

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Crystal M. Rookard, Administrative Law Court Judge  
Appellate Case No.: 2024-001132

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Darryl Keith Louis, # 279494,

Appellant,

v.

South Carolina Department  
of Corrections,

Respondent.

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Initial Brief of Appellant

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### STATUTES

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### OTHER AUTHORITIES

S.C. Dep't of Corr. Policy/Procedures No OP-22.14,  
Operations Manual: Inmate Disciplinary  
System (Feb. 2, 2015)

### STATEMENT OF ISSUES ON APPEAL

1. DID THE ALC ERR IN FINDING APPELLANT WAS AFFORDED MINIMA DUE PROCESS WHEN THE AGENCY DENIED APPELLANT'S WITNESS AND FAILED TO STATE WHY?
2. WAS THE ALC ERRONEOUS WHEN IT DETERMINED SUBSTANTIAL RIGHTS OF THE APPELLANT WAS NOT PREJUDICED AFTER THE AGENCY VIOLATED ITS OWN STATUTORY PROVISIONS OWING TO THE ABSENCE OF MINIMA DUE PROCESS?

### STATEMENT OF THE CASE

On November 14, 2023, Darryl Keith Louis #279494 brought this action challenging a disposition of guilt from prison disciplinary hearing in the Administration Law Court (ALC) against the South Department of Corrections (SCDC) for violations of Constitutional and statutory provisions. On December 18, 2023, Appellant filed his initial brief along with a Motion to supplement the Record. Without a response from the Respondent, the ALC denied Appellant's motion to supplement the record.

The Appellant filed for a Motion for Summary Judgment on January 17, 2024. Again, without a response from the Respondent, the ALC denied Appellant's Motion for Summary Judgment. Thereafter, the ALC entered a judgment on the action affirming the Agency's decision on June 6, 2024.

On June 23, 2024, Louis served the Notice of Appeal on SCDC.

## STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2022) sets forth the standard of review for this court when sitting in review of a decision by the ALC. see S.C. Dep't of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008).

The Court of Appeals may..... reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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 by other area 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 religion.

S.C. Code Ann § 1-23-610(B). "The review of the Administrative Law Court's order must be confined to the record." Id. "In an appeal of the final decision of an administrative agency, the standard of review is whether the ALC's findings are supported by substantial evidence." Sanders v S.C. Dep't of Corr. 379 S.C. 411, 665 S.E. 2d 231, 234 (Ct. App. 2008). "However, when the issue on review raises a question of law, this court may reverse the decision of the ALC

where it is in violation of a statutory provision or it is affected by an error of law." Torrence v. S.C. Dep't. of Corr., 433 S.C. 633, 642-43, 861 S.E.2d 36, 41 (Ct. App. 2021) (Quoting Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control 411 S.C. 16, 28, 766 S.E. 2d 707, 715 (2014)).

## FACTS

On August 29, 2023, Appellant and his roommate were charged for possession of a communication device subsequent a cell search of their living quarters. The roommate Bobby Caughman informed the charging official Lt. Small that the phone and everything else confiscated was his alone. (see transcript pg.6). On September 11, 2023, Appellant submitted a Automated request to staff Member (ARTSM) to Disciplinary Hearing Officer Hough. (Transcript pg.10). On September 19, 2023, while waiting for disciplinary hearing to commence. Appellant's roommate informed Counsel Substitute Armstrong that he will be pleading guilty, claiming responsibility of the items discovered, and that Appellant was not in possession of any of the items found in their cell several days before. Bobby Caughman's hearing preceded the Appellant's hearing and both resulted in guilty determinations, and a penalty of 90 days Loss of good time credits. (see transcript pg. 5)

## ARGUMENTS

1. Because Appellant's requested witness Bobby Caughman was denied absent an explanation, Appellant's Substantial Rights were prejudiced.

The rule of law governing whether a[n] trial court erred in finding an inmate was afforded due process is Wolfe v. McDonnell 418 U.S. 539, 556 (1974) ("Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."); Al-Shabazz v. State 338 S.C. 354, 369-70, 527 S.Ed 742, 750 (2000) ("The statutory right to sentence-related credits is a protected liberty interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated."); Wolfe, 418 U.S. at 564-71 (holding due process in a prison disciplinary proceeding involving serious misconduct requires (1) advance written notice of the charge must be given to the inmate at least twenty-four hours before the hearing; (2) fact-finders must prepare written statement of the evidence relied on and the ~~statement~~ reasons for the disciplinary action; (3) the inmate should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals; (4) an illiterate inmate or

or one with a complex case that cannot be handled alone may seek assistance from a substitute counsel; and (5) the persons hearing the matter, who may be prison officials or employees, must be impartial); S.C. Dept of Corr. Policy/Procedure, No OP-22,14, Operations Manual: Inmate Disciplinary System § 14.4 (Feb. 2, 2015) ("Inmates will be required to use SCDC Form 19-11, 'Request to Staff Member,' listing the name of all witnesses they wish to be made available at their hearings.") Id. ("The form must be..... received no later than [twenty-four] hours prior to the hearing;"); which requires that when an inmate's request to call a witness is denied, "the hearing officer must write his/her reasons for this denial on the SCDC Form 19-69, in the space provided." Id. at 14.3

In a similar case, the Supreme Court of New York held that a "Hearing Officer's failure to personally ascertain reason for unwillingness to testify by petitioner's inmate witness, as requested by petitioner, served to deny petitioner his right to call witnesses ----- error was of constitutional dimension; Petitioner was charged with violations of prison regulations which could, and in fact did, result in loss of good time credit; also implicated is petitioner's minimal due process right to call witnesses when that will not be unduly hazardous to institutional safety or correctional goals; petitioner's conditional right to call witnesses is

a constitutional right which is implemented by 7 NYCRR 254.5 (a); thus, respondent's violation of their own regulation was also violation of Petitioner's Constitutional right to call witnesses; such violation necessitates dismissal of charges upon which hearing was held and expungement of tainted proceedings." Matter of Contreras v Coughlin 199 A.D.2d 601, 604 N.Y.S. 2d 651.

In this Sub Judice, no reason appears in the record for the refusal of requested witness to testify. If the application of law in the matter of Contreras v Coughlin, is followed by this Appellate Court, then the hearing officer's failure to personally interview witness violated Appellant's conditional right to call witnesses.

2. Because Appellant was denied requested witness, Prison Official's failure to follow statutory provision constitutes as a violation of due process.

Appellant realleges and incorporates here argument #1 verbatim. This error is of constitutional dimension. Appellant "was charged with violations of prison regulations which could, and in fact did, result in the loss of good time credit. Id. at 602, citing Matter of Laureano v. Kuhlmann 75 NY2d 141, 146, supra). This is not a case where the denial is only a breach of a regulatory requirement (see Matter of Blake v. Coughlin 189 AD2d 1016, 1017). Also implicated is Appellant's minimal due process right "to call witnesses when that will not be unduly hazardous to institutional safety or correctional goals.

(Matter of Laureano v. Kuhlmann, supra, at 146), Appellant's conditional right which is implemented by S.C. Dep't of Corr. Policy/Procedure, No OP-22,14, Operations Manual's Inmate Disciplinary System § 14.3-14.4 (see supra, at 146-147). "Thus, respondent's violation(s) of their own regulation under the circumstances here was also a violation of Petitioner's Constitutional right to call witnesses. Such a violation necessitates dismissal of the charges upon which the hearing was held and expungement of the tainted proceedings." Matter of Contreras v. Coughlin 199 A.D.2d 601, 602; Quoting Matter of Rosario v. Seksky 162 AD2d 939, 940.

Notwithstanding, the statutory violations by the hearing officer, the reporting official likewise failed to follow the prison's own rules/regulations. Lt. Small failed to: (1) list disposition of evidence in space provided, (2) include disposition of evidence in the statement of facts. see Transcript pg. 6.

The Policy reads in pertinent part: "Supervisor's Review/Responsibilities, . . . . She will instruct the observing employee to complete SCDC Form 19-29A. This report will be typed (if possible) and will, at a minimum, include, ~~at~~ the following information . . . . . A description of the facts of the offense(s), to include, at a minimum, . . . . A full statement of the facts underlying the offense, to include witnesses, evidence, and disposition of evidence, and the reporting employee's signature, title, list of any evidence, and disposition of evidence." S.C. Dep't of Corr. Policy/Procedure, No OP-22,14

Operations Manual's Inmate Disciplinary System  
§ 3-3.1 (Feb. 2, 2015).

CONCLUSION

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

Respectfully Submitted,

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July 23, 2024

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PROOF OF SERVICE

I certify that I have served the Transcript, Appellant's Initial Brief, and available Record on Appeal on South Carolina Department of Corrections by depositing a copy of it in the United States Mail, Postage PrePaid, on July 23, 2024, addressed to their attorney of record, Office of General Counsel, PO Box 21787, 4444 Broad River Rd., Columbia, SC 29221-1787, on July 23, 2024.

July 23, 2024

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S.C. Court of Appeals  
Jenny Abbott Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211

In Re: Appellate Case No.: 2024-001132;  
Darryl Keith Lewis # 279494 v. South Carolina  
Department of Corrections.

Dear Ms. Kitchings,

Enclosed find: 2 Transcripts, 2 Initial briefs,  
2 proof of Service, 2 Record of Appeal, 1 prepaid  
postage envelope.

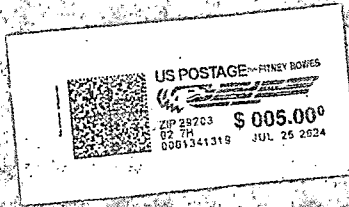
Please date/clock stamp all documents. Keep  
one copy for your filing and return the other to  
Appellant in the self-addressed envelope.

Respectfully,

*Darryl Lewis*

July 23, 2024

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