DECEMBER 20, 2013

Hon. JENNY ABBOTT KITCHINGS
1015 SUMTER STREET
Columbia, S.C. 29201

RE: Harold Mosley #137525, Petitioner v
S.C. Dept of Corrections, Respondent, Opinion no. 2013-UP-389

DEAR MS. KITCHINGS,

PLEASE FIND ENCLOSED FOR FILING PETITIONERS WRIT OF CERTIORARI IN THE ABOVE CASE/OPINION NUMBER. ALSO ENCLOSED ARE THE FOLLOWING:

(1) PROOF OF SERVICE SHOWING THE SAME WAS SERVED ON RESPONDENT
(2) RECORD ON APPEAL
(3) PETITION FOR REHEARING
(4) MOTION FOR PERMISSION OF LEAVE TO PROCEED IN FORMA PAUPERIS
(5) FINANCIAL CERTIFICATE

THE WRIT OF CERTIORARI HAS BEEN FILED DUE TO THE OPINION OF THE COURT OF APPEALS FILED IN THIS ON GOING CASE.

SINCERELY

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

CC: Shanika K. Johnson
OFFICE OF GENERAL COUNSEL
P.O. Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787
(803) 896-8555

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS

OPINION NO. 2013-UP-389

HAROLD MOSLEY #137525 . . . . . PETITIONER,

V

SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS. . . . . RESPONDENT.

MOTION FOR PERMISSION OF LEAVE
TO PROCEED IN FORMA PAUPERIS

NOW COMES THE PETITIONER, HAROLD MOSLEY, WHO MOVES THIS COURT PURSUANT TO RULE 3(b), SCRCP, FOR PERMISSION OF LEAVE TO PROCEED IN FORMA PAUPERIS BY SHOWING THE FOLLOWING:

1. THE PETITIONER HAS LOST 1000 DAYS GOOD-TIME CREDITS IN A DISCIPLINARY HEARING HELD JUNE 13, 2011.

2. THE PETITIONER IS UNABLE TO PAY THE COSTS OF THIS ACTION.

3. PETITIONER PROVIDES THIS COURT WITH A COPY OF A FINANCIAL CERTIFICATE VERIFYING HIS INDIGENCY.

4. PETITIONER HAS A RIGHT TO PROCEED IN THIS ACTION PURSUANT TO RULE 203(b), SCACR, AND AL-SHABAZZ V STATE, 338

S.C. 354, 527 SE2d 742 (2000).

Conclusion

Because this Petition for Writ of Certiorari involves the loss of good-time credits, the Petitioner is entitled to proceed in forma pauperis. See Furtick v. S.C. Dep't of Corr., 374 S.C. 334, 340, 649 SE2d 35, 38 (2007); (Finding the loss of good-time credits implicates a state-created liberty interest); Ex Parte Martin 321 S.C. 533, 535, 471 SE2d 134, 134-35 (1995) ("motions to proceed in forma pauperis may be granted only when authorized by statute or required by constitutional provisions").

Respectfully submitted

December 20, 2013

Harold Mosley

Harold Mosley #37525
Kershaw Correctional Inst.
4848 Goldmine Hwy.
OAK-A-7
Kershaw, S.C. 29067

Kershaw C.I.

INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Shango Dam Ballah FKA - Harold Mosley

SCDC # 137525 - INMATE SIGNATURE: Shango Dam Ballah

I plan to file this action in the SC County of Richland - court of Appeals.

The section below is for SCDC - Financial Accounting Branch's use ONLY.

(1) Total deposits to inmate's account for preceding six months' period* ..... $ 0

(2) Twenty percent (20%) of line 1 ..... $ 0

(3) Account balance - current date ..... $ 0.05

(4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ $ 0

**NOTE to COURT: If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months ____/____/____.

Prepared by Financial Accounting Branch - SCDC

11/9/12
Date

efile\setrust5\prepared 7/97

The State of South Carolina
In The Supreme Court

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

Opinion No: 2013-UP-389

Harold Mosley #137525.....Petitioner

v.

South Carolina
Department of Corrections.....Respondent

Petition For A Writ Of Certiorari

---

s/_____
Harold Mosley #137525
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Oak A-7
Kershaw, SC 29067

cc:Shanika K. Johnson
Office of General Counsel
P.O. Box 21787
4444 Broad River Road
Columbia, SC 29221-1787

(803)896-8555

INDEX

CERTIFICATE of COUNSEL/PETITIONER

Counsel/Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 22, 2013

s/ Harold Mosley

Harold Mosley #137525
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Oak A-7
Kershaw, SC 29067

December 20, 2013

QUESTIONS PRESENTED

1. Did the ALC Judge abuse her discretion in issuing a defective Order of Dismissal?

2. On the record as a whole was the evidence presented sufficient to support a conviction of assault and/or Battery of an SCDC Employee?

3. Was the Petitioner denied his right to call witnesses in violation of the Due Process Clause of both the State and Federal Constitutions?

4. Was the Petitioner placed in Double Jeopardy when he was sanctioned twice for an offense stemming from the same incident?

5. Did the Petitioner receive Ineffective Assistance of Counsel Substitute at the hearing of June 13, 2011?

STATEMENT OF THE CASE

This petition stems from a disciplinary hearing held on June 13, 2011 in which the Petitioner was convicted and lost accrued Good-time-1000 days.

- Petitioner filed a Step 1 Grievance June 23, 2013 which was denied July 11, 2013
- Petitioner filed his Step 2 Grievance on July 13, 2011 which was denied November 22, 2011.
- Petitioner filed his Notice of Appeal with the Administrative Law Court ("ALC") December 19, 2011. He then filed his Brief on March 1, 2012. In an order dated April 10, 2012 ALC Judge Carolyn C. Matthews dismissed Petitioner's Appeal.
- Petitioner filed his Notice of Appeal to the Court of Appeals on May 7, 2012 and his Initial Brief on November 23, 2012.
- Petitioner filed his Final Brief with the Court of Appeals on November 28, 2012 which was dismissed on October 16, 2013.
- Petitioner filed a Petition for Rehearing to the Court of Appeals on October 29, 2013 which was denied by the court in an order dated November 22, 2013 and Affirmed in Opinion No: 2013-UP-389.

This Petition for a Writ of Certiorari follows:

ARGUMENT

1. The ALC Judge abused her discretion in issuing a defective Order of Dismissal.

The Order of Dismissal contains nothing pertaining to what took place at Petitioner's hearing on June 13, 2013, but instead discusses the charge of another inmate dealing with SCDC rules violation 854 **"EXHIBITIONISM AND PUBLIC MASTURBATION** (R.P.2 underlined) and his accusing officer, Ofc. Harvin.

Instead the ALC Judge simply recited the testimony of Lt. Holsinger and relies on such testimony ASA Finding of Fact to substantiate her reasoning.

This court has already addressed such defective orders in Porter b. S.C. Public Service Commission 333 S.C. 12, 507 S.E. 2d 328 at 332 (S.C. 1998) by stating "an Administrative body is not required to present it's findings of fact and reasoning in any particular format. Although the better practice is to present them in an organized and regimented manner. However, "a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. at 411, 351 S.E. 2d at 152 ( )

In the present case before this court the ALC Judge's Order contains no specific, express Findings of Fact, nor is it supported by Evidence sufficient to sustain a conviction of assault and/or Battery of an SCDC Employee, and finally, the law was not applied properly to those findings.

II. On the record as a whole the evidence Presented was insufficient to support a conviction of assault and/or Battery of an SCDC Employee.

In order to find Petitioner guilty of assault and/or Battery of an SCDC Employee the DHO had to find that the Petitioner committed a "Bodily Injury" against the Person of Lt. Holsinger. There exists nothing in the record as a whole showing that Lt.

Holsinger suffered a bodily injury, however, bodily injury is an offense element of the charge of assault and/or Battery of a a SCDC Employee (R.P.). The difference between the charges of 807 "Assault and/or Battery of an SCDC Employee" and 807 "Striking an SCDC Employee" in SCDC Policy OP-22.14 is precisely the offense element of Bodily Injury. Under South Carolina Law "The State is required to prove every element of a charged offense to obtain a conviction." State v. Attardo 263 S.C. 546, 211 S.E. 2d 868 (1975); State v. Barksdale 311 S.C. 210, 428 S.E. 2d 498, 501 (ct.app. 1993).

Lt. Holsinger's testimony at the hearing of June 13, 2013 was that she suffered **Bruises** to her skin (R.p.12, lines 18-22) yet in her 19-29(A) "Incident Report" she accused Petitioner of throwing her to the floor causing her to strike her head (R.P.15)

In Lark v. Bi-Lo, Inc. 276 S.C. 130, 276 S.E. 2d 304 at 307 (1981) this court held "The substantial evidence rule prescribed in the statute means we will not overturn a Finding of Fact by an Administrative Agency unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." Lark v. Bi-Lo, Inc. Supra, citing Independent Stave Co. v. Fulton 251 ark. 1086, 476 S.W. 2d 792, 793 ( ).

On June 2, 2010 The South Carolina General Assembly abolished all common law offenses of Assault and/or Battery and codified and defined said offenses in Act No. 273 §7.B (R.P.28) making both Great Bodily Injury and moderate Bodily Injury Offense Elements of any and all kinds of Assault and Battery charges (R.P.26)

The record shows that Lt. Holsinger, from her own testimony, did not even suffer "moderate bodily Injury" (R.P.12, lines 18-22). Even the deferential "some evidence" standard of Superintendent v. Hill 472 U.S. 445 (1985) cannot be applied to this case because there exists in the record only "some evidence" that a striking of an SCDC Employee (R.P.35) but "no evidence" that an assault and/or Battery of an SCDC Employee (R.P.34) occurred. SEE 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).

Finally, in Jackson v. Virginia 443 U.S. 307, 99 S.Ct. 2787 (1979), the Supreme Court of the United States held 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 finder of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia 443 U.S. at 316, 99 S.Ct. at 2787 ( )

III. The Petitioner was denied his right to call witnesses in violation of the Due Process Clauses of both the State and Federal Constitutions.

Petitioner a request for witnesses to the DHO in an inmate request to Staff member dated June 2, 2011 (R.P.17). DHO denied receiving the same at the June 13, hearing of 2013 (R.P.12, lines 5 and 6)

The DHO gave no reason in the written record for such denial and this Petitioner has previously shown both the ALC and the Court of Appeals the mechanisms by which inmates at Tyger River Correctional were denied their rights to call witnesses.

Petitioner argues that had his requested witness(es) been allowed to testify as a qualified nurse she could have and would have testified that Lt. Holsinger did not receive a bodily injury, a blow to her head as she alleged and that such testimony would have altered the results and out-come of the hearing of June 13, 2013.

Furthermore, this Court has previously held that "an inmate has the right... to request witnesses in defense." Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 at 751 (2000).

IV. The Petitioner was placed in Double-Jeopardy when he was sanctioned twice for an offense stemming from the same incident. SCDC Policy OP-22.14 at §16.4 Provides that "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." (R.P.) The Petitioner argues that

not only could he not be sanctioned twice for the offense of 801 "Assault and/or Battery of an SCDC Employee" because the alleged assaults of both Ofc. Lance and Lt. Holsinger took place at the same time and are not separate from each other, but more importantly, the above SCDC Policy section places a substantial limitation on official discretion and guides the states decision maker, which creates a protected liberty interest on behalf of Petitioner not to be placed in Jeopardy twice for offenses stemming from the same incident. "A state creates a Protected Liberty Interest by placing substantive 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, 249, 103 S.Ct. 1741, 1747, 75 L.Ed. 2d 813 (1983) citing Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 467 101 S.Ct. 2460, 2465, 69 L.Ed 158 (1981)

Pursuant to Rule 242 (1) (3) (4) and (5) SCACR, the question of whether or not the Petitioner had a protected liberty interest in not being placed in Double jeopardy has Precedential value and should be reviewed and ruled upon by this court.

V. The Petitioner received Ineffective Assistance of counsel substitute at the hearing of June 13, 2011. This court has held "an inmate has the right to a counsel substitute, a non-attorney designated to assist the inmate or represent him at the hearing" Al-Shabazz v. State 338 S.C. 354, 527 S.E. 2d 742 at 751 (2000)

Petitioner argues that under South Carolina Law, not only does an inmate have a right to counsel substitute, but that an inmate has a right to a counsel substitute who will assist and represent him at a disciplinary hearing. The record before this court will show that Petitioner's counsel substitute refused to assist him or to represent him at his hearing of June 13, 2013 (R.P.. 11 lines 20-23 & R.P.12, lines 7 & 8)

Petitioner argues that the question he wanted his counsel substitute to ask of Lt. Holsinger, specifically questions 2 and three were relevant and not having effective representation at his disciplinary hearing along with the fact of him being denied his requested witness resulted in the hearing being a mockery of Justice, hence, a kangaroo court. See Simpkins v.

State, ____S.C.____, 401 S.E. 2d 142 (1991).
This case has Precedential value because this is an issue where Petitioner lost a total of 1500(Hundred) days of accrued Good-Time, effectively prolonging his sentence by years. "The statutory right to sentence related credits is a protected "Liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal Due Process to ensure the state-created right was not arbitrarily abrogated." Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed 2d 935 (1974)

The Petitioner was denied every means by which to Place the issue of the insufficiency of the Evidence squarely on the table and to put up a defense. Denied his right to call witnesses; Denied the right to have his counsel substitute assist and represent him.

CONCLUSION

Wherefore, upon the foregoing, the Petitioner was denied minimal Due Process and the lost of such amounts of sentence-related credits resulted in him suffering a typical and significant hardships in relation to the ordinary incidents of Prison Life. Sandin v. Conner 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed. 2d 418 (1995)

Respectfully Submitted

s/ Harold Mosley

Harold Mosley #137525
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Oak A-7
Kershaw, SC 29067

December 20, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS

CASE NO. 11-ALJ-04-0093-AP

Harold Mosley #137525 . . . . . APPELLANT,

V

SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS . . . . . RESPONDENT.

RECORD ON APPEAL

Harold Mosley #137525
KERSHAW CORRECTIONAL INST.
4848 Goldmine Hwy
SMU - 90
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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Harold Mosley, #137525, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 11-ALJ-04-0993-AP Grievance No. TRYCI 858-11 **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Appellant appeals the decision of SCDC in his Step 2 Grievance in which his conviction of Assault and/or Battery of an SCDC Employee (801) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost one thousand days of good time earned. Appellant appeals alleging he was not afforded due process.

STANDARD OF REVIEW

The Court'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 Court'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 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 Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. 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 Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an

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COURT ADMINISTRATION

inmate is disciplined for serious misconduct. Al-Shabazz, 527 S.E.2d at 750. However, these 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 five 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.

Al-Shabazz, 527 S.E.2d at 751 citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

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

Appellant was served with notice of the charge on June 2, 2011 and the hearing was held on June 13, 2011. The Disciplinary Report and Hearing Record show reliance on incident report and testimony of from Officer Harvin. The Disciplinary Report and Hearing Record show that the reason for the action taken was it was the Appellant's second charge for Exhibitionism & Public Masturbation. Inmate requested his accuser to be present at the hearing via telephone. Appellant was assisted by Counsel Substitute. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

In this case, Lieutenant Holsinger reported that she went to Appellant's room to speak with him. Appellant was agitated and spoke loudly. After attempting to get the Appellant to calm down, Lieutenant Holsinger ordered the Appellant to place his hands on the wall to be restrained and he refused several directives. Appellant then acted like he would cooperate and Hollinger continued her attempt to restrain the Appellant. Holsinger called for First Responders and as she was placing handcuffs on the Appellant, he grabbed Holsinger and threw her to the floor. At this time Officer Lance was present. Inmate eventually ceased resisting and was restrained. Appellant, Holsinger, and Lance were all examined by nurses.

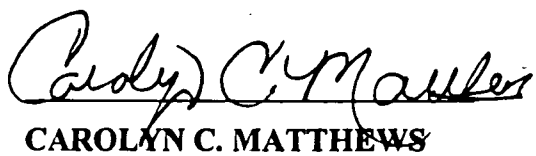
In Appellant's Brief filed on March 1, 2012, Appellant alleges that there was insufficient evidence to support his conviction, he was denied his right to call witnesses, he was punished twice for this conviction, he received ineffective assistance from counsel substitute, and that the punishment was arbitrary. As outlined above, Appellant received due process.

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 § 1-23-380(6) (Supp. 2010); See also Marietta Garage, Inc. v. South Carolina Dep't of Public 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. It is thus clear that Inmate 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 hereby **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

April 10, 2012
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 thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 10 day of April 2012
By: Pam P. Syd

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Harold Mosley, # 137525,	)	Docket No.: 11-ALJ-04-00993-AP
	)	
Appellant,	)	RESPONDENT'S BRIEF
	)	
v.	)	Honorable Carolyn Matthews
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Harold Mosley ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on June 18, 2011, challenging his disciplinary conviction for Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill or Injure, 801 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 19, 2011. This grievance was also investigated and denied. Appellant now appeals, claiming his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests that the disciplinary conviction be upheld.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming,

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), requires the following in prison disciplinary cases:

a) notice of charges;
b) disclosure of evidence against defendant (may be limited);
c) opportunity to be heard;
d) no right to confront and cross-examine adverse witnesses;
e) neutral and detached hearing body;
f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
g) written statement by the fact-finder as to the evidence relied upon.

These requirements were complied with in this appeal. The Disciplinary Report and Hearing Record shows Appellant had notice of the charges (Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill or Injure), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on June 13, 2011), a neutral and detached hearing body (hearing officer), and a written statement of findings (Major Disciplinary Report and Hearing Record).

There was ample evidentiary support for the disciplinary conviction. Lieutenant Holsinger reported that she went to Appellant's wing to speak with him. When Lieutenant Holsinger arrived, Appellant was loud and agitated. As Lieutenant Holsinger attempted to handcuff Appellant, Appellant threw her to the floor, causing her to strike her head. After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based on Lieutenant Holsinger's report and testimony. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) ("The relevant question is whether there is any evidence in the record that

as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest.[1] See Sullivan at 443, 586 S.E.2d at 127.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Service Commission of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

[1] As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

could support the conclusion reached by the disciplinary board.")[2]

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The record conclusively establishes that the "substantial evidence on the whole record" supports SCDC's final agency decision. The hearing officer found Appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: Shanika Johnson
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1943

March 29, 2012
Columbia, SC

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[2] In Hill, the Court further elaborated, "The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context." Id. (citations omitted).

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 993 GRIEVANCE No.: TYRCI 858-11
INMATE NAME: Harold Mosley, SCDC #137525
DATE: June 13, 2011
CHARGE: 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public

DHO: State your name and SCDC number please.

I/M: Harold Mosley, #137525.

DHO: Inmate Mosley, the purpose upon this hearing is to treat 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 um, Tyger River Correctional Institution, at approximately 8:45 a.m. on 3/13/11....excuse me 6/13/11. Um, I am Mr. Turner, Disciplinary Hearing Officer. Inmate Mosley is being represented by Counsel Substitute Fowler. Counsel Substitute Fowler, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: With that understanding, I will read the charges into the record. Inmate Mosley, I have before me case number 83 it reads Harold Mosley, uh, 137525, inmate charged with 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill

DHO: Disciplinary Hearing Officer
I/M: Inmate
OFC: Accuser
C/S: Substitute Counsel

or Injure. The charging official in this case is Lt. J. Holsinger. We do have Lt. Holsinger present by speakerphone, at the request of the accused. Lt. Holsinger, will you verify your presence by stating your name and rank? I think we lost her. Hold on, I'm getting her back. Lt. Holsinger, state your name and SC...uh, rank to verify your presence at the hearing.

OFC: Jackie Holsinger, Lieutenant.

