

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
Case No.: 2022-ALJ-04-0047-AP

APPELLATE CASE No.: 2023-001786

2023
DEC 01
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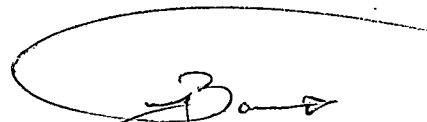
DEC 01 2023
SC Court of Appeals

Genuine Truth Banner Appellant

v.

South Carolina Department of Corrections Respondent

INITIAL BRIEF OF APPELLANT



Genuine Truth Banner
Kirkland Correctional
Maximum Security Unit/Solitary-26
4344 Broad River Rd
Columbia, SC 29210

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Arguments

1. Appellant was not allowed to present all of his documentary evidence, specifically as it relates to the video of the incident, violating due process.
2. The disciplinary hearing officer (DHO) openly admitted that she did not and would not review or consider appellants documentary evidence (video) before rendering a decision in violation of his due process rights.
3. None of Appellant's witnesses were present and only one accuser was present though multiple were called upon / requested violating due process.

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TABLE OF AUTHORITIES

Sandin V. Conner, 115 S.Ct. 2293 (1995)

Wolff V. McDonnell, 418 U.S. 539, 563 - 72 (1974)

STATEMENT OF ISSUES

1. Did the Administrative Law Court err in ruling that appellant received minimal due process where various witnesses, accusers and documentary evidence (video) were blocked from being presented and were not considered or reviewed by the DHO before rendering a decision of guilt?
2. Did the Administrative Law Court err in ruling that substantial evidence supported the conviction when the only thing that was relied upon was one former accuser's original statement which she later re-canted at trial though her trial testimony was blocked from being presented, considered or reviewed?

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STATEMENT OF THE CASE

On April 2nd, 2020 appellant was accused of assaulting an CDC officer and was express shipped to Kirkland's 'SSR' and charged with (B01) Assault on CDC employee, (B14) inciting a riot (disturbance and (B09) threatening to inflict harm. Appellant was later charged with attempted murder and possession of a weapon during the commission of a violent crime in a court of law stemming from the same incident.

In violation of their own policy requiring disciplinary hearings or extension requests to occur within 21 days of the charge, no extension request occurred until ~~May~~ June 23rd, 2020 and it explicitly mandated that a hearing would be held within 21 days of that date. No disciplinary hearing was actually had until April 23rd, 2021. At that hearing, appellant was NOT found guilty.

A criminal trial on the related charges ensued on October 11th, 2021 and on October 13th, 2021 appellant was acquitted and found NOT GUILTY of all charges. At this time appellant began to complain that he was still being housed in (SSR) substantiated security risk, CDC's most restrictive solitary confinement for over 18 months for charges he was never found guilty of either institutionally or in a court of law and threatened to sue. Two weeks later, appellant was served with another ~~set~~^{copy} of charges stemming from the same incident.

Appellant requested all the same evidence, witnesses and accusers as he did before at the original April 23rd, 2021 disciplinary hearing. A new disciplinary hearing was held on October 28th, 2021 and the disciplinary hearing officer refused to review or even consider ~~appellant's~~ evidence (video), certain witnesses and accusers were not/could not be present as some no longer worked for CDC at that time and I was not allowed to present the primary accusers trial testimony where she re-counted her statement. The disciplinary hearing officer 'found' me 'guilty' using only the primary accusers original statement as evidence. The (B14) and (B09) charges were dismissed as they "all stemmed from the same incident."

Appellant was given "time served" in 'SSR' solitary confinement (as he had already served 18 months at that point), a loss of 12 days of good time and a loss of various privileges. Now having finally been 'substantiated' as a security risk, appellant to this day, remains in 'SSR' under the CDC's most restrictive solitary confinement.

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STATEMENT OF THE CASE

Appellant appealed up to the Administrative Law Court. The Administrative Law Court's order of dismissal did not include a notice of the right to appeal or a deadline to file an appeal. Appellant then filed a Petition for a Writ of Habeas Corpus with the U.S. District Court which was dismissed without prejudice noting that appellant must first complete all state court appeals ~~first~~.

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Appellant's previous attempt to appeal in this court was dismissed for various issues including failure to provide a copy of the order being challenged, failure to provide a filing fee, failure to provide a proof of service and for failure to provide a copy of the court's ~~letter~~ letter dated June 12th, 2023. Here, appellant has corrected all former deficiencies and requests that this appeal be considered for the following reasons:

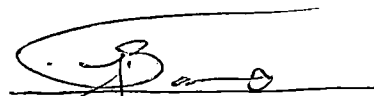
1. Appellant asserts that he has no record of any June 12th, 2023 correspondence from the court in this matter and that if he had, he would have provided the court a copy per its request to satisfy that deficiency.
2. Appellant's substantial rights and liberty as it relates to the "ordinary incidents of prison life", (*Sandin v. Conner* 115 S.Ct. 2293) are still being negatively affected by what appellant alleges and the evidence shows was a gross miscarriage of justice and due process violations at the disciplinary hearing in question. Altogether, appellant has been held in 'SSR' solitary confinement for 3 years and eight months for charges he was acquitted of in a court of law and was not found guilty of in the original April 23rd, 2021 disciplinary hearing. Over two years of that has come ~~back~~ after 'time served' was given as a sanction and future penalties, limits and restrictions are to follow even after appellant leaves SSR.
3. The evidence is clear. *Wolff v. McDonnell*, 418 U.S. 539 outlines the bare minimum due process protections afforded to prisoners at disciplinary hearings. The ability to present and have documentary evidence considered is chief among those. The ability to present and have various witnesses and accusers be considered is another. The transcript of disciplinary hearing records the disciplinary hearing officer acknowledge that certain witnesses and accusers were or could not be present. She was further recorded as admitting that she did not and would not review or consider appellant's primary piece of documentary evidence which was the video of the incident that was presented at trial.

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CONCLUSION

Appellant did not receive the minimal due process required at an institutional disciplinary hearing and the administrative law court erred in ruling that he did. The Administrative Law Court further erred in ruling that substantial evidence supported the conviction when the only evidence that was relied upon was an incident report of a former accuser who re-canted her statement at trial though her trial testimony was denied from being presented and was not considered, along with video of the incident and other former accusers/witness testimony.

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WVIT
RECORD



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Ex # 2

if Appellant received the due process to which he was entitled. *Al-Shabazz*, 338 S.C. at 369-70, 527 S.E.2d at 750. The South Carolina Supreme Court enunciated the following five requirements which, if established, show that minimum constitutional requirements for procedural due process have been met in inmate disciplinary matters: (1) the inmate was given advance written notice of the charge at least twenty-four hours before the hearing; (2) the fact finder prepared a written statement of the evidence relied on and reasons for the disciplinary action; (3) the inmate was allowed to call witnesses and present documentary evidence; (4) counsel substitute was allowed to help the inmate if the inmate was illiterate or if the case was too complex for the inmate to handle alone; and (5) the person who heard the matter, who may be prison officials or employees, was impartial. *See id.*; 338 S.C. at 371, 527 S.E.2d at 751 (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-72 (1974)). Applying these five requirements, as gleaned from the Record in this case, this Court concludes the following:

Appellant was given notice of the charge on October 25, 2021, and the disciplinary hearing in the matter took place on October 28, 2021, more than twenty-four hours later. Based on the hearing transcript, Appellant was represented by counsel substitute during the hearing. Appellant participated in the hearing and was given the opportunity to present witnesses and documentary evidence. Additionally, at Appellant's request, his accuser was present to testified at the hearing. The hearing transcript and report show that the Hearing Officer's determination of Appellant's guilt was based upon the narrative and testimony of Officer Myers. There is nothing in the Record indicating the Hearing Officer was otherwise than neutral. Therefore, this Court concludes that Appellant was afforded the minimum due process required in prison disciplinary proceedings.

Furthermore, when reviewing the Department's decisions in inmate grievance matters, this Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. *Al-Shabazz*, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, this Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly

erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

As part of his appeal, Appellant contends he should not have been charged with assault and battery because he was previously found not guilty of these charges in general sessions court. As the Hearing Officer aptly explained when Appellant raised the issue during the disciplinary hearing, evidentiary standards in general sessions court are not the same as the evidentiary standards applied in prison disciplinary matters. For a finding of guilt in a prison disciplinary case, the hearing officer must find that there is a preponderance of the evidence proving the inmate's guilt. In Appellant's case, a thorough review of the Record shows that there was ample evidence presented at the hearing to support the Hearing Officer's finding.

Accordingly, because Appellant was afforded the minimum due process required and there is substantial evidence in the Record to support Appellant's disciplinary conviction, the Department's decision must be affirmed. *See* S.C. Code Ann. § 1-23-380(5) ("The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced.").

Appellant further contends the Department violated its own policy when more than 21 days passed before he was brought before a disciplinary hearing officer. He contends the delay violated his right to due process. However, a prison official's failure to follow the Prison's own policies does not on its own constitute a violation of procedural due process. *See Myers v Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996).

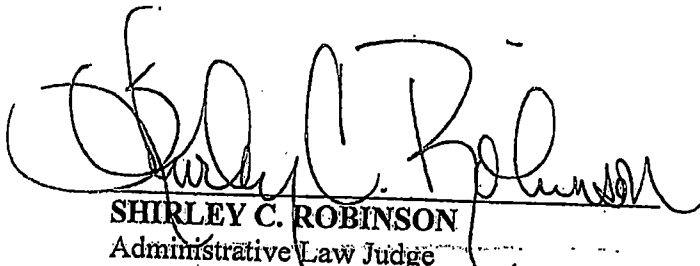
Finally, Appellant argues that although he was given credit for "time served," he is still housed in SMU. Pursuant to *Brown v. Evatt*, Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). In addition, "...the security and custody classification of state prison inmates is a matter of state prison-official discretion whose exercise is not subject to federal procedural due process constraints." *Slezak v. Evatt*, 21 F.3d 590, 594 (4th Cir. 1994). Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a

Ex # 4


constitutional right or exceeds the limits of his sentence. See *Brown*, 322 S.C. at 194, 470 S.E.2d at 851.

