

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Court Carolyn C. Matthews

Docket Number: 13-ALJ-04-0200-AP

Appellant Case No: 2013-002276

Billy Lee Lisenby JR; #200273 Appellant

v.

South Carolina Department of Corrections Respondent

Record ON Appeal

Billy Lee Lisenby JR; #200273

990 Wixacky Hwy.

Lee Corr Inst.

Bishopville S.C. 29010

PRO-SE

General Counsel

RECEIVED

DEC 03 2013

SC Court of Appeals

LEGAL MAIL ONLY

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: Nov. 26th 2013

/s/ Billy Lee Lisenby
Billy Lee Lisenby JR, #200213
990 Wiscoky Ave.
Lee C. I
Bishopville S.C. 29010

STATE OF SOUTH CAROLINA

Administrative Law Court

Carolyn C. Matthews
Administrative Law Judge



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

April 10, 2013

Billy Lee Lisenby, #200273
Tyger River Correctional Institution
200 Prison Road, SMU #48
Enoree, SC 29335

Re: 13-ALJ-04-0200-AP

Mr. Lisenby,

Enclosed is a copy of your Notice of Appeal and exhibits..

Sincerely,

A handwritten signature in cursive script that reads "Page P. Snyder".

Page P. Snyder, Esquire
Law Clerk to The Hon. Carolyn C. Matthews

encl.

Cc: SCDC General Counsel, Esquire (no encl.)

the search and the other to assist and to serve as a witness)." This is a major violation. Appellant asked his counsel substitute in writing and in person to call SGT. Fowler, MR. Childress, MR. Finch, and C/o Trathum as my witnesses. Prior to the conducting of the hearing counsel substitute ("CS") attempted to make reference he "allegedly" contacted the SCDC witnesses that were requested. However, according to SCDC policy OP-22.14 (8.2.4) the CS is required to "Interview relevant witnesses prior to the hearing. For those witnesses who will not be able to appear, obtain written statements that can be given to the Hearing Officer at the hearing." The D.H.U must interview any witness who is unavailable by speaker phone during the hearing and the "answers of the witnesses must be recorded." OP-22.14 (15.5). Therefore, the alleged contact to the SCDC employee's is uncorroborated hearsay testimony, as neither witness was interviewed by the D.H.U or his testimony recorded. Appellant was denied his right to call his witnesses or have them write statements on be present. Note: MR. Childress, and C/o Trathum were approx. 25 feet from the D.H.U hearing, they could've come in and testified. This violated OP-22.14 Section 15.3 which states "If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on SCDC Form 19-69." Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information. I moved in cell #14 in late August 2012. On July 27, 2012 SGT. Fowler found a note stating a knife was in room #14. SGT. Fowler and C/o Bobo then conducted a shake-down of room #14 that was video recorded. [See Enclosed Incident Report] They never checked the window never had maintenance remove the metal cage from the window. The inmate that was housed in the room Christopher West has a long history of knife and weapon possession. IF they had a tip a knife was in the room why didn't they take the metal cage off in July during the shake-down. Also note a person has access to room #14's window from the outside as well. I asked the D.H.U to view the video of the July 27, 2012 shake-down but he refused. They put me in a room that they knew a knife was possibly in, and did not conduct a proper search before moving me in. SGT. Fowler would've testified to this.

Appellant was not permitted to adequately discredit the allegations against himself where he was not allowed to reasonably confront and cross examine the witnesses. Appellant requested witnesses to be present that would provide exculpatory evidence. To Appellant's knowledge, the record does not reflect that anyone observed or witnessed his counsel substitute contact SGT. Fowler, MR. Childress, MR. Finch, or C/o Trathum. Therefore, the testimony of counsel substitute ("CS") is unsubstantiated "hearsay evidence" and is not reliable in accord with due process set forth by Wolff v. McDonnell. The D.H.U was required to conduct the questioning of the employee witnesses via telephone (conference call) in the presence of the record and myself, the record is void of any substantial reason for the D.H.U's deviation from policy and procedure. OP-22.14 (15.3) (8.1), (8.2), (8.4), and (8.2.6)

Lastly the D.H.U was required to state his reasons for not allowing the witnesses to be present during the hearing of the SCDC 19-69 form, he did not. This further offends OP-22.14.

The Warden gave incorrect info, on his response by stating it's the inmates responsibility to check his room for contraband. In SMU it's the officers responsibility. See OP-22.19 Section 8. Search Procedures For Inmates' Living Area Section 8.3 An inmate's living area will always be searched in the following instances: before inmate is moved to a special management housing unit (SMU), the SMU cell will be searched to ensure that it does not contain any unauthorized items; (4-4192)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

REC'D JAN 8 2013

* Due: 1-4-13

STEP 2

INMATE NAME: Billy Lisenby
SCDC NUMBER: #200273
INSTITUTION: Tyngboro C.I. ✓
HOUSING UNIT: SMU #48
WORK ASSIGNMENT: N/A

RECEIVED

JAN 09 2013

INMATE GRIEVANCE

Office Use Only
Grievance No. TYRC1-1401-12
Code: General _____
Policy _____
Disc. Hear. #131 811
Class. HO 11-5-12
Date Received 1-8-13
IGC Initials JL

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *I'm appealing for several reasons. The warden gave incorrect info. in his response by stating it's the inmates responsibility to check his room for contraband. In smu it's the officers responsibility. See OP-22.19 Section 8. Search Procedures for Inmates' Living Area Section 8.3 An inmates living area will always be searched in the following instances: before inmate is moved to a special management housing unit (smu), the smu cell will be searched to ensure that it does not contain any unauthorized items; (4-1192)*
Please see my step 1 I was denied my witnesses as well.

Billy Lisenby 1-7-13
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction(s) of Possession of a Weapon (8.11) on November 5, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -60- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

JAMES E. BRIDGES 1/23/13
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Billy Lisenby 2-14-13
Grievant Signature Date

J. Leacraft 2-4-13
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

COP # 07-12-012
 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 INCIDENT REPORT

Exhibit #1

| | | | |
|--|--------|-------------------------------------|----------|
| Institution/Center: TYRRE | | Time of Report: 11:45 A.M. | |
| Date of Report: 7-27-12 | | Date of Incident: 7-27-12 | |
| Reporting Official: OFC. G. BOBO 037445 | | Time of Incident: 11:15 A.M. | |
| Location of Incident: SMU CELL # 9 | | Employee(s) Involved: | |
| Inmate(s)/Resident: | SCDC# | Age | Race Sex |
| 1. DANIEL McCLAIN | 300203 | | B/M |
| 2. CHRISTOPHER WEST | 183479 | | B/M |
| 3. RICHARD JETER | 311627 | | B/M |
| 4. | | | |
| 5. | | | |

On the above date and approximate time: SGT. FOWLER HANDED ME OFC G. BOBO 037445 A NOTE HE FOUND IN THE REFRIGERATOR IN THE INTERVIEW ROOM STATING THERE WAS POSSIBLE A PILL IN ROOM 14 AND THAT ROOM 9 HAD SENT IT TO ROOM 14. I NOTIFIED MAJOR PARRISH. A CELL SEARCH OF CELL #14 AND CELL #9 WAS CONDUCTED. I/M CHRISTOPHER WEST SCDC 183479 RESIDES IN CELL #14 AND THE RESULTS OF THE SEARCH WAS NEGATIVE. I/M DANIEL McCLAIN SCDC# 300203 RESIDES IN CELL #9 AND THE RESULTS OF THE SEARCH PRODUCED ONE WHOLE PILL AND APPROXIMATELY 3/4 OF A PILL. BOTH PILLS WERE OF THE SAME COLOR (DARK TAN) AND "A" ON ONE SIDE "6 | 0" ON THE OTHER SIDE. MEDICAL WAS NOTIFIED AND IDENTIFIED THE PILLS AS "REMERON." I/M McCLAIN DOES NOT HAVE A PRESCRIPTION FOR "REMERON." I/M RICHARD JETER SCDC # 311627 THE ONLY INMATE ON THE EAST WING TO HAVE A PRESCRIPTION FOR "REMERON" ACCORDING TO MEDICAL. INMATE JETER RESIDES IN CELL #8 IN SAU.

Signature: *[Handwritten Signature]*

Evidence: *[Handwritten]* 1 (1) whole pill, 3/4 A PILL (CONTAINS COLOR (DARK TAN) WITH "A" ON ONE SIDE AND "6 | 0" ON THE OTHER SIDE.

Supervisor's Comments:
 BOTH I/M McCLAIN AND I/M JETER ARE CHARGED WITH 903.
 (Recommended) Forward to Capt. [Name]

Signature: *[Handwritten Signature]* Title: *[Handwritten Title]* Date/Time: **7-27-12**

Major/Responsible Authority:
 903

Signature: *[Handwritten Signature]* Title: *[Handwritten Title]* Date: *[Handwritten Date]*

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0200-AP
Grievance No. TYRCI-1401-12

**ORDER GRANTING RESPONDENT'S
MOTION TO ENLARGE TIME
TO FILE RECORD**

On May 6, 2013 Respondent filed a Motion to Enlarge Time to File Record in the above-captioned case. Respondent requests additional time to transcribe the tape from Appellant's disciplinary hearing and have the hearing officer review the tape.

This Court will grant Respondent an **additional thirty (30) days** from the date of this Order to file its Record.

IT IS THEREFORE ORDERED that the Record shall be due thirty (30) days from the date of this order. Appellant's brief shall be due twenty days from the date the Record is filed. Respondent shall have twenty days from the date Appellant's brief is filed to submit a brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
S.C. Administrative Law Court

May 20, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 25th day of May 2013
By: Mary Beth Campbell
Judicial Law Clerk

2.

FILED

MAY 20 2013

SC ADMIN. LAW COURT

State of South Carolina
Administrative Law Court

FILED

APR 11 2013

Billy Lee Lisenby JR, #200273
Appellant,

vs.
South Carolina Department of Corrections
Respondent

Docket No: 13CO200
Grievance No. TyRCI-1401-12

SC ADMIN. LAW COURT

Judge Matthews
Appellant's Brief

Statements of The Issues on Appeal

1. Did the Respondents violate Appellant by not noting on the 19-29A form that he had a mental health background, and by not notifying his mental health counselor?
2. Did the Respondents violate Appellant's right to be Free From Unreasonable Searches and seizure by Fourth Amendment?
3. Did the Respondents err in not having his witnesses present, on speaker phone or have them write a statement? Was his counsel substitute ineffective for not doing the same? Was he denied his right to call witnesses and no reason was demonstrated?
4. Did the Respondents err in not viewing the ~~video~~ video of his room being searched prior to Appellant moving in, and not viewing the incident report that states on July 27, 2012 SGT. Fowler found a note stating a knife was in room #14?

Statement of The Case

Appellant was charged with 311: Possession of a Weapon after L.T. Lavigne alleged he found a knife in his room. On 11-5-12 he was found guilty after pleading not guilty by D.H. Turner. On Nov. 12th 2012 he appealed due to actual innocence violation of due process, and ineffective assistance of counsel substitute. His step 1 was denied on 1-4-13 and his step 2 was denied on 1-23-13.

Appellant appealed to the ALC on 3-11-13 and the case was assigned to Judge Matthews on 3-20-13.

Argument #1

Appellant has a lengthy mental health background, in which he is being treated with meds. This was not indicated on his 19-29A Form, and his mental health counselor was never notified. This is a violation of OP-22.14 Section 3.3 which states:

"Note: If the inmate has a mental health issue noted on his/her MEDClass screen or is acting in such a manner that indicates a mental health concern, then a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29A. In these instances, a memorandum from the mental health care professional must be included as an attachment to SCDC Form 19-29A, "Incident Report," attesting to the inmate's mental status and accountability for his/her actions." This was not done in this case.

Argument #2

The Respondents violated Appellant's Right to be Free From Unreasonable Searches and seizure by the Fourth Amendment. L.T. Lawrence Lavigne illegally conducted a shake-down of Appellant's Room alone while he was in the holding cell. The incident report supports this and he did not deny it at the hearing. L.T. Lavigne was alone when the alleged knives were found, this is a violation of OP-22.19 of SCDC Inmate Search Policy Section 8.1 which states:

"If the inmate is not present, then two (2) employees will be required to complete the search (one to complete the search and the other to assist and to serve as a witness). This is a major violation.

The Warden gave incorrect information on his response by stating it's the inmates responsibility to check his Room for contraband. In SMU it's the officers responsibility. See OP-22.19 Section 8 Search Procedures For Inmates' Living Area Section 8.3:

"An inmate's living area will always be searched in the following instances:
before inmate is moved to a special management housing unit (SMU), the SMU cell will be searched to ensure that it does not contain any unauthorized items; (4-4172)"
This is a major violation.

Argument #3 & 4 combined

Argument 3 & 4 contains similar issues so Appellant has consolidated them. Appellant asked his counsel substitute in writing and in person to call Sgt. Fowler, Mr. Childress, Mr. Finch, and C/o Treatham as his witnesses. Prior to the conducting of the hearing counsel substitute ("c/s") attempted to make reference he "allegedly" contacted the S.C.D.C. witnesses that were requested. However, according to S.C.D.C. policy OP-22.14 (8.2.4) the c/s is required to "Interview Relevant witnesses prior to the hearing. For those witnesses who will not be able to appear, obtain written statements that can be given to the Hearing Officer at the hearing." The DHO must interview any witness who is unavailable by separate phone during the hearing and the "answers of the witnesses must be recorded." OP-22.14 (15.5). Therefore, the alleged contact to the SCDC employee's is uncorroborated hearsay testimony as neither witness was interviewed by the DHO or his testimony recorded. He was denied his right to call his witnesses or have them write statements or be present. Note: Mr. Childress, and C/o Treatham were approx. 25 from the DHO hearing, they could've come in and testified. This violated OP-22.14 Section 15.3 which states "If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and his information that is relevant to the case, then he/she is obligated to provide said information."

Appellant moved in cell #14 in August 2012. On July 27, 2012 SGT Fowler found a note stating a knife was in room #14. SGT Fowler and Yo Bo Bo then conducted a shake-down of room #14 that was video recorded. (The incident is part of Appellant's Notice of Appeal.) They never checked the window and never had maintenance remove the metal cage from the window. The inmate that was housed in this room Christopher West has a long history of knife and weapon possession. If they had a tip a knife was in the room why didn't they take the metal cage off in July during the shake-down. Also note a person has access to room #14's window from the outside as well. Appellant asked the D.H.O to view the video of the July 27, 2012 shake-down but he refused. They put me in a room that they knew a knife was possibly in, and did not conduct a proper search before moving me in. SGT Fowler would've testified to this.

Appellant was not permitted to adequately discredit the allegations against him when he was not allowed to reasonably confront and cross examine the witnesses. He requested witnesses to be present that would provide exculpatory evidence. To the best of Appellant's knowledge, the record does not reflect that anyone observed or witnessed his Counsel substitute contact SGT Fowler, MR. Childress, MR. Finch, or C/O Trathum. Therefore, the testimony of Counsel substitute ("CS") unsubstantiated "hearsay evidence" and is not reliable in accord with due process set forth by Wolff v. Organ. The DHO was required to conduct the questioning of the employee witnesses via telephone (conference call) in the presence of the record and myself, the record is void of any substantial reason for the D.H.O's deviation from policy and procedure. OP-22.14 (15.3) (S.1), (S.2), (S.1), and (S. 2.6.)

Lastly the DHO was required to state his reasons for not allowing the witnesses to be present during the hearing on the SCDC 19-69 Form he did not do this. This further offends OP-22.14.

Cases Requiring assistance:

Staff assistance must be provided "in good faith and in the best interests of the inmate." Courts have held that sometimes staff members are appointed as assistants pursuant to prison rules but then do little or nothing to help the prisoner, this denies due process.

Eng v. Coughlin 553 F.2d at 593

Grandison v. Cuyler 774 F.2d 598, 604 (3d Cir. 1985)

Giano v. Sullivan, 709 F. Supp. 1209, 1215 S.D.N.Y. 1989

Pino v. Dalshiem 605 F. Supp. 1305, 1313 (S.D. N.Y. 1985)

Bulla v. Idaho State Bd of Correction, 595 F. Supp. 1558, 1582 (D Idaho 1984)

Hendricks v. State of New York Dept. of Correctional Services, 165 A.D. 2d 923, 560 N.Y.S. 2d 534, 535 (N.Y. App. Div. 1990)

Nix v. Evatt, 850 F. Supp. at 458

Conclusion

For the above reasons Appellate ask his case be overturned.

Dated: April 8th 2013

Respectfully Submitted,

Bill Jr.

Certificate of Service

I hereby certify that I have served Respondent's a copy of Appellant's Brief by depositing a copy of same in the United States Mail, postage prepaid, April _____ 8th, 2013, addressed to the Respondent as follows:

Christopher D. Flurion
Staff Attorney
S.C. Dept. of Corrections
PO Box 21787
Columbia S.C. 29221

Billy Lee Linsby
Billy Lee Linsby Jr. #200223
200 Raven Rd. SMU #48
Enoree SC. 29335

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC. 29201

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0200-AP
Grievance No.: TYRCI 1401-12

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 11, 2013 by Billy Lisenby ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant appeals the decision of the SCDC in his Step Two Grievance, in which his conviction for Possession of a Weapon (811) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost 60 days of good time, therefore a liberty interest is involved. Appellant appeals on the grounds that his due process rights were violated.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented.

