October 30, 2013

THE Honorable Tanya A. GEE
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: Harold Mosley #137525, Petitioner
v South Carolina Department of Corrections, Respondent, CASE no. 2012-212195

DEAR MS GEE,

Enclosed for Filing is the Petitioner's Petition for Rehearing in the above CASE. Also enclosed are the following:

(1) Certificate of service showing that a copy of the same has been sent to the administrative law court, as well as a copy being served on the respondent.

SINCERELY

Harold Mosley

Harold Mosley #137525
Kershaw Correctional Inst.
4848 Goldmine Hwy
OAK-A-7
Kershaw, S.C. 29067

CC: Shanika Kenyatta Johnson
OFFICE OF GENERAL COUNSEL
P.O. Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787
(803) 896-1943

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Harold Mosley #137525 — Petitioner

v

South Carolina Department of Corrections — Respondent

APPELLATE CASE no. 2012-212195

Appeal from the Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

unpublished opinion no. 2013-UP-389
submitted September 13, 2013 - Filed October 16, 2013

Petition For Rehearing

Harold Mosley #137525
Kershaw Correctional Inst.
4848 Gold Mine Hwy.
OAK-A-7
Kershaw, S.C. 29067

Shanika Kenyatta Johnson
Office of General Counsel
P.O. Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787
(803) 896-1943

TABLE OF AUTHORITIES

Findings of Facts and conclusions of law

1. Did the court of appeals err in ruling that the below agencies decisions were supported by substantial evidence?

2. Did the court of appeals err in ruling that the below agencies complied with the procedural due process safe guards afforded by WOLFF v McDONNELL, Al-Shabazz v State and the S.C. Administrative Procedures Act?

Petition

Petition makes this motion for Rehearing based upon the above General points of contention and pursuant to Rule 221(A), SCACR, and would show this court that the decisions and/or orders of the below agencies in this case were not supported by such quantum of evidence as prescribed by the statutes and laws under which judicial review is permitted;

1. THE court of appeals ERRED in ruling that the below agencies decisions were supported by substantial evidence where Petitioner could not have committed an assualt and or battery of an SCDC employee under the laws of this state. pursuant to S.C. Code Ann. § 16-3-600(A)(1)(2)

1CA). the court of appeals has relied upon the ruling in Sanders V S.C. Dep't of Corrs., 379 S.C. 411, 665 S.E.2d 231 (Ct.App. 2008) to conclude that the decision of the respondent and the Administrative Laws Court ("ALC") complied with the standard of review and was supported by substantial evidence, however, the South Carolina Supreme Court has stated specifically that "substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury." Porter V S.C. Public Service Comm'n, 333 S.C. 12, 507 S.E.2d 328, 332 (S.C. 1998).

In Jackson V Virginia, 443 U.S. 307, 99 S.Ct. 278 (1979) the Supreme Court of the United States stated that "In Winship, the court held for the first time that the Due Process clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson V Virginia, supra, 443 U.S. at 316, 99 S.Ct. at 2787

the court of appeals, citing Sanders concluded "This Court need only find, considering the record as a whole,

EVIDENCE FROM WHICH REASONABLE MINDS COULD REACH THE SAME CONCLUSION THE ALC REACHED", HOWEVER, THE UNITED STATES SUPREME COURT HAS LONG HELD THAT "INSTEAD, THE RELEVANT QUESTION IS WHETHER, AFTER VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, ANY RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT." Johnson V Louisiana, 406 U.S. AT 362, 92 S.Ct. AT 1624-1625

PETITIONER WOULD SHOW THIS COURT THAT IT IS PRECISELY BECAUSE OF THE ABOVE THAT THE SOUTH CAROLINA SUPREME COURT ITSELF HAS HELD THAT "THE STATE IS REQUIRED TO PROVE EVERY ELEMENT OF A CHARGED OFFENSE TO OBTAIN A CONVICTION". State V Attardo, 263 S.Ct. 546, 211 S.E.2d 868 (1975); State V Barksdale, 311 S.C. 210, 214, 428 S.E.2d 498, 501 (Ct. App. 1993)

PETITIONER THUS INVOKES THE SOUTH CAROLINA CONSTITUTIONAL ARTICLE V § 9 AND ADMONISHES THIS COURT THAT "THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA BIND THE COURT OF APPEALS AS PRECEDENT" DANIELS V City of Goose Creek, 314 S.C. 494, 431 S.E.2d 256 (S.C. App. 1993)

FURTHER, PETITIONER THUS INVOKES THE SUPREMACY CLAUSE, ARTICLE VI §2, OF THE UNITED STATES SUPREME COURT AND ADMONISHES THIS COURT THAT THE "SUPREME COURT OF SOUTH CAROLINA IS BOUND BY DECISIONS OF UNITED

States supreme court..." State v Waites, 224 S.C. 12, 77 S.E.2d 256, 259 (S.C. 1953)

Therefore, this court should rehear this case where the Petitioner has alleged in section II of his brief that the evidence in this case was insufficient to convict him of assault and/or battery of an SCDC employee where the state did not, and, indeed, cannot prove the offense element of "Bodily Injury" under S.C. Code Ann. § 16-3-600(A)(1) and (2)

The south Carolina supreme court has stated that "an administrative body must make findings which are sufficiently detailed to enable [the] court to determine whether the findings are supported by the evidence and whether the law has been applied properly to these findings." Porter v S.C. Pub. Serv. comm'n, 332 S.C. 93, 504 S.E.2d 320 (1998).

Petitioner alleges that the law has not been applied properly to the findings in this case where under S.C. Code Ann. § 16-3-600(A)(1) and (2) the DHO, nor any "reasonable mind" could reach the conclusion that the record when viewed as a whole contained substantial evidence with which to convict Petitioner of assault and/or battery of an SCDC employee.

This court has overlooked the fact that in order to find Petitioner guilty of assault and/or battery of an SCDC employee, that the law of South Carolina found under

S.C. Code Ann. §16-3-600(A)(1) and (2) requires the State to prove the offense element of "Bodily Injury." (R.P.34); SEE ALSO Morgan V DRETKE 433 F.3d 455, 458 (5th cir. 2005) (While record demonstrated that Assault occurred, there existed "no evidence" of resulting injury which was essential element of misconduct charge). "Both Assault and Battery of a high and aggravated nature and simple Assault and battery require as an Element of the offense that a violent injury be done to the person of the victim." State V Foxworth _ S.C._ 238 S.E.2d 172, 173 (1977)

2. The court of Appeals erred in ruling that the below State agencies complied with the Procedural due process safeguards afforded by Wolff V McDonnell, Al-Shabazz V State and the S.C. Administrative Procedures Act ("APA").

Petitioner hereby preserves all issues he has previously and properly raised below under South Carolina law, and waives none, and would show the following:

I. The court of Appeals should rehear this matter because the order of the ALC Judge is defective in that the order contains nothing at all in regards to a judicial ruling pertaining to what took place at Petitioners' disciplinary hearing of June 13, 2011. SEE Porter V S.C. Public Service Comm'n, 333 S.C. 712, 507 S.E.2d 328, 333, F.n. 3 (S.C. 1998)

II. The court of Appeals should rehear this matter where Petitioner presented two (2) Affidavits pursuant to.

Rule 5(c)(2), SCRCP, showing that he was denied his right to call witnesses. The South Carolina Supreme Court has held in Al-Shabazz v State, 338 S.C. 354, 527 S.E.2d 742 at 751 (2000) that "an inmate has the right to ... request witnesses in his defense."

The Disciplinary hearing officer denied Petitioner his right to call witnesses and then failed to give a reason in the written record for such a denial. The ALC made a conclusory statement in its order of dismissal.

The South Carolina Supreme Court has already held that "where material facts are in dispute, the administrative body must make specific, express findings of fact." Porter v S.C. Pub. Serv. Comm'n 332 S.C. 93, 504 S.E.2d 320 (1998); Able Communications, Inc. v S.C. Pub. Serv. Comm'n 290 S.C. 409, 351 S.E.2d 151 (1986)

"Just as a prisoners right to call witnesses is not unlimited, neither is the discretion of prison officials to deny such a request. The reason for not acceeding to a request to call witnesses must be a legitimate one, and it must be expressed." Ponte v Real, 471 U.S. 491, 497, 105 S.Ct. 2192 at 2196, 85 L.Ed.2d 553 (1985)

III. the court of appeals erred in ruling that the Petitioner was not placed in Double Jeopardy and should rehear this matter where the DHO was mandated under SCDC policy not to sanction the Petitioner twice for offenses stemming from the same incident.

