinson</u>		Date of Incident: <u>3/21/11</u>	
Location of Incident: <u>Headquarters</u>		Time of Incident: <u>9:03 AM</u>	
Inmate(s)/Resident:	SCDC#	Age	Race Sex
1. <u>Pedro Wise</u>	<u>26907</u>	<u>B</u>	<u>M</u>
2.			
3.			
4.	<u>5mu27</u>		
5.			
Employee(s) Involved:		1. <u>DANIEL Murphy (IG) office</u>	
		2.	
		3.	
		4.	
		5.	

On the above date and approximate time: Mr. D. Murphy of the Inspector General's office emailed INV. S. Robinson that inmate Pedro Wise was on Crimestoppers for phone harassment. Information was that he was on Facebook and that he was calling with a cell phone. The number of the phone was 803-543-0567.

Pedro Wise is being charged with 89B Possession of a Cellphone.

MAR 22 2011

Signature: INV. Sylvia Robinson

Evidence:

Witness(es):

Supervisor's Comments: Refer to Major Seward for 89B.

Signature: [Signature] Title: Capt Date/Time: 3/22/11 11:35am

Major/Responsible Authority: Forward to Otto
Jim will be charged with 89B

Signature: [Signature] Title: MAJ Date: 3/23/11

STG Related - Refer to STG Committee () Yes (X) No () Unknown
This Incident is DRUG related () Yes (X) No () Unknown
911 NMIT
Action Taken
() Informal Resolution
() Administrative Resolution
(X) Refer to Disciplinary Hearing

3/28

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD**

Case#: 00065 Inmate Name: Wise, Pedro SCDC#: 269017
 Living Area: SMU27 Job: NA Custody: NA
 Offense Date: 3/21/11 Offense Time: 9:03 AM/PM Institution: Kershaw

Offense Description:
 898 The Possession of Any Cell Phone or Other Type of Communication Device: Possession of, receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, buys, sales of cellular phones or other communications equipment and/or any components thereof.

Charging Officer/Employee: Sylvesta Robinson Title: Investigator
 INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
 I DO NOT WANT TO BE PRESENT AT MY HEARING
 I DO WANT MY ACCUSER PRESENT AT THE HEARING
 I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

I WAIVE MY RIGHT TO A HEARING
 SMU/SEGREGATION ONLY Armsstrong
 I WANT A COUNSEL SUBSTITUTE
 I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 3/28/11 8:05 AM/PM By (Print): Sgt. M. Blackmon
 Inmate Signature: Pedro Wise SCDC#: 269017 Date: 3/28/11

HEARING INFORMATION:

Hearing Date: <u>4/12/11</u>	Hearing Time: <u>10:20 am/pm</u>	Tap: <u>221</u>	Side: <u>B</u>	Start: <u>263</u>	End: <u>429</u>
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EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING.

Unable to contact 9.1 NMH @ 10:25am

OFFENSE CODES	<u>898</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: Written & verbal testi- mony of Robinson, an email and crime stoppers form.

HEARING LENGTH: 11 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): _____
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 * Canteen (Days) 360+360=720 Visit Suspension Thru 1/1 360+360=720
 * Other phone (Days) 360+360=720 Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 360-22=338

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 2nd offense of 898

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 22

DATE INMATE PLACED IN PHD 3/22/11

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Pedro Wise DATE: 4-12-11

HEARING OFFICER (PRINT NAME): Sylvesta Robinson

APPROVED/REVERSE/MODIFY [Signature] REASON _____
 Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record
 Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)
 Canary - Inmate (Service of Disciplinary Report)
 Pink - Criminal Record

** (Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

Handwritten initials/signature

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1
APR 18 2011

INMATE NAME: PEDRO WISE

SCDC NUMBER: 269017

INSTITUTION: Kershaw

HOUSING UNIT: S.M.U. # 27

WORK ASSIGNMENT: N/A

APR 19 2011
KERSHAW CI
GRIEVANCE

Office Use Only
Grievance No. FILE 0653-11
Code: General
Policy
Disc. Hear. 007/105
Class. HO 4/12/11
Date Received 4/14/11
IGC Initials PA

