

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Tracey Carter, 247387,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
)
)
)

Docket No. 12-ALJ-04-0839-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by the Appellant above named, who is incarcerated with the South Carolina Department of Corrections (Department). The appellant appeals the Department's decision denying his grievance in which the Appellant complains he was wrongfully disciplined for Possession of Any Communication Device. The Appellant did not lose any accrued good time credits as part of his discipline.

DISCUSSION

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to cases involving denial of state created liberty interests¹ typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

The Supreme Court further explained the Court's jurisdiction in Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004). Slezak emphasized that, while the Court has jurisdiction over all properly filed inmate grievance appeals, the Court is not required to hold a hearing on every matter. Id. "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." Id citing

¹ The Court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

FILED
MAY 03 2013

Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id at 756. Consequently, the review in these inmate grievance cases is limited to the record presented.

In this case, because the Appellant did not lose any accrued good time credits as part of his punishment, no state created liberty interest is implicated. Therefore, this court must adhere to the traditional "hands off" doctrine regarding judicial involvement in prison disciplinary procedure and other internal prison matters. See Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) and Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

THEREFORE, for the foregoing reasons, the decision appealed from is **AFFIRMED** and this appeal is **DISMISSED WITH PREJUDICE.**



S. Phillip Lenski
Administrative Law Judge

May 3, 2013
Columbia, South Carolina

WARDEN'S DECISION AND REASON:

Inmate Carter;

This is in response to KRCI-1110-12. You have appealed the results of your 7/31/12 Disciplinary Hearing where you were found guilty on the charge of 898 Possession of a Cell Phone, case 12. 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 the written and verbal testimony of Officer Hunt and the evidence. Based on this information, your appeal is without merit and therefore denied.

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

RECEIVED
AUG 15 2013
SC Court of Appeals

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

Tracy Carter 8-28-12
Grievant/Signature Date

Wanda K. [Signature] 8-24-12
Warden Signature Date

[Signature] 8/28/12
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.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Tracey F. Carter AUG 09 2012
SCDC NUMBER: # 247387 ml
INSTITUTION: Kershaw
HOUSING UNIT: Palmetto B-38
WORK ASSIGNMENT: Upholstery

Office Use Only
Grievance No. KRCT-1110-12
Code: General _____
Policy _____
Disc. Hear. 898 #12
Class. HO 7/3/12
Date Received 8/10/12
IGC Initials DK

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The purpose of this grievance is to appeal the charge of 898 Possession of a Cell Phone Charge in which I was charged with on 7/12/2012. The item confiscated and which currently remains in evidence is not a homemade cell phone charger as alleged by Officer Hunt or other SCDC persons involved in this matter. Neither was the evidence any type of communication device. (SEE ATTACHED SHEETS)

ACTION REQUESTED:

This Disiplinary Conviction Be Vacated

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

VIA Appeal (SEE ATTACHED)

Tracey F. Carter 8/8/2012
Grievant Signature Date

ACTION TAKEN BY IGC:

Disciplinary documentation reviewed.
See Warden's Response

P. Nough 8/21/12
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.

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

Case#: 12 Inmate Name: Carter, Tracey SCDC#: 247387
 Living Area: PB33 Job: NA Custody: NA
 Offense Date: 7/12/12 Offense Time: 3:35 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: Chris Hunt (Al Contraband) Title: Officer

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 NOT WANT MY ACCUSER PRESENT AT THE HEARING AS
- I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- I WAIVE MY RIGHT TO A HEARING SMU/SEGREGATION ONLY
- I WANT A COUNSEL SUBSTITUTE
- I DO NOT WANT A COUNSEL SUBSTITUTE

Tracey Carter

Date & Time Notified: 7/11/12 AM/PM By (Print): _____
 Inmate Signature: Tracey Carter SCDC#: _____ Date: 7/11/12

HEARING INFORMATION:

Hearing Date: <u>7/11/12</u>	Hearing Time: <u>1:10</u> am/pm	Tape:	Side:	Start:	End:
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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.

None. He asked what evidence was presented and I said it was all in the report.

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 testimony of Hunt + the actual evidence. I'm wanted the DNO to plug the stereo to his walkman which was denied.

HEARING LENGTH: 15 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) 180 (TV) Reprimand: _____ Loss of Good Time (days): _____
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 * Canteen (Days) 180 + 360 = 540 Visit Suspension Thru 1/1/13 180 + 360 = 540 Days
 * Other phon (Days) 180 + 360 = 540 Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 180 Mail Out TV

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st offense of 898.

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS _____

DATE INMATE PLACED IN PHD 1/1/12

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Tracey Carter DATE: 7/11/12

HEARING OFFICER (PRINT NAME) _____

APPROVED/REVERSE/MODIFY _____ REASON _____
 Warden

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

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

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

Copy

TO: NAME: Mr. Armstrong	TITLE: Council Substitute	DATE: 7-20-12
INMATE'S NAME: TRACEY Carter		SCDC #: 247387
INSTITUTION: Kershaw		LIVING QUARTERS: PB 38B

Mr. Armstrong

This charge came about on last Thursday 7-12-12. Charged w/a homemade charger. (Untrue definitely). If it is not too much trouble, please allow me to have my (evidence present at my hearing physically). That way, this can be solved with just allowing me to plug this to my TV and with the help of (2 AA batteries) and you could then hear the volume loudness through my headphones. Also Mr. Armstrong would you allow me to see you today Friday 7-20-12 since the hearing is 7-24-12 Tuesday... with the help of my TV to show that with this earphone wire and radio jack or plug and a small piece of a broken circuit board from a radio is not a homemade charger as Officer Hunt has described in his narrative. Please allow me to show you all this ~~is~~ it's ^{only} a volume control to make your TV ^{radio} louder (that's all). I'm guilty of hiding it ~~and~~ admit and only because I didn't want to lose it, but as far as me having a charger (NOT TRUE) So I'm asking can this be ^{dismissed} ~~dismissed~~ to a ~~control board charge~~? You can see clearly that this not a homemade charger or anything remotely close. Please, I need your assistance ASAP.

Sincerely Tracey Carter

DISPOSITION BY STAFF MEMBER:

DATE:

SIGNATURE: