

September 23, 2013

TO: Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

RECEIVED

SEP 27 2013

SC Court of Appeals

RE: William Wilson # 326610, Appellant; vs,
South Carolina Department of Corrections;
Respondent; Case no: 13-ALJ-04-0356-AP

Dear Ms. Gee,

Enclosed for filing please find the following:

1. Appellant's notice of Appeal
2. Order of Dismissal of Administrative Judge John D. McLeod
3. Notice of Motion and Motion for leave to proceed in Forma Pauperis
4. Financial Certificate of the Appellant
5. Certificate of Service
6. Certificate of Counsel

Please note that the Appellant already has in his possession the entire transcript of this matter from the previous Appeal at the lower court so arrangements of obtaining such are unnecessary.

* Also, please note that the Institution is on Lock-Down for the Flu virus, therefore I am unable to get the financial certificate in time of my 30 day limitation statute, please work with me and allow me to forward it as soon as we come off lock down.

Respectfully,

S/ William Wilson
William Wilson #326610
Kershaw Correctional Inst.
4848 Goldmine Hwy
SMU # 67
Kershaw SC. 29067

IN THE STATE OF SOUTH CAROLINA

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THE State of South Carolina
In the Court of Appeals

Appeal from the Administrative Law Court
John D. McLeod; Administrative Law Judge

Docket no: 13-ALJ-01-0356-AP

William Wilson # 326610 Appellant,

- vs -

South Carolina Department
of Corrections Respondent,

Notice of Motion and Motion
For Leave to Proceed in Forma Pauperis

Notice of Motion

Now Comes the Appellant, William Wilson # 326610, giving this Court notice according to the applicable Rules of the South Carolina Appellate Court Rules that he shall so move by way of motion for leave to proceed in Forma Pauperis in this matter.

Motion For leave to Proceed
in Forma Pauperis

Now Comes the Appellant, William Wilson, # 326610 who moves this Court pursuant to Rule 3(b), SCRCP, by way of motion for leave to proceed in Forma Pauperis in this matter and would show the Court the following:

1. The Appellant appeared before a South Carolina Department of Corrections ("SCDC") disciplinary Hearing officer ("DHO") on November 19, 2012 for Rules violation 897 "possession of security equipment property" and was found guilty and convicted of the same.
2. Appellant filed his notice of Appeal of the Final Agency decision on May 2013 and was assigned the Above Docket number and Administrative Law Judge on May 15, 2013.
3. On August 27, 2013 the Appellant received an Amended order of Dismissal from ALC Judge John D. McLeod dated August 23, 2013 stating that the Appellant Received proper Due process and that the record as a whole supported the charge and conviction and thus he refused to supplement his Judgment for that of the ~~Agency's~~ Agency's; and further, the Appellants Case was dismissed with prejudice because the Appellant failed to adhere to the Rules of special Appeals, specifically rule 6e0, as he did not separate and number his argument in his Brief.
4. The Appellant was found guilty of said charge inspite of the fact that neither the DHO or the Accusing officer proved the elements of the charge. The Appellant was said to be in possession of a Hard-cuff key which was a twisted paperclip; as admitted by the officer in his written Report. (see 19-29(4) Incident Report). The officer did not even try to open the cuffs with said evidence, and paper-clips are readily available to any prisoner.

"The state must present evidence to support each element of the crime charged in order to uphold the conviction"... State v Brooks S.C. 283 SE2d 830 ().

5. Wherefore, the Dto committed an abuse of Discretion in finding the Appellant guilty of said Charge as the Evidence doesn't support the Judgement.

"An abuse of Discretion arises from an error of law or a factual conclusion that is without evidentiary support." Lee v Sues 457 SE2d 344 (S.C. 1995).

6. Furthermore, the Charging officer, Sergeant Chris Hicks, did not see the paper-clip come off of the Appellant or find it in his belongings. As he stated on record at the Disciplinary hearing of November 19, 2012, "he took the nurse's word for it" that it came off the Appellant's person. However, he failed to list the name of the nurse as a witness in the 19-29 (A) Incident Report as mandated by SCDC policy OP-20.14 § 3.1, 3.2, and 3.3. pre-judging the Appellant's ability to call on this witness to bear testimony, and aid his defense, and/or Examine or cross-examine her as is his right." SEE Al-shabazz v State 338 S.C. 354, 527 SE2d 742 (2000).

7. The Appellant lost 45 days statutory created Good time credits creating a protected liberty interest, entitling him to the Afore mentioned Due process.

8. The Appellant is an aggrieved party and pursuant to Rule 201 (b), SCARC he has a right to appeal in this matter, despite the Appellant's inability to pay the fees at this time.

9. The Appellant would like to bring to this Court's attention the seriousness of this charge and the effect it will have on his already tightly con-

troled liberties as an Inmate. He will not only be unable to stay on a level two medium custody/security Institution, He will be sent to a level 3 Maximum security Institution, and this happens only after he has completed the days disciplinary detention time in Isolation, then the subsequent 18 months security Detention time in isolation... though there are Inmates in special Management unit or ("SMU") with the same charge as this Appellant who have been on Security Detention for over 28 months without any additional charges, so it is no guarantee that this Appellant will be placed back into the General population at all, if the conviction is upheld, thus the Appellant prays this Court hear his case.

10. The Appellant has provided this court a financial certificate verifying his indigency.

Conclusion

wherefore, having shown that he is an aggrieved party and having established that he has several protected liberty interests in Jeopardy, plus his right to Judicial review, the Appellant prays this court grant him relief by allowing him to proceed in forma pauperis in this matter. SEE AL-shabazz V state, 338 S.C. 354, 527 SE2d 742, 758 (2000); also Griffin V Illinois 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed.2d 891 (1956) (holding: "that to satisfy the dictates of the equal protection and due process clauses of the fourteenth Amendment, a state may not condition a defendant's ~~exerc~~ises of a right to Appellate review upon his ability to pay for that Right." Id at 18-20, 76 S.Ct. at 590-91.

Respectfully submitted,
S/ William Wilson

The State of South Carolina
In the Court of Appeals

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SEP 27 2013

Appeal from the Administrative Law **SG Court of Appeals**

John D. McLeod, Administrative Law Judge

Docket no: 13-ALJ-04-0350- Ap

William Wilson # 326610 Appellant,

vs

South Carolina Department
of Corrections Respondent

Certificate of Service

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have sent an original copy of the Appellant's notice of Appeal, ALC order of Dismissal, Notice of motion and motion for leave to proceed in Forma Pauperis, Financial certificate, Certificate of Counsel, and a proof of service upon the Respondent by placing the same in the Kershaw Correctional smu mailbox with postage affixed, addressed to: Office of General Counsel; Cheron Hess; P.O. Box 21787, 4444 Broad River Road; Columbia S.C. 29221-1787; and also copies of the same to the ALC/Lower Court addressed to Jana E. Shealy, Edgar A. Building; 1205 Pendleton St.; Suite 224, Columbia S.C. 29201 on this 23 day of September 2013.

CC: Jana E. Shealy, ALC
and

Cheron Hess; Respondent's Counsel

S/ William Wilson
William Wilson # 326610