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Aug. 6, 2013

RE: 12-ALJ-04-0025-AP

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, SC. 29211

Dear Clerk,

I filed (2) briefs before I found out cases 12-ALJ-04-0025-AP, and 12-ALJ-04-0044-AP were consolidated. I sent you a money order asking for a copy of both briefs you sent me (2) copies of 12-ALJ-04-0044-AP.

Will you please send me a copy of the initial brief in case 12-ALJ-04-0025-AP?

Thanking you in advance!

Billy L.

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The State of South Carolina
In the Court of Appeals

Appeal From The Administrative Law Court

Deborah Brooks Darden, Judge

Case No. 12-ALJ-04-0044-AP

Appellate Case No. 2012-213396

Billy Lee Lisenby JR,

Appellant

v.

South Carolina Department of Corrections,

Respondent

Initial Brief of Appellant

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S.C. SUPREME COURT

Dated: Feb. 1st 2013

Billy Lee Lisenby JR,

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Cases

Wolff v. McE Donnell, 418 U.S. 539, 563-72, 94 S.Ct 2963, 2978-82 (1974)

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Statement of Issues on Appeal

1. Did the ALJ err in failing to find that the language in the Request to Staff from Inmate did not contain life threatening, or bodily injury threats?
2. Did the ALJ err in failing to find that Appellant was denied his right to confront his accuser and no Reason was given or placed on the 19-29A form?
3. Did the ALJ err in failing to find that the Respondent's violated policy by charging and convicting Appellant with (3) non-assaultive disciplinarys in one day?

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Statement of The Case

On Jun. 5th 2011 Appellant was convicted of 809 Threatening to Inflict Harm on or Assaulting an employee and on members of the Public. He appealed through Step 1 and Step 2 of S.C.D.C.'s grievance system and the conviction was affirmed. He then appealed to the ALJ and it was denied on October 3, 2012 by Deborah Brooks Dunder, Judge.

Argument(s) # 1

The language in the Request to Staff from Inmate did not contain life threatening, or bodily injury threats.

Appellant is accused of threatening Assoc. Warden Burton in stating "IF they keep fucking with me I'm going to fuck with them." It's plain to see he was talking about if the officers continue putting bogus write-ups, and harassing him, he is going to start back putting paperwork on them. He plainly stated "I have not been putting paperwork on anybody and I've been laying down." Appellant never threaten to do harm to anybody. Nobody claim to be threaten by him. The appropriate charges would've been 818 Use of Obscene, Vulgar or Profane Language or Gestures or 836 Disrespect. They are defined as follows:

"818 Use of Obscene, Vulgar or Profane Language or Gestures: The act of any inmate who verbalizes or writes lewd or indecent notes or letters to another person, or makes gestures or actions that are discourteous or disrespectful in nature, when the person who receives verbal statements, notes, letters, gestures, or actions complains of such."

"836 Disrespect: The failure of any inmate to observe proper decorum or who willfully engages in action or make statements to a person which are discourteous in nature, which may or may not include the use of profanity."

809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public: is defined as follows:

"Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future."

The language in the Request to Staff does not fit the description of 809 Threatening to Inflict Harm.

Argument #2

Appellant was denied his right to confront his accuser and no reason was given or placed on the 19-29A Form?

On 12-23-10 at 11:22 PM Appellant checked the appropriate box on the 19-69 Form that states "I DO WANT MY ACCUSER PRESENT AT THE Hearing!". Appellant abided by policy OP-22.14 Section 15.4 which states "The inmate must request the accuser's (s) presence prior to the hearing utilizing Form 19-69." He was denied his right to confront ^{his} accuser, and no reason was given or placed on his 19-29A.

The Respondent's violated OP-22.14 Section 15.5 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. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official."

They never tried to get Appellant's accuser on the phone. They never stated why he was not available.

This is a violation of 18.1 which states:

"SCDC Form 19-69 "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information: 18.1.4 whether questioning of the inmate's accusers, if requested, was denied and, if so, the reasons for the denial."

Appellant's accuser was at the institution and he is the Warden, he is on call 24 hrs a day. Appellant's accuser is over operations even when he is not at work they can page him and he'll call back in mins. The D.H.O could've contacted his accuser easily, and had him on speaker phone. They called for approval to put me in the restraint chair at 2:00 AM one morning. By him being at the institution the day of Appellant's hearing he could've been called.

They have violated Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S. Ct 2963, 2973-82 (1974)

Argument #3

The Respondent violated policy by charging and convicting Appellant with (3) non-assaultive disciplinarys in one day.

Appellant had been on SMU for 22 months and he habitually commit non-assaultive offenses. Per policy I can only go to the D.H.U once per month for non-assaultive charges. He was convicted of (3) three non-assaultive Disciplinarys on Jan. 5, 2011. This is a violation of OP-22.14 section 21 which states:

"Disciplinary Charges for Inmates in Special Management Unit And Maximum Security Unit: Inmates housed in SMU and MSU, who habitually commit non-assaultive offenses will have the incidents, disposed of by utilizing S.C.D.C Form 19-28A. The infraction will be entered into the offender Management System DISC screen using Type Action "03" which will show as, "(closed- Other Action Taken) Informally Resolved." IF the inmate commits a non-assaultive charge and earns goodtime, s/he may be charged once per month and provided with a disciplinary hearing. Therefore, accrued goodtime maybe taken for disciplinary violations."

Respondent abide by this policy with all inmates except Appellant. This is a violation of U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 (stating "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws").

Conclusion

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

Dated: Feb. 1st 2013

Respectfully Submitted,

Billie Lutz.