



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Acting Director

January 16, 2014

Ms. Jenny Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: Billy Lisenby, # 200273 v. SCDC
Case Tracking Nos.: 2012-213396 & 2012-213434

Ms. Kitchings,

Pursuant to your letter dated January 13, 2014, I am resending to the Court a copy of the Initial Brief of Respondent (filed March 6, 2013). Please let me know if you need anything further.

Sincerely,

A handwritten signature in black ink that reads "Shanika K. Johnson". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Shanika K. Johnson
Attorney for Respondent

cc: File

Billy Lisenby, Jr., # 200273
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010
(without enclosures)

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

Case Nos. 12-ALJ-04-0025-AP,
12-ALJ-04-0044-AP

Billy Lisenby, Jr., # 200273.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

March 4, 2013

South Carolina Department of Corrections

Shanika K. Johnson
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW4

ARGUMENT AND CITATION OF AUTHORITY.....5

**I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY
 REQUIRED DUE PROCESS.....5**

**II. RESPONDENT’S FINAL AGENCY DECISIONS ARE SUPPORTED
 BY SUBSTANTIALEVIDENCE.....6**

CONCLUSION.....7

CERTIFICATE OF SERVICE.....9

TABLE OF AUTHORITIES

I. STATUTES

S.C. Code Ann. § 1-23-610.....	4
S.C. Code Ann. § 1-23-380.....	4

II. CASES

<u>DuRant v. S.C. Dep't of Health & Environmental Control</u> , 361 S.C. 416, 420, S.E.2d 704 (Ct. App. 2004).....	5
<u>Grant v. S.C. Coastal Council</u> , 319 S.C. 348, 461 S.E.2d 388 (1995).....	7
<u>Heater of Seabrook, Inc. v. Public Serv. Comm'n</u> , 332 S.C. 20, 503 S.E.2d 739 (1998).....	7
<u>Lake v. Reeder Constr. Co.</u> , 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998).....	4
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	7
<u>Pearson v. JPS Converter & Indus. Corp.</u> , 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997).....	6
<u>Porter v. S.C. Public Serv. Comm'n</u> , 333 S.C. 12, 507 S.E.2d 328 (1998).....	7
<u>Wolff v. McDonnell</u> , 418 U.S. 539 (1974).....	5

STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**
- II. ARE RESPONDENT'S FINAL AGENCY DECISIONS SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Billy Lisenby, Jr. ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public, offense 809 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing.

(R.p.____) Appellant lost 30 days of good time due to the disciplinary conviction.

(R.p.____). Appellant was also convicted of Damage, Loss, Destruction or Defacing Property Valued at Less than 100.00, offense 856 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 30 days of good time due to this disciplinary conviction. (R.p.____).

Appellant filed a Step One Grievance on January 11, 2011, challenging his 856 conviction. This grievance was investigated and denied. (R.p.____). Appellant filed a Step Two Grievance on February 8, 2011, which was also denied. (R.p.____). 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 rejected appellant's arguments that his mental ill classification was not given consideration and that his conviction should be overturned because he should not have been charged with more than one disciplinary infraction per month. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence. (R.p.____).

Appellant filed a Step One Grievance on January 21, 2011, challenging his 809

conviction. This grievance was investigated and denied. (R.p. ____). Appellant filed a Step Two Grievance on February 17, 2011, which was also denied. (R.p. ____). 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 rejected appellant's arguments that his mental ill classification was not given consideration, that he did not receive a copy of the evidence used against him, and that his conviction should be overturned because he should not have been charged with more than one disciplinary infraction per month. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence. (R.p. ____).

Appellant now seeks review of the ALC's decision. On February 5, 2013, this Court granted Appellant's motion to consolidate the appeals for the two disciplinary convictions. For the reasons that follow, SCDC respectfully requests that the ALC's decision be affirmed.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's 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. Reeder 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 judgment 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 need 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. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. 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. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due Process 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.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were complied with in both cases. The Disciplinary Report and Hearing Record for both cases demonstrate that Appellant had notice of the charges. (R.p. ____). The records also reveal there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearings. (R.p. ____). Furthermore, Appellant was afforded an opportunity to be heard at both January 5, 2011 hearings. (R.p. ____). There was a neutral and detached hearing

body at the hearings, an SCDC disciplinary hearing officer. (R.p. ____). Appellant was provided with a counsel substitute, and there was disclosure of the written statement of the hearing officer's findings. (R.p. ____).

There was ample evidence to support appellant's disciplinary convictions. For the 856 conviction, Officer Ayers reported that while he was conducting a security check, he heard banging coming from the direction of Appellant's cell. When he got to Appellant's cell, Officer Ayers observed the glass from the food service window was broken. Appellant later admitted to causing the window to break. (R.p. ____).

There was also sufficient evidence for the 809 conviction. Associate Warden Burton reported that he received a Request to Staff from Appellant. Within the document, Appellant wrote obscenities that were interpreted as physical threats to SCDC employees. (R.p. ____). The disciplinary hearing officer determined Appellant's words amounted to unlawful threats.

The ALC subsequently ruled that appellant's convictions for both charges were sufficiently supported by the evidence. Additionally, in both cases the ALC determined that the multiple charges did not result in a violation of due process. (R.p. ____). Moreover, there was nothing in the record to suggest the agency's decision was arbitrary, capricious, or the result of personal bias or prejudice.

II. RESPONDENT'S FINAL AGENCY DECISIONS ARE 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 record as a whole. Pearson v. JPS

Converter & Indus. 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 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).

All credible evidence presented at Appellant’s hearings indicates Appellant was guilty of both disciplinary offenses. The disciplinary hearing officer stated she found Appellant was guilty based upon Officer Ayer’s testimony for the 856 conviction and Associate Warden and Captain Bishop’s testimony for the 809 conviction. Furthermore, the records conclusively establish that the “substantial evidence on the whole record” supports Respondent’s final agency decision. (R.p. _____).

Appellant has not carried his burden of proving that the decisions of the Department are clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm’n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC’s decisions should be upheld.

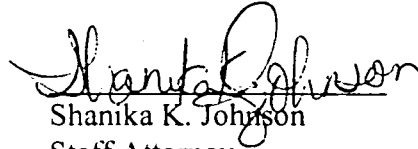
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections’ decisions in these cases.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent

A handwritten signature in black ink, appearing to read "Shanika K. Johnson", written over a horizontal line.

Shanika K. Johnson
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508

Columbia, SC
March 4, 2013

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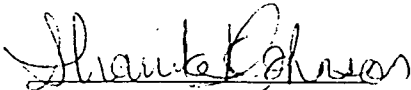
Billy Lisenby, Jr., # 200273.....Appellant,

v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, March 5, 2013, addressed to the Appellant as follows:


Shanika K. Johnson
Staff Attorney
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent

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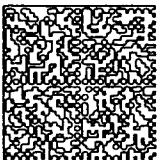
Office of General Counsel
P.O. Box 21787/4444 Broad River Road
Columbia, South Carolina 29221-1787

Ms. Jenny Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

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