SCDC Policy OP-22.14, 16.4 states specifically "If

AN INMATE is charged with multiple OFFENSES, the INMATE CANNOT BE SANCTIONED SEPARATELY FOR EACH OFFENSE UNLESS THEY ARE totally SEPARATE AND distinct violations. IF THE OFFENSES ARE SEPARATE AND distinct, then the INMATE MAY BE SANCTIONED CONSECUTIVELY FOR EACH OFFENSE. INMATES MAY NOT BE SANCTIONED CONSECUTIVELY FOR LESSER included OFFENSES."

EVEN under SOUTH CAROLINA LAW A PERSON MAY NOT BE SANC-TIONED TWICE FOR CRIMES occurring within the SAME time PERIOD. SEE S.C. CODE ANN. § 17-25-50." A STATE CREATES A PROTECTED LIBERTY INTEREST by PLACING SUBSTANTIVE [redacted] limitations on OFFICIAL DISCRETION. AN INMATE MUST SHOW THAT PARTICULARIZED STANDARDS or CRITERIA GUIDE THE STATE'S DECISION MAKERS." olim V WAKINEKONA 461 U.S. 238 AT 249, 103 S.Ct. 1741 AT 1747 (1983)

IV. FOR THE SAME REASONS STATED ABOVE THIS COURT SHOULD REHEAR PETITIONERS CLAIM REGARDING HIS LESSER INCLUDED OFFENSE CLAIM. SEE olim V WAKINEKONA, 461 U.S. 238 AT 249, 103 S.Ct. 1741 AT 1747 (1983) SEE BRIEF, [redacted]

V. THIS ~~COURT~~ COURT SHOULD REHEAR THIS MATTER BECAUSE IT HAS PRECEDENTIAL VALUE REGARDING HIS CLAIM THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL SUBSTITUTE. THE SOUTH CAROLINA SUPREME COURT HELD IN AL-SHABAZZ THAT UNDER WOLFF, 418 U.S. 563-72, 94 S.Ct. 2978-82, 41 L.Ed.2d AT 954-60 THAT A PRISONER SHOULD HAVE COUNSEL/SUBSTITUTE, BUT HERE THE COUNSEL/SUBSTITUTE REFUSED TO HELP OR

Assist Petitioner during his hearing.

Conclusion

Wherefore, based upon the foregoing, the Petitioner requests this court to Rehear this matter because the accumulated loss of Good-time Credits and sanctions imposed upon him caused him to suffer Atypical and significant hardships in relation to the ordinary incidents of Prison life. See Sandin V Conner, 515 U.S 472, 115 S.Ct. 2293, 132 L.Ed. 2d 418 (1995).

Respectfully submitted

Harold Mosley

Harold Mosley #137525
Kershaw Correctional Inst.
4848 Gold Mine Hwy
Oak-A-7
Kershaw, S.C. 29067

October 30, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

HAROLD MOSLEY #137525, Petitioner,

V

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Respondent.

APPELLATE CASE NO. 2012-212195

APPEAL FROM THE ADMINISTRATIVE LAW COURT
CAROLYN C. MATTHEWS, ADMINISTRATIVE LAW JUDGE
UNPUBLISHED OPINION NO. 2013-UP-389
SUBMITTED SEPTEMBER 13, 2013 - FILED OCTOBER 16, 2013

CERTIFICATE OF SERVICE

I CERTIFY THAT A COPY OF PETITIONERS PETITION FOR REHEARING WAS SENT TO THE ADMINISTRATIVE LAW COURT JUDGE CAROLYN C. MATTHEWS, AS WELL AS A COPY BEING SERVED ON RESPONDENT ATTORNEY SHANEEKA KENYATTA JOHNSON, BY PLACING THE SAME IN THE KERSHAW CORRECTIONAL MAILBOX WITH POSTAGE AFFIXED AND ADDRESSED TO OFFICE OF GENERAL COUNSEL AT P.O. BOX 21787, 4444 BROAD RIVER ROAD, COLUMBIA, S.C. 29221-1787, THIS 30th DAY OF OCTOBER, 2013.

OCTOBER 30th, 2013

Harold Mosley

HAROLD MOSLEY #137525
KERSHAW CORRECTIONAL INST.
4848 GOLD MINE HWY
OAK-A-7