DHO: Thank you. Inmate M....uh, supporting charge against the accused, following incident report. Tyger River Correctional Institution; date of the report uh, 5/23/11; uh, reporting official Lt. Jackie Holsinger, time of the report 8:30 a.m. approximately. Employee ID number 014508. Date of the incident May 23rd, 2011. Location of the incident Unit 5, A-Wing. Time of the incident uh, 0745 a.m. approximately. Inmate in question, Harold Mosley, 137525. Uh, employees/witnesses involved Officer James Lance, Nurse Jamie Spencer, Nurse Randon Weaver, Captain Billy Lawter, and Barbara Lewis. On the above date and approximate time, I, Lt. J Holsinger, entered Unit Five, A-Wing to speak with Inmate Harold Mosley, 137525. Uh, when I entered the unit Officer J. Lance informed me that he had told Inmate Mosley to return to his room because the A-Wing of Unit Five was on modified lockdown and he could not leave. I went to the wing to speak to Inmate Mosley and he was loud and agitated. I tried to get him to calm down, and he would not. I then instructed him to place his hands on the wall to be restrained and he refused several directives. He then stated that he would uh, go to the holding cell and I informed him that he was going in restraints. I then called for First Responders. At that time he acted as if he was going to comply, and I attempted to put the handcuffs on his left wrist. He grabbed both of my upper arms and I placed both of my

1) hands on the front of his shirt and attempted to place him on the floor. Inmate Mosley
2) then threw me to the floor, causing me to strike my head on the bench as I landed under
3) it. When I got up, I observed Inmate Mosley going towards Officer Lance. I attempted to
4) draw MK-4 uh, fogger, while giving him directions to cease or stop his actions. Inmate
5) Mosley then ceased his actions and I was able to handcuff him. Inmate Mosley was
6) examined by Nurse Amy Spencer and Officer Lance and I were examined by uh, by
7) Nurse Brandon Weaver. Captain B. Lawter was notified. Officer Lance and I spoke to
8) Ms. Barbara Lewis, the Parent Representative. Signature is that of Lt. Jackie Holsinger.
9) Evidence listed, pictures 425 through 431 on RPR camera. I have a copy of a MIW that
10) was presented as nothing more than a recapitulation of those, that contained within the
11) report counsel you hearing.?
12) C/S: Yes sir.
13) DHO: Also present is a host of photographs depicting the injuries of various officers
14) involved showing bruises and contusions to Lt. Holsinger.
15) C/S: Yes sir.
16) DHO: Inmate Mosley, if you plead guilty to this charge, or if you happen to be found
17) guilty of the offense, you would not be eligible to earn good time for the month of May in
18) this case. Do you understand?
19) I/M: Yes.
20) DHO: In addition to this, if I happen to find you guilty of this charge, you could lose
21) visitation privileges, canteen privileges, telephone privileges, you could be assigned
22) disciplinary detention and there could further loss of good time in the case. Do you
23) understand this?

1) I/M: Yes.

2) DHO: Uh, the charge of 801 – Assault and/or Battery of an SCDC Employee, case

3) number 83, how do you plead?

4) I/M: None.

5) DHO: This is your opportunity to make a statement on the record.

6) I/M: As the charge of 801 alleged against me by Lt. Holsinger, I would like to note that

7) nowhere in the narrative of her incident report, that she alleged that she sustained an

8) injury. All injuries on the evidence of the offense of 801, and the assault must be with

9) means or intent to kill or injure. Um, as you told me I couldn't read this statement like I

10) wrote Mr. Turner. I just want to say for the record that I'm in a situation where I had

11) Officer Lance repeatedly striking me.

12) DHO: I want to clarify that statement you just made sir, because it's not correct or

13) accurate. You were told that you could read anything in that is relevant to the charge.

14) That's what you were told. Do you understand?

15) I/M: Okay, alright. Alright, um, anyway I was in a situation where I was being struck.

16) Only thing I was trying to do with Lt. Holsinger is get away because she...she...I can say

17) for the record that Lt. Holsinger did nothing wrong. I was struck by Corporal Lance. Um,

18) she was trying to take me down. I re...I resisted. Um, but I at no time tried to hinder or

19) intend to hurt her. I didn't attempt to strike her at any time.

20) DHO: Counsel, do you have anything on behalf of the accused in this case ?

21) C/S: Um, he has given me a list of questions to ask Lt. Holsinger.

22) DHO: As long as they're relevant to the charge.

23) C/S: And actually they're not, but...

1) DHO: If they're not, do not read them in. You may ask relevant questions and relevant

2) questions only and questions should not be repetitive in nature. It's clearly...the issue has

3) been clearly outlined in the officer's report that's repetitive questioning.

4) C/S: Yes sir. I understand.

5) I/M: Excuse me Mr. Turner. Um, did you get my request?

6) DHO: I have no request from you sir.

7) I/M: Okay, what about the questions that...you're not going to ask the questions?

8) C/S: Like I explained to you before we came in, they're not relevant to the case. Cause

9) they're all um, within the narrative of the disciplinary.

10) I/M: So, if I was holding up my hands during the whole incident, that's not relevant, to

11) the case?

12) C/S: It is...

13) DHO: You had the opportunity to put that on ste...on record sir and you did not. Go

14) ahead counsel.

15) C/S: Um, we don't have any questions then.

16) DHO: Ms. Holsinger, is the content of your report true and correct as written?

17) OFC: Yes sir it is.

18) DHO: Did you sustain any injuries as a result of this issue?

19) OFC: Yes, I did.

20) DHO: And what was the nature of those injuries?

21) OFC: Bruises on both upper arms, uh, bruise on the outside left thigh, and the outside

22) right thigh, due to being thrown across the rock sir.

23) DHO: This appeared to be an intentional act on behalf of the accused?

1) OFC: I beg your pardon sir.

2) DHO: Was this an intentional act that was committed by the accused?

3) OFC: Yes sir.

4) DHO: Do you have anything else relevant to the charge at hand?

5) OFC: No sir I do not.

6) DHO: I thank you kindly for your help.

7) OFC: Thank you sir.

8) DHO: With that understanding the information that will be used to support the charge

9) against you will be the incident report previously read into the record, the testimony of

10) your accuser during the hearing. I have provided you the opportunity to make a

11) statement, present evidence, call witnesses on your behalf, and I am prepared now to

12) recess this hearing and arrive at a decision. If you'll step up I'll be with you shortly.

13) Restate your name and SCDC number please.

14) I/M: Harold Mosley, 137525.

15) DHO: Inmate Mosley, I have found you guilty of the offense brought against you today.

16) The information that was used to arrive at this decision was the incident report previously

17) read into the record, the testimony of Lt. Holsinger that her report was true and correct as

18) written, and this was an intentional act by yourself, and she did sustain injuries, photos of

19) Lt. Holsinger's injuries. Sanctions that have been imposed 720 days disciplinary

20) detention, a hundred...1080 days canteen, 1080 days telephone, 1080 days visitation,

21) 1000 days loss of good time, uh, uh medical restitution or cost of any medical treatment

22) provided to any of the victims in this case. Uh, that cost will be determined. You will be

23 notified by separate correspondence. You do have the right to appeal both the

determination of guilt and the sanctions portion of the charge. 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. Keep in mind that 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 appeals rights?

IM: Yes.

DHO: That concludes this hearing.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

05-11-092

Institution/Center: Tyger River Correctional Institution	**Date of Report:** May 23, 2011
Reporting Official (Full Name): Jacque Holsinger, Lt.	**Time of Report:** 8:30AM Approximately
Employee ID #: 014508	**Date of Incident:** May 23, 2011
Location of Incident: Unit 5 A-Wing	**Time of Incident:** 07:45AM Approximately

Inmate(s)/Resident:	SCDC#	Age	Sex	Race	**Employee(s)/Witnesses Involved:**
1. Harold Mosley	137525	43	Male	Black	1. Ofc. James Lance
2.					2. Nurse Amy Spencer
3.					3. Nurse Brandon Weaver
4.					4. Capt. Billy Laughter
5.					5. Barbra Lewis

1) **On the above date and approximate time:** I, Lt. J. Holsinger, entered Unit 5, A-Wing to speak to inmate Harold Mosley, #137525,
2) B/M, age 43. When I entered the Unit, Officer J. Lance informed me that he had told I/M Mosley to return to his room because the
3) A Wing of Unit 5 was on modified lock down and he could not leave. I went to the wing to speak to I/M Mosley and he was loud
4) and aggitated. I tried to get him to calm down and he would not. I then instructed him to place his hands on the wall to be restrained
5) and he refused several directives. He then stated that he would go to the holding cell and I informed him that he was going in
6) restraints. I then called for First Responders. At that time he acted as if he was going to comply and I attempted to put the
7) handcuff on his left wrist. He grabbed both of my upper arms and I placed both of my hands on the front of his shirt and attempted
8) to place him on the floor. I/M Mosley then threw me to the floor causing me to strike my head on the bench as I landed under it.
9) When I got up, I observed I/M Mosley going towards Officer Lance. I attempted to draw the MK-IV Fogger while giving him
10) directions to stop his actions. I/M Mosley then ceased his actions and I was able to handcuff him. I/M Mosley was examined by
11) Nurse Amy Spencer and Officer Lance and I were examined by Nurse Brandon Weaver. Captain B. Laughter was notified. Officer
12) Lance and I also spoke to Ms. Barbara Lewis, the P.A.I.R. representative.

Signature: Jacque Holsinger. Title: Lieutenant.

Evidence: PICTURES 425-431 ON UPPER YARD CAMERA

Disposition of Evidence: 6 PICTURES OF ASSAULT WOUNDS

Supervisor's Comments: BOTH STAFF SEEN BY NURSE WEAVER INMATE SEEN BY NURSE SPENCER REFER TO REPORT # 05-11-095

Printed Name: Billy LAUGHTER

Signature: Billy Laughter Title: Cpt Date/Time: 5-23-11 9:30AM

Major/Responsible Authority: 801

Printed Name: Barbara Lewis

Signature: Title: Captain Date: 5/24/11

STG Related – Refer to STG Committee

( ) Yes ( ) No (✓) Unknown

This incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution

( ) Administrative Resolution

(X) Refer to Disciplinary Hearing

SCDC 19-29A (Rev. January 2005)

· EXHibit "1"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST TO STAFF MEMBER

TO: NAME: MRS. Poole TITLE:	DATE: JUNE 13, 2011
INMATE'S NAME: Harold Mosley	SCDC #: 137525
INSTITUTION: Tyger River Correctional	LIVING QUARTERS: SML #7

Sgt. Poole,

On June 2, 2011 I sent an inmate request to DHO Turner requesting to have nurse Amy Spencer present at my hear. At the hearing of June 6, 2011 counsel substitute Mrs. Lewis informed DHO Turner that I did in fact tell her that I requested the same of DHO Turner, but he denied that he had received a request from me. On June 8, 2011 I sent a request to Mrs. Lewis requesting nurse Spencer to be present at my hearing but today - June 13, 2011 Mrs. Fowler was my counsel substitute. Today DHO Turner told me again that he had not received the request to staff member. Could you by chance have received that request I sent to DHO Turner? Also, could you please inquire of Mrs. Lewis whether or not she received my request of June 8, 2011 requesting nurse Spencer as my witness? Thank you.

Harold Mosley

DISPOSITION BY STAFF MEMBER:

I received a request from you on 6/8/11 requesting nurse Spencer in Cfc. Lance's case. This was 2 days after your hearing. I did not receive a request on Lt. Holsinger's case in which you are referring to when you was represented by Ms. Fowler. The request was dated on 6/2/11 but did not receive until 6/8/11

DATE: 6/15/11	SIGNATURE: S. M. Poole

SCDC FORM 19-11 (REV.FEB 2001)

EXHIBIT "2"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Mr. Turner	Disc. Hearing Officer	June 2, 2011
INMATE'S NAME: Harold Mosley		SCDC #: 137525
INSTITUTION:		LIVING QUARTERS: SMU #7

DHO Turner,

I am requesting to have nurse Amy Spencer as my witness to be present at my hearing. Cpl. Lance - my accuser - wrote in his statement that he only struck me once - in the temple - However, nurse Spencer, who actually touched my injuries will contradict Cpl. Lances' allegations by testifying that I also had several abrasions around my left eye, including two (2) swollen bumps, one in my left eyebrow area and the other under my left eye.

I declare and certify under penalty of perjury pursuant to 28 U.S.C. §1746 that an original copy of this request, requesting nurse Amy Spencer as my witness was sent to DHO Turner by placing the same in the SMU mailbox this 2nd day of June, 2011.

/Harold Mosley
Harold Mosley #137525

DISPOSITION BY STAFF MEMBER:

received request on 6/8/11 after hearing.

DATE:	SIGNATURE:
6/8/11	H. M. Poole

SCDC FORM 19-11 (REV. FEB 2001)

RECEIVED

DEC 30 2013

SOUTH CAROLINA
COURT ADMINISTRATION

State of South Carolina
Administrative Law Court

Exhibit "3"

Shaquio Dambollah # 137525
Appellant

v

South Carolina Department
of Corrections Respondent

Affidavit of Christopher Williams

Personally appeared before the undersigned officer duly authorized to administer oath, Christopher Williams, who after being sworn deposed and said the following:

1). I am witness to the incidents taking place at Tyger River Correction institution regarding inmates being denied their request to witnesses at their disciplinary hearings, and give this affidavit of my own personal knowledge. I am competent to give such testimony.

2). On July 17, 2011, I sent an inmate request to disciplinary hearing officer Sgt. Poole [redacted] requesting to have inmate Frank Washington #295-187, as a witness to be present at my disciplinary hearing of July 25, 2011.

3) At the disciplinary hearing of July 25, 2011. DHO Turner denied receiving my request, therefore, my request witness was denied.

4). On July 25, 2011. I sent Sgt. Poole an inmate request inquiring of her had she received my request.

5). On July 28, 2011, I received a response from Sgt. Poole stating that she had the said request, but that she didn't receive it until 7/25/11. the day of my disciplinary hearing of 7/25/11

6). Further deponent saith not.

Sworn to and subscribed before me
This 28 day of August 2011
Christine Thomas
Notary Public
My commission expires: 9/1/2019

Christopher Williams
Christopher Williams # 30260824

SHANNON DAMBALLAH #137525
Appellant,
-v-
South Carolina Department of Corrections Respondents.

South Carolina Administrative Law Court

EXHibit "4"

Affidavit of Thomas Waters #321296

Personally appeared before the undersigned officer duly authorized to administer oaths, Thomas Waters #321296 being duly sworn deposed and states the following...

1.) I Thomas Waters #321296, and I am giving this testimony outlined in this affidavit on my own personal knowledge, I am competent to give such testimony...

2.) on June 30, 2011 I sent a inmate request to Disciplinary hearing officer at Tyger River "C.I." Sgt. M. Pool, requesting to have a list of 7 witnesses at my hearing. My hearing was held on 7-6-11, none of my witnesses was at my hearing.

3.) DHO officer F.L. Turner denied receiving my witness request, Even through I clearly noted on my disciplinary report and hearing record, my intent to have this list of 7 witnesses at my hearing. So he knew of my intent to request witnesses...

4.) on 7-6-11 I sent a request to Sgt. Pool asking her to send me my request form back dated 6-30-11, stating that I wanted a list of 7 witnesses at my hearing. I also asked Sgt. Pool to let me know the date she received my request...

5.) on 7-12-11 I received a response from Sgt. Pool, stating that she received my request on 7-11-11, 5 days after my hearing...

6.) I filed an institutional grievance on this matter on 7-25-11...

7.) Further deponent saith not...

Thomas Waters #321296

Sworn before me on this 22nd day of September 2011.

Notary Public

My commission expires: 9/1/2019

Exhibit "5"

Questions For Nurse Spencer

1. Nurse Spencer, did you examine I/M Mosley after the incident?

2. Did He have any Bruising around his left eye?

3. Did He show you a knot or bump under his left eye brow?

4. Did He show you Another knot or bump under his left eye?

5. on May 25, 2011 at sick call when you saw I/M Mosley did he also have A Black eye by then?

6. In your professional capacity is it your medical opinion that I/M Mosley was struck twice in the Left eye area as he alleges?

EXHibit "6"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST TO STAFF MEMBER

TO: NAME: TITLE:	DATE:
~~Ms. Caldwell Assoc. Warden~~	July 8, 2011
INMATE'S NAME: Shango Damballah FKA- Harold Mosley	SCDC #: 137525
INSTITUTION: Tyger River Corr. Inst.	LIVING QUARTERS: SMU #7

Assoc. Warden Caldwell,

On June 2, 2011 I sent an Inmate request to Dhe Turner requesting to have Nurse Amy Spencer present as my witness. At my hearing of June 6, 2011 Dhe Turner denied receiving my request. In her response of 6/15/11 to me Sgt. Poole stated that she received said request from me on 6/8/11 two (2) days after my first hearing date. I spoke to Mail-room employee Mr. Crider on 7/6/11 who informed me that as soon as requests arrive in the mailroom they are sent to the respective employees addressed in the inmate request the very next day. Could you please explain to me how such a delay in my inmate request could have occurred, especially since I needed the requested employee witness to be present at my disciplinary hearing?

Sincerely,

Shango Damballah

DISPOSITION BY STAFF MEMBER:

Who did you address your ~~request~~ request to staff to - Ms. Spencer or Sgt. Poole? Ms. Spencer was away from the institution from 5-26-11 till 6-6-11. If you sent the request to Ms. Spencer, she did not get it until 6-6-11. After being out, it takes time to "sift" through your mail. That is probably where the delay came in.

DATE:	SIGNATURE:
7-15-11	W. Hoey, Admin. Asst.

SCDC FORM 19-11 (REV.FEB 2001)

Exhibit "7"

Questions for Lt. Helsinger

1. Lt. Helsinger, In your 19-29(A) "Incident report" you never mention seeing I/M Mosley striking officer, is that correct?

2. Lt. Helsinger as a result of the Incident did you suffer a protracted loss or impairment of the function of a bodily member or organ?

3. Lt. Helsinger as a result of the Incident did you require any surgical repair of a complex nature, or treatment to your wounds requiring the use of regional or general anesthesia?

4. Did I/M Mosley keep repeatedly placing both his hands in the air to avoid being cuffed by you?

South Carolina Department of Corrections

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

July 26, 2012

Harold Mosley, #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw, SC 29069

Re: Harold Mosley, #137525 v. SCDC
Appellate Case No. 2010-212195

Mr. Mosley,

While the Department of Corrections does permit inmates to view our policies, it does not allow inmates to have physical copies of them. However, the Court of Appeals has previously been provided a copy of our Disciplinary Policy, OP-22.14. Should the Court need an additional copy, I will provide it, as requested.

Sincerely,

Shanika Johnson

Shanika K. Johnson
Attorney for Respondent

cc: File

Ms. Jenny Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201
(without enclosures)

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

RECEIVED July 30, 2012

SCDC will also not allow pictures to be photo-copied

1) PAGES #23 - #25 missing from the record on appeal

2) PAGES #29 - 36 also missing from record on appeal

§ 16-3-600 - Assault and Battery

(A) For purposes of this section

(1) "Great Bodily Injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ

(2) "Moderate Bodily Injury" means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles, and connective tissues that require surgical repair of a complex nature or when the treatment of the injuries requires the use of regional or general anesthesia

General Assembly's Intent, Part 2

Section 2. It is the intent of the General Assembly that the provisions of Part 2 of this Act shall provide consistency in sentencing classifications, provide proportional punishments for the offenses committed, and reduce the risk of recidivism

[Section 7(b)] Provides:

The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of an high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occuring on or after the effective date of this act

[June 2, 2010] Act no. 273, §7(b)

Good Time — 2700 days

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 83 Inmate Name: HAROLD MOSLEY SCDC#: 137525

Living Area: SML 7A Job: Custody: ST2

Offense Date: 5/23/11 Offense Time: 7:45 AM/PM Institution: TYRCI

Offense Description:
801: Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government (refer to OP-22.14)

Charging Officer/Employee: J. HOLSINGER 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 Fowler
- ☐ I DO NOT WANT A COUNSEL SUBSTITUTE

Date &Time Notified: 6/2/11 856 AM/PM By (Print): Sgt McMorris
Inmate Signature: Harold Mosley SCDC#: 137525 Date: 6/2/11

HEARING INFORMATION:

Hearing Date: 6/13/11	Hearing Time: 845 am/pm	Tape: 571	Side: A	Start: 303	End: 456

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

6) The excluded all questions must be relevant to the charge and non repetitive in nature.

OFFENSE CODES	801			
INMATE PLEA (G, NG, None)	None			
FINDINGS (G, NG, DS)	G			

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: (B) (C) Testimony of Lt Holsinger that her report was true and correct that this was an intentional act by Mosley and she did sustain injuries, (D) Photos of Lt Holsinger injuries.

HEARING LENGTH: 15 MINUTES

SANCTIONS:

Loss of Privileges (Days)
- Property (Days)
- Canteen (Days) 1080 (00+360)
- Other TV (Days) 1080 (00+360)
- Disciplinary Detention (Days): 720

Reprimand:
Extra Duty:
Visit Suspension Thru 1080 (00+360)
Cell Restriction (Days):

Loss of Good Time (days): 1000
Restitution: $ TBD **

Cost of medical treatment for Nicholson

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 2nd 801 conviction.

