

INITIAL BRIEF

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
PHILIP S. LENSKI, Administrative Law Judge

CASE No. 2024-000800

James Lynch 244917.

Appellant.

✓

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

RECEIVED

JUL 19 2024

SC Court of Appeals

James Lynch
James Lynch 244917
BRSF Saluda B- 203
4460 Broad River Rd.
Columbia SC 29210
PRO-SE LITIGANT

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OTHER AUTHORITIES

SCDC Disciplinary Policy DP-22.14 (February 2, 2015) Page-6

STATEMENT OF ISSUE ON APPEAL

1. Disciplinary hearing was held two years and four months after being considered formally charged. Department Policy states SCDC had 60 days to have the hearing.
2. Appellant Accuser the (OBSERVING EMPLOYEE) failed to write Incident Report (1929A) which violates Policy.
3. Appellant was Deprived of a fair or impartial hearing when the department violated its own Policy.

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals Pursuant to the Notice of Appeal filed by James Lynch 244917 (Appellant) on May 13, 2024. Appellant, an inmate in custody of SCDC (S.C. Dept. of Corrections) (Respondent or Department). After Appellant's Step-1 and Step-2 Grievances were denied, the Appellant filed a Notice of Appeal with the Administrative Law Court (ALC) on February 12, 2024. The Appellant is appealing his disciplinary conviction of 805 Hostage Taking and 802 Sexual Assault because (1) his disciplinary hearing was held two (2) years and four (4) months after he was considered formally charged and SCDC Disciplinary Policy OP-22.14 mandates the Department had twenty-one (21) days to have the hearing, (2) and because Appellant Accuser (Observing Employee) did not write the incident report (SCDC Form 19-29A) also in violation of the Department's Disciplinary Policy OP-22.14. On April 22, 2024 the Department filed a "Motion to Dismiss" Pursuant to Howard v. S.C. Dept. of Corr. 399 S.C. 618, 733 S.E. 2d 211 (2016) and S.C. Code Ann. § 1-23-600 (b). April 30, 2024 Appellant filed a response to the Department's motion requesting the ALC to deny the Department's motion to dismiss because of the demonstrated procedural violations that (3) deprived Appellant of a fair hearing. On May 6, 2024 the ALC Law Judge, Philip S. Lenski issued an ORDER Granting Respondent's motion to Dismiss based on limited jurisdiction in inmate Grievance Appeals. The ALC only has jurisdiction of matters implicating a state created liberty interest.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard of review in Appeals from the ALC. S.C. Code Ann. § 1-23-610 (b) (SUPP. 2020). An Appellate Court may reverse or modify a decision if the Administrative Law Court (ALC) findings ~~are~~ conclusions are:

- (A) in violation of Constitutional or statutory Provisions;
- (B) in excess of the statutory authority of the Agency;
- (C) made upon unlawful Procedure;
- (D) affected other error of law;
- (E) Clearly erroneous in view of the reliable, Probative, and Substantial evidence on the whole Record; or
- (F) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Wolf v. McDonnell*, the S. Ct. held that due process in a prison disciplinary proceeding involving serious misconduct requires:

- (5) That the person hearing the matter who may be prison officials or employees, must be impartial.
- 418 U.S. 563-72, 94 S. Ct. 2978-82, 41 L. Ed. 2d 419-60 (June 26, 1974).

In *Allen v. SDC*, If a regulation explicitly mandates an outcome based on the existence of relevant criteria, then the state has created a liberty interest. Ct. App. 434 S.E. 114, 862 S.E. 2d 268 (August 4, 2021).

The Administrative Law Court may not grant an inmate relief from an erroneous administrative decision by SDC however. Unless the inmate demonstrate the error deprived him of due process. *Allen v. SDC*, 439 S.E. 164, 170-71, 886 S.E. 2d 671, 674 (2023).

Allen v. SCDL Ct. App. States may create - liberty interest protected by the due process clause by limiting a prisons inmates freedom from restraint in such a way that imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. 434 S.C. 114, 862. S.E. 2d 268 (August 4, 2021).

Some kind of hearing is required at some time before a person is finally deprived of his liberty, even when the liberty is a statutory creation of the state. Wolf v. McDonnell U.S. S.Ct. 418, U.S. 539 94 S.Ct. 2963 41 L.Ed. 2d 935 (June 26, 1974).

SCDC Inmate Disciplinary System DP-22, 14

ISSUE Date: February 2, 2015

Responsible Authority: Division of Operations

State/Federal Statutes: S.C. Code of laws, sections 24-1-140, and 24-13-210.

PURPOSE: TO provide guidelines for the administration and application of SCDC inmate disciplinary system.

Pursuant to this mandated / state laws which states:

3. SUPERVISORS Review / Responsibilities:

If the supervisor on duty can not correct the inmates behavior using the corrective action listed in paragraph 2.1 and 2.2, or if the incident is too serious to be resolved in this manner, he/she will instruct the observing employee to complete SCDC form 19-29A (Incident Report).

7.2 Once the inmate is formally charged (and entered into the offender management system), the hearing will be held within 21 calendar days.

9. Hearing Officers Duties:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process.

9.3 The following factors must be considered when reviewing an appeal:

- Whether the hearing officer acted in substantial compliance with policies / procedures.

