

# 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 JUDGE

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CASE NO. 2024-000800

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James Lynch 244917,

Appellant,

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Sic Department of Corrections,

Respondent.

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[FINAL] BRIEF OF APPELLANT

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131 *James Lynch*  
James Lynch 244917  
BRSF Suite B-203  
4460 Broad River Rd.  
Columbia Sic 29210  
Pro-Se Litigant

**RECEIVED**

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SC Court of Appeals

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SCDC Inmate Disciplinary Policy OP-22.14 (February  
2, 2015) Record of Appeal Pages: 7-12

## STATEMENT OF ISSUES ON APPEAL

1. Disciplinary Hearing held (2) two years and (4) four months after being formally charged. Department Policy states; SCDC had (2) days to have hearing.
2. Appellant Accuser (the CONSERVING EMPLOYEE) failed to write incident report (19-29A) which violates Policy.
3. Appellant was deprived of a fair or impartial hearing when SCDC / department violated it's own 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) Page-3. Appellant filed a Step-2 Grievance and was denied on January 17, 2024 See Step-2 (Record on Appeal) Page-4. 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) Page-2 and 802 Sexual Assault see (Record on Appeal) Page-15 because (1) his disciplinary hearing for the charge was held two years and four months after Appellant was considered to be formally charged and SCD Disciplinary Policy DP-22, 14 mandates the department had (215 days to have the hearing See (Record on Appeal) Page-10, 7.2 (2) and because Appellant accused (observing employee) did not write the incident report (SCDC Form 19-29A) also in violation of Policy See (Record on Appeal) Page-1 and see Disciplinary Policy (Record on Appeal) Page-8, 3. Supervisors Review/Responsibilities; On April 22, 2024 The Department filed a motion to Dismiss Pursuant to Howard v. S.C. Dept. of Corrections 349 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) Page-11, 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 Judge's ORDER for reference. (Record on Appeal) Page-5-6; 16-17,

# 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 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.E. 2d at 954-60 (June 26, 1974).

In *Allen v. S.C. SC*, the Ct. App. held that; 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. S.C. SC*. 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's 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 the ordinary incidents of prison life. Allen v. SCDC, Ct. App. 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.E.2d 985 (June 26, 1974).

## SCDC INMATE DISCIPLINARY SYSTEM DP-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 if the incident is too serious to be resolved in this manner, s/he will instruct the observing employee to complete SCDC Form 19-29A. For Reference see (Record on Appeal) Page-8, 3. see SCDC Incident Report (Record on Appeal) Page-1.

7.a 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) Page-10 See Disciplinary Report and Hearing Record for offense Date: July 23, 2021 and Hearing Date: November 16, 2023 (See Record on Appeal) \_\_\_\_\_ Pages- 2 and 15

## 9. Hearing Officers Duties:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process. See (Record on Appeal) Page-11, 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.

For reference see (Record on Appeal) Page-12, 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 (Record on Appeal) Page-2 and 15 Disciplinary Report and Hearing Record. Appellant's argument is that, SCDC Procedural (21) day 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. For reference of dates see (Record on Appeal) Page-1 (Incident Report) bottom right corner of page. Regarding the department (SCDC) violations of its on procedures see (Record on Appeal) Page-10, 7.2 from July 23, 2021 - November 16, 2023 is 2 years and four months before Appellant was provided a hearing. This is a contextual issue where not only is SCDC 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 (SCDC Disciplinary Policy DP-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.C. 114, 862 S.E. 2d 268 (August 4, 2021) See (Standard of Review) Page-5.

Also In *Allen v. SCDJ*, the Ct. of 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) Page-5.

In *Wolf v. McDonnell*, the U.S. S. Ct. 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. 529, 94 S.Ct. 2963 41 L. Ed. 2d 935 (June 26, 1974) See for reference (Standard of Review) — Page-6.

The Ct. App. held that states may create a liberty interest protected by the due process clause by limiting a prison's inmate's 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. SCDJ*, 434 S.C. 114 862, S.E. 2d 268 (August 4, 2021) for reference See (Standard of Review) Page-6. Appellant due to the Respondent's violation of its own policy and Appellant's due process rights, the Appellant is still confined to SCDJ Supermax unit even after he was given time served. See Disciplinary Report and Hearing Record (Record on Appeal) Page-2 bottom of page where it states: Date inmate placed in PHD (Pre-Hearing Detention) 7-23-21 and beside it states: Date inmate released from PHD there is no release date noted because Appellant is still at this time lock down 23 hours a day facing what *Allen v. SCDJ* 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's violated procedures this deprived Appellant of a fair hearing. (8)

## ARGUMENT-TWO

ON JULY 23, 2021 Appellant accused the (Observing Employee) failed to complete or write a 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 SCDC Form 14-29A (Incident Report) and instead wrote the report himself. For reference see incident report (Record on Appeal) Page-1. SCDC Inmate Disciplinary Policy and Procedure OP-22.14 states: 3. Supervisors Review / Responsibilities: 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 SCDC form 14-29A (Incident Report). For reference see (Record on Appeal) Page 8, 3. 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.C. 114, 862 S.E. 2d 268 (August 4, 2020). For reference see (Standard of Review) Page-5 IF theres no incident report written by the Observing employee, then theres 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 its On Policy and Procedure. 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 (Record on Appeal) page-11, 9.-9.1

This was not conducted or followed by the Respondent as evidence 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) page-3

See Step-2 Grievance (Record on Appeal) page-4.

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. NO she did not.

In Wolf v. McDonell, 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) for

Reference see (Standard of Review) page-5.

Appellant has a liberty interest due to constitutional and state laws violated.

## CONCLUSION

For the proven foregoing reasons stated, this court should reverse or dismiss the charges against Appellant.

Respectfully Submitted,

October 22, 2024

James Lynch  
James Lynch 244917  
BRSP Saluda B-203  
4460 Broad River Rd.  
Columbia SC 29210  
PRD-se Litigant

(10)

CERTIFICATE OF COUNSEL IN FINAL 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.



S.C. Department of Corrections.

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief  
Complies with Rule 211(c)(5), SCACR.

October 20, 2024

ISI James Lynch  
James Lynch 244917  
BRSE Saluda B-203  
4460 Broad River Rd.  
Columbia SC 29210  
PRO-SE Litigant

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