

State of South Carolina
Administrative Law Court

Willie James Roundtree #267355
Appellant

VS.
SCDC
Respondent

Certificate of Service

Docket # 13-ALJ-04-0192-AP

TO: Judge Lenski
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

I certify that the original Reply
Principal Brief was served on Judge Lenski,
By depositing the original in the U.S. Mail,
Postage Prepaid to the Above Address.

Date: 6/21/13

CC: File

#267355
Willie James Roundtree
Trenton C.I. Dorm/3-848
84 Greenhouse Rd.
Trenton, S.C. 29847

RECEIVED

SEP 09 2013

SC COURT OF APPEALS

State of South Carolina
Administrative Law Court

Willie James Roundtree, # 267355
Appellant,

Reply Principal Brief

VS.
SCDC

Docket # 13-ALJ-04-0192-A

Respondent

Statement of The Case:

The Appellant was employed at Pepperhill Nursing CTR. I worked there from 7/22/11 until 12/7/12. During that time the Appellant was once suspended & terminated for a defamatory statement made by Mr. Larry Pugh (his supervisor). I was called hired back immediately after Mr. Pugh was found to be wrong. HE ADMITTED TO BEING WRONG TO CAPT. SYBERTH OF LSPRC AND TO ADMINISTRATOR SCOTT JONES AND (OWNER) WADE JONES. Now Mr. Pugh claims to have seen Appellant on a cell phone on 12/6/12 while at work. Yet the incident wasn't reported to LSPRC until 12/7/12 the next day. He was off that day. Mr. Pugh NEVER stated why he didn't confiscate this cell phone I was supposedly using on 12/6/12 at the time he says he observed me using a phone. That isn't by procedure. Why wasn't the Appellant notified that he had been supposedly seen on a cell phone right then, and why wasn't the incident reported to SCDC AS SOON AS IT supposedly occurred. The Appellant worked all that day 12/6/12, and all day 12/7/12 the next day. ON 12/7/12 when the Appellant got off work HE WAS TAKEN TO LSPRC, THEN TRANSFERRED TO T.R.C.I. THE SAME DAY BEING ACCUSED OF OFFENSE 898 POSSESSION OF ANY COMMUNICATION DEVICE. A HEARING WAS HELD ON 12/20/12, and I was wrongly convicted and punished. I filed A STEP ONE GRIEVANCE ON 1/4/13, THE GRIEVANCE WAS DENIED WITH THE BASIC RUBBER STAMP WITHOUT A REAL INVESTIGATION INTO
(conclusion next page)

claim being done by T.C.I.. The Appellant filed the step two Grievance on 1/7/13, this was also denied. The Appellant may have had a hearing, but I have not had a fair and impartial investigation done to find out the truth in this matter.

MY ISSUES ARE AS FOLLOWS:

1) By Angie Gambell calling CPS John Birone stating that I was caught using a cell phone, and she was having the cell phone delivered to KSPRC. I have been accused and convicted. I have lost good time, work credits, and my custody status changed. This has caused my state-created liberty interest to change by being wrongly punished. (SEE THE ATTACHED APPENDIX FOR INCIDENT REPORT).

2) Mr. Birone has never received a cell phone I was supposedly using, and the Incident Report for this clearly states that he would receive the cell phone. Yet no cell phone has been produced nor turned over to SCOL, and it's been 7 months. (SEE ATTACHED APPENDIX).

3) I lost good time, work credits, and my custody status changed when Mrs. Angie Gambell called and said I had been seen on a cell phone that she never witnessed me on, nor did she receive, produce or deliver a cell phone like she stated on Incident Report.

4) Mr. Larry Pugh My Supervisor has given false information on me in the past, his actions were reported, and an investigation was done and he was found to be wrong. A straight forward and fair investigation should have been done this time.

5) The disciplinary action form from Pepperhill has the date of my infraction as 12/6/12, but the Incident Report form and the Disciplinary Hearing Record, has the incident and offense date as 12/7/12. What makes this possible? The incident time is approx: 2:45 p.m. (SEE ATTACHED APPENDIX).

6) I was also told by DHO Glidewell that the employer has 24 hrs. to report the incident. If that's true then time for reporting was exhausted, the next day.