LAW/ANALYSIS

Since a state-created liberty interest is involved, it is necessary to determine if Appellant received due process of the law. Well established precedent determines that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Id. at 369-70, 527 S.E.2d at 750. However, those

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requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has enunciated the following requirements, which if established, will ensure procedural due process in inmate disciplinary matters:

(1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that inmate should be allowed to call witnesses and present documentary evidence; (4) that counsel substitute...should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Id. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

Applying these requirements to the record in this case we find the following:

Appellant was served with notice of the charge on October 24, 2012 and the hearing was held on November 5, 2012. The Disciplinary Report and Hearing Record show reliance on testimony from Lieutenant Lavigne. The Disciplinary Report and Hearing Record show that the reason for the action taken is that this is Appellant's fourth offense of this nature. Appellant was given the opportunity to call witnesses and give testimony. Appellant was also represented by Counsel Substitute. There is nothing in the record to suggest that Hearing Officer was anything other than neutral or detached. Thus, Appellant's due process rights were protected by the process utilized by SCDC in this case.

The charging official, Lieutenant Lavigne, reported that while he was conducting a search of Appellant's cell, he found two homemade weapons wrapped in newspaper between the window and the wire mesh. Appellant was subsequently charged. Appellant raises as an issue the fact that his conviction was the result of due process violations and the fact that the weapons were there before he moved to that cell. However, as Lieutenant Lavigne testified, the weapons were in a location where Appellant had to be aware of their presence even if he was not the one to place them. As the Wolff Court acknowledged, the full panoply of due process rights does not apply to prison disciplinary proceedings; there must be mutual accommodation between

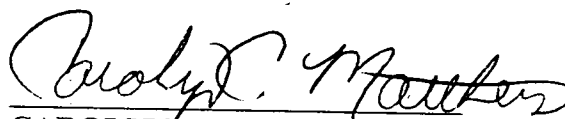
institutional needs and objectives and the provisions of the Constitution that are of general application. Wolff, 418 U.S. at 556. After a thorough review of the record, there is substantial evidence to uphold the decision of SCDC.

An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(6) (Supp. 2010). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. See S.C. Code Ann. § 1-23-380(6) (Supp. 2010); see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case, the substantial evidence in the record supports SCDC's decision. The Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the Hearing Officer should be affirmed unless the decision is arbitrary, capricious, or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

Therefore, for the foregoing reasons this appeal is **DISMISSED, WITH PREJUDICE**.

IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

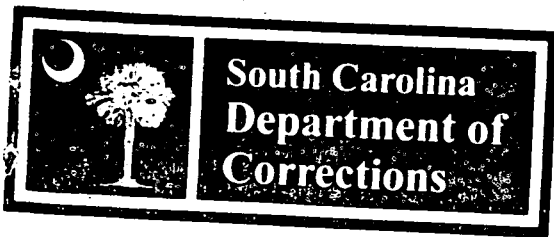
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 4th day of October 2013

By: MBC

Judicial Law Clerk

October 4, 2013
Columbia, South Carolina



NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

June 14, 2013

The Honorable Carolyn C. Matthews
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

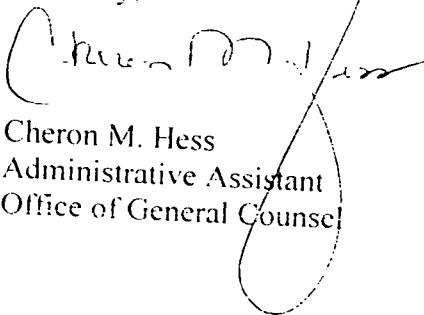
Reference: Inmate Billy Lisenby, #200273 vs. SCDC
Docket No. 13-ALJ-04-0200-AP

Dear Judge Carolyn C. Matthews:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance TYRCI 1401-12, Disciplinary Report and Hearing Record, Incident Report, and Disciplinary Transcript, as well as other supporting documents in the above referenced case.

Please file the originals and return a clocked-in copy of the cover letter to me in the enclosed self-addressed envelope.

Sincerely,



Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Billy Lisenby, #200273
File

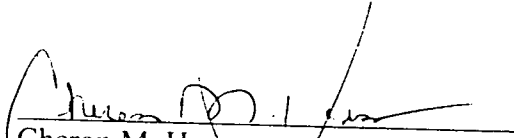
5.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Billy Lisenby, #200273
Tyger River Correctional Institution

Columbia, South Carolina
June 14, 2013



Cheron M. Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 13-ALJ-04-0200-AP GRIEVANCE No.: TYRCI 1401-12
INMATE NAME: Billy Lisenby SCDC No.: 200273
INSTITUTION: Tyger River Correctional Institution
DATE: November 5, 2012
CHARGE: 811-Possession of a Weapon**

DHO: State your name and SCDC Number, please.

I/M: Billy Lisenby, 200273.

DHO: Inmate Lisenby, the, uh, purpose behind this hearing is to treat the matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so would result in removal. Do you understand?

I/M: Yes sir.

DHO: You're appearing before this Disciplinary Hearing, which is being held at, uh, Tyger River Correctional Institution; approximately 10:47 a.m.; on 11-5-12. I am Mr. Turner, Disciplinary Hearing Officer. Uh, Inmate Lisenby is being represented by Counsel Substitute Fowler. Counsel Substitute Fowler, are you and the accused ready to proceed?

C/S: We are, sir.

DHO: (Cough) Excuse me. Inmate Lisenby, I have before me Case Number 131 and it thru...a...reads: Billy Lisenby, uh, thr...200273; inmate charged with 8-1-1-Possession of a Weapon. The actual or constructive possession by an inmate of any instrument intended to be used to inflict physical injury on another person. Charging Official in this case is Lieutenant L. Lavigne. We do have Lieutenant Lavigne present in the Hearing

DHO: Disciplinary Hearing Officer

I/M: Inmate

C/S: Counsel Substitute

OFC: Accuser

Room at the request of the accused. Lieutenant Lavigne, would you verify your presence by stating your name and rank?

OFC: Lieutenant Lavigne.

DHO: Thank you. In support of the charge against the accused, the following Incident Report: Tyger River Correctional Institution; Date of the Report: uh, 10, uh,-19-12; uh, Reporting Official: Lawrence Lavigne, uh. Time of the Report: uh, 1520 hours; uh, Employee ID Number: 048464; Date of the Incident: uh, 10-19-12; Location of the Incident: SMU Room, uh, 14; uh, Time of the Incident: uh, approximately 4:30 hour...4:30...1430 hours; uh, Inmate in Question: uh, Barry L...uh, Billy Lisenby, uh, 200273; On the Above Date and Approximate Time: While conducting a targeted cell search of Cell 14 in SMU 1, I, Lieu...Lavigne, uh, found between the window and the wire mesh, two (2) homemade weapons wrapped in newspaper. One weapon was approximately 5 inches long and made out of an eyeglass frame sharpened to a point at one end. The other weapon was approximately twelve inches long and a quarter inch in diameter and appears to be made out of the hot water plunger of a lock, uh, up sink. The weapons were turned over to contraband. The room housed, uh, one inmate and that was Inmate Billy Lisenby, uh, 200, uh, 273. Signature is that of Lawrence Lavigne, Lieutenant CCO. Evidence in the case: I do have a valid Chain of Custody and I do have a photograph. It does appear to be the evidence as outline there in the Incident Report.

Do you agree, Counsel?

C/S: I do, sir.

DHO: Inmate Lisenby, uh, if you plead guilty to this charge or if you happen to be found guilty of the offense, you would not be eligible to earn good time for the month of October. Do you understand?

I/M: Yes sir.

DHO: In addition to this, if I happen to find you guilty of this charge, you could lose visitation privileges, canteen privileges, telephone privileges, you could be assigned disciplinary detention, there could be further loss of good time in the case. Do you understand this?

I/M: Yes sir.

DHO: To the offense of 8-1-1-Possession of a Weapon, how do you plead?

I/M: Not guilty.

DHO: Your opportunity to tell us why you feel you're not guilty.

I/M: Um, I got a statement here I would like to read. Um, on October 19th, 2012, Lieutenant Law...Lawrence Lavigne had Mr. Childress remove a metal cage from around my window and he alleges, Lieutenant Lavigne, while alone in my room, he found two knives between the window and the wire mesh, wrapped in newspaper. I was in the Holding Cell when this occurred. I move in Cell 14 in late August 2012. On July 27th, 2012, Sergeant Fowler found a note stating a knife was in Room 14. Sergeant Fowler and C/O Bo Bo then conducted a shakedown of Room 14 that was video recorded. They never checked the window and never had maintenance remove the metal cage from...from the window. The inmate that was housed in the room, Christopher West, has a long history of knife and weapon possession. My first argument is that Lieutenant Lavigne was alone in my room when the alleged knives were found and his Incident

Report supports this. Per OP 22.19 of SCD...DC, Inmate Search Policy, Section 8.1, states in part: If the inmate is not present, then two employees will be required to complete the search, one to complete the search and the other to assist and to serve as a witness. This was not done in my case.

DHO: It might be a separate grievable issue, but it won't affect my hearing or ruling in this case.

I/M: My second argument is if they had a tip a knife was in the room, why didn't they take the metal cage off in July during the shakedown?

DHO: Not relevant.

I/M: Also note, a person has access to Room 14's window from the outside as well. I ask that the DHO review the video of the July 27th, 2012, shakedown...

DHO: The July shakedown is not relevant in this charge, sir.

I/M: ...before making a ruling in my case because the knife had to be in the window when I moved in. Uh, Inmate West has a, uh, had been, uh, has... Inmate West has been issued glass...glasses by Medical. I was never issued glasses by Medical. One of the knives was a eyeglass frame sharpened to a point to an end. Next, since I've been at Tyger River CI, August 2nd, 2012, no hot water plunger off a lock-up sink has gone missing. I asked my Counsel Substitute, in writing and in person, to call Sergeant Fowler, Mr. Childress, Mr. Finch, and C/O Trathum...name being maybe pronounced wrong...T-R-A-T-H-U-M. as my witness. Sergeant Fowler will testify that the room was not searched properly because they did not remove the metal cage to see if a knife was in the window. The Incident...

DHO: You're talking about the July case, sir. We're not talking about the July case.

I/M: The Incident...

DHO: We're dealing with the incident that occurred this time.

I/M: The Incident Report does not speak on the fact that Mr. Childress took the metal cage off the fence. I would like for him to testify to this and I want to ask has he taken this cage off before. Mr. Finch will testify that no twelve inch hot water plunger off a lock-up sink has been missing since I came to Tyger River CI on August 2nd, 2012. C/O Tra...Trathum, uh, T-R-A-T-H-U-M will verify I was in the Holding Cell while Lieutenant Lavigne condic...conducted the search in my room.

DHO: Counsel, do you have anything on behalf of the accused?

C/S: Uh, I spoke to Officer Trantham, we'll start there, and he said the inmate was sitting on the floor outside the room while the search was conducted.

DHO: Thank you.

C/S: Mr. Finch stated that, uh, no plunger is missing, but that does not mean the plunger could not have come from another room.

DHO: Alright.

C/S: Uh, Mr. Childers said that, yes, he did take the metal off the window, but there was a hole that the inmate could gain access to the items that were inside of the metal that he took off and Sergeant Fowler, of course, was not present on the day of the search.

DHO: Thank you. Lieutenant Lavigne, is the content of your report true and correct as written?

OFC: Yes sir.

DHO: Uh, based on your discovery of the evidence, the location, uh, all the circumstances surrounding this, is there any possibility those items were present without the knowledge of the accused?

OFC: No sir.

DHO: Do you have anything else that's relevant to the charge?

OFC: No sir.

DHO: Thank you. With that understanding, the information that will be used to support the charges against you will be: the Incident Report, previously read into the record; the testimony of your accuser during the hearing; uh, the, uh, photocopy of the evidence that was present in the hearing. I have provided you the opportunity to make a statement, present evidence, call witnesses on your behalf and I am prepared now to recess this hearing and arrive at a decision. If you'll step up and I'll be with you shortly. Restate your name and SCDC Number, please.

I/M: Billy Lisenby, 200273.

DHO: Inmate Lisenby, I have found you guilty of the offense that was brought against you today. The information that was used to arrive at this decision is: the Incident Report, previously read into the record; the testimony of Lieutenant Lavigne, that his report was true and correct as written; the photo of the evidence. Sanctions that have been imposed: 180 days disciplinary detention; 360 days canteen; 360 days telephone; 360 days visitation; 60 days loss of good time. You do have the right to appeal the sanctions portion of the charge and the determination of guilt. The manner in which you do so, is you file an SCDC Form 10-5. That is a Step 1 Grievance Form, with the Grievance Coordinator. If you're going to appeal the case, it must be done within 15

days. That is 15 days from the time I hand you your copy of the Hearing Report here today. Also, remember that if you need any assistance with an appeal, the Grievance Coordinator helps you with the process. Do you understand the appeal rights?

I/M: Yes.

DHO: That concludes this hearing.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, #200273,

Appellant,

-vs-

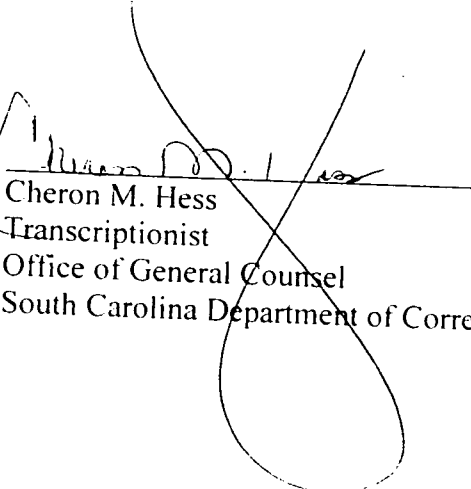
South Carolina Department of Corrections,

Respondent.


)
)
)
)
) **CERTIFIED TRANSCRIPT**
) Docket No.: 13-ALJ-04-0200-AP
)
)
)
)

This is to certify that the following transcript of this tape-recorded administrative disciplinary hearing is a true, accurate and complete transcript of the proceedings and testimony hereby transcribed.

I do further certify that I was not present at the administrative disciplinary hearing that has been transcribed.


Cheron M. Hess
Transcriptionist
Office of General Counsel
South Carolina Department of Corrections

SWORN TO before me this
14 day of June, 2013


(L. S.)
Notary Public for South Carolina
My Commission Expires: 9-18-2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, #200273,)
Appellant.)
-vs-)
South Carolina Department of Corrections,)
Respondent.)
_____)

CERTIFICATION
Docket No.: 13-ALJ-04-0200-AP

This is to certify that I am the Disciplinary Hearing Officer who presided at the administrative disciplinary hearing in this matter. I have reviewed the attached transcript of this tape-recorded hearing and hereby certify the transcript as true, accurate, complete and constitutes the entire record of the proceedings.

R. L. Turner
Disciplinary Hearing Officer
South Carolina Department of Corrections

SWORN TO before me this
14 day of June, 2013

Melinda Faye DeLoach (L. S.)
Notary Public for South Carolina
My Commission Expires: 2/20/2018

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1**

REC'D NOV 13 2012

INMATE NAME: Billy Lee Livsey JR.
 SCDC NUMBER: #200273
 INSTITUTION: Tyger River C.I.
 HOUSING UNIT: SMU #14 48
 WORK ASSIGNMENT: N/A

Office Use Only
 Grievance No. TYRC I 1401-12
 Code: General _____
 Policy _____
 Disc. Hear. Case 131 811 &
 Class. HD 11-5-12
 Date Received 12/10/12
 IGC Initials JL

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 11-5-12, I was found guilty of 311. Possession of a weapon after pleading not guilty, by D.H.U. Turner. I now appeal due to actual innocence violation of due process, and ineffective assistance of counsel substitute. First, I have a lengthy mental health background, in which I'm being treated with meds for. This was not indicated on my 19-29A Form, and my mental health counselor was never notified. This is a violation of OP-22.14 section 3.3, which states "Note: If the inmate has a mental health issue noted on his/her MEO class screen or is acting in such a manner that indicates a mental health concern, then a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29A. In those instances, a memorandum from the mental health care professional must be included as an attachment to SCDC form 19-29A, 'Incident Report,' attesting to the inmate's mental status and accountability for his/her actions." This was not done in this case. Next L.T. Lawrence Levine conducted a shake down of my room alone while I was in the holding cell. The incident report supports this and he did not deny it at the hearing. He was alone when the coffee knives were found, this is a violation of OP-22.14 of SCDC Inmate Search Policy Section 3.1 which states "If the inmate is not present, then two (2) employees will be required to complete the search (one to complete the search and the other to assist and to serve as a witness)." This is a major violation. I asked my counsel substitute in writing and in person to call Sgt. Fowler, Mr. Childress, Mr. Finch, and C/O Trathum as my witnesses. Prior to the conducting of the hearing counsel substitute ("CS") attempted to make reference he "allegedly" contacted the SCDC witnesses that were requested. However, according to SCDC policy OP-22.14 (8.2.4) the CS is required to "Interview relevant witnesses prior to the hearing. For those witnesses who will not be able to appear, obtain written statements that can be given to the Hearing Office at the hearing." The D.H.U. must interview any witness who is unavailable by speaker phone during the hearing, and the names of the witnesses must be recorded." OP-22.14 (15.5). Therefore, the alleged contact to the SCDC employee's is uncorroborated hearsay testimony, as neither witness was interviewed by the D.H.U. on his testimony recorded. I was denied my right to call my witnesses or have them write statements or be present. Note: MR. Childress, and C/O Trathum were approx. 25 feet from the D.H.U. hearing, they could be come in and testified. This violated OP-22.14 section 15.3 which states "If witnesses are denied by the Hearing Office, the Hearing Office must write his/her reasons for this denial on SCDC form 17-68 'Disciplinary Report and Hearing Record,' in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information." I moved in cell #14

