

In the state of South Carolina In the Court of Appeals

Appeal From the South Carolina Dept. of Correction

John D. McLeod, Administrative Law Judge

Docket No: 13-ALJ-04-0420-IJ

S.C.D.C., Respondent

v.

Kevin McCollum, #277577 Appellant

[Initial Brief]

To: Jenny Abbott Kitchings, Clerk

P.O. Box 11629

Columbia, SC 29211

This is the requested material in correct fashion.

RECEIVED

DEC 18 2013

SC Court of Appeals

Dear Mrs. Kitchings,

A- I, Kevin McCollom, #277577, Bring this matter before the South Carolina Court of Appeals. I disagree with the order of dismissal signed by Judge John D. McLeod. I mailed my original brief and Certificate of service both to the A.L.C. and the dept. of General Counsel on 7-29-13, yet in the order of dismissal it's stated Appellant Has not filed a copy of a Final decision from which Appeal may be taken. I do not understand this statement because clearly I have. I've added my original brief and certificates of service to the Designation of Matter to be included in the record so that you can review my material and witness when it was filed. In my notice of Appeal/Petition I stated know where within it anything about SCDC Failing to rule on a grievance for more than 180 days. For this statement to be made it's unreal for me to assume this statement is meant for my material. I've been denied the right to exhaust my administrative remedies without just cause. There is absolutely know justification for my appeal to be dismissed with Prejudice. I deserve Fair treatment.

[SEE Designation for copies of my notice of Appeal/Petition, my original Brief and Both Certificates of Service]

B. My Statement of Issues for Appeal are:

1. I was denied a counsel substitute.
2. I have been denied the right to examine the evidence against me.
3. I was denied the right to present non-frivolous evidence on my behalf at my D.H.O. Hearing.
4. The picture that's being used as evidence against me is not me.
5. Lt. McKie the contraband officer here at Trenton told me on 2-6-13 that the picture doesn't look like me.

C- My statement of the Case is:

On 2-5-13 I was charged with creating and/or Assisting with a Social Networking site. On or about 2-6-13 Lt. McKie searched me and my property looking for a cell-phone, He said He had received information that I had a cell-phone. On 2-13-13 at 10:12 a.m. I was notified that I was being charged, I asked for a counsel substitute and was denied. On 2-17-13 Major Donald Jenkins asked me what does Charleston Thuglife mean. I explained to Him that I didn't know and I asked Him to please go through all of my mail and phone records because this is definately a mistake. On 2-19-13 I was found guilty of offense 905 Creating and/or Assisting with a Social Networking Site. I tried to present Non-Frivolous Evidence on my behalf and was denied. I filed step 1 Appeal on 2-21-13 and wrote warden Bollinger, My Step 1 was denied on 3-18-13. I filed step 2 Appeal on 3-22-13. I received the decision on 5-3-13. I filed an appeal with the A.L.C. After the 5-3-13 decision. The Appellant prays for the help of this court in Finding the truth and all fairness in this matter. This is not an ordinary incident of prison life.

D- My arguments that support my issues for appeal are :

1. I was Denied A Counsel Substitute.

On 2-13-13 I requested a counsel substitute and was denied. I needed a Counsel substitute to help me defend myself on this charge due to the complexity of the issues that are involved around this 905 charge. My case is very complex due to the fact I'm being accused of this by Major Donald Jenkins and A/W Ann Shawkat His supervisor has signed off on it. SCDC Inmate Disciplinary system Policy 8.1.3 states "When the inmate, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case," May have a counsel substitute. As I stated in my issues I was denied the right to present Non-Frivolous Evidence that will clear me of this charge.

2. I Have Been Denied The Right To Examine The Evidence Against Me.

I asked repeatedly before I was found guilty may I please see the evidence. I'm told that the evidence is a picture of some guy with a scar on his forehead. I've had different officers that have seen the picture approach me looking for a scar but I don't have one. SCDC Inmate Disciplinary System Policy 15.1 states in Part that "If one or more of the charges involved the possession of contraband, the item (s) of contraband, a sample of the contraband, or a picture of the item should be produced at the Hearing." This clearly did not happen at my hearing because I've never been allowed to see this evidence.

3. I Was Denied The Right To Present Non-Frivolous Evidence On My Behalf At My D.H.O. Hearing.

Since I was told that the evidence against me is a picture, I had a picture of me on hand trying to present it at my DHO Hearing as evidence. The D.H.O. Hearing officer denied me the right to do so. SCDC Inmate Disciplinary system 15.2 states in Part "the accused inmate, or the inmates counsel substitute, may present documentary evidence," SCDC Policy 15.7 states in Part, "If on the other hand, the accused inmates presents non-frivolous evidence which, if true, would contradict the facts alleged in the staff member's report, the Hearing Officer must at least take one of the following steps at the Hearing prior to the Final disposition of the case," By me not being allowed to present my non-frivolous evidence my right to a fair hearing was violated By the D.H.O. Hearing Officer. I had documentary evidence to present on my

behalf that was in my possession at my hearing on 2-19-13 but I was denied the right to do so.

4. The Picture That's Being Used As Evidence Against Me is Not Me.

Whoever the guy is in the picture is not me. I need for you to take a real good and clear look at the picture. I deserve to be judged fairly without being unjustly accused. I'm told that the picture has Charleston Thuglife attached to it. I'm from Myrtle Beach and have never been to Charleston, SC. There is a list of names and phone numbers the inmate has been in contact with. I don't know any of them and as far as I know no one has investigated to see if any of the contacts know me and I have never had a scar anywhere on my face or head.

5. Lt. McKie The Contraband Officer Here at Trenton Told Me on 2-6-13 That The Picture Doesn't Look Like me

I asked Lt. McKie on 3-22-13 why did He allow me to be charged and found guilty of this 905 charge? He stated to me that He didn't want to touch it because He didn't want His name on it. Here at Trenton C.I. when Major Donald Jenkins is the charging officer there is no staff member here that's going to go against the charge, especially a officer with less rank.

E My Conclusion is :

The relief I seek is to be judged fairly at a fair hearing where my rights are not violated and I'm given a fair chance to prove that whoever is on the picture that's been used to convict me as Evidence is not me.

Respectfully Submitted,

S/ Kevin McCollum #277577

T.C.I. Dorm 3-A-3

84 Greenhouse rd.

Trenton, SC 29847

Date: 12-13-13

CC: Dept. OF General Counsel

A.L.C.

File