

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

Case No. 12-ALJ-04-0546-AP

RECEIVED

JUL 01 2013

SC Court of Appeals

Billy Lee Lisenby, # 200273.....Appellant,

v.

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

**MOTION TO COMPEL APPELLANT TO
SUPPLEMENT THE RECORD**

Comes Now, respondent, the South Carolina Department of Corrections, and requests that this Honorable Court ORDER appellant to supplement the record on appeal. In support of this request, respondent shows this Honorable Court the following:

1. On October 2, 2012 appellant served respondent with a copy of a document entitled "Record on Appeal"¹ which did not contain certain items listed in respondent's Designation of Matter. Specifically, the following items were not included:

- a. Photograph of evidence dated February 4, 2012.
- b. Step One Inmate Grievance Form for Grievance Number KRCI 0233-

12.

¹ Appellant's record includes materials connected with two pending appeals, case numbers: 12-ALJ-04-0546-AP and 12-ALJ-04-0547-AP. Both cases are appeals separate from inmate disciplinary convictions arising from the same incident. This motion refers

c. Step Two Inmate Grievance Form for Grievance Number KRCI 0233-12.

2. A copy of each missing document is included as an attachment to this motion.
3. Rule 210(c), SCACR, provides in part that, "The Record on Appeal shall include all matter designated to be included by any party under Rule 209."
4. Appellant has clearly not complied with the rules of this Honorable Court.
5. Respondent has cited to the materials appellant omitted from the Record in its Initial Brief. To file a Final Brief, respondent must have a Record on Appeal containing complete copies of all items respondent listed in its Designation of Matter.

WHEREFORE, respondent respectfully requests that this Honorable Court ORDER appellant to supplement the Record on Appeal with the above listed materials.

Respondent further requests that this Honorable Court ORDER that the final briefs shall be served and filed within twenty days of service of the supplemented Record on Appeal.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent

Columbia, SC
June 28, 2013

only to 12-ALJ-04-0546-AP because the appeals have not been consolidated and the record contains all designated materials connected with 12-ALJ-04-0547-AP.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM**

STEP 1

INMATE NAME: Billy Lee Lisenby JR; FEB 15 2012
SCDC NUMBER: #200273
INSTITUTION: Keeshaw Corr. Inst FEB 10 2012
HOUSING UNIT: Oak Hill
WORK ASSIGNMENT: Dorm Worker

Office Use Only
Grievance No. KCCF 02 33-12
Code: General
Policy _____
Disc. Hear. SCS #122
Class. HD 2/14/12
Date Received 2/14/12
IGC Initials [Signature]

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 2-14-12 I was found guilty of 893 Possession of a Cellphone and/or Charger, after pleading not guilty. I'm arguing actual innocence, violation of due process, and failure to abide by policy and procedure. I presented (7) statements by inmates Jeremy Gaines #297898, Antonio Singleton #295492, James L. Goethel #6613, Daniel Gray #285909, Melvin Huntley #340142, and Aaron Brimfield #331101, stating I never claimed ownership of the contraband, and that Co. Cort, Moore, and Lee found the contraband. (4) Four inmates were housed in the rooms but I was the only one charged. This is not the correct protocol, all (7) inmates were supposed to be charged and the D.H.O was supposed to be the fact-finder. The D.H.O refused to call my witnesses (Co. Cort, Co. Moore, and Co. Lee. I asked for my witnesses on the record and the D.H.O stated "We do not call people from the Agency Search Team as witnesses," Prior to the hearing I sent the D.H.O and Council Substantive a S.C.D.C Form 1741 Request to Staff Member asking that Co. Cort, Co. Moore, and Co. Lee be called as my witnesses. This is a violation of OP.22.14 Section 15.3 which states "The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses is Repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing Officer, the Hearing Officer must mark his/her reasons for this denial on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information." None of this was done, and the reason for denying my witnesses were not on SCDC Form 19-69. If my witnesses couldn't have been present the D.H.O could've gotten them on speaker phone. See OP.22.14 Section 15.5 in part which states "Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded." Wolff v. Mc Donnell, 74 Sct. 2963 (1977) supports the fact that I have a constitutional right to have my witnesses called in my behalf. The D.H.O obtained a statement from Co. Cort, but refused to obtain statements from Co. Moore and Co. Lee, which would've been in my favor.

ACTION REQUESTED: I ask that my case be overruled and that the tape recording be made available to the appropriate reviewing authority before deciding my appeal as stated in OP.22.14 Section 23.4.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

Billy Lee Lisenby Jr. Feb 14, 2012
 Grievant Signature Date

ACTION TAKEN BY IGC:
Reviewed disciplinary documentation
See Warden's Response.

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

[Signature] 5/2/12
 IGC Signature Date
N/A _____
 Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Lisenby;

This is in response to KRCI-233-12. You have appealed the results of your 2/14/12 Disciplinary Hearing where you were found guilty on the charge of §98 Possession of a Cell Phone. The issues you stated do not warrant a reversal of the charge. 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 Officer Hunt and a picture of the evidence. Based on this information, your appeal is without merit and therefore denied.

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

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

Billy Lee King 3-3-12
 Grievant Signature Date

William Kralds 3-6-12
 Warden Signature Date

J. North 3/8/12
 IGC Signature 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.

MAR 23 2012

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

DUE
3/13/12
546
Office Use Only
Grievance No. KIC-0233-12
Code: General _____
Policy _____
Disc. Hear. 898-#122
Class. HO-20412
Date Received 3/13/12
IGC Initials PA

INMATE GRIEVANCE

INMATE NAME: Billy Lee Liscoby, JR.

MAR 12 2012

SCDC NUMBER: #200293

RECEIVED

INSTITUTION: Leaham C.F.

MAR 13 2012

HOUSING UNIT: Deck All

WORK ASSIGNMENT: N/A

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *I'm a victim of selective prosecution, because they never showed any evidence that I claim ownership of the contraband. (7) inmates made statements saying I didn't claim ownership of the contraband. Several inmates had access to the contraband, and I was the only one charged. This is not protocol, all (9) inmates were suppose to be charged and the D.H.O was suppose to be the Fact-Finder. The D.H.O refused to call my witnesses C/o Moore, and C/o Lee. I asked for my witnesses on the record and the D.H.O stated "We do not call people from the Agency Search Team as witnesses." Nothing in policy OP-22.11 supports this. Prior to the hearing I sent the D.H.O and Counsel Subst. rule a S.C. D.C Form 19-11 Request to Staff member asking that C/o Moore, and C/o Lee be called as my witnesses. [See Enclosed Request To Staff.] Pursuant to Wolff v. McDonnell, 94 Sct 2963 (1977) supports the fact that I have a Constitutional right to have my witnesses called in my behalf. Also I was denied the right to confront my accuser. C/o Cook, C/o Moore, and Lee found the contraband, and C/o Hunt wrote the incident up. Hunt admits he was not in the room when the contraband was found. I ask my case be overruled.*

Billy Lee Liscoby, Jr. March 9th 2012
Grievant Signature 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 February 14, 2012, under SCDC OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of 60 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.

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] 4/30/12
Signature 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.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)



02/04/2012

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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Motion to Compel Appellant to Supplement the Record by depositing a copy of same in the United States Mail, postage prepaid, on June 28, 2013, addressed to the Appellant as follows:

Mr. Billy Lisenby, # 200273
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29355



Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent