

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Administrative Law Judge Robert H. Reibold

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

Jay Walter Tate, Jr. #131879

Appellant

v.
South Carolina Department of Corrections

Respondent

Final Brief

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SC Court of Appeals

Dated: February 10, 2025

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STATEMENT OF THE 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, etc) level (1) offense and (855) Conspiring to Smuggle Contraband into institution level (2) offense. Both are serious offenses. The incident was referred to a Disciplinary hearing on October 18, 2022. On November 2, 2022, a disciplinary hearing was conducted and Appellant was 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 started his Step (2) grievances stating dissatisfaction with the Warden's response. On January 4, 2023, Appellant received the Responsible Official's decision and reason for denying his grievances. On February 10, 2023, Appellant filed his Notice of appeal with the South Carolina Administrative Law Courts. On February 24, 2023, the case was assigned to the Honorable Robert L. Reibold, Case numbers 230059, Grievance No: PCI 0657-22 and 230060, Grievance No: PCI 660-22. Appeal as follows with the South Carolina Court of Appeals filed on June 22, 2023, Appellate Case No: 2023-001002. The Respondent's filed two motions to dismiss pursuant to Howard v. South Carolina Department of Correction Docket No: 23-AJ-04-060 and 23-AJ-04-05; Grievance No: PCI 660-221 and PCI 657-221, Appellant filed two motions to proceed pursuant to Al-Shabazz v State and S.C. Code 1-23-610. Order Granting Motion to Dismiss Docket No. 23-AJ-04-0059 and 60 AP.

Statement of Issue on Appeal

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

Respondent's was dishonest in a Motion to Dismiss Pursuant to Howard v. South Carolina Department of Corrections. Appellant stated in both Step 1 and 2 that this off record material was a audio phone Recording and Appellant never Filed any grievances on any earned credits.

Argument

Appellant Filed two properly Filed grievances No: PCI-660-221 and PCI 657-221. Appellant never Filed any grievance on his Step 1 or Step 2 on any earned good time credits. Appellant stated in motion to Proceed that the grievance was never properly investigated and the allege drugs was not properly tested. Appellant was denied due process under Article 1 section 3 of the South Carolina Constitution as well as the Fourteen Amendment of the United States Constitution.

These were 2 properly Filed grievances and appellant did not hear the evidence that determine his guilt. *Wolff v McDonnell* 418 US. 539, 94 S.Ct 2963 An inmate can hear all the evidence. *Al-Shabazz v State* 338 SC. 354, 527 S.E.2d 742 (Headnote 8) South Carolina Department of Corrections 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 of the security and order of the institution. Appellant did not hear this allege audio phone recording. Appellant was denied due process.

Appellant was denied due process, because, because Disciplinary Hearing Officer did not have the South Carolina Department of Corrections 19-79 Form "Controlled Substance Testing and Disposition Form". The language of the South Carolina Department of Corrections Policies and Procedure 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: (OP-22-14 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 or a picture of the item should be produced at the hearing. Also if the contraband involved tobacco or a controlled substance such as Marijuana or Alcohol, the Hearing Officer must have available a copy of the SCDL 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 19-79 Form is not part of the Disciplinary Report and Hearing Record that was attached with the Respondent's motion to Dismiss. Appellant was denied due process

Respondent's Failed to provide the Discovery From the November 2, 2022 disciplinary hearing. These are 2 Major disciplinary and should have been provided by rule in At-Shaba22.

Respondent's was dishonest in their motion to dismiss because that off the record material was an alleged audio phone recording and appellant never filed any grievances on earned credits.

Conclusion

For the foregoing reason this should reverse the Administrative law Court decision, or what this Court deem just and proper

Respectfully Submitted
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