ACTION REQUESTED: I ask that the tape be made available to the appropriate reviewing authority.
 I ask that my case be overturned.
 [See Page 2]
 [Exhib. 11]

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

ACTION TAKEN BY IGC:

Billy Lee Livsey Jr. Nov. 12, 2012
 Grievant Signature Date

Considered grievance issue, contacted appropriate staff, reviewed all pertinent information and documentation. See Warden's Response for decision.

I accept the action taken by the IGC and consider the matter closed.
 I do not accept the action taken and wish to appeal.

J Lecomp
 IGC Signature Date

N/A
 Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Lisenby;

This is in response to TYRCI-1401-12, case # 131. You have appealed the results of your 11/05/12 Disciplinary Hearing where you were found guilty on the charge of 811 Possession of a Weapon. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. Disciplinary hearing tape was reviewed, No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. It is the inmates responsibility to check your cell as soon as you are placed in it. Based on this information, your appeal is without merit and therefore denied.

If not satisfied with my response, see Step 5 below.

Jim Dely 1/2/13
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Bill L 1-4-13
Grievant Signature Date

J. Leonard 1-4-13
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

in late August 2012. On July 27, 2012 SGT. Fowler found a note stating a knife was in room #14. SGT. Fowler and Co. Bo Bo then conducted a shake-down of room #14 that was video recorded. [See Enclosed Incident Report] They never checked the window and never had maintenance remove the metal cage from the window. The inmate that was housed in this room Christopher West has a long history of knife and weapon possession. If they had a tip a knife was in the room why didn't they take the metal cage off in July during the shake-down. Also note a person has access to room #14's window from the outside as well. I asked the D.H.U. to view the video of the July 27, 2012 shake-down but he refused. They put me in a room that they knew a knife was possibly in, and did not conduct a proper search before moving me in. SGT. Fowler would've testified to this.

I was not permitted to adequately discredit the allegations against me where I was not allowed to reasonably confront and cross examine the witnesses. I requested witnesses to be present that would provide exculpatory evidence. To my knowledge, the record does not reflect that anyone observed or witnessed my counsel substitute contact SGT. Fowler, Mr. Childress, Mr. Finch, or Co. Trathum. Therefore, the testimony of counsel substitute ("C/S") is unsubstantiated "hearsay evidence" and is not reliable in accord with due process set forth by WOLFENBUTER v. McCOLL. The DHU was required to conduct the questioning of the employee witnesses via telephone (conference call) in the presence of the record and myself; the record is void of any substantial reason for the DHU's deviation from policy and procedure. OP-22.14 (15.3) (3.1), (3.2), (3.4) and (3.2.6).

Lastly the DHU was required to state his reasons for not allowing the witnesses to be present during the hearing of the SCDC 14-69 Form Did Not. This further offends OP-22.14.

* Due: 1-9-13

REC'D JAN 8 2013

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

INMATE NAME: Billy Linsby
 SCDC NUMBER: # 200213
 INSTITUTION: Tyroneville C.T. ✓
 HOUSING UNIT: SMU #48
 WORK ASSIGNMENT: 1/11

Office Use Only

Grievance No. TYRONE-1401-12
 Code: General _____
 Policy _____
 Disc. Hear. *131 811 d
 Class. 48 11-5-12
 Date Received 1-8-13
 IGC Initials JL

INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *I'm appealing for several reasons. The warden gave incorrect info on his response by stating it's the inmates responsibility to check his room for contraband. In SMU it's the officers responsibility. See OP 22.17 Section 3 Search Procedures for Inmates Living Area ~~20~~ Section 3.3 An inmates living area will always be searched in the following instances: before inmate is moved to a special management housing unit (SMU), the SMU cell will be searched to ensure that it does not contain any unauthorized items; (4-11-12)*

Please see my step 1 I was denied my witnesses as well.

Billy Linsby 1-7-13
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction(s) of Possession of a Weapon (8.11) on November 5, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -60- days accrued good time. were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing. you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

8

[Signature] 1/23/13
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

 Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

Good Time - 360 days

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 131 Inmate Name: BILLY LISENBY SCDC#: 200273
Living Area: SMU 14A Job: _____ Custody: DD2
Offense Date: 10/19/12 Offense Time: 2:30 AM Institution: TYRCI

Offense Description:
811: Possession of a Weapon: The actual or constructive possession by an inmate of any instrument intended to be used to inflict physical injury on another person.

Charging Officer/Employee: L. LAVIGNE Title: LT
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

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 Few/1/1

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 10/24/12 9:10 AM By (Print): P. Trantham
Inmate Signature: Billy Lisensby SCDC#: 200273 Date: 10/24/12

HEARING INFORMATION:

| | | | | | |
|------------------------------|------------------------------|-------|-------|--------|------|
| Hearing Date: <u>11/5/12</u> | Hearing Time: <u>1047 AM</u> | Tape: | Side: | Start: | End: |
|------------------------------|------------------------------|-------|-------|--------|------|

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WA EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDE FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

at 10:47 AM in court only 10/19/12 4 attorneys
is out of the room 10/19/12 10:47 AM to 11:00 AM

| | | | | |
|---------------------------|------------|--|--|--|
| OFFENSE CODES | <u>811</u> | | | |
| INMATE PLEA (G, NG, None) | <u>NG</u> | | | |
| FINDINGS (G, NG, DS) | <u>6</u> | | | |

off. not released

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: Officer's report of Lt. Lavigne that he observed inmate Lisensby with a knife in his possession on 10/19/12 at 2:30 AM in the TYRCI kitchen.

