

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM ADMINISTRATIVE LAW COURT

ADMINISTRATIVE LAW JUDGE DEBORAH B. JURSEN

---

APPELLATE CASE NO. 2013-001541

DOCKET NO. 12-ALT-04-0916-AP

GRIEVANCE NO. ECI 1137-12

---

DUSTIN GAINES, #316068

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS,

RESPONDENT,

---

REPLY BRIEF OF APPELLANT

---

DECEMBER 2, 2013

DUSTIN GAINES, #316068  
PRO-SE APPELLANT  
EVANS CORR. INST.  
610 HWY 9 WEST  
BENNETTSVILLE S.C. 29512

RECEIVED

DEC 09 2013

SC Court of Appeals

## TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

STATEMENT OF THE CASE

STANDARD OF REVIEW

ARGUMENT

I. RESPONDENT'S FINAL AGENCY DECISION IS NOT SUPPORTED  
BY SUBSTANTIAL EVIDENCE

II. ADMINISTRATIVE LAW JUDGE, RALPH K. ANDERSON, REVERSED  
THE DECISION OF THE FINAL AGENCY IN THE RECORD OF  
APPEAL OF VIRGIL HAYGOOD #300382, THE INMATE LISTED  
1<sup>ST</sup> ON THE INCIDENT REPORT OF THE CASE IN WHICH  
APPELLANT IS APPEALING

CONCLUSION

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

I. STATUTES

S.C. CODE ANN. § 1-23-610

S.C. CODE ANN. § 1-23-380

II. CASES

DURANT V. S.C. DEP'T OF HEALTH & ENVIRONMENTAL CONTROL, 361 S.C.  
416, 420, S.E. 2d 704 (Ct. App. 2004) ..... 4

GRANT V. S.C. COASTAL COUNCIL, 319 S.C. 348, 461 S.E. 2d 388 (1995) ..... 5

HEATER OF SEABROOK, INC. V. PUBLIC SERV. COMM'N, 332 S.C. 20, 503 S.E.  
2d 739 (1998) ..... 5

LAKE V. REEDER CONSTR. CO., 330 S.C. 242, 498 S.E. 2d 650 (Ct. App. 1998) ..... 3

LARKY, BI-LO, INC., 276 S.C. 130, 276 S.E. 2d 304 (1981) ..... 4

PEARSON V. JPS CONVERTER & INDUS. CORP., 327 S.C. 393, 489 S.E. 2d  
219 (Ct. App. 1997) ..... 4

## STATEMENT OF THE ISSUES ON APPEAL

I. ARE RESPONDENT'S FINAL AGENCY DECISIONS SUPPORTED BY SUBSTANTIAL EVIDENCE?

II. DID ADMINISTRATIVE LAW JUDGE, RALPH K. ANDERSON, REVERSE THE AGENCY'S FINAL DECISION IN THE RECORD OF THE APPEAL OF VIRGIL HAYGOOD #300382, AN INMATE LISTED AS THE 1<sup>ST</sup> OFFENDER ON THE INCIDENT REPORT OF THE CASE IN WHICH APPELLANT IS APPEALING?

## STATEMENT OF CASE

THIS MATTER COMES BEFORE THIS HONORABLE COURT PURSUANT TO THE APPEAL OF DUSTIN GAINES. ("APPELLANT"), AN INMATE INCARCERATED WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ("SCDC"). APPELLANT WAS CONVICTED OF POSSESSION OF ANY CELL PHONE OR OTHER TYPE OF COMMUNICATION DEVICE, OFFENSE 898 UNDER SCDC POLICY OP-22.14, INMATE DISCIPLINARY SYSTEM, FOLLOWING A DISCIPLINARY HEARING. APPELLANT LOST 615 DAYS OF GOOD TIME DUE TO THE DISCIPLINARY CONVICTION.

APPELLANT FILED A STEP ONE GRIEVANCE ON JUNE 26, 2012, CHALLENGING HIS 898 CONVICTION. THIS GRIEVANCE WAS INVESTIGATED AND DENIED. APPELLANT FILED A STEP TWO GRIEVANCE ON JULY 23, 2012, WHICH WAS ALSO DENIED. APPELLANT THEN APPEALED TO THE ADMINISTRATIVE LAW COURT.

AFTER THE PARTIES FILED BRIEFS, THE ALC AFFIRMED SCDC'S FINAL DECISION, FINDING THE DISCIPLINARY HEARING COMPORTED WITH DUE PROCESS. THE ALC RULED THAT THE DISCIPLINARY HEARING COMPLIED WITH DUE PROCESS. THE ALC ALSO RULED THAT THE DISCIPLINARY CONVICTION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

APPELLANT NOW SEEKS REVIEW OF THE ALC'S DECISION. FOR THE REASONS THAT FOLLOWS, APPELLANT REQUESTS THAT THE ALC'S DECISION BE REVERSED.

## STANDARDS OF REVIEW

S.C. CODE ANN. § 1-23-610(B) PROVIDES THE APPLICABLE STANDARD OF REVIEW:

THE REVIEW OF THE ADMINISTRATIVE LAW JUDGE'S ORDER MUST BE CONFINED TO THE RECORD. THE REVIEWING TRIBUNAL MAY AFFIRM THE DECISION OR REMAND THE CASE FOR FURTHER PROCEEDINGS; OR IT MAY REVERSE OR MODIFY THE DECISION IF THE SUBSTANTIVE RIGHTS OF THE PETITIONER HAVE BEEN PREJUDICED BECAUSE OF THE FINDING, CONCLUSION, OR DECISION IS:

(a) IN VIOLATION OF CONSTITUTIONAL OR STATUTORY PROVISIONS;

(b) IN EXCESS OF THE STATUTORY AUTHORITY OF THE AGENCY;

(c) MADE UPON UNLAWFUL PROCEDURE;

(d) AFFECTED BY OTHER ERROR OF LAW;

(e) CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; OR

(f) ARBITRARY OR CAPRICIOUS OR CHARACTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

SEE ALSO S.C. CODE ANN. § 1-23-380(5); LAKE V. REEBER CONSTR. CO., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

IN AN APPEAL OF THE FINAL DECISION OF AN ADMINISTRATIVE AGENCY, THE STANDARD OF APPELLATE REVIEW IS WHETHER THE ALC'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. SEE S.C. CODE ANN. § 1-23-610(B).

A REVIEWING COURT SHALL NOT SUBSTITUTE ITS JUDGEMENT FOR THAT OF THE ALC AS TO FINDINGS OF FACT, BUT IT MAY REVERSE OR MODIFY DECISIONS WHICH ARE CONTROLLED BY ERROR OF LAW OR ARE CLEARLY ERRONEOUS IN VIEW OF THE SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE. Id. IN DETERMINING WHETHER THE ALC'S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE COURT NEEDS ONLY FIND, CONSIDERING THE RECORD AS A WHOLE, EVIDENCE FROM WHICH REASONABLE MINDS COULD REACH THE SAME CONCLUSION THAT THE ALC REACHED. DURANT V. S.C. DEPT OF HEALTH & ENVIRONMENTAL CONTROL, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (CF. APP. 2004). THE MERE POSSIBILITY OF DRAWING TWO INCONSISTENT CONCLUSIONS FROM THE EVIDENCE DOES NOT PREVENT A FINDING FROM BEING SUPPORTED BY SUBSTANTIAL EVIDENCE. Id.

### ARGUMENT AND CITATION OF AUTHORITY

I. RESPONDENT'S FINAL AGENCY DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

A REVIEWING COURT WILL NOT DISTURB THE FINDINGS OF AN ADMINISTRATIVE AGENCY IF THOSE FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE. PEARSON V. JPS CONVERTER & INDUS. CORP., 327 S.C. 393, 489 S.E. 2d 219 (CF. APP. 1997). "SUBSTANTIAL EVIDENCE" IS EVIDENCE WHICH, CONSIDERING THE RECORD AS A WHOLE, WOULD ALLOW REASONABLE MINDS TO REACH THE CONCLUSION THAT THE ADMINISTRATIVE AGENCY REACHED TO JUSTIFY ITS ACTION. LARK V. BI-LO, INC., 276 S.C. 130, 276 S.E.2d 304 (1981)

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 SERV. COMM'N, 332 S.C. 20, 503 S.E.2d 739 (1998).

