

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE **RECEIVED**

Robert L. Reibold AHJ

JUL 25 2024

SC Court of Appeals

APPELLATE CASE NO: 2023-001002

Mr. Jay Walter Tate, Jr #131879.

Appellant

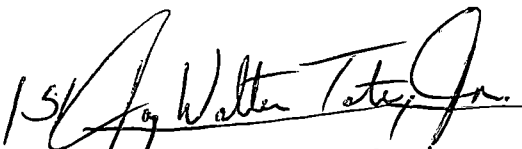
v

South Carolina Department of Corrections

Respondent

Amended Initial Brief of Appellant

Dated: July 19, 2024

15/   
Mr. Jay Walter Tate, Jr. #13187  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 2906  
Pro-Se Appellant

OTTER Counsel of Record

Christina Catoe Bigelow, Esquire  
South Carolina Department of Corrections  
Office of General Counsel  
Post Office Box 21787

Columbia, South Carolina 29211

## Statement of Case

The respondent's filed two motions to dismiss pursuant to Howard v. South Carolina Department of Correction's Docket No: 23-ALJ-04-060-AP, 23-ALJ-04-0059 and Grievance No: PCI 660-221 and PCI-657-221. These motions had the most important document attach was the Discipline Report and Hearing record. The respondent's was dishonest about allege material off the record. Disciplinary Hearing Officer request an allege audio phone recording and reviewed it in secrecy. Appellant had a right to hear all the evidence. Also disciplinary report and hearing revealed the Disciplinary Hearing Officer never had the mandatory SCDC Form 19-79 "Controlled Substance Testing and Disposition Form.

Appellant filed two motions to proceed. In pursuant to Al-Shabazz v State and S.C. Code Ann Section 1-23-610. These grievances was not properly investigated. The Agency's finding guilt were made off the record and used to convict him. Also assert that the drugs was not properly tested. This appeal follow.

## Argument

The Administrative law Judge showed willful blindness to dismiss the appeal for failure to Implicate a State created liberty or property interest and Appellant was denied Due Process.

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These were 2 properly filed grievances and appellant did not hear the evidence. An inmate can hear all the evidence *Al-Shabazz v State* 338 S.C. 354, 522 S.E.2d 742 Headnote 8 (2000) South Carolina Department of Corrections Policies and Procedures OP-22.14. Inmate Disciplinary System. 13 Presence of inmate at Disciplinary hearing 13.2 Inmate may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life safety of persons or the security and order of the institution.

Appellant was denied due process because the Disciplinary Hearing Officer did not have S.C.D.C. 19-79 Form. "Controlled Substance Testing and Disposition Form". The language of the South Carolina Department of Corrections Policies and Procedures OP-22.14. This regulation contains mandatory language and specific directives to decisionmaker that if the substantive predicates are present, a particular outcome must follow OP-22.14 (14 Presentation of evidence at hearing) H.1 at the start of the hearing the Hearing Officer will advise the inmate to enter a plea to each charge. If one or more the charges involved the possession of contraband, or the item(s) of contraband, a sample of the contraband or a picture of the item should be produced at the hearing. Also if the contraband involved tobacco or a controlled substance such as marijuana or alcohol, the Hearing Officer must have available a copy of the S.C.D.C. Form 19-79 "Controlled Substance Testing and Disposition Form" that establishes the exact type of illegal drug was found in possession of the inmate.

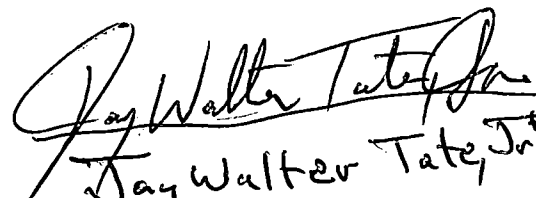
Please see the Disciplinary Report and Hearing Record. It reveals the Hearing Officer never had the Mandatory Copy of the SCDC Form 19-79 Controlled Substances Testing and Disposition Form.

Appellant never filed any grievances on good time, please see grievances Step 1 and Step 2. The incident report should shed light on the request allege audio phone recording, because the incident report stated a GTI Screenshot as evidence.

Is the SCDC policy is arbitrary and capricious?

### Conclusion

For the foregoing reason this court should reverse the Administrative Law Court decision. Also vacate the disciplinary conviction on both charges, or what the court seem just and proper.

  
Jay Walter Tate, Jr. #13187  
Kershaw Correctional Institute  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

The State of South Carolina  
In The Court of Appeals

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Appeal From The Administrative Court  
Administrative Law Judge Robert H. Reibold

JUL 25 2024

Court of Appeals

Administrative Law Court Case No 23-AHJ-04-59 and 60  
Appellate Case No. 2023-001002

Jay Tate #131879

Appellate

v.

South Carolina Department of Corrections Respondent

Proof of Service

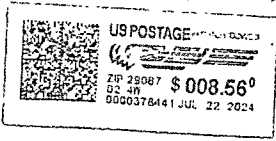
I hereby certify, that a true copy of the Appellant's Amended Initial Brief, have been served this 19<sup>th</sup> day of July, 2024 on the Respondent, Christina Catoe Bigelow, Esquire, South Carolina Department of Corrections, Office of General Counsel, Post Office Box 21787, Columbia South Carolina 29221 & the South Carolina Court of Appeals, Jenny A. Kitchings, Clerk of Court Post Office Box 11629, Columbia, South Carolina 29211

Dated: July 19, 2024

Respectfully Submitted,  
*Jay Walter Tate Jr*  
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SC Court of Appeals

Mrs Jenny A. Kitching, Clerk  
South Carolina Court of Appeal  
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