My Argument in Support of my issues are:

- 1) Mrs. Angie Gambell NEVER SEEN ME ON A CELL PHONE, NOR DID SHE RECEIVE A CELL PHONE, BUT HER 3rd HAND INFORMATION WAS STILL USED TO WRONGLY CONVICT ME. THE SUPREME COURT HAS RULED INMATES WHO OBSERVE PRISON RULES, HAVE A STATUTORY RIGHT TO GOOD TIME CREDITS AND THE LOSS OF SUCH CREDITS AFFECT A LIBERTY INTEREST PROTECTED BY THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT. THE LOSS OF ~~THESE~~ CREDITS THREATENS APPELLANT'S PROSPECTIVE FREEDOM FROM CONFINEMENT BY EXTENDING THE LENGTH OF IMPRISONMENT. WHEN THE STATEMENT IS MADE THE CELL PHONE WILL BE DELIVERED TO LSPRC, THEY SHOULD BE MADE TO PRODUCE A CELL PHONE.
- 2) BEING THAT CPS JOHN BIRONE NEVER RECEIVED A CELL PHONE AS THE INCIDENT REPORT HE FILLED OUT STATES HE WOULD, THEN WHY DIDN'T HE TRY TO COME UP WITH THE CELL PHONE BEFORE I WAS CONVICTED FOR A CELL PHONE I NEVER HAD, NOR USED. CLEARLY IT CAN BE SEEN THAT I NEVER HAD A CELL PHONE BECAUSE IF I DID MR. LARRY PUGH WOULD HAVE TAKEN IT FROM ME RIGHT THEN AS HIS SUPPOSE TO DO PER PROCEDURE.
- 3) IF MR. LARRY PUGH OR ANGIE GAMBELL HAD ACTUALLY SEEN ME ON A CELL PHONE OR THEY ACTUALLY HAD A CELL PHONE I WAS SUPPOSEDLY USING, THEN WHY WAS I ALLOWED TO WORK ALL THAT DAY THEN ALL THE NEXT DAY, 12/6/12, AND 12/7/12? HE WOULD HAVE HAD TO TAKE THE CELL PHONE ON THE SPOT, IT ONLY MAKE SENSE TO DO SO IF HE SEEN ME ON A CELL PHONE. THE GOOD TIME CREDITS I'VE LOST BY BEING WRONGLY ACCUSED CONSTITUTE A PROTECTED LIBERTY INTEREST, THE RELOCATION OF SUCH CREDITS WITHOUT JUST CAUSE IS A VIOLATION OF PROCEDURAL DUE PROCESS. (CONTINUE NEXT PAGE)

I'm AWARE that if I violate any RULE of confinement, my CREDITS may be lost, but in this CASE I VIOLATED NO RULE and PROCEDURE, Plus Protocol were VIOLATED by the RESPONDENT. (SEE APPENDIX).

4) Being that it's A PROVEN FACT that Mr. Larry Pugh has lied on me in the past, why wasn't anything about this situation investigated, After the facts, Times, and dates all were in ACCURATE? If Angie stated on report that A PHONE would be delivered to LSPRC and NEVER did, why should anyone believe that Mr. Larry Pugh ever SEEN ME ON A CELL PHONE? IT WAS NOT TRUE! ONE month prior to this incident November of 2012, Mr. Pugh had me terminated /suspended, Claiming that I loaded 101 pounds of clothing in a 55 pound washing machine. He weighed up wet clothes, not dry clothes. That's what CAUSED the weight to be off. An investigation was done, then he admitted he weighed up wet clothes, He fully understood before hand that he was suppose to weigh up dry clothes. After 1 week I was told to report back to work, THEN Mr. Pugh openly admitted he had made a mistake to the OWNER, THE Administrator, other employees myself and Captain Sy Pherritt of LSPRC. NOW Mr. Pugh HAS come ONE month later with a different type of false statement, and so far NO-ONE has tried to find out the truth. This significant hardship is not included in ordinary incidents of prison life. Mr. Pugh did tell other employees that he was going to get rid of me. I do have WITNESSES for that Statement.

5

5) By the incident Report and the Disciplinary Hearing Record All having the date of offense 12/7/12 At Approx: 2:45 p.m. on them, I assumed at first I was being accused of having a cell phone on 12/7/12, because that's what the paperwork I received had on them. (SEE APPENDIX, INCIDENT REPORT).

This shouldn't ~~have~~ been allowed to be incorrect. Truthfully, I worked on 12/6/12, and 12/7/12 without incident. I personally feel this was done to me in retaliation for the November 2012 plot not working. Mr. Larry Pugh tried different methods to get me terminated, and his plot so far was successful.

CONCLUSION

I NEED THE decision To Provide AN Adequate Remedy. The substantial evidence That's supports me being wrongly convicted is where the narrative states A Cell Phone would be delivered; yet 7 months later still no cell phone. TR. C. I WAS led to believe LSPRC had A cell phone and the cell phone would be delivered by it being stated on the incident Report. The cell phone WAS NEVER produced because I NEVER had one to begin with. Not even a picture of a phone ~~or~~ anything. I need this charge vacated from my Record. I need all of the good time and credits I had taken from me for this false charge. The Appellant would like his custody, Telephone Privileges, Visitation, and Canteen Privileges reinstated.

CONCLUSION

DATE: 6/21/13

CC: Judge LEVSKI "original"
Dept of General Counsel
file

APPENDIX

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page 1 of 1

Institution / Center:	Lower Savannah Work Release Ctr.				
Date of Report:	12.7.12				
Reporting Official:	John C. Binone 0040098		Time of Report:	3:40 PM Approx	
Location of Incident:	Job Site		Date of Incident:	12.7.12	
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. Willie J Roundtree	267355	48	B	M	1.
2.	3A-7				2.
3.	MOIH				3.
4.					4.
5.					5.

On the above date and approximate time: I CPS John Binone received a phone call from Angie Gambell that this inmate was caught using a cell phone by his immediate supervisor Larry Pew. Termination Notice will be faxed from Pepperhill today 12.7.12. Ms. Gambell is also having the cell phone delivered to HSTRC

Signature: John C. Binone

Evidence: FAF from Pepper Hill

Witness(es):

Supervisor's Comments:

Refer to Major for disciplinary actions due to above nature of incident and statement from employee approx 4:00 CH

Signature: Curtis Hatley Title: Sgt. Date/Time: 12/7/12

Major / Responsible Authority:

898

Signature: [Signature] Title: Major Date: 12/11/12

STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Action Taken

- Informal Resolution
- Administrative Resolution
- Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 02 Inmate Name: Ronald Lee Miller SCDC#: 267355

Living Area: 3A-7 Job: None Custody: MOIA

Offense Date: 12/17/12 Offense Time: 2:45 AM/PM (M) Institution: Lower Savannah Work Release

Offense Description: 898: Possession of any communication device

Charging Officer/Employee: J. Burice Title: CPS

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING

I DO NOT WANT TO BE PRESENT AT MY HEARING

I DO WANT MY ACCUSER PRESENT AT THE HEARING WAB

I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

I WAIVE MY RIGHT TO A HEARING SMU/SEGREGATION ONLY

I WANT A COUNSEL SUBSTITUTE WAB

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 12/11/12 12:55 AM/PM (M) By (Print): H. Miller

Inmate Signature: [Signature] SCDC#: 267355 Date: 12/11/12

HEARING INFORMATION:

Hearing Date: <u>12/20/12</u>	Hearing Time: <u>11:05</u> am/pm <u>(M)</u>	Tape: _____	Side: _____	Start: _____	End: _____
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EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

H.C.S. Williams

OFFENSE CODES	<u>898</u>				
INMATE PLEA (G, NG, None)	<u>NG</u>				
FINDINGS (G, NG, DS)	<u>G</u>				

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: (13) + Statement

Notice from Pepper 11

HEARING LENGTH: _____ (MINUTES)

ACTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 60

- Property (Days) 360 + 180 = 540 Extra Duty: _____
- Canteen (Days) 360 + 180 = 540 Visit Suspension Thru _____ Restitution: 5
- Other None (Days) 360 + 180 = 540 Cell Restriction (Days): _____
- Disciplinary Detention (Days): 180

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st 898 conviction

CREDIT FOR PHD TIME SERVED? YES/NO _____ IF YES, DAYS _____

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 12-20-12

HEARING OFFICER (PRINT NAME): J. Burice

APPROVED: REVERSE/MODIFY [Signature] Warden 12/20/12 REASON _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

Blue - Institutional Record Canary - Inmate (Service of Disciplinary Report)

Green Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)