

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

JOSH JETER; #314407,

APPELLANT,

VS.

SOUTH CAROLINA DEPT OF CORRECTIONS,

RESPONDENT,

CASE No:

13-ALS-04-0390-AP

APPELLANT INITIAL BRIEF

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SC Court of Appeals

STATEMENT OF THE ISSUE ON APPEAL

1. DID ADMINISTRATIVE LAW JUDGE MS. SHIRLEY C. ROBINSON
ERROR WITHIN HER DECISION MAKING?

STATEMENT OF CASE

ON 2/5/13 APPELLANT WAS FALSELY ACCUSED OF S.C.D.C. DISCIPLINARY
INFRACTION (§§4) EXHIBITIONISM AND PUBLIC MASTURBATION. OFFICER F. ROGERS
ALLEGED THAT SHE OBSERVED APPELLANT MASTURBATING OFF HER AT THE TIME
OF OFFICER ROGERS ACCUSATION! A SECURITY CELL CHECK SHEET SHOWED THAT
APPELLANT WAS IN BED (ASLEEP) DURING THE ALLEGED INCIDENT. DOCUMENTARY
EVIDENCE WAS PRESENTED AT APPELLANT'S HEARING TO SHOW THAT APPELLANT WAS IN
FACT IN BED, AND WAS MISTAKENLY IDENTIFIED. IN DESPITE OF THE EVIDENCE
PRESENTED APPELLANT WAS STILL FOUND GUILTY OF THE ALLEGED INFRACTION.

APPELLANT APPEALED R. TURNER'S DECISION IN WHICH BOTH STEP 1 AND STEP #2
GRIEVANCES WERE DENIED. APPELLANT THEN APPEALED TO THE ADMINISTRATIVE LAW
COURT DIVISION, IN WHICH S.C.D.C.'S WRONGFUL CONVICTION WAS STILL-UP-HELD.

WHEREFORE, APPELLANT NOW SEEK JUDICIAL REVIEW AT THIS LEVEL, AND HAVE
ENCLOSED ACTUAL - FACTS AND VIOLATION(S) OF HIS RIGHTS) VIOLATED, AT THE TWO
PREVIOUS LEVELS...

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STANDARD OF REVIEW

THE APPELLANT COURT HELD THAT THE ADMINISTRATIVE LAW JUDGE DIVISION (ALJD) HAD SUBJECT MATTER JURISDICTION TO HEAR APPEALS FROM THE FINAL DECISION OF THE DEPARTMENT IN A NON COLLATERAL OR ADMINISTRATIVE MATTER. SUBJECT MATTER JURISDICTION REFERRED TO THE (ALS'S) POWER TO HEAR AND DETERMINE CASE(S) OF THE GENERAL CLASS TO WHICH THE PROCEDURES IN QUESTION BELONGED. THE ALS HAD APPELLANT JURISDICTION OVER ANY APPEAL WHERE NOT CASE TERMS, INMATE GRIEVANCE TAPES, AND PROPERTY INTEREST, STATE CREATED, APPELLANT JURISDICTION IMPLICATE MODIFIED; CALARIFY CASSETT CELL SUBJECT MATTER JURISDICTION DECLARATORY JUDGEMENT ACTION; ADMINISTRATIVE LAW, ADMINISTRATIVE SEGREGATION; LIBERTY INTEREST; SENTENCE RULING(S); TRIPLE IN AL - ~~SHABAZZ~~ SHABAZZ V. STATE 9 338, S.L. 354, 527 S.E.2d 742 (2000). THE COURT HELD THAT INMATES COULD PERSUE APPELLANT REVIEW IN THE ALS TO CERTAIN GRIEVANCE DECISIONS MADE BY THE (DOC) AS LONG AS THEY WERE,

- 1) THE CONTENTION IS THAT APPELLANT(S) "SENTENCE; SENTENCE RELATED CUSTODY" HAS BEEN ERRONEOUSLY CALCULATED OR;
- 2) THE INMATE'S CREATED LIBERTY INTEREST HAS BEEN TAKEN AS A PUNISHMENT IN A MAJOR DISCIPLINARY HEARING.

LAW ANALYSIS

SINCE AT THE TIME OF THE ORIGINAL FILING, A STATE CREATED LIBERTY WAS AND IS STILL INVOLVED. THEREFORE, IT BECAME NECESSARY TO DETERMINE IF INMATE HAD RECEIVE THE TRUE PROCESS HE WAS DUE...

IT WAS WELL ESTABLISHED THAT S.C.D.C. (UNST) MEET CERTAIN MINIMUM CONSTITUTIONAL REQUIREMENTS FOR PROCEDURAL DUE PROCESS IN MATTERS WHERE AN INMATE IS DISCIPLINED FOR SERIOUS MISCONDUCT. AL-SHARAZ, 527 S.E.2d AT (750) INTERNAL CITATION OMITTED. HOWEVER, THESE REQUIREMENTS MUST BE BALANCED AGAINST THE NEED TO MAINTAIN AN ORDERLY AND SAFE PRISON ENVIRONMENT. I.D. TO THAT END, THE SUPREME COURT HAS ~~HAS~~ HAD PRESCRIBED THE FOLLOWING FIVE REQUIREMENTS WHICH, IF ESTABLISHED, WILL ENSURE PROCEDURAL DUE PROCESS IN INMATE DISCIPLINARY MATTERS.

TO FACILITATE CHECKING AGAINST THE RECORD, THE REQUIREMENTS OF WOLFF ARE SUMMARIZED AS FOLLOWS.

1.) 24 HR ADVANCE NOTICE OF CHARGES; (2.) WRITTEN STATEMENT BY FACT FINDER AS TO EVIDENCE RELIED UPON; (3.) WRITTEN STATEMENT BY FACT FINDER AS TO REASON FOR DISCIPLINARY ACTION TAKEN; (4.) OPPORTUNITY TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE; (5.) COUNSEL SUBSTITUTE ALLOWED IF INMATE ILLITERATE OR IF CASE IS COMPLEX) AND (6.) IMPARTIAL HEARING TRIBUNAL.

ARGUMENT

"APPELLANT WASN'T AFFORDED ADEQUATE DUE PROCESS"

APPLYING THOSE REQUIREMENTS TO THE RECORD IN THIS CASE APPELLANT FIND THE FOLLOWING.

1. 24 HR ADVANCED WRITTEN NOTICE OF CHARGES:

"APPELLANT WAS SERVED WRITTEN NOTICE OF THE CHARGE ON 2/13/13"

2. WRITTEN STATEMENT BY FACT FINDER AS TO EVIDENCE RELIED UPON

"DRHR CANNOT SHOW THAT RELIANCE ON WRITTEN AND VERBAL TESTIMONY OF OFFICER F. ROGERS WAS ADEQUATELY JUSTIFIABLE DUE TO THE BELOW FACTS.

A) ACCORDING TO THE CELL CHECK CHART AT THE ALLEGE TIME OF THE INCIDENT ON 2/5/13 AT 11:40 P.M. THE CHART SHOWED THAT APPELLANT WAS IN FACT IN BED.

B) THE SAME ACCUSING EMPLOYEE'S SIGNATURE (F. ROGERS) IS SIGNED OFF ON THE CELL-CHART CONFIRMING THAT THE ACCUSED INMATE WAS IN FACT ASLEEP, IN WHICH THE ABOVE ALONE SHOWS INCONSISTENCY ON THE CHARGING OFFICER'S BEHAVIOR, AND SELF-CONTRADICTION OF HER OWN REPORT.

3.) WRITTEN STATEMENT BY FACT FINDER AS TO REASON FOR DISCIPLINARY ACTION TAKEN.

"(DRHR) CANNOT DEMONSTRATE A TRUE REASON FOR SUCH ACTION TAKEN, OTHER THAN APPELLANT HAS A DISCIPLINARY HISTORY OF SUCH OFFENSES, ESPECIALLY AND BASED UPON THE FACT THAT ("DOCUMENTARY") EVIDENCE PRESENTED AT APPELLANT'S HEARING SHOWS THAT, APPELLANT WAS ASLEEP DURING THE ALLEGE INFRACTION, AND FOR THAT ALONE, APPELLANT SHOULD HAVE NOT BEEN CONVICTED OF THE OFFENSE.

4.) OPPORTUNITY TO CALL WITNESSES; AND PRESENT DOCUMENTARY EVIDENCE.