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS

DATE INMATE PLACED IN PHD ___/___/___

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: X Harold Mosley DATE: 6/13/11

HEARING OFFICER (PRINT NAME) R. L. Thomas

APPROVED/REVERSE/MODIFY Tom Kelly REASON
Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record
Canary - Inmate (Service of Disciplinary Report)
Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)
Pink - Central Record

**(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

SCDC 19-69 (Rev., May 2007)

(TR) 3/1/12

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
CAROLYN C. MATTHEWS, ADMINISTRATIVE LAW JUDGE

CASE NO. 11-ALJ-04-00993-AP

Harold Mosley #137525 . . . . . Appellant,

V

South Carolina
Department of Corrections . . . . . Respondent.

Appendix to the Record on Appeal

Harold Mosley #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
SMU #90
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

TYRCI 0858-11 due 7/17/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED JUL 25 2011

RECEIVED JUL 15 2011 INMATE GRIEVANCE

INMATE NAME: Shango Damballah

SCDC NUMBER: 137525

INSTITUTION: Tyger River Corr. Inst.

HOUSING UNIT: SMU #7

WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. TYRCI-0858-11
Code: General
Policy
Disc. Hear. 801 #85 6.13.11
Class.
Date Received 7.19.11
IGC Initials CT

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I stand by all claims I made in my Step 1 appeal and hereby incorporate each and every claim into this Step 2 appeal by reference.

1) Procedural Error - Double Jeopardy - I was charged twice with two (2) 801 rules violations stemming from the same incident yet the DHO sanctioned me consecutively for each offense in violation of SCDC policy OP-22.14 16.4 which states "If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are totally [redacted]

Shango Damballah 7-13-11
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) on June 13, 2011, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of 1000 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 twenty-four (24) 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.

11/03/2011
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.

Shango Damballah 11-22-11
Grievant Signature Date

J. Hough 11/22/11
IGC Signature Date

(38)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1) **SEPARATE and distinct violations.** "SEE incident reports

2) Procedural Error - I WAS **denied the right to cross-examine** my accuser in violation of SCDC Policy OP-22.14 § **15.5**. At my Hearing I ga counsel substitute Ms Fowler a list of questions to ask my accuser Helsinger. Ms. Fowler refused to ask the questions stating that "the questio were not relevant." It is not the responsibility of a counsel substitu to decide whether or not a question is relevant, that is th responsibility of the DHO. DHO Turner refused to allow me to as questions of my accuser at my hearing in violation of Wolff v McDon

3) Procedural Error - I WAS **denied the right to present witnesse** It is undisputed that I requested to have nurse Amy Spencer present at my hearing as a witness. SEE Exhibit "1" from disci plinary appeal Grievance no. TyRCI-0828-11. At the time I wrote my request to the DHO on June 2, 2011 I could not foresee that disciplinary hearing would be divided into two separate hearings. I requested said witness pursuant to SCDC Policy OP-22.14. and where that right was denied it is a violation of OP-22.14

4) Procedural Error - **LACK OF EVIDENCE:** At my hearing Lt. Helsinger stated that she received bruises to her arms and ribs but state nothing about having received an injury to her head for which I was accused. The APA establishes the "substantial evidence" standard and there is nothing in the hearing record to confirm that Lt. Helsinger received an injury to her head for which I was charge and there is no evidence that she received any "injuries" whatsoe to constitute the charge of 801. SEE S.C. Code Ann. § 1-23-380(A)(6)(D).

5). Procedural Error - Per SCDC Policy OP-22.14 § 23.2 I wrote a requ to Major Parrish on June 13, 2011 requesting to hear my disciplinary tape s to this day I have not been allowed to hear it.

6) Procedural Error - The taking of my good-time without due pro cess is a violation that is "capable of repetition, yet evading review in violation of S.C. Code Ann § 24-13-210(C). only the Commissioner/Director of the SCDC can take my good-time. By statute that responsibility cannot be delegated to others.

7) Procedural Error - SCDC Policy OP-22.14 § 4.3 - 4.33. This incide that led to these charges are being investigated by the DDO so why were the disciplinary charges even brought before the DHO in the

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

REC'D JUN 27 2011

INMATE NAME: Shango Damballah Harold Mosley
SCDC NUMBER: 137525
INSTITUTION: Tyger River Correctional Inst.
HOUSING UNIT: SMU #7
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. TRCI 0858-11
Code: General DH
Policy 801 # 83
Disc. Hear. 6.13.11
Class.
Date Received 6.28.11
IGC Initials CT

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I HEREBY APPEAL the disciplinary decision of June 13, 2011 because of the following procedural errors,

1) Procedural Error - Double Jeopardy - I was charged twice with two (2) 801 rules violations stemming from the same incident. SCDC Policy OP-22.14 § 16.4 does not allow for an inmate to be charged with multiple offenses when the incident constitutes only one offense. Also the sanctions exceed the maximum punishments allowed by Policy OP-22.1

2) Procedural Error - I was denied the right to cross examine my accuser in violation of SCDC Policy OP-22.14 § 15.5. At my hearing I gave

ACTION REQUESTED: (1) that the record be made to reflect that counsel substitute Mrs. Lewis informed DHO Turner at my first hearing that I requested nurse Amy Spencer to be present at my hearing as a witness; (2) that the charges be combined b/c they stem from the same incident and constitute only one charge (3) that the disciplinary decision of June 13, 2011 be overturned.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Disciplinary Appeal of June 13, 2011.

Shango Damballah 6-23-2011
Grievant Signature Date

ACTION TAKEN BY IGC: Forward to Warden for Response

2 Level 1
1000 GT ✓
770 DD ✓
Priv 360 ✓
Rest.
o/c RER policy

C. Thompson 6/28/11
IGC Signature Date

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

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(40)

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Harold Mosley:

This is in reference to grievance TRCI 0858-11

You have appealed the results of your disciplinary hearing conviction for charge 801 case 83 heard on 06/13/2011.

The issues you stated do not warrant a reversal of the charge. Pertinent documentation had been review ed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on Lt. Holsinger's report, and evidence presented at the hearing. The sanctions imposed were not excessive and are in accordance with the Operational Procedure Policy (OP 22.14), Inmate Disciplinary System.

Therefore, your grievance is denied. If you wish to appeal this decision to the next level, you must submit a Step 2 grievance form within five (5) days of receipt.

Refer to instruction # 5 listed below.

Warden Signature 7/11/11 Date

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

Shanzo Dambellah 7-12-11
Grievant Signature Date

C Thompson 7/11/11
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.

2)- Counsel substitute Mrs. Fowler a list of questions to ask my accuser Ms. Holsinger. Mrs. Fowler refused to ask the questions stating that "the questions were not relevant". It is not for a counsel substitute to decide whether a question is or is not relevant; that is the responsibility of the DHO. DHO Turner refused to allow me to question my accuser.

3) Procedural Error - **The right to present witnesses:** I wrote an inmate request to staff member to DHO Turner on June 2, 2011 requesting nurse Amy Spencer to be present at my hearing as a witness. See **Exhibit #** response of Sgt. Poole. I was informed by my first counsel substitute Mrs. Barbara Lewis that I would be going to the disciplinary hearing on June 6, 2011. However, DHO Turner could not reach the accusing official Ms. Holsinger and continued the hearing. At my hearing of June 1, 2011, DHO Turner denied receiving my inmate request requesting nurse Spencer to be present at my hearing as a witness. This is in violation of SCDC Policy OP-22.14§15.3. An SCDC employee is **obligated** to provide information to a DHO when an inmate calls them as a witness. Let the record reflect that I tried to secure my right to call witnesses to my hearing under Wolff v McDonnell, and Al-Shabazz v State, according to SCDC Policy OP-22.14§8.2.4 and was arbitrarily and capriciously denied that right. **See SCDC Policy OP-22.14§15.3.**

4) Procedural Error - **Lack of Evidence:** At my hearing Ms. Holsinger stated that she received bruises to her arms and ribs but stated nothing about having received an injury to her head for which I was accused. The APA establishes the "**Substantial Evidence**" standard and there is nothing in the hearing record to confirm that Ms. Holsinger received an injury to her head and there is no evidence that she sustained any "**injuries**" whatsoever to constitute the charge of 801. See S.C. Code Ann. §1-23-380(A)(6)(D)

5) Procedural Error - **Hearing Tape** - I was denied a meaningful judicial review where I was not allowed to hear my disciplinary tape to prepare my appeal after having written an inmate request to Major Parrish on June 13, 2011 per SCDC Policy OP-22.14§23.2 requesting to hear my disciplinary tape. This is also in violation of the Inmate Grievance Policy and the Civil Rights of Institutionalized Persons Act.

6) Procedural Error - The taking of my good time without due process is a violation that is "**capable of repetition, yet evading review**" in violation of S.C. Code Ann §24-13-210(C). Only the Commissioner/Director of the SCDC can take my good time. By statute, that responsibility to take good time cannot even be delegated to others.

7) Procedural Error - SCDC Policy OP-22.14§4.3-4.3.3 - This incident is being investigated by the **DDO** so why were the disciplinary charges **even** allowed to go forward to the DHO in the first place?

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS

CASE NO. 11-ALJ-04-0093-AP

Harold Mosley #137525 . . . . . Appellant,

v

South Carolina
Department of Corrections. . . . . Respondent.

Final Brief of Appellant

Harold Mosley #137525
Kershaw Correctional Inst.
4848 Goldmine Hwy
SMU-90
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

TABLE OF CONTENTS & CASES

CASES

Statutes

Statement of Issues on Appeal

I. Did the ALC Judge abuse her discretion in issuing a defecti[illegible] order of dismissal in violation of the appellants right to procedura[illegible] due process under both the state and federal constitutions?

II. On the record as a whole was the evidence presented insufficient to support a conviction of assault and/or battery of an SCDC employee in violation of the substantial evidence standard of the APA and appellants right to procedural due process under both the state and federal consti-tutions?

III. Where the DHO used the definition of the lesser included offense to convict the appellant of assault and/or battery of an SCDC employee was it a violation of the ex post facto clauses of both state and federal constitutions?

IV. Was the appellant denied his right to call witnesses in violation of the due process clauses of both the state and federal constitutions?

