

The STATE OF SOUTH CAROLINA
In The COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS
CASE NO. 12-ALJ-04-0798-IJ

APPELLATE CASE NO. 2013-002231

Michael Jones #237769 APPELLANT,
V.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RESPONDENT.

APPELLANT'S REPLY BRIEF

November 27th, 2013
Pelzer, South Carolina

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?
- II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY INCOMPETENT EVIDENCE?

STATEMENT OF CASE

This MATTER comes before This Honorable COURT PURSUANT TO THE APPEAL OF Michael Jones ("APPELLANT"), AN Inmate ("I/M") incarcerated with the South CAROLINA DEPARTMENT OF CORRECTIONS ("SCDC"). APPELLANT WAS CONVICTED OF THE I/M DISCIPLINARY ("Disc.") OFFENSE OF POSSESSION OF A CELLPHONE, OFFENSE 898 UNDER SCDC POLICY DP-22.14, I/M DISC. SYSTEM, FOLLOWING A DISC. HEARING. APPELLANT LOST 450 DAYS GOOD-TIME DUE TO THE DISC. CONVICTION. (S.C.DC FORM 19-67 DISC. HEARING REPORT AND RECORD).

APPELLANT FILED A STEP ONE GRIEVANCE APPEAL ON JULY 10, 2012, CHALLENGING HIS DISC. CONVICTION. THIS GRIEVANCE WAS INVESTIGATED AND DENIED BY I/M GRIEVANCE COORDINATOR MS. HINDENBURG, WHO WAS THE APPELLANT'S I/M COUNSEL SUBSTITUTE AT THE HEARING ALSO. APPELLANT FILED A STEP TWO GRIEVANCE NOVEMBER 8, 2012, WHICH WAS ALSO DENIED. APPELLANT FILED NOTICE OF APPEAL IN THE ADMINISTRATIVE LAW COURT ("ALC"), PURSUANT TO AL-SHABAZZ V. STATE, 527 S.E.2d 742 (2000).

THE ALC AFFIRMED SCDC'S FINAL DECISION, FINDING THE DISC. HEARING CONDUCTED WITH DUE PROCESS AND WAS SUPPORTED BY SUFFICIENT EVIDENCE. (ORDER SEPTEMBER 26, 2013).

APPELLANT NOW APPEALS THE ALC'S DECISION. FOR THE REASONS THAT FOLLOW, THE APPELLANT RESPECTFULLY REQUESTS THAT THE ALC'S DECISION BE REVERSED.

STANDARD OF REVIEW

S.C. Code Ann. §1-23-610 (B) Provides The APPLICABLE Standard OF REVIEW: The REVIEW OF THE ADMINISTRATIVE LAW JUDGE'S ("ALJ") ORDER MUST BE CONFINED TO THE RECORD. THE REVIEWING TRIBUNAL MAY AFFIRM THE DECISION OR REMAND THE CASE FOR FURTHER PROCEEDINGS OR IT MAY REVERSE OR MODIFY THE DECISION IF THE SUBSTANTIVE RIGHTS OF THE PETITIONER HAVE BEEN PREJUDICED BECAUSE OF THE FINDINGS, CONCLUSIONS, OR DECISION IS:

- (A) IN VIOLATION OF CONSTITUTIONAL OR STATUTORY PROVISIONS;
- (B) IN EXCESS OF THE STATUTORY AUTHORITY OF THE AGENCY;
- (C) MADE UPON UNLAWFUL PROCEDURE;
- (D) AFFECTED BY OTHER ERROR OF LAW;
- (E) CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; OR
- (F) ARBITRARY OR CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

See ALSO: S.C. Code ANN. §1-23-380(G); LAKE V. REEDER CONSTR. CO., 498 S.E. 2d 650, 653 (Ct. APP. 1998) ("ON APPEAL... THIS COURT MAY REVERSE WHERE THE DECISION IS AFFECTED BY ERROR OF LAW.").