ARGUMENTS

1. ON JULY 23, 2021 Offense Date Appellant was accused of 802 Sexual Assault and 805 Hostage Taking. ON JULY 27, 2021 Appellant was considered to be formally charged at 3:01 PM as the charge was referred to disciplinary hearing see CSCDC Incident Report 19-29A) as this report has been included in the record on appeal. However, once the Appellant was considered to be formally charged, SCDC (Respondent) had twenty one (21) days to have a disciplinary hearing (see SCDC Policy 00-22-14 under the title of Standard of Review Page 6 7.2). The respondent (SCDC) failed to provide the disciplinary hearing within the 21 day time frame. However, ON November 16, 2023 Appellant was taken to a re-hearing and was found guilty of alleged charges of Sexual Assault and Hostage Taking. The Respondent (SCDC) clearly violated it's on policy and procedures, when the respondent waited 2 years and 4 months to have a hearing. This issue became a state created liberty interest due to violations of state laws or SCDC policies (see Standard of Review Page 5) In *Allen v. SCDC* the court of Appeals held that; if a regulation explicitly mandates an outcome based on relevant criteria, then the state has created a liberty interest. Ct. App, 434 S.E. 114, 862 S.E. 2d 268 (August 4, 2021) See (*Wolf v. Madonell*) under title Standard of Review, Page-6. In *Wolf* the U.S. Sct held that; some kind of hearing is required at some time before a person is deprived of his

liberty, even when the liberty is a statutory creation of the state. 418 U.S. 539, 94 S.Ct. 2963 41 L.Ed. 2d 935 (June 26, 1974). See (Allen v. SDC) under title of Standard of Review Page-6. The Ct. App. held that: states may create liberty interest protected by the due process clause by limiting a prison's inmates freedom from restraint in such a way that imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. 434, S.C. 114 862, S.E. 2d 268 (August 4, 2001).

The 2 years and 4 months up until the DHO (Disciplinary Hearing) Appellant was confined in SDC Supermax lock up for 23 hours a day one hour recreation and Appellant is still housed in Supermax currently at this time. See Standard of Review Page-5 (Wolf v. McDonnell) the S.Ct. held that due process in a prison disciplinary proceeding involving serious misconduct requires: (5) that the person hearing the matter who may be prison officials or employees, must be impartial. 418 U.S. 562-72, 94 S.Ct. 2978-82, 41 L.Ed. 2d at 954-60 (June 26, 1974). The Respondents violation of its own procedures was indeed arbitrary or capricious as the Respondent allege in their final disposition of the Appellant Step-1 and Step-2 Grievances that there was no procedural errors See (Appellant's Step-1 and 2 Grievances that was included in the record on Appeal.

ARGUMENT

2. ON JULY 23, 2021 Appellant Accuser the OBSERVING EMPLOYEES failed to write SCBC Incident Report 19-29A, which is a direct violation of SCBC (Respondent). Inmate Disciplinary System See Page 6 to view the Standard of Review of C Disciplinary Policy DP-22.14 3. Supervisor Review/Responsibilities: which says, If the Supervisor on duty can not correct the inmates behavior using the corrective action listed in 2.1 and 2.2, OR if the incident is too serious to be resolved in this manner, he/she will instruct the Observing Employee to complete SCBC Form 19-29A (Incident Report).

Instead of the observing employee who claimed to have witnessed the rule violation completing or writing the incident report the supervisor T. Robertson wrote the report as he was not a witness to the alleged incident see (Incident Report 19-29A) as it was included in the record on appeal. Under the title Standard of Review Page 5 see (Allen v. SCBC) if a regulation explicitly mandates an outcome based on relevant criteria, then the state has created a liberty interest. Ct. App. 434 S.C. 114, 862 S.E.2d 268 (August 4, 2021).

If theres no incident report by the observing employee then obviously there was not a rule infraction, without the incident report theres no legal complaint to charge the Appellant.

ARGUMENT

3. Appellant was deprived of a fair hearing. When the Respondent (SCBC) violated it's own Policy and Procedure, the Department actions was arbitrary and capricious. Appellant was deprived of a fair hearing when Disciplinary Policy DP-22.14 Page - 6 and top of page-7 (Under the title Standard of Review) Policy says: 9. Hearing officer duties:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process.

This was not conducted by the Respondent as evidence of Appellant's Step-2 Grievance final Agency disposition stated; that there was no procedural errors and that Appellant was afforded due process rights (See Step-2 Grievance that was included in the record on Appeal). Also SEDA Disciplinary Policy OP-22.14 Page-6 and top of Page-7 states;

19.3 The following factors must be considered when reviewing an appeal:

Page-7 • Whether the hearing officer acted in substantial compliance with policies / procedures. No she did not.

IN *Wolf v. McDonnell* (Under title Standard of Review Page-5) States: The S.Ct held that, due process in a prison disciplinary proceeding involving serious misconduct requires: (5) That the person hearing the matter who may be prison officials or employees, must be impartial. 418 U.S. 563-72, 94 S.Ct. 2978-82, 41 L.E. 2d 4954-60 (June 26, 1974). Appellant has a liberty interest due to constitutional and state laws violated.

CONCLUSION

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

July 15, 2024

By James Lynch
James Lynch 244917
BRSF Saluda B-203
4460 Broad River Rd.
Columbia SC 29210
Pro-SE Litigant

SOUTH CAROLINA COURT OF APPEALS

JAMES LYNCH 244917,

Appellant,



South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I certify that I have served an Initial Brief on the South Carolina Court of Appeals (Clerk) by depositing a copy of it in the United States Mail, Postage Prepaid, on 7-15-24 2024 addressed to: Catherine S. Harrison (Deputy Clerk, Chief) S.C. Court of Appeals, P.O. Box 11629, Columbia SC 29211

JULY 15, 2024

By James Lynch
JAMES LYNCH 244917
BRSE Salvia B-203
4460 Broad River Rd.
Columbia SC 29210
PRO-SE Litigant

RECEIVED

JUL 19 2024

SC Court of Appeals

CC: OFFICE OF GENERAL COUNSEL
(Respondent)
4444 Broad River Rd.
P.O. BOX 21787
Columbia SC 29221