V. Was the appellant placed in double jeopardy when he was sanctioned twice for an offense stemming from the same incident in violation of his right to procedural due process under both state and federal consti-tutions?

VI. Did the appellant receive ineffective assistance of counsel substitute at the hearing of June 13, 2011 in violation of his right to procedural due process under both state and federal constitutions?

VII. Has the SCDC over the years arbitrarily taken the appellants good-time in violation of his right to due process under both the state and federal constitutions?

RECEIVED

DEC 30 2013

SOUTH CAROLINA
COURT ADMINISTRATION

Statement of the case

On May 23, 2011, the Appellant became involved in a physical altercation with Cfc. James Lance and Lt. Holsinger. On June 2, 2011 the Appellant was served notice of the charge for two(2) South Carolina Department of Corrections ("SCDC") rules violation of 801: "Assault and/or Battery of an SCDC Employee"...

On June 2, 2011 of the same day Appellant sent a request to staff member, SCDC Form 19-11 to disciplinary Hearing Officer ("DHO") R.L. Turner requesting to have nurse Amy Spencer to be present at his disciplinary hearing to testify on his behalf as to the two swollen knots and/or bumps he had around his left eye area due to the physical altercation. DHO Turner denied receiving the inmate request.

At the hearing of June 6, 2011 Lt. Jacque Holsinger could not be reached via telephone by DHO R.L. Turner who then issued a continuance of the matter until the following week of June 13, 2011. Wherein, the Appellant was convicted as charged and sanctioned to a loss of one thousand (1000) days statutory good-time credit (liberty interest).

At the hearing of June 13, 2011 Appellant was represented by counsel substitute Mrs. Fowler who refused to read his questions of cross-examination of Lt. Holsinger into the record as he requested.

On June 23, 2011 the Appellant filed his step 1 disciplinary appeal which was denied by Tyger River Correctional Institution warden Tim Riley on July 11, 2011, the Appellant then filed his step 2 disciplinary appeal on July 13, 2011 and received the final agency decision on November 22, 2011.

Appellant filed his notice of appeal with the administrative law court ("ALC") on December 18, 2011 and was assigned ALC case number 11CO993 and ALC Judge Carolyn C. Matthews, in this particular matter.

Appellant filed his initial brief to the ALC on March 1, 2012 and received the respondents brief on or around April 3, 2012. The Appellant then filed a reply brief on April 10, 2012.

ALC Judge Carolyn C. Matthews dismissed the Appellants case in an order dated April 10, 2012 to which the Appellant filed a rule 59(E) motion to alter and amend. Appellant filed his notice of appeal along with a motion for permission of leave to proceed in forma pauperis on May 7, 2012.

This appeal follows.

ARGUMENT

I. THE ALC JUDGE ABUSED HER DISCRETION IN ISSUING A DEFECTIVE ORDER IN VIOLATION OF THE APPELLANT'S RIGHT TO PROCEDURAL DUE PROCESS UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS.

THE ORDER OF DISMISSAL OF ALC JUDGE CAROLYN C. MATTHEWS IS DEFECTIVE IN TWO(2) RESPECTS. THE ORDER WHICH IS DATED APRIL 10, 2012 CONTAINS A MATTER THAT HAS NOTHING TO DO WITH THE APPELLANTS' CASE; AND, (2) THE ORDER DO NOT SPECIFICALLY ADDRESS THE ISSUES RAISED BY THE APPELLANT AT THE ADMINISTRATIVE LAW COURT LEVEL. SEE GENERALLY APPELLANTS NOTICE OF MOTION TO ALTER AND AMEND

I.(1) THE ORDER CONTAINS A MATTER RELATING TO AN OFFICER HARVIN REGARDING AN INMATE WHO WAS CHARGED FOR "EXHIBITIONISM AND PUBLIC MASTURBATION". THIS APPELLANT HAS UNDERLINED THE APPROPRIATE SECTION OF THE ORDER FOR YOUR REVIEW. SEE ORDER OF DISMISSAL OF ALC JUDGE CAROLYN C. MATTHEWS (R. p. 2 underlined)

I HAVE NEVER BEEN CHARGED FOR SUCH AN OFFENSE. FURTHERMORE, MY HEARING WAS HELD ON JUNE 13, 2011 FOR THE SCDC CHARGE OF 801 "ASSAULT AND/OR BATTERY OF AN SCDC EMPLOYEE"... MY ACCUSING OFFICER IS LT. JACQUE HOLSINGER, NOT OFFICER HARVIN.

THEREFORE, THE ORDER CONTAINS NOTHING AT ALL IN REGARDS TO A JUDICIAL RULING PERTAINING TO WHAT TOOK PLACE AT MY DISCIPLINARY HEARING WHICH MAKES THE ALC JUDGE DECISION BASELESS AND HER FINDINGS ARE NOT BASED ON THE FACTS OF THIS CASE.

IN SAMPLES V MITCHELL, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (CT. APP. 1997), THE COURT OF APPEALS HELD THAT "WHEN THE TRIAL JUDGE IS VESTED WITH DISCRETION, BUT HIS RULING REVEALS NO DISCRETION WAS, IN FACT, EXERCISED, AN ERROR OF LAW HAS OCCURRED."

LIKEWISE, IN BALLOON PLANTATION INC. V HEAD BALLOONS, INC. 303 S.C. 152, 339 S.E.2d 439 AT 441 (CT. APP. 1990) THE COURT OF APPEALS ALSO HELD THAT "IT IS AN EQUAL ABUSE OF DISCRETION TO REFUSE TO EXERCISE DISCRETIONARY AUTHORITY WHEN IT IS WARRANTED AS IT IS TO EXERCISE DISCRETION IMPROPERLY."

I.(2) THE ALC JUDGE'S ORDER OF DISMISSAL IS VAGUE AND DOES NOT SPECIFICALLY ADDRESS THE ISSUES RAISED BY THE APPELLANT IN HIS BRIEF. "AN ADMINISTRATIVE BODY MUST MAKE FINDINGS WHICH ARE SUFFICIENTLY DETAILED TO ENABLE THE SUPREME COURT TO DETERMINE WHETHER THE

Findings are supported by the evidence and whether the law has been applied properly to those findings. Hamm v Southern Bell Telephone and Telegraph, Co., 302 S.C. 132, 394 SE.2d 311 (1990) cert. denied, ___ U.S. ___ 111 S.Ct. 1018, 112 L.Ed.2d 1099 (1991).

II. On the record as a whole the evidence presented was insufficient to support a conviction of assault and/or battery of an SCDC employee in violation of the substantial standard of evidence of the APA and the appellants right to procedural due process under both state and federal constitutions.

I have tried to state plainly in a language that even a child of 10 years of age can understand that **"Bodily Injury"** is an element of the offense of assault and/or battery of an SCDC employee and that the SCDC cannot make or prescribe a rule or regulation that has a different definition of assault and/or battery than that which was defined by the S.C. Legislature.

A pro se litigant is in no position to interpret the law. All I ask is that you answer specifically as to the question regarding the definition of assault and/or battery and **the element of bodily injury**. ALC Judge Matthews refused to do so.

See 801 "Assault and/or battery of an SCDC employee". (R.P. 34) Again, **the** SCDC's definition must coincide with the S.C. Legislature's definition of assault and/or battery and to do otherwise would be to alter and/or add to the law.

"It is well settled that an administrative order which materially alters or adds to the law is void." Milliken & Co. v S.C. Dept of Labor, Etc. 269 SE.2d 763, 764 (1980); Lee v Michigan Millers Mutu. Auto. Ins. Co., 250 S.C. 462, 158 SE.2d 774 (1968)

"The same principle applies to administrative rule-making" Hay v S.C. Tax Comm'n 273 S.C. 269, 255 SE.2d 837 (1979); Heyward v S.C. Tax Comm'n 240 S.C. 347, 126 SE.2d 15 (1962).

Only the S.C. legislature can define a crime. "First and foremost, a penal statute must be construed strictly against the state and in

FAVOR OF the DEFENDANT." Williams v State, 306 S.C. 89, 91, 410 SE.2d 563, 564 (1991). "THE RULE that PENAL LAWS ARE to BE construed strictly... is Founded on the Plain Principle that the POWER OF PUNISHMENT is VESTED in the Legislature not in the Judicial department. It is the legislature, not the court, which is to define A CRIME, And ordain it's punishment..." Brown v State, 343 S.C. 342, 540 SE.2d 846, 849-50 (2001), citing United States v Wiltberger, (18 U.S. 5 Wheaton 76, 95-96, 5 L.Ed. 37, 42 (1820).

Lt. Holsinger was holding onto this appellant while OFFICE LANCE was punching ME in the FACE. Did I throw her to the Floor? YES, I did. I admit that, but the questions this court is called upon to answer is: Did I throw her to the Floor causing her to strike her head as she alleges? And did she sustain A "**bodily Injury**" AS A result of her striking her head?

It's that simple. In her written 19-29(A) "Incident Report", Lt. Holsinger states specifically, "Inm Mosley then threw me to the Floor **causing me to strike my Head** on the bench AS I Landed under it". SEE 19-29(A) "Incident Report" of Lt. Jacque Holsinger (R. P. 15)

At the disciplinary hearing of June 13, 2011 when asked by the DHO whether or not she sustained Injuries, **she made no mention of striking her head because that did not happen.**

DHO: Did you sustain Any Injuries AS A result of this Issue?
OFC: YES, I did.
DHO: And what was the nature of those Injuries?
OFC: Bruises on both upper arms, uh, bruise on the outside left thigh, and outside right thigh, due to being thrown across the rock sit. SEE Hearing transcript at page 5, lines 18-22 (R. P. 12, lines 18-22)

Also, on the photographs of the officers' involved no picture whatsoever was taken of Lt. Holsinger's Head, yet she alleged I threw her causing her to strike her head. SEE pictures. (R. PP. 23-25)

THE SCDC defines 801 "Assault and/or battery of An SCDC Employee"... AS "THE willful hitting, striking, or unauthorized touching of an SCDC Employee... with or without A weapon or the throwing of Any substance at or on An SCDC Employee... when such hitting, striking, throwing or unauthorized touching **CAUSES Bodily Injury**" (R. P. 34)

This appellant admits that he is guilty of striking Lt. Holsinger under

the definition supplied by SCDC policy OP-22.14, §807, but not guilty for the charge of 801 because Lt. Hulsinger **did not receive a Bodily Injury** cf. 807 "striking an SCDC employee" (R.P. 35)

THE appellant was charged with the offense of assault and/or battery of an SCDC employee on May 23, 2011 and argues that the crime to be charged is the law in effect at the time of the offense. Collins v Youngblood, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed. 2d. 30 (1990).