HEARING LENGTH: 10 (MINUTES)

SANCTIONS:

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

- Property (Days) _____
- Canteen (Days) 360 (2012/10)
- Other 100 (Days) 360 (2012/10)
- Disciplinary Detention (Days): 750

Extra Duty: _____ Restitution: \$ _____

Visit Suspension Thru 3/30/2013

Cell Restriction (Days): _____

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st prior 811 in 2002

CREDIT FOR PHD TIME SERVED? YES/NO NO IF YES, DAYS _____
DATE INMATE PLACED IN PHD 1/1/12
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Billy Lisensby DATE: 11/5/12
HEARING OFFICER (PRINT NAME) P. L. Trantham
APPROVED REVERSE/MODIFY P. Caldwell REASON _____
Warden

EVIDENCE

Case No. _____

40/4

Evidence Description SHANK 5" LONG, EYE GLASS FRAME, SHANK 12" x 1/4"
Place Evidence Found CELL 12 SMU

SCDC CORRECTIONS POSITION FORM

Date & Time of Recovery 10-19-72 1440 HRS
Suspect BILLY LISEBY Offense _____
Victim # 200273

NUMBER: _____
SERIAL: _____

Evidence Recovered By TAMM TAYNE LT.
Signature Rank

Date: _____
CDC #: _____
CDC #: _____
CDC #: _____

CHAIN OF POSSESSION OF EVIDENCE
Signatures Required

From Tamm Tayne CONTRABAND To CONTRABAND Date 10-19-72 Time 1500 HRS

ANALYSIS
Analyzed/Weighed: _____
() Other: _____
() Heroin () Alcohol Content

SCDC S-23 (Rev. October, 1996)

PHARMACY PRESCRIPTION/MEDICATION VERIFICATION

Date Examined: _____ Quantity/Weight: _____
Examination Results: _____

Prescription Medications: () Are () Are not issued by SCDC
() Were () Were not issued to inmate

S/ _____

DISPOSITION OF CONTRABAND/EVIDENCE BY CONTRABAND CONTROL OFFICER

Disposition Date: _____ Place: _____

() Destroyed () Turned into Sled () Held for Display
() Turned into Inmate Welfare Fund () Returned to: _____

S/ _____

Disposition Witness Signature: _____ Title: _____

SCDC 19-79 (Rev. November, 1996)

3.4
11-131 ✓
10/23

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

SMU 14A 202

| | | | | |
|--|-----|-----|------|------------------------------------|
| Institution/Center: TYGER RIVER C I | | | | Date of Report: 10-19-2012 |
| Reporting Official (Full Name): LAWRENCE LAVIGNE | | | | Time of Report: 1520 HOURS |
| Employee ID #: 048464 | | | | Date of Incident: 10-19-2012 |
| Location of Incident: SMU ROOM 14 LL | | | | Time of Incident: APPX. 1430 HOURS |
| Inmate(s)/Resident: SCDC# | Age | Sex | Race | Employee(s)/Witnesses Involved: |
| 1. BILLY LIENBY SCDC # 200273 | | M | B | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

On the above date and approximate time: WHILE CONDUCTING A TARGETED CELL SEARCH OF CELL 14 LL IN SMU I, LT. LAVIGNE, FOUND BETWEEN THE WINDOW AND THE WIRE MESH, 2 HOME MADE WEAPONS WARPED IN NEWSPAPER. ONE WEAPON WAS APPX. 5" LONG AND MADE OUT OF AN EYE GLASS FRAME SHARPENED TO A POINT AT ONE END. THE OTHER WEAPON WAS APPX. 12" LONG AND 1/4" IN DIAMETER AND APPEARS TO BE MADE OUT OF THE HOT WATER PLUNGER OF A LOCK UP SINK. THE WEAPONS WERE TURNED INTO OVER TO CONTRABAND. THE ROOM HOUSED ONE INMATE AND THAT WAS INMATE BILLY LIENBY SCDC # 200273.

Signature: *[Signature]* Title: LT. CCO

Evidence: 2 HOME MADE WEAPONS 5" AND 12"

Disposition of Evidence: PLACED IN CONTRABAND

Supervisor's Comments: Refer to Major/Responsible Authority

Printed Name: Jason Webber

Signature: *[Signature]* Title: LT Date/Time: 10-19-12 3:38p

Major/Responsible Authority: 811

Printed Name: CATY DUNCAN

Signature: *[Signature]* Title: Capt Date: 10/20/12

STG Related - Refer to STG Committee

() Yes (X) No () Unknown

This incident is DRUG related

() Yes (X) No () Unknown

Responsible Authority Action Taken

() Informal Resolution

() Administrative Resolution

(X) Refer to Disciplinary Hearing

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Court Carolyn C. Matthews

Docket Number: 13-ALJ-04-0200-AP
Appellant Case No: 2013-002276

Billy Lee Lisenby JR. #200273 Appellant

v.
South Carolina Department of Corrections Respondent

PROOF OF SERVICE

I swear under penalty of perjury that I have served one copy of
The enclosed ~~record~~ Record ON Appeal on the following:

Christopher D. Florian
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21987
Columbia, S.C. 29221

South Carolina Administrative
Law Court
1205 Pendleton St Suite 224
Columbia S.C. 29201

Dated: Nov. 26th 2013

Billy Lee Lisenby JR.
Billy Lee Lisenby JR. #200273