

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Robert L. Reibold, ALJ

Appellate Case No: 2023-001002
Administrative Law Case No: 23-ALJ-04-59 and 60

Jay Walter Tate, Jr. #131879

Appellant

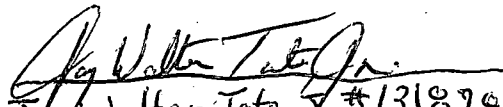
v.

South Carolina Department of Corrections Respondent

Final Brief of Appellant

Dated October 12, 2024

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SC Court of Appeals

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Statement of Case

On October 14, 2022 Appellant received an incident report while he was an inmate at the Perry Correctional Institution. The incident was initiated by reporting Official Sgt. Hester, charging Appellant with the following offenses: (903) Trafficking Use, Possession, Narcotics, Marijuana, ect level 1 offense and (855) Conspiring to Smuggle Contraband into Institution level 2 offense. Both are Major Offenses and serious. The incident was referred to a Disciplinary Hearing on October 18, 2022. On November 2, 2022 a disciplinary hearing was conducted and Appellant convicted of both offenses. On November 9, 2022, Appellant filed his Step 1 grievances on both offenses. On November 28, 2022, Appellant received the Warden's response denying his grievances. On November 30, 2022, Appellant filed his Step 2 grievances stating his dissatisfaction with the Warden's response. On January 4, 2023, Appellant received the Responsible Official's decision and reason for denying both grievances. On February 10, 2023, Appellant filed his Notice of appeal with the South Carolina Administrative Law Court on both grievances (No: PCI-0657-22 and PCI-0660-22). On February 24, 2023, the case was assigned to the Honorable Robert H. Reibold, Case Numbers 2320059, Grievance No: PCI-0657-22 and #230060, Grievance No: PCI-660-22. The Respondent's filed two Motions to Dismiss Pursuant to Howard v South Carolina Department of Corrections and S.C. Code Ann: Section 1-23-600(0) Docket No: 23-ALJ-04-AP, 23-ALJ-04-0059 and 060. Grievances (No: PCI-660-22) and PCI-657-22. These motions had the most important document attach was the Disciplinary Report and Hearing Record. Respondent's was dishonest about allege material off the record. Disciplinary Hearing Officer requested an allege Audio phone recording that was not part of the Incident Report and reviewed edit in secrecy. Appellant had a right to hear all the evidence. Also the 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 Al-Shabazz v State and S.C. Code Ann: Section 1-23-610. Docket No: 23-ALJ-04-0059 and 23-ALJ-04-0059. Appellant assert that these grievances:

was not properly investigated. The Agency's finding of guilt was made off the record and used to convict him. Appellant also asserts that the drugs were not properly tested in this motion.

Appellant received two orders granting motion to dismiss. Docket No: 23-AHS-04-0060 and 23-ALS-04-0059-AP.

Appellant filed Initial Brief on September 7, 2023.

On November 28, 2023 Appellant filed a motion to obtain leave of court to amend Initial Brief and expand the designation of matter to be included.

Order granting Appellant motion to amend his designation of matter and Initial Brief, filed on June 20, 2024.

Appellant filed his amended Initial Brief and expanded the designation of matter to be included on July 19, 2024.

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.

Appellant Filed 2 Properly Filed grievances PCI-0657-22 and PCI-0660-22. Appellant Stated in his motion to Proceed In Pursuant to AL-Shabazz v State and SC Code Ann: Section 1-23-610 Docket No: 23-ALJ-04-060 and 23-ALJ-04-0059. Appellant clearly stated the drugs were not properly tested. Appellant Never Filed any grievance(s) on Step 1 or Step 2 on good time credits. The grievance(s) were not properly investigated by the Warden or Responsible Officials.

Appellant did not hear the evidence. An inmate can hear all the evidence, AL-Shabazz v State 338 SC 355 27 SE2d 742 (Headnote 8) 2000. South Carolina Department of Correction 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 person or the security and order of the institution. This evidence was used to determine Appellant guilt. Appellant was denied Due Process on this ground.

Appellant was denied due process because the Disciplinary Hearing Officer did not have the SCDC 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 contain mandatory language and specific directives to decisionmaker that if the substantive predicates are present, a particular outcome must follow. Allen v South Carolina Department of Corrections

433 SC. 114, 862 SE2d 268, OP-22:14 (14) Presentation of evidence at hearing) 14:1 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 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 marijuana or alcohol, the hearing Officer must have ~~to~~ available a copy of the SCDC Form 19-79 "Controlled Substance Testing and Disposition Form" that establishes the exact type of illegal drug was found in possession of the inmate. This mandatory SCDC Form 19-79 was not part of the Disciplinary Report and Hearing Record. I was denied due process on this ground.

The Incident Report should shed light on the requested allege Audio Phone Recording, because the incident Report stated GTL Screenshot as evidence.

Appellant is asking this court to order the South Carolina Department of Corrections to release the discovery and transcript copy of the disciplinary hearing that was held on November 2, 2022.

Appellant never had any possession of any illegal drugs. Appellant never conspired to smuggle any drug or contraband into ~~any~~ the Perry Correctional Institution.

Dated October 12, 2024

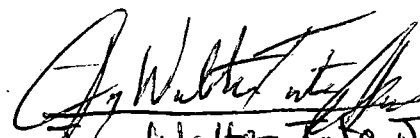
Footnotes

Inmate Scotty Shelton #385004 was never charged

Conclusion

For the forgoing reasons this court should reverse the Administrative law court decision. Asking this court to vacate both disciplinary with the evidence on the record and remove from my disciplinary records, or what the court deem just and proper

Dated October 12, 2024


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