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
On 4-12-2011, I was convicted of an 898 Possession of a cell phone charge. MR. D. Murphy was the one that was supposedly had received this crime stoppers tip, so why isn't he the charging employee/officer? He is an SCDC employee so there for he can write an incident report. In the narrative part on the 19-29A Investigator Robinson said that MR. D. Murphy emailed him that I was on crime stoppers for phone harassment, but investigator Robinson didn't list who or what I was supposedly had harassed. Then in Mr. Robinson next phrase he says that I was on face book and that I was calling with a cell phone. Now Mr. Robinson didn't produce no pictures of no phone, nor did he receive a phone from me, my property nor my surroundings. When asked if he went on face book to see if I had a face book account he stated no. Then investigator Robinson put headquarters as the location of incident. Now for that to be so that means I had to be at that place when the so-called incident took place. Now what Building/Dozm on this yard is named or called headquarters. Then investigator Robinson didn't list anything as evidence which is a violation of SCDC Policy and procedures op. 22-14 under section 3.2 that section of the policy (section 3.2 of policy op 22-14) states: A description of facts (1) facts of offenses to include at a minimum (1) The name and SCDC number of the inmate (2) the name of all witnesses (3) The general location of the offense and a full statement of the facts underlying the offense to include witnesses, evidence and disposition of evidence (4) The reporting employee's signature (continue on pg 2).

ACTION REQUESTED: For charges and sanctions to be over turned and dismissed, for all policies and sections to be looked in to and studied before making decision on this appeal for a copy of the email and crime stoppers report be forwarded to me. For the tape to be reviewed by myself and the I.G.C. for a response within 30 days as stated in SCDC policies and procedures GA-01-12. Also review the tape from the hearing before making decision on this appeal.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Pedro Wise 4-18-2011
Grievant Signature Date

ACTION TAKEN BY IGC:
Reviewed all pertinent information and disciplinary documentation.
See Warden's Response for decision.


[Signature] 5/6/11
IGC Signature Date

I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.


WARDEN'S DECISION AND REASON:
Inmate Wise;

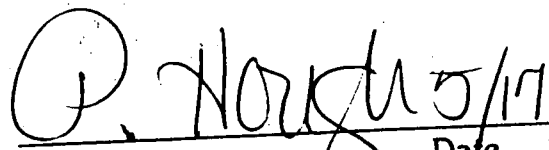
This is in response to KRCI-0653-11. You have appealed the results of your 4/12/11 Disciplinary Hearing where you were found guilty on the charge of 898 Possession of Any Cell Phone or Other Communication Device. The issues you stated do not warrant a reversal of the charge. Per OP-22.14 Inmate Disciplinary System, the Hearing Officer will decide the inmate's guilt or innocence with the respect to each charge based on a preponderance of the **credible evidence**. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on the written and verbal testimony of Investigator Robinson, a e-mail from Investigator Murphy and a Crime Stoppers report. Based on this information, your appeal is without merit and therefore denied.

If not satisfied with my response, see Step 5 below.


Warden Signature 5-12-11 Date

- I accept the Warden's decision and consider the matter closed.
 I do not accept the Warden's decision and wish to appeal.


Grievant Signature 5/17/11 Date


IGC Signature 5/17/11 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

title, list of any evidence and disposition of evidence.

Investigator Robinson also violated SCDC policy and procedures op. 22-14 under section 3.2 because he fail to state my name and number in the narrative part on the 19-29 A form. Not only that, he fail to give a general location of the offense and a full statement of the facts underlying the offense, which is also a violation of SCDC policy and procedures op. 22-14 under section 3.2. At my hearing the D.H.O. presented 2 pieces of papers, as so-called evidence. The first one she (Mrs. Sellers ~~the~~ D.H.O.) said was a copy of the email, then the second one the D.H.O. said was a copy of the crime stoppers report. Now either copy ~~way~~ was listed on the 19-29 A form as evidence or as disposition of evidence which is another violation of SCDC policy and procedures op. 22-14 under section 3.2. Also the sanctions imposed by the D.H.O. was out of the guidelines listed in policy ~~is~~ op. 22-14. Also there was no concrete ~~concrete~~ evidence to link me to any of this. The D.H.O. also fail to inform me of my appeal process and she didn't give me a grievance. All of this is violating SCDC Policy and procedures op. 22-14 and it's a violation of my process Due Rights

Also Investigator Robinson Robinson never mentioned any thing about a crime stoppers report ~~within~~ the narrative section on the 19-29 A form

Neither did he list it as evidence which ~~is~~ violates SCDC policy and procedures

op. 22-14 under section 3.2 and it violate my Process Due Rights.

MAY 23 2011

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

DUE
5/22/11
Office Use Only
Grievance No. KCT-005311
Code: General _____
Policy _____
Disc. Hear. 893 #105
Class. 10.412/11
Date Received 5/18/11
IGC Initials [Signature]

INMATE GRIEVANCE

STEP 2 MAY 18 2011

INMATE NAME: Pedro Wise

SCDC NUMBER: 269017

INSTITUTION: Kershaw

HOUSING UNIT: S.M.U #27

WORK ASSIGNMENT: N/A

RECEIVED
MAY 18 2011
KERSHAW CI
GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

my issues wasn't ~~is~~ investigated properly because policy and procedure SOP-22.14 under section 3.2 clearly stated what it must include at a minimum. Also I asked the I.G.C. to let me review the tape because there were some evidence presented that was not listed on my 19.29A form. Now that is a clear violation of policy CP.22.14. Also at the hearing when asked if he seen me on face book INV. Robinson said NO. So how can I possibly be convicted based on the verbal testimony, written testimony, a email from Mr. Murphy and a crime stoppers report. Now the email nor crime stoppers report was not mentioned nor listed as evidence. which violates CP.22.14 section 3.2. Also will you read over grievance step 1 and base your decision from there. Also I was found guilty and denied on step 1 appeal even after several errors was made in my case.

Pedro Wise
Grievant Signature

5-18-2011
Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Possession or Attempt to Possess a Cell Phone (898) on April 12, 2011, under SCDC OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of -0- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner. In accordance with Agency Policy OP-22.14, "Inmate Disciplinary System," inmates desiring to listen to a copy of their taped hearing must submit a SCDC Form 19-11, "Request to Staff Member," informing the Major. The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape. The tape will be played for the inmate by, and in the presence of, the assigned staff member within fifteen (15) days of receiving the request.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature]
Signature

08/04/2011
Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Pedro Wise
Grievant Signature

8/10/11
Date

[Signature]
IGC Signature

8/10/11
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

S.C.D.C.
4444 Broad River Rd.
Columbia, SC 29210

Re: Pedro Wise V. SCDC

Dear SCDC:

I now make this request for a copy of the transcript of my April 12, 2011, disciplinary hearing, held at Kershaw Correctional Institution, before Ms. Sellers.

I make this request pursuant to all applicable Rules of Court of the State of South Carolina.

Thanks in advance for your time and attention to this matter.

Sincerely,

1s/ Pedro Wise

Pedro Wise # 269017
K.C.I./ PAL A #42
4848 Goldmine Hwy.
Kershaw SC 29067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATION LAW COURT
Ralph K. Anderson, Administrative Law Judge

Case No. 11-ALJ-04-0707-AP

South Carolina Department of Corrections,.....Respondent,
v.
Pedro Wise,.....Appellant.

PROOF OF SERVICE

I, Pedro Wise, Appellant in the above cited case, swear that under the penalty of perjury that I have this day served my brief upon the respondents, by depositing such in the U.S. Mail via Kershaw Correctional Institutional mail system.

THE FOLLOWING HAS BEEN SERVED:

1. S.C. Court of Appeals
P.O.Box 11629
Columbia, SC 29211

2. S.C.D.C.
4444 Broad River Road
Columbia, SC 29210

*Sworn and subscribed before me
on the 12th of June 2013.*

Catherine A. Amason

*My comm. seal expires on
December 23, 2018*

1st Pedro Wise

Pedro Wise # 269017
K.C.I./ PAL A # 42
4848 Goldmind Hwy.
Kershaw SC 29067