THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No: 2013-002277

Michael Goins #302385 ---------- Appellant,

V.

South Carolina Department of Corrections ---------- Respondents.

REPLY BRIEF

December 13, 2013

Pro Se Appellant,
Mr. Michael Goins #302385
430 Oaklawn Road
Pelzer, S.C. 29669

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The respondents responded to the Appellant's Initial Brief and designation of Matter with their Respondent's Initial Brief and Designation of Matter. Now comes the Appellant's Reply Brief.

The respondents are asserting that the appellant was afforded all constitutionally required due process rights at his Disciplinary hearing and that the respondent's final agency decisions were supported by substantial evidence. The appellant begs to differ.

In the appellant's designation of matter, the Disciplinary report and Hearing record form, it clearly shows that the appellant was not afforded the opportunity to question his accuser nor present the testimony of his key witness, Sgt. Robertson, in his hearing. In Appellant's Initial Brief he manifested how he did not check the box on the DRHR form thats labeled "I do not want my accuser present." It is an well established fact that the staff member that serves an inmate with the DRHR form notifying him of the charge asks the inmate if he wants an counsel substitute and does he want his accuser present at the hearing. The inmate then initials by each box and signs his name. The appellant did not check that box so he did not initial by that box. This is an error that indeed harmed the appellants defense mechanism. State v. Wiley 692 S.E.2d 560 (S.C. App. 2010) ("Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; Rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.") Id. 563.

The Appellant submitted an SCDC Form 19-11 to his counsel substitute through the mail requesting that his key witness; Sgt. Robertson be present at the hearing to testify in the appellants behalf. the appellant even notified the DHO, Mr. Turner, in the hearing that he did submit an form 19-11 to have his key witness present but the issue was overlooked. this clear conduct is an error that must be taken as an denial to call the key witness. See State v. Miller 652 S.E. 2d 444 (S.C. App. 2007).

The Disciplinary Hearing Officer (DHO) read into the record an anonymous RTSM form supposedly written by the appellant to the accuser basically admitting to the act. The DHO never asked the Appellant did he know of or write the anonymous RTSM form. There was no evidence to solidify that the appellant wrote that anonymous RTSM form or knows who wrote it but it was still erroneously read into the record and used as an determination of his guilt. Heater of seabrook, INC. v. Public Serv. Comm'n. 332 S.C. 20 (1998) ("However, the writing of order without sufficient details or analysis, coupled with this standard of review, can make their decisions as a practical matter unassailable on appeal. The findings of facts of an administrative body must be sufficiently detailed to enabled the reviewing court to determine whether findings are supported by the evidence & whether the law has been properly applied to those findings.") Id. 23. The administrative agency can not explain why the appellant was denied to examine his accuser, denied to have his key witness present at the hearing and why an anonymous statement was read into the evidence. It is well established that the substantial evidence rule requires consideration of the evidence on both sides; Evidence that is substantially viewed in isolation may become insubstantial when contradictory evidence is taken into account. Landry v. F.D.I.C, 204 F.3d 1125, 1141 (D.C. 2000).

This Honorable court has the authority to reverse the findings of the administrative agency if it is proven that the conviction was determined with erroneous evidence or made upon unlawful procedure. See S.C. Code Ann. § 1-23-610. Pursuant to SCDC Policy OP-2214 "Inmate Disciplinary System" section 4.1-4, it clearly states that the Major or responsible authority has Nine (9) days from the date of the incident to sign off on the charge and enter it into the SCDC computer. The Appellant has submitted an original copy of the incident report which clearly shows that no Major or responsible authority had signed the incident report, period, which makes the conviction using the incident report to determine the guilt very unlawful and erroneous as if having an Criminal trial without an TRUE BILLED indictment. This conviction has to be reversed. Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side. Lark v. Bibb. INC. 276 S.E.2d 304, 306 (1981). Substantial evidence is such relevant evidence as a reasonable mind might except as adequate to support conclusion. The language of the statute 1-23-380(g) clearly indicates that

this court should reverse a conviction upon the statute application where a manifest or gross error of law has been committed by the administrative agency. Id. 307.

FURTHERMORE, the Appellant has clearly shown that the Administrative Agency showed biasness towards him. It is clearly shown. Pursuant to Rule 6.0 of the SCALC Rules, the Appellant had 65 days from the date of assignment to file his Appellant's Brief and the Respondent's had 85 days from the date of assignment to file their Respondent's Brief then the Appellant had 95 days from the date of assignment to file his Reply Brief. The Administrative tribunal clearly showed his bias in the case by not even allowing the Appellant the time to file an Reply Brief before he made his decision. The Appellant's Reply Brief was due on October 5, 2013 but the Administrative tribunal filed his findings to withhold the respondents decision on October 1, 2013. The Appellant was biased by the Administrative tribunal's clear prejudice decision. This alone is clear grounds for reversal. Porter v. S.C. Public Serv. Comm'n, 507 S.E. 2d 328 (1998). (The deferential standard of review does not mean, However, that the court will except an administrative agency decision at face value without requiring the agency to explain its reasoning.) Id. 332.

CONCLUSION

WHEREFORE, for all the reasons stated above, this honorable court should reverse the Administrative agency's decision in this case.

December 13, 2013

Pro Se Appellant
Mr. Michael Goins #302385

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CERTIFICATE OF SERVICE

I, Michael Goins #302385, do hereby certify that on December 13, 2013 I did serve on the following agencies a copy of the Appellant's Reply Brief by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following addresses:

1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211

2.) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221

SWORN to and subscribed before me
this 19 day of December, 2013.
Tamara Conwell (L.S.)
Notary Public For South Carolina
My Commission Expires
My commission expires: ~~September 25,~~ 2023

/s/ Michael Goins
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