IN AN APPEAL OF THE FINAL DECISION OF ADMINISTRATIVE AGENCY PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT, THE STANDARD FOR APPELLATE REVIEW TO THE APPELLATE PANEL IS WHETHER THE ALJ'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. IN DETERMINING WHETHER THE ALJ'S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE COURT NEED ONLY FIND, LOOKING AT THE ENTIRE RECORD ON APPEAL, EVIDENCE FROM WHICH REASONABLE MINDS COULD REACH THE SAME CONCLUSION THAT THE ADMINISTRATIVE AGENCY REACHED. THE MERE POSSIBILITY OF DRAWING TWO INCONSISTENT CONCLUSIONS FROM THE EVIDENCE DOES NOT PREVENT A FINDING FROM BEING SUPPORTED BY SUBSTANTIAL EVIDENCE. DURANT V. S.C. DEP'T OF HEALTH & ENVIRONMENTAL CONTROL, 604 S.E. 2d 704, 706-07 (Ct. APP. 2004).

SUBSTANTIAL EVIDENCE IS NOT A MERE SCINTILLA OF EVIDENCE NOR THE EVIDENCE VIEWED BLINDLY FROM ONE SIDE. LARK V. BI-LO INC., 276 S.E. 2d 304, 306 (1981).
SUBSTANTIAL EVIDENCE IS "SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT

AS ADEQUATE TO SUPPORT CONCLUSION." Id 307. The LANGUAGE OF The Statute 1-23-380(G) CLEARLY indicates THAT THIS COURT SHOULD REVERSE A CONVICTION UPON STATUTE'S APPLICATION WHERE A MANIFEST OR GROSS ERROR OF LAW HAS BEEN COMMITTED BY THE ADMINISTRATIVE AGENCY. Id 307.

ARGUMENT AND CITATIONS OF AUTHORITY

I. APPELLANT WAS NOT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

PRISON DISC. CASES ARE NOT CRIMINAL TRIALS IN FEDERAL OR STATE COURTS. INSTEAD, THEY ARE ADMINISTRATIVE HEARINGS IN AN INSTITUTIONAL SETTING. THEREFORE, DUE PROCESS IN PRISON DISC. HEARINGS IS SUBSTANTIALLY LESS THAN WOULD BE REQUIRED IN A CRIMINAL TRIAL BEFORE A COURT. DUE PROCESS REQUIRES THE FOLLOWING IN PRISON DISC. CASE:

- (A) NOTICE OF CHARGES;
- (B) DISCLOSURE OF EVIDENCE AGAINST DEFENDANT;
- (C) OPPORTUNITY TO BE HEARD, CALL WITNESSES AND PRESENT EVIDENCE NOT HAZARDOUS TO THE INSTITUTION;
- (D) RIGHT TO CONFRONT AND CROSS-EXAMINE ACCUSER;
- (E) NEUTRAL AND DETACHED HEARING BODY;
- (F) AID OF COUNSEL SUBSTITUTE WHERE ILM IS ILLITERATE OR THE CASE COMPLEX;
- (G) WRITTEN STATEMENT BY THE FACT-FINDER AS TO THE EVIDENCE RELIED UPON.

WOLFF V. McDONNELL, 418 U.S. 539, 566; 94 S.Ct. 2963, 2979-80 (1974).

"THE ILM FACING DISC. PROCEEDINGS SHOULD BE ALLOWED TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE IN HIS DEFENSE WHEN PERMITTING HIM TO DO SO WILL NOT BE UNDULY HAZARDOUS TO INSTITUTIONAL SAFETY OR INSTITUTIONAL GOALS. ORDINARILY, THE RIGHT TO PRESENT EVIDENCE IS BASIC TO A FAIR HEARING... IT MAY BE THAT AN INDIVIDUAL THREATENED WITH SERIOUS SANCTIONS WOULD NORMALLY BE ENTITLED TO PRESENT WITNESSES AND RELEVANT DOCUMENTARY EVIDENCE; BUT HERE WE MUST BALANCE THE ILM'S INTEREST IN AVOIDING LOSS OF GOOD-TIME AGAINST THE NEEDS OF THE PRISON, AND SOME AMOUNT OF FLEXIBILITY AND ACCOMMODATION IS REQUIRED. PRISON OFFICIALS MUST HAVE THE NECESSARY DISCRETION TO KEEP THE HEARING WITHIN REASONABLE LIMITS AND TO REFUSE TO CALL WITNESSES THAT MAY CREATE A RISK OF REPRISAL OR UNDERMINE AUTHORITY." WOLFF V. McDONNELL, 418 U.S. AT 566; 94 S.Ct. AT 2979-80 (1974).

