

# BRIEF OF APPELLANT

The State of South Carolina  
In the Court of Appeals

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Appeal From Administrative Law Court  
Philip S. Lenski Administrative Law Judge

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Case No. 2024-000800

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James Lynch 244917,

Appellant.

S.C. Department of Cor. ✓

Respondent.

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ALL [FINAL] BRIEFS OF APPELLANT

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By James Lynch  
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SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

1. Disciplinary Hearing held (2) years and (4) months after being formally charged. Department Policy states, SDC had (21) days to have hearing.
2. Appellant accuses the (observing employee) failed to write incident report (19-29A) which violates Policy.
3. Appellant was deprived of a fair hearing when SDC violated it's on Policy.

# STATEMENT OF 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 SCD (S.C. Department of Corrections) (Respondent). After Appellant's Step-1 Grievance was denied on December 8, 2023 (See Step-1 Grievance) (Record on Appeal) \_\_\_\_\_ P. 6. Appellant filed a Step-2 Grievance and was denied on January 17, 2024 See (Step-2 Grievance) Record on Appeal P. 7. Appellant filed a notice of Appeal with the ALC (Administrative Law Court) on February 12, 2024. The Appellant is appealing his disciplinary conviction of 805 (Hostage Taking) See (Record on Appeal) \_\_\_\_\_ P. 12 and 802 (Sexual Assault) See (Record on Appeal) P. 6. Because (1) his disciplinary hearing for the charge was held two years and four months after Appellant was considered formally charged and SCD Disciplinary Policy OP-22.14 Mandates the department had (2) data to have the hearing, for reference see (Record on Appeal) \_\_\_\_\_ P. 18, 7.2 and because (2) Appellant accuser (Observing employees) did not write the incident report SCD form (19-29A) also in violation of Policy See (Record on Appeal) \_\_\_\_\_ P. 8 and See Disciplinary Policy (Record on Appeal) \_\_\_\_\_ P. 16, 3. SUPERVISORS REVIEW/RESPONSIBILITIES: On April 22, 2024 the department filed a motion to dismiss pursuant to Howard v. SCD, 399 S.C. 618, 723 S.E. 2d 211 (2016) and S.C. Code Ann. § 1-23-600 (D). 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 See (Record on Appeal) Reference \_\_\_\_\_ P. 19, 9-9.1 On May 6, 2024 the ALC Law Judge Philip S. Lenski issued an order granting respondents motion to dismiss based on limited jurisdiction in inmate grievance appeals. The ALC only has jurisdiction of matters implicating a state created liberty interest. See Judges ORDER (Record on Appeal) \_\_\_\_\_ P. 3-4 and 9-10.

# 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 findings conclusions are:

- (A) in violation of constitutional or statutory provisions;
- (B) in excess of the statutory authority of the agency;
- (C) Made upon unlawful procedures;
- (D) effected 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.E. 2d at 954-60 (June 26, 1974).

IN *Allen v. Scott*, the Ct. App. held that, ~~in order to establish a state created liberty interest~~ IF a regulation explicitly mandates an outcome based on the existence of relevant criteria, then the State has created a liberty interest, 434 S.C. 114, 862 S.E. 2d 268 (August 4, 2021).

*Allen v. Scott*, the Ct. App. held that, In order to establish a state created liberty interest, a regulation must contain explicitly mandatory language i.e. specific directives to the decision maker that if the regulation substantive predicates are present, a particular outcome must follow. U.S. Const. Amend. 14.

The Administrative Law court may not grant an inmate relief from an erroneous administrative decision by SCDC however. Unless the inmate demonstrate the error deprived him of due process, Allen v. SCDC S.Ct. 439 S.C. 164, 170-71 886 S.E.2d 671, 674 (April 5, 2023).

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 ordinary incidents of prison life, Allen v. SCDC Ct. App. 434 S.C. 114, 862 S.E.2d 268 (August 4, 2021).

Somekind 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. Madonell, U.S. S.Ct. 418, U.S. 539, 94 S.Ct. 2963 41 L.E.d. 2d 935 (June 26, 1974).

### SCD INMATE DISCIPLINARY SYSTEM OP-22, 14

#### 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 the incident is too serious to be resolved in this manner s/he will instruct the observing employee to complete SCDC form 19-29A. See (Record on Appeal) P. 16, 3. See SCDC incident report (Record on Appeal) P. 8.

7.2 Once the inmate is formally charged and entered into the offender management system, the hearing will be held within (21) calendar days. See (Record on Appeal) P. 18 SCDC disciplinary policy. See Disciplinary Report and hearing record for offense date: JULY 23, 2021 and Hearing date: November 16, 2023 See (Record on Appeal) P. 5 and 11

## 9. Hearing Officers Duties:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process. For reference see (Record on Appeal) \_\_\_ P. 19, 9.1

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

- Whether the hearing officer acted in substantial compliance with policies / procedures. See reference (Record on Appeal) \_\_\_ P. 20, 19.3

## ARGUMENT - ONE

Offense Date: July 23, 2021 Appellant was accused of 802 (Sexual Assault) and 805 (Hostage Taking) which he was convicted of Hearing Date: (November 16, 2023) for reference see disciplinary hearing report (Record on Appeal) \_\_\_ P. 5 and 11. Appellant's argument is that, some procedural (21) days time frame for having a disciplinary hearing of the charges had expired as of (August 19, 2021) as appellant was considered formally charged and entered into the offender management system as of (July 30, 2021). See (Record on Appeal) \_\_\_ P. 8 for reference of dates, (Incident Report) bottom right corner of page - 8. Regarding the department (SCDC) violations of its own procedures, for reference see (Record on Appeal) ( inmate disciplinary system) \_\_\_ P. 18, 7.2 From July 23, 2021 - November 16, 2023 is two (2) years and four (4) months before appellant was provided a hearing. This is a contextual issue where not only is some policy ~~has~~ been violated but this violates the due process clause. This issue became a state-created liberty interest due to violations of state laws such as: (S.C. mandated disciplinary policy OP-22.14). In *Allen v. SCDC*, the Ct. App. held that, IF a regulation explicitly mandates an outcome based on relevant criteria, then the state has created a liberty interest. 434 S.d. 114, 862 S.E. 2d 268 (August 11, 2021) see (Standard of Review) P. 5.

Also in *Allen v. SCD*, the Ct. App. held that, in order to establish a state-created liberty interest, a Regulation must contain explicitly mandatory language, i.e. specific directives to the decision maker that if the regulations substantive predicates are present, a particular outcome must follow. U.S. Const. Amend. 14, See (Standard of Review) P. 5. In *Wolf v. McDonnell*, the S.Ct. held that, some kind of hearing is required at sometime 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 (Standard of Review) \_\_\_\_\_ P. 6. The Ct. App. held that, 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. *Allen v. SCD*, 434 S.E.2d 114, 862 S.E.2d 268 (August 4, 2021) See (Standard of Review) P. 6 appellant due to the respondents violations of its own policy and appellants due process rights, the Appellant is still confined to SCD Supermax Unit even after he was given time served. See (Disciplinary Report and Hearing Record) (Record on Appeal) \_\_\_\_\_ P. 5 bottom of page where it states: Date inmate placed in PHO, (Pre-hearing Detention) 7-23-2021 and beside it states: Date inmate released from PHO, there is no date noted because Appellant is still at this time lock down twenty three (23) hours a day facing what *Allen v. SCD*, describes as atypical and significant hardships. 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. *Wolf v. McDonnell*, 418 U.S. 563-72, 94 S.Ct. 2978-82 41 L.Ed.2d at 954-60 (June 26, 1974), See Reference (Standard of Review) Page-5, When the Respondent violated procedures this deprived Appellant of a fair hearing.

# ARGUMENT - TWO

ON JULY 23, 2021 APPELLANT ACCUSED THE (OBSERVING EMPLOYEE) FAILED TO COMPLETE OR WRITE AN INCIDENT REPORT REGARDING THE ALLEGATIONS SHE ACCUSED APPELLANT OF 802 (SEXUAL ASSAULT) AND 805 (HOSTAGE TAKING) HOWEVER, THE OBSERVING EMPLOYEE REPORTED THE ALLEGED ALLEGATIONS VIA HER STATE CELL PHONE TO AN OFF DUTY ASSOCIATE WARDEN, THOMAS ROBERTSON (SUPERVISOR). APPELLANT'S ARGUMENT IS THAT, THE SUPERVISOR (A/W) THOMAS ROBERTSON VIOLATED POLICY AND PROCEDURE OF THE INMATE DISCIPLINARY SYSTEM OP-22.14. WHEN HE FAILED TO INSTRUCT THE OBSERVING EMPLOYEE TO WRITE SCDP FORM 19-29A (INCIDENT REPORT) AND INSTEAD WROTE THE REPORT HIMSELF. FOR REFERENCE SEE SCDP INCIDENT REPORT (RECORD ON APPEAL) PAGE-8. SCDP INMATE DISCIPLINARY POLICY AND PROCEDURE OP-22.14 STATES: 3. SUPERVISORS REVIEW/RESPONSIBILITIES: IF THE SUPERVISOR ON DUTY CANNOT CORRECT THE INMATE BEHAVIOR USING THE CORRECTIVE ACTION LISTED IN 2.1 AND 2.2 OR THE INCIDENT IS TOO SERIOUS TO BE RESOLVED IN THIS MANNER. HE/SHE WILL INSTRUCT THE OBSERVING EMPLOYEE TO COMPLETE SCDP FORM 19-29A (INCIDENT REPORT). FOR REFERENCE SEE SCDP POLICY (RECORD ON APPEAL) PAGE-16,3. IN ALLEN V. SCDP, THE CT. APP. HELD THAT, IF A REGULATION EXPLICITLY MANDATES AN OUTCOME BASED ON RELEVANT CRITERIA, THEN THE STATE HAS CREATED A LIBERTY INTEREST, 434 S.E. 114, 862, S.E. 2d 268 (AUGUST 4, 2021) FOR REFERENCE SEE (STANDARD OF REVIEW) PAGE-5 IF THERE IS NO INCIDENT REPORT WRITTEN BY THE OBSERVING EMPLOYEE, THEN THERE IS NO LEGAL OR VALID COMPLAINT TO CHARGE THE APPELLANT OF A SAID RULE INFRACTION. AS THIS ALSO DEPRIVED APPELLANT OF A FAIR HEARING AND TRIGGERS DUE PROCESS RIGHTS.

# ARGUMENT - THREE

On July 23, 2021 Appellant was deprived of a fair hearing, when the Respondent (SCDC) violated it's On Policy and Procedures. The department actions was arbitrary and capricious. SCDC Inmate Disciplinary Policy OP-22.14 states: 9. Hearing officer Duties: 9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process. For reference see SCDC Policy (Record on Appeal) P. 19, 9.0 and 9.1, this was not conducted or followed by the Respondent as evident of Appellant's Step-1 and Step-2 Grievances (Agency final Disposition) stated: there was no procedural errors and that Appellant was afforded due process rights. For reference see Step-1 Grievance (Record on Appeal) P. 6 and Step-2 Grievance (Record on Appeal) P. 7. SCDC Disciplinary Policy OP-22.14 states: 19.3 the following factors must be considered when reviewing an Appeal:

- Whether the hearing officer acted in substantial compliance with Policies / Procedures. In *Wolff 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 at 954-60 (June 26, 1974). See reference (Standard of Review) Page-5. Appellant has a liberty interest due to constitutional and State laws violated.

## CONCLUSION

For the foregoing proven reasons stated, this Court should Reverse or dismiss the charges against Appellant.

Respectfully Submitted,  
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November 20, 2024

# CERTIFICATE OF COUNSEL IN FINAL BRIEF

The state of South Carolina  
IN THE COURT OF APPEALS

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Appeal from Administrative Law Court  
Philip S. Lenski Administrative Law Judge

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Case No. 2024-000800

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James Lynch 244917,	Appellant,
S.C. Department of Corrections,	Respondent.

V.

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## Certificate of Counsel

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The undersigned certified that this Final Brief  
Complies with rule 211(b), SCACR.

November 20, 2024

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