Law to be charged is determine from the evidence presented at trial. State v Gourdine, 325 S.C. 59, 472 S.E.2d 241 (1996).

On June 2, 2010 the South Carolina General Assembly abolished all common law offenses of assault and/or battery and codified and defined said offenses in Act No. 273 § 7.8 which provides:

"THE common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of an high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault and simple assault **are all abolished for offenses occurring on or after the effective date of this act**"

Act No. 273 § 7.8 [June 2, 2010] (R.P. 28)

this courts primary function in interpreting a statute is to ascertain the intent of the Legislature. State v Batten, 310 S.C. 510, 427 S.E.2d 670 (1993). (R.P. 27)

S.C. Code Ann. § 16-3-600 (A)(1) and (2) provides:

(A) For purposes of this section

(1) "**Great Bodily Injury**" means bodily injury which causes substantial risk of death or which causes serious permanent disfigurement or a protracted loss or impairment of the function of a bodily member or organ.

(2) "**moderate Bodily Injury**" means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia

S.C. Code Ann. § 16-3-600 (A)(1) and (2) (R.P. 26)

By her own testimony Lt. Holsinger stated she received only **Bruises** to both her upper arms and outer thighs, yet this evidence does not rise to a level of "**Bodily Injury**." (R. p. 26)

The state is required to prove every element of a charged offense to obtain a conviction. State v Attardo, 263 S.C. 546, 211 S.E.2d 868 (1975); State v Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct. App. 1993).

Nowhere in her testimony at the Hearing of June 13, 2011 does Lt. Holsinger state she was thrown to the floor by the appellant which caused her to strike her head. ALC Matthew's, using the reasoning of Marietta Garage, Inc. v South Carolina Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999) claims there is substantial evidence in the record to support the SCDC's decision.

However, the appellant argues that not only did Lt. Holsinger not receive a bodily injury, but according to her own verbal testimony she did not strike her head on the bench when she was "Thrown across the Rock" as she alleges in her 19-29 A) "Incident report. (R. p. 15)

In Lark v Bi-lo Inc. 276 S.C. 130, 276 S.E.2d 304 at 307 (1981) the South Carolina Supreme Court held "The substantial evidence rule, prescribed in the statute means we will not overturn a finding of fact by an administrative agency **'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based'**." Lark v Bi-lo Inc., supra, citing Independent Stave Co. v Fulton, 251 Ark. 1086, 476 S.W.2d 792, 793

Appellant argues that the evidence presented at the hearing of June 13, 2011 was insufficient to support a charge of assault and/or battery of an SCDC employee where

(a) there was no permanent **disfigurement** or protracted loss or impairment of the function of a bodily member or organ of Lt. Holsinger - "**Great Bodily Injury**" - nor was there.

(b) a physical injury to Lt. Holsinger requiring treatment to an organ system of her body other than the skin, muscles and connective tissues that required surgical repair of a complex nature or when the treatment of the injuries requires use of regional or general anesthesia. (**Moderate Bodily Injury**)

III. Where the DHO used the definition of the lesser included offense to convict the appellant of assault and/or battery of an SCDC employee it was a violation of the Ex post facto clauses of both the State and

Federal constitutions.

In collins v youngblood 110 S.Ct. 2715, 2724 (1990) Justice Stevens stated the "Ex Post Facto" clause of the constitution has been construed to embrace any law that deprives a person accused of a crime of a "substantial protection" that the law afforded at the time of the alleged offense. collins v youngblood supra at 2724

The appellant argues that the DHO, using the SCDC's policy definition of the lesser included offense of 807 "Striking an SCDC Employee" to convict him of the greater offense of 801 "Assault and/or Battery of an SCDC Employee" was a quasi-judicial decision that amounted to a violation of the Ex Post Facto clauses of both the State and Federal constitutions.

In the United States v Ellen 961 F.2d 462, 463 (4th cir. 1992) the U.S. Court of Appeals for the Fourth Circuit stated "As the text of the clause makes clear, the Ex Post Facto prohibition applies only to 'laws'... This is not to say however, that all actions of administrative agencies are exempt from Ex Post Facto clause scrutiny. When Congress has delegated to an agency the authority to make a rule instead of making the rule itself the resulting administrative rule is an extension of the statute for purposes of the clause." SEE Rodrigues v United States Parole Commn 594 F.2d 170, 173 (7th cir. 1979)

IV. THE Appellant was denied his right to call witnesses in violation of his right to procedural due process under both the State and Federal constitutions.

The South Carolina Supreme Court 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 present documentary evidence **and to request witnesses in his defense.**" (R.P. 17)

On June 2, 2011 the appellant sent DHO R.L. Turner an inmate request to staff member requesting to have Amy Spencer to be present at my disciplinary hearing to testify on his behalf regarding the knots and/or bumps he had around his left eye area. (R.P. 17)

Appellant argues this testimony of nurse Amy Spencer would have altered the results of the hearing. Furthermore, SCDC policy OP-22.14 §15.3 provides in part ..." If an employee has been called as a witness and has information that is relevant to the case, the he/she is obligated to

provide said information. (R.p. 31).

Thus, the appellant argues that he had a qualified right to call said witness and SCDC policy OP-22.14§15.3 placed a substantial limitation on the hearing officers discretion, thereby, also creating a protected liberty interest in the same. (R.p.17)

This appellant has previously shown in his initial brief to ALC Judge Carolyn C. Matthews that Tyger River Correctional Institution has an illegal unwritten policy and practice going on regarding inmates' ability to call their witnesses at their hearings.

This unwritten policy and practice involves one Sgt. Poole, who customarily informs inmates to send their inmate requests to staff member which requests to have witnesses to be present at their hearings to her.

Sgt. Poole, in turn, denies that she has received the inmates requests to call witnesses, or informs inmates that she did not receive the inmates request until after the disciplinary hearing. SEE Exhibits "3" and "4" (R.pp. 18 and 19)

This happened to this appellant. I sent an inmate request to staff member to DHO R.L. Turner on June 2, 2011, because under SCDC policy OP-22.14§8.2.4 inmates must submit their requests for witnesses to either their substitute counsel or the DHO. SEE Exhibit #2 (R.p. 17) and SCDC policy OP-22.14§8.2.4 (R.p. 29)

Instead of adhering to its own policy, the agency allowed Sgt. Poole to interfere with my constitutional right to call witnesses present at my hearing by intercepting my request to staff to DHO R.L. Turner and then denying that she received it before my first disciplinary hearing. SEE Exhibit #1 (R.p. 16).

She stated that she did not receive my request which was submitted on June 2, 2011, until June 8, 2011 - two (2) days after my first disciplinary hearing of June 6, 2011. SEE Exhibit #1 (R.p. 16)

When I wrote to her on June 13, 2011 inquiring whether she had my request requesting witnesses she replied, "YES" to that question but denied receiving a request from me for the present case before this court. SEE Exhibit #1 (R. p. 16)

This practice is not only against SCDC policy but it is also unconstitutional.

An Examination of Exhibit #2 (R.P. 17) will show that I submitted my Inmate Request to staff member requesting to have nurse Amy Spencer as my witness to DHO Ms. Turner on June 2, 2011 (Exhibit #2) (R.P. 17).

How did it End up in Sgt. Poole's Possession? I also submitted Evidence to ALC Judge Carolyn C. Matthews that this unwritten policy and practice has also happened to other inmates as well. See Exhibits #3 and #4 Affidavits of Christopher Williams #306684 and Thomas Waters #321296 (R.P. 18 and 19)

First of all, the Agency violated its own policy in using this unwritten policy and practice to deny me my witness. "An administrative agency must follow its own rules and regulations. Tiska v Department of Health and Env't'l Control, 292 S.C. 190, 355 S.E.2d 531, 533 (1987).

Secondly, Due Process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense. State v Mabe, 412 S.E.2d 386, 388 (1991). I had a qualified right under both Wolff v McDonnell, 418 U.S. 563-72, 94 S.Ct. 2978-82, 41 L.Ed.2d at 954-66 and Al-Shabazz v State, 338 S.C. 354, 527 S.E.2d 742 at 751 (2000) to call witnesses in my defense to be present at my disciplinary Hearing.

Also, Exhibits #3 and #4 were submitted in accordance with rule 56(c), SCCP, yet the ALC Judge did not rule upon this issue.

Appellant would direct this Court's attention to the written reasons the DHO gave for denying witnesses. See SCDC form 19-69 "Disciplinary Report and Hearing Record" in Respondents record on appeal. (R.P. 37)

"When an inmate is found guilty, the officer must prepare a written report containing, among other things ... the reasons for excluding any witnesses or evidence." Al-Shabazz v State, 338 S.C. 354, 527 S.E.2d 742, 752 (2000).

Instead of utilizing **Section (3)** on the 19-69 "Disciplinary Report and Hearing Record" to explain the reasons for denying witnesses, the DHO wrote **Section (6)** stating "**I'm Also Informed all questions must be relevant to the charge**" (R.P. [redacted])

"The DHO's failure to permit the appellant to summon witnesses offends the framework of Wolff and its progeny." Fox v Coughlin, 893 F.2d 475 (2nd Cir. 1990); Brooks v Andolina, 826 F.2d 1266 (3rd Cir. 1987) (The failure to call witnesses without demonstrating that permitting the witnesses to testify would be hazardous to institutional **concerns** deprives a prisoner of procedural

due process rights.

V. THE APPELLANT WAS PLACED IN DOUBLE JEOPARDY WHEN HE WAS SANCTIONED TWICE FOR AN OFFENSE STEMMING FROM THE SAME INCIDENT IN VIOLATION OF HIS RIGHT TO PROCEDURAL DUE PROCESS, UNDER BOTH STATE AND FEDERAL CONSTITUTIONS.

SCDC policy OP-22.14 §16.4 specifically provides: If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are **totally separate and distinction 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. (SCDC policy OP-22.14 §16.4 - R. p. 32)

It is the SCDC who under-lined the above section and must follow this guide-line. "An administrative agency must follow its own rules and regulations." SEE Triska v Department of Health and Env't'l control, 292 S.C. 190, 355 S.E.2d 531, 533 (1987).

The appellant argues that not only could he not be sanctioned twice for the offense of 801 "Assault and/or battery of an SCDC employee" because the alleged assaults on both Ofc. Iance and Lt. J. Holsinger took place at the same time and **are not separate** from each other, but more importantly, the above SCDC policy section places a substantial limitation on official discretion and guides the states decision maker, which creates a protected liberty interest on the be-half of the appellant not to be placed in jeopardy twice for offenses stemming from the same incident.

"A state creates a protected liberty interest by placing substantive limi-tations 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, 249, 103 S.Ct. 1741, 1747, 75 L.Ed.2d 813 (1983) citing Connecticut Board of Pardons v Dumschat 452 U.S. 458, 467, 101 S.Ct. 2460, 2465, 69 L.Ed. 2d 158 (1981).

VI. THE APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL/SUBSTITUTE AT THE HEARING OF JUNE 13, 2011 IN VIOLATION OF HIS RIGHT TO PROCEDURAL DUE PROCESS UNDER BOTH STATE AND FEDERAL CONSTITUTIONS.

At the disciplinary hearing of June 13, 2011 the appellant was represented by counsel substitute Mrs. Fowler, who he gave questions to in order for her to ask of Lt. J. Holsinger during the hearing pursuant to SCDC policy OP-22.14 §15.5 (R. p. 31)

Appellant argues that said questions were important to his defense, especially as it related to the nature of Lt. Hulsinger's alleged injuries and, if asked, would have changed the out-come of the disciplinary hearing. See Exhibit #7 (R. P. 22)

"Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense. State v Mabe, 412 S.E.2d 386, 388 (S.C. 1991).

Before the hearing the appellant met with counsel substitute Mrs. Fowler where in he informed her that he had questions for her to ask of Lt. J. Hulsinger. The counsel substitute told appellant she could not ask questions that were not relevant. See Exhibit #7 (R.P. 22)

The appellant told counsel substitute Mrs. Fowler that the issue of whether or not the questions he had prepared for Lt. Hulsinger were relevant was for the DHO to decide and again informed Mrs. Fowler to "make sure you put my questions on the hearing record."

During the disciplinary hearing when asked by the DHO if the appellant had any questions for the accuser, counsel substitute Mrs. Fowler replied **"yes, but they are not relevant"** See Disciplinary Hearing transcript, page 4, lines 20-23 and page 5, lines 1-15 (R.P. 11 and R.P. 12)

The appellant argues that counsel substitute was ineffective and that he was substantially prejudiced by her refusal to place his questions for Lt. Hulsinger on the hearing record where it was relevant to the nature and extent of the injuries she alleged she sustained as a result of her being "assaulted" by the appellant. (

See e.g., Simpkins v State, __SC__, 401 S.E.2d 142 (1992) ("Having concluded the [Hearsay] issue was a meritorious one which would have entitled Petitioner to reversal on direct appeal, we find counsel's patent omission in failing to raise the issue clearly establishes ineffective assistance).

The appellant argues that under the laws of South Carolina that he had a qualified right to effective assistance of counsel substitute.

"An inmate has the right to a counsel substitute, a non-attorney designated to assist the inmate or represent him at the hearing. Al-Shabazz v State 338 S.C. 354, 527 S.E.2d 742 at 751 (2000).

VII. THE SCDC OVER THE YEARS HAVE BEEN ARBITRARILY TAKING THE APPELLANTS GOOD-TIME IN VIOLATION OF HIS RIGHT TO DUE PROCESS UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS.

THE S.C. LEGISLATURE HAS GRANTED THE DIRECTORS OF THE SCDC THE AUTHORITY TO PROMULGATE RULES AND REGULATIONS PURSUANT TO THE APA. SEE S.C. CODES ANN. §§ 24-1-20; 24-1-140 AND 24-13-210.

UPON INFORMATION AND BELIEF, THE APPELLANT ARGUES THAT THE DIRECTOR(S) OF THE SCDC HAVE FAILED TO PROMULGATE ITS ADMINISTRATIVE RULES AND REGULATIONS PURSUANT TO THE APA, HENCE, ITS AUTHORITY TO DISCIPLINE AND PUNISH THE APPELLANT FOR SERIOUS MISCONDUCT AND TO TAKE HIS STATUTORY GOOD-TIME CREDITS ARE NULL AND VOID.

A STATE [AGENCY] IS A CREATURE OF STATUTE AND ITS AUTHORITY IS DEPENDANT UPON STATUTE. BROOKS V S.C. STATE BD. OF FUNERAL SERVICE, 271 S.C. 457, 247 S.E.2d 820, 822 (1978).

THE APPELLANT ARGUES THAT OVER THE YEARS THE SCDC HAS WORKED OUT A POLICY AND PRACTICE OF ALLOWING SCDC EMPLOYEES OTHER THAN THE COMMISSIONER / DIRECTOR HIMSELF TO FORFEIT HIS STATUTORY GOOD-TIME CREDITS IN CONTRADISTINCTION TO S.C. CODE ANN. § 24-13-210(C).

"ALTHOUGH A REGULATION HAS THE FORCE OF LAW, IT MUST FALL WHEN IT ALTERS OR ADDS TO A STATUTE". SOCIETY OF PROFESSIONAL JOURNALISTS V SEXTON, 283 S.C. 563, 324 S.E.2d 313, 315 (1984).

THE APPELLANT ARGUES THAT THE SCDC'S POLICY AND PRACTICE OF ALLOWING SCDC EMPLOYEES OTHER THAN THE COMMISSIONER / DIRECTOR TO TAKE HIS GOOD-TIME CREDITS IS A DUE PROCESS VIOLATION THAT IS **"CAPABLE OF REPETITION, YET EVADES REVIEW!"**

CONCLUSION

WHEREFORE, HAVING SHOWN THAT HE WAS SUBSTANTIALLY PREJUDICED BY THE FOREGOING PROCEDUAL DUE PROCESS VIOLATIONS, AND THE ARBITRARINESS OF THE DHE; AND HAVING SHOWN THAT THE EVIDENCE PRESENTED AT

the disciplinary hearing of June 13, 2011 was insufficient to convic
him for the charge of 801 "Assault and/or Battery of an SCDC
Employee" the appellant requests relief of this court by over-
turning the agency decision and restoring all his good-time credit
A defendant is entitled to a directed verdict when the state
fails to produce evidence of the offense charged." State v McKinney
344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)

Respectfully submitted

November 28, 2012

Shange Damballah

Shange Damballah #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy.
SMU #90
Kershaw, S.C. 29067

The South Carolina Court of Appeals

Harold Mosley, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2012-212195

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc: Harold Mosley
Christopher D. Florian
Shanika Kenyetta Johnson

(59)

FILED
November 22, 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 Oct. 16, 2013

Petition for Rehearing

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

TABLE OF AUTHORITIES

I. CONSTITUTIONAL ARTICLES

II. STATUTES

III. CASES

Findings of Fact 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 safeguards afforded by Wolff v. McDonnell, Al-Shabazz v State and the S.C. Administrative Procedures Act?

Petition

Petitioner 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 Assault 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).

1.(A) THE COURT OF APPEALS HAS RELIED UPON THE RULING IN SANDERS V S.C. DEPT. OF CORR'S, 379 S.C. 411, 665 S.E.2d 231 (Ct. App. 2008) to conclude that the decision of the RESPONDENT and the administrative law 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 com'n 333 S.C. 12, 507 S.E.2d 328, 332 (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, 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.C. 546, 211 SE.2d 868 (1975); State v Banks-dale, 311 S.C. 210, 214, 428 SE.2d 498, 501 (Ct. App. 1993).

Petitioner thus INVOKES THE SOUTH CAROLINA CONSTITUTIONAL ARTICLE V §9 AND ADMONISHES THIS COURT THAT "THE DECISIONS 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 SE.2d 256 (S.C. App. 1993).

FURTHER, PETITIONER THUS INVOKES THE SUPREMACY CLAUSE, ARTICLE VI §2, OF THE UNITED STATES CONSTITUTION AND ADMONISHES THIS COURT THAT THE "SUPREME COURT OF SOUTH CAROLINA IS BOUND BY DECISIONS OF THE UNITED STATES SUPREME COURT..." STATE v WAITUS 224 S.C. 12, 77 SE.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 properly applied to those findings." Porter v SC 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 DHC, not any "reasonable mind" could have reached 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. 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 records 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 requires as an element of the offense that a violent injury be done to the person of the victim." STATE V FOXWORTH _ S.C. _, 238 SE.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 McDONNELLS, 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 Com'n 333 S.C. 712, 507 SE.2d 328, 333 F.N.3 (S.C. 1998)

II the court of appeals should rehear this matter where petitioner presented (2) affidavits pursuant to Rule 56(E) 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 SE.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 Judge 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 SE.2d 320 (1998); Able Communications, Inc. v S.C. Pub. Serv. comm'n 290 S.C. 409, 351 SE.2d 151 (1986).

"Just as a prisoner's 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 S.C. law a person may not be sanctioned 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 limitations on official discretion. An inmate must show that particularized standards or criteria guide the states 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 re-hear 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, III.

V. This 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 v State 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 the 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 29, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS

OPINION NO. 2013-UP-389

HAROLD MOSLEY #137525 . . . . . PETITIONER,

V

SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS . . . . . RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT A COPY OF PETITIONERS WRIT OF CERTIORARI, MOTION FOR PERMISSION OF LEAVE TO PROCEED IN FORMA PAUPERIS, FINANCIAL CERTIFICATE, RECORD ON APPEAL AND APPENDIX TO THE RECORD ON APPEAL WAS SERVED ON THE RESPONDENT BY PLACING THE SAME IN THE KERSHAW CORRECTIONAL INSTITUTION MAILBOX WITH POSTAGE AFFIXED AND ADDRESSED TO SHANITRA K. JOHNSON AT THE OFFICE OF GENERAL COUNSEL, P.O. BOX 21787, 4444 BROAD RIVER ROAD, COLUMBIA, S.C. 29221-1787 THIS 20th DAY OF DECEMBER, 2013.

RESPECTFULLY SUBMITTED

Harold Mosley

DECEMBER 20, 2013

HAROLD MOSLEY #137525
KERSHAW CORRECTIONAL INST.
4848 GOLDMINE HWY
OAK-A-7
KERSHAW, S.C. 29067