The Requirements Enumerated in Wolff were not complied with in this case. The Appellant was denied his right to call only one specific SCDC employee witness who would have testified Appellant was innocent. Specifically the ONE ONLY SCDC employee requested witness would not have created any risk of reprisal or undermine authority, but would in fact maintained fairness integrity of the procedure. "While this court recognizes the mischief that might be worked if this right is extended to extremes, in this case at hand the witness sought was an employee of the Respondent and there is no excuse for his absence that alone is ground for reversal." The Honorable S.C. Administrative Law Judge John D. McLeod, 09-ALJ-04-00025-AP (2009). (Transcript P. 4, Exhibit B SCDC Form 19-11 of June 13, 2012).

The Appellant specifically denies writing the unverified statement used in part to found guilty. (Transcript P. 5; Exhibits A). The unverified statement was not present at the Disc. hearing. (Transcript P. 5). Appellant suffered due process violations cause of the exclusion of SCDC specifically requested employee witness in possession of vital information and the use of involuntary unverified denied statement was prejudicial. State v. Wiley, 692 S.E.2d 560, 563-64 (Ct. App. 2010). When defendant shows error and resulting prejudice is grievous and that prejudicial effect can not be removed in no other way, (mistrial), error is not harmless. Id 563. Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial. Id 564. Abuse of discretion occurs when the trial court ruling is based on an error of law resulting in prejudice to appellant. State v. McLeod, 606 S.E.2d 215, 218-19 (S.C. App. 2004). Although evidence may be relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value. Id 220; SEE ALSO: RULE 403 SCRC.

THE APPELLANT REQUESTED ONLY ONE SPECIFIC SCDC EMPLOYEE WITNESS IN POSSESSION OF VITAL INFORMATION ASSERTING APPELLANT'S INNOCENCE. APPELLANT DENIED WRITING UNVERIFIED STATEMENT. THE DENIAL OF APPELLANT'S ONLY WITNESS AND USE OF UNVERIFIED ADAMANTLY

Denied Statement is NOT a harmless error because both had significant affect on the result of the Disc. Hearing.

Because Appellant's Disc. Conviction does not comport with all due process requirements, Appellant respectfully requests the decision of the ALC be reversed.

II. Respondent's Final Agency Decision is Supported by Incompetent Evidence.

If guilt has been conclusively proven by incompetent evidence such that another rational conclusion can be reached, [an appellate] court should set aside conviction because of errors affecting the results. State v. Lyles, 665 S.E.2d 201, 204-05 (S.C. App. 2008). Substantial evidence is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached. Pearson v. JPS Converter & Indus. Corp., 489 S.E.2d 219, 221 (Ct. App. 1997).

The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether findings are supported by the evidence and whether the law has been properly applied to those findings. Implicit findings of facts are not sufficient. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 503 S.E.2d 739, 742 (1998). Evidence is incompetent if it could create dangers such as prejudice, confusion of the issues, tendency to mislead. State v. Lyles, 665 S.E.2d at 206 (S.C. 2008).

The administrative agency's decision of guilt is supported by incompetent evidence that prejudiced the appellant. The Disc. Report and hearing record area provided for Disc. Hearing Officer disposition for why appellant's only requested SCDC employee witness was excluded from the hearing is blank with no valid reason provided. The area designated for explanation as to why documentary evidence was excluded is also blank with no valid reason given. (SCDC Form 19-67 Disciplinary Report and hearing record exhibit C). "The deferential standard of review does not mean, however, that the court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." Porter v. South Carolina Public Service Comm'n, 507 S.E.2d 328, 332 (Ct. App. 1998).