"(A) APPELLANT DID NOT WANT HIS ACCUSER PRESENT DUE TO THE FACT THAT, DOCUMENTARY EVIDENCE PRESENTED AT THE HEARING WAS STRONG ENOUGH TO MANIFEST THAT APPELLANT WAS CHARGED ON MISTAKEN IDENTITY AND CELL LOG CHECK SHEET SHOWED THAT APPELLANT WAS IN FACT ALREADY ASLEEP DURING THE ALLEGE INCIDENT.

5.) COUNSEL SUBSTITUTE ALLOWED IF INMATE IS ILLITERATE OR IF CASE IS COMPLEX.

(APPELLANT WAS REPRESENTED BY COUNSEL MS. LOWE

6.) IMPARTIAL HEARING TRIBUNAL;

"DHO TURNER WAS 'BIAS' AND DISPLAYED DECITNESS WITH HIS DECISION MAKING (RE-REVIEW THE FOREGOING...

ARGUMENT # 2

DUE TO APPELLANT(S) INCARCERATION STATUS (LIFE-SENTENCE) HE IS NOT ELIGIBLE TO EARN GOOD-TIME, HOWEVER THAT STILL DOESN'T "EXEMP" APPELLANT FROM BEING TREATED IDENTICAL WITH OTHER PRISONER(S), AS TO RECEIVE CERTAIN OPPORTUNITIES TO PARTICIPATE IN ACTIVITIES DUE TO APPELLANT(S) ILLEGAL UNCONSTITUTIONAL CONVICTION AT HIS DHO. APPELLANT HAS BEEN STRIPED OF

- A.) THE OPPORTUNITY TO HAVE VISITS.
- B.) THE OPPORTUNITY TO HAVE PHONE CALLS.
- C.) THE OPPORTUNITY TO ATTEND RELIGION SERVICES.
- D.) THE OPPORTUNITY TO PURCHASE ITEMS FROM CANTEEN AND,
- E.) THE OPPORTUNITY TO HAVE CERTAIN JOBS.

APPELLANT HAS (LIFE-SENTENCE) MORESO; THESE INFRACTIONS EFFECT APPELLANT (LIBERTY) AGAIN, DUE TO THE CONVICTION HINDERS HE FROM BEING ABLE TO ADVANCE TO A LEVEL # 2 FACILITY. APPELLANT IS DEMONSTRATING THAT HE DOES IN FACT HAVE RIGHTS UNDER STATE / FEDERAL LAWS TO BE FREE FROM THESE TYPE OF CONSTITUTIONAL VIOLATIONS AND WITH RESPECT TO SUCH RIGHTS GIVEN BY LAW TO APPELLANT, HE RESPECTFULLY MOVES, BY AND THROUGH THIS COURT TO REVIEW SUCH VIOLATIONS OF THE PLAINTIFFS RIGHTS SEE: WRIGHT V ENOMOTO 462 FED. SUPP. 397 COURT HELD THAT PRINCIPLES OF DUE PROCESS REQUIRE THAT BEFORE AN INMATE IS PLACED IN ADMINISTRATIVE SEGREGATION HE MUST BE AFFORDED PROMPT WRITTEN NOTICE OF THE REASONS FOR HIS CONFINEMENT, AN OPPORTUNITY TO PREPARE A DEFENSE, A FAIR AND EXPEDITIOUS HEARING AT WHICH TO PRESENT EVIDENCE, REPRESENTATION BY A COUNSEL SUBSTITUTE WHEN APPROPRIATE, AND A WRITTEN DECISION BY THE HEARING PANEL. U.S. CONSTITUTIONAL ~~ARTICLE~~ ARTICLE I SEC. 17 (PRELIMINARY INJUNCTION RELIEF)

APPELLANT MEETS ALL REQUIREMENTS, APPELLANT HAS STATE CASE IN IT'S ENTIRETY.

United States District Court

DISTRICT OF South Carolina

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT (*aka* *Motion to Proceed In Forma Pauperis*)

CASE NUMBER: C/A No.

I, SOSH SETER declare that I am the (check appropriate box)
 petitioner/plaintiff/movant
 other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC. §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No" go to Part 2)

If "Yes" state the place of your incarceration PERRY C.I.

Are you employed at the institution? No Do you receive any payment from the institution?

2. Are you currently employed? Yes No

a. If the answer is "Yes" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 (twelve) months have you received any money from any of the following sources?

- | | | |
|---|------------------------------|--|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| b. Rent payments, interest or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| d. Disability or workers compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes" describe each source of money and state the amount received and what you expect you will continue to receive.