EVIDENCE PRESENTED AT APPELLANT'S HEARING DOES NOT INDICATE THAT APPELLANT WAS EVER IN POSSESSION OF, OR EVER USED, OR PARTICIPATED IN THE USE OF THE CELL PHONE IN QUESTION. THE DISCIPLINARY HEARING OFFICER STATED THAT SHE FOUND APPELLANT GUILTY BASED UPON OFFICER DAVIS' REPORT AND TESTIMONY, THE TESTIMONY OF LIEUTENANT TOMS, AND THE PICTURES AND VIDEO FOR THE 898 CONVICTION. FURTHERMORE, THE RECORD CONCLUSIVELY ESTABLISHES THAT NOWHERE IN EITHER OFFICER'S REPORT OR TESTIMONY DOES IT STATE THAT APPELLANT WAS EVER SEEN OR FOUND IN POSSESSION OF A CELL PHONE. THE RECORD REFLECTS THAT PHOTOGRAPHIC OR VIDEO EVIDENCE REGARDING APPELLANT WAS ON THE SEIZED PHONE, BUT IT ALSO ESTABLISHES THAT THIS WAS APPELLANT'S 3<sup>RD</sup> OFFENSE OF CHARGE 898 AND BEING THAT IT IS KNOWN FACTS THAT APPELLANT WAS PREVIOUSLY CONVICTED OF POSSESSION OF A CELL PHONE, AND THAT CELL PHONES CAN TRANSMIT PHOTOGRAPHIC IMAGES TO OTHER CELL PHONES, THE PRESENCE OF A VIDEO OR PHOTO SHOULD NOT BE CONSIDERED SUPPORTIVE EVIDENCE OF THE 898 CONVICTION, BECAUSE THE PHOTO COULD HAVE COME FROM A CELL PHONE THAT APPELLANT WAS PREVIOUSLY CONVICTED OF.

RESPONDENT HAS NOT CARRIED THE BURDEN OF PROVING THAT APPELLANT EVER POSSESSED OR USED THE CELL PHONE IN QUESTION. CONSEQUENTLY SCDC'S DECISION SHOULD NOT BE UPHOLD.

II. ADMINISTRATIVE LAW JUDGE, RALPH K. ANDERSON REVERSED THE DECISION OF THE FINAL AGENCY IN THE RECORD OF APPEAL OF VIRGIL HAYGOODS #300382, THE INMATE LISTED 1<sup>ST</sup> ON THE INCIDENT REPORT OF THE CASE IN WHICH APPELLANT IS APPEALING.

APPELLANT FILED A DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL PROPOSING THAT ALL DOCUMENTS CONCERNING THE APPEAL OF VIRGIL HAYGOODS, #300382 BE INCLUDED IN THE RECORD ON APPEAL. WHEN REVIEWING THE DESIGNATION OF MATTERS IT CLEARLY ESTABLISHES THAT VIRGIL HAYGOODS WAS INDEED CHARGED WITH OFFENSE 898 ALONG WITH APPELLANT, WAS CONVICTED OF THE OFFENSE BASED ON THE SAME EVIDENCE, AND APPEALED THE DHO'S DECISION WHERE HE EVENTUALLY SOUGHT RELIEF IN THE ALC WHERE THE HONORABLE RALPH K. ANDERSON REVERSED HIS CASE, AND ORDERED SCAC TO UPLIFT ALL SANCTIONS IMPOSED AND REINSTATE ALL LOSS OF GOOD TIME CREDITS. THEREFORE, SCAC'S DECISION SHOULD NOT BE UPHHELD.

## CONCLUSION

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

RESPECTFULLY SUBMITTED,

DUSTIN GAINES #316068  
PRO-SE APPELLANT

S/ Dustin Gaines

EVANS CORR. INST.

610 HWY 9 WEST

BENNETTSVILLE SC. 29512

BENNETTSVILLE SC,

DECEMBER 2, 2013

SWORN OR AFFIRMED TO AND SUBSCRIBED  
BEFORE ME THIS 4<sup>th</sup> DAY OF December,  
2013.

Daniel   
NOTARY PUBLIC

MY COMMISSION EXPIRES: Feb 7<sup>th</sup> 2023

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE DEBORAH B. DURDEN

APPELLATE CASE NO. 2013-001541  
DOCKET NO. 12-ALJ-04-0916-AP  
GRIEVANCE NO. ECI. 1137-12

DUSTIN GAINES, #316068

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS,

RESPONDENT,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED ALL PARTIES  
A COPY OF APPELLANT'S REPLY BRIEF BY DEPOSITING A COPY OF THE  
SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, AND PROPERLY  
ADDRESSED; ON THIS 4<sup>TH</sup> DAY OF DECEMBER 2013.

S/ Dustin Gaines

DUSTIN GAINES #316068  
PRO-SE APPELLANT  
EVANS CORR. INST.

610 HMY 9 WEST

BENNETTSTVILLE SC, 29512

RECEIVED

DEC 09 2013

SC Court of Appeals