THE DENIAL OF SCDC OBLIGATED EMPLOYEE WITNESS AND PRESENTMENT OF RELEVANT DOCUMENTARY EVIDENCE WITHOUT A VALID REASON BEING ASSIGNED LEAVES THE EVIDENCE OF THE RECORD AS A WHOLE PREJUDICIAL AND INCOMPETENT. THE DENIAL OF EMPLOYEE WITNESS, DOCUMENTARY EVIDENCE, AND USE OF UNVERIFIED STATEMENT, WHICH APPELLANT CLEARLY DENIED WRITING, HIGHLY PREJUDICED APPELLANT AND HAD DIRECT SUBSTANTIAL AFFECT ON GUILT FINDING. (SCDC FORM 19-11 OCTOBER 10, 2012, STATEMENT EXHIBITS A, TRANSCRIPT P. 4.5, SCDC FORM 19-11 JUNE 13, 2012 EXHIBIT B).

THE APPELLANT HAS CARRIED HIS BURDEN OF PROVING THAT THE DECISION OF THE DEPARTMENT IS CONTROLLED BY ERRORS OF LAW AND SUPPORTED BY INCOMPETENT EVIDENCE. IT IS THE RESPONDENT WHO HAS FAILED TO PROVE WITH SALIENT FACTS SUFFICIENTLY DETAILED THEY DID NOT VIOLATE THE APPELLANT'S CONSTITUTIONAL RIGHTS TO ADEQUATE TOUCHSTONE DUE PROCESS MINIMUM REQUIREMENTS.

CONCLUSION

WHEREFORE, FOR ALL THE REASONS STATED ABOVE, THIS COURT SHOULD REVERSE THE DEPARTMENT'S DECISION IN THIS CASE AT HAND.

NOVEMBER 27th, 2013
PELZER, SOUTH CAROLINA

RESPECTFULLY SUBMITTED,

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MR. MICHAEL L. JONES # 237769

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THE STATE OF SOUTH CAROLINA
In The COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS
CASE NO. 12-ALJ-04-0798-IJ

APPELLATE CASE NO. 2013-002231

Michael Jones, #237769, APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RESPONDENT.

CERTIFICATE OF SERVICE

I, hereby certify that I have served Respondent a copy of Appellant's Reply Brief by depositing a copy of same in the United States Mail this 27th day of November 2013 addressed to the Respondent as follows:

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DEC 06 2013
SC Court of Appeals

In The STATE OF SOUTH CAROLINA
County OF Greenville

MR. Michael L. Jones, 237769,
AFFIVANT.

AFFIDAVIT OF Michael L. Jones
TO The South CAROLINA COURT OF APPEALS
IN REFERENCE TO ~~CASE~~ ^{INITIAL BRIEF} NO. 2013-002231
~~(M)~~

I, certify THAT I RECEIVED IN MY POSSESSION The SCOC OFFICE OF GENERAL
COUNSEL, Counsel Christopher D. Florian, ESQ., Response TO APPELLANT'S ^{Initial Brief} APPEAL
CASE NO. 2013-002231 TODAY November 25, 2013 SERVED UPON ME AT LEGAL MAIL
PASS OUT BY PERRY C.I. undersigned NOTARY MAIL ROOM STAFF MEMBER.

Subscribed to and Subscribed By me
This 25th DAY OF November, 2013.
Tamara Conwell (L.S.)
NOTARY Public:

Further the AFFIVANT SAYTH NOT.
Mr. Michael Jones #237769
Mr. Michael L. Jones #237769
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September - 25 - 2023
My Commission expires:

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IT IS FURTHER ORDERED THAT THE ORDER TO SHOW CAUSE, AND ALL OTHER PAPERS ATTACHED TO THIS APPLICATION, BE SERVED ON THE ABOVE SAID PLAINTIFF

By _____

DATED: _____

THE HONORABLE JUDGE