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

November 3, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE
I hereby certify that the enclosed copy of this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the emergency, and copies addressed to the recipient or their attorney.


Clerk

The State of South Carolina
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Administrative Law Court

Ex. #86

DHO: Okay. Okay. Thank you so much. Okay. Now, this is your opportunity. I need you to tell me what happened on 4/2/2020.

I/M: I mean, I don't really have to --

DHO: Yes, you do. Because this is an internal hearing. This is the administrative hearing. Uh, the outside street charges were exactly that and their decision is based on, uh, um, beyond the shadow of a doubt. The administrative hearing that correction has is based on the preponderance of credible evidence. That's why it's called an administrative hearing versus a street charge, with their evidence is based on beyond a shadow of a doubt. So, if there's any doubt at all, okay, you could be found not guilty; whereas, with an administrative hearing, they are basing it on the preponderance of credible evidence. So, you do need to share with me your in...your understanding or your truth in terms of what happened that particular day. And then, I also have your accuser here on the phone. She also will be given an opportunity to tell her truth in terms of what she saw. Do you understand the difference in the hearings?

I/M: Yes, ma'am. I want to be abundantly clear that I actually don't have to say anything.

DHO: Well, if --

I/M: I...I would, but I want to, so that's -- we can get past that.

DHO: Okay. Listen, you're absolutely right. You want...you don't have to say anything. And if you don't say anything, as I just told you, it's based upon what? The preponderance of --

I/M: And that's [inaudible 0:28:00] --

DHO: -- credible evidence and preponderance is defined as...as 51 percent. Do you understand that Inmate Banner?

Ex # 37

I/M: Yes, ma'am.

DHO: Okay. So just so you're clear in terms of what type of hearing we have, so now you have an opportunity to tell me your side of what happened.

I/M: First, can I ask, did any...has anyone here seen the video?

→ DHO: No, we have not seen the video. I didn't even know there was a video that, uh, captured what took place. I'm...I'm just finding out about a video. You did not even ask the, uh --

I/M: It's in the paperwork.

→ DHO: -- Coun-...Inmate...Inmate Banner, you know, I acknowledge I did not see this, okay? I did not see this. Okay? You failed to tell your Counsel Substitute any of this, although you wrote it in April. Okay? Today is October. It would have been great, number one, if you had not heard from me, if you just told Miss Hollis, said "Miss Hollis, I hadn't heard from Miss Moore. I wrote her in April." Okay? "Here it is July, I have not heard from her."

I/M: I have.

DHO: Okay.

I/M: Multiple times.

DHO: Well, nobody, not one single person has said anything to me about this. No one, okay?

I/M: How...how am I supposed to deal with that?

DHO: I understand that. I--

I/M: I mean, there's nothing I can do about that at this point.

IN THE SOUTH CAROLINA COURT OF APPEALS

Ex #8

Genuine Truth Banner #375165
Appellant

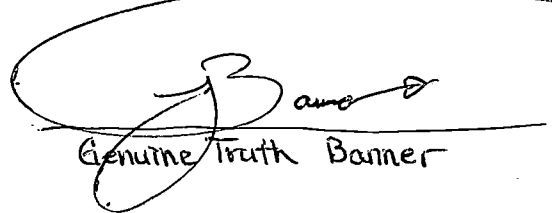
vs

South Carolina Department of Corrections
Respondant

Appellate Case No.: 2023 - [REDACTED] 001786
Lower Court Case No.: 2022-ALJ-04-0047-AP
Affidavit of
Genuine Truth Banner
November 22nd, 2023

JONIA
2023
DEC 1

1. Appellant is over the age of 18 and is competent to testify in the matters herein.
2. It is and always was appellants intention to proceed in the above captioned matter 'pro se' and in forma pauperis. At the time of the initial filing of appeal in this matter, appellants poverty would have made him eligible to be considered in forma pauperis.
3. Appellant has not located any correspondence from the court dated June 12th, 2023 in the above mentioned case. Based on this, appellant does not believe he ever received any correspondence from this court with the date of June 12th, 2023.
4. If appellant had ever received any June 12th, 2023 dated correspondence from the court and could locate said correspondence to make copies of to correct the deficient portions of his initial notice of appeal, appellant certainly would have done so.


Genuine Truth Banner

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DEC 01 2023

SC Court of Appeals

State of South Carolina
County of Richland
The foregoing instrument was acknowledged
before me 21 day of November 2023
Melissa D. Spriggs
Your Name Here, Notary Public
My Commission Expires 12-01-2025

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