

FEB 19 2014

JERRY MASSEY JR. Appellant

S.C. Supreme Court  
Docket No: 13-ALJ-04-0830-AP

V.

RCI - 038413

South Carolina Department  
of Corrections.

Respondant

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filed - October - 29, 2013

FEB 24 2014

JERRY MASSEY JR, of Columbia, PRO-SE

SC Court of Appeals

CHRISTOPHER FLORAIN, of Columbia,  
for Respondant.

This matter is before the Supreme Court by way of notice of appeal - dismissal from the Administrative Law Court, in order of RULE-66 findings that JERRY MASSEY wasn't entitled to relief, January 30, 2014.

Facts/Procedural History

ON MAY-1, 2013 the Appellant at Ridgeland Correctional Institution was found guilty of a 99B/cellphone. Appellant filed a step-1 grievance and step-2 grievance in which both was denied. The South Carolina Department of Corrections (SCDC) issued its final decision up holding the conviction. The Appellant filed a appeal to the Administrative Law Court in which was dismissed by Judge Carolyn Matthews January 30, 2014.

Appellant's Appeal is not based on the loss of good time or failure to EARN good time as argued by Respondant and dismissed by the ALC Judge Carolyn Matthews, Appellant contended that "There is a misinterpretation of the contraband." Appellant was wrongfully convicted of an cell phone charge when Respondant showed NO evidence to support the charge of a cell phone. However due process require at a minimum that there be some evidence in the record to support the disciplinary decision.

Under the Administrative Procedures Act (APA), Appellant appealed CDC's finding to the ALC. Appellant is appealing the ALC's dismissal pursuant to RULE 204(b), SCACR.

Standard of Review

The (APA) establishes the standard of review and the Court's Authority in reviewing decisions of the ALC. The reviewing of the Administrative Law Judge 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 the findings, conclusion, or decision is:

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- A.) IN VIOLATION OF CONSTITUTIONAL 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;

S.C. CODE ANN, 1-23-610 (B) (Supp 2008.)

### Insufficiency of Evidence

ERROR OF APPROPRIATE CHARGE OF CONTRABAND, NO CELLPHONE OR CELLPHONE ATTACHMENTS TO SUPPORT THE CHARGE OF A CELLPHONE DEVICE. ALL ITEMS OF THE EVIDENCE PRESENTED WAS PURCHASED AT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS - Canteen. (T.V ADAPTOR AND Koss HEADPHONE PLUG) - ALL ALTERED TOGETHER. THE CHARGING OFFICER WASN'T A WITNESS NOR THE ACCUSER, WHICH IS A VIOLATION OF CONSTITUTION RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAWS UNDER THE 14<sup>th</sup> ADMENDMENT. THE EVIDENCE PRESENTED WAS CLEARLY A CONTRABAND CHARGE.

### Compliance with Policy

THE CONTRABAND HAS NO EVIDENCE TO SUPPORT THE CHARGE OF A BPB/CELLPHONE DEVICE Superintendent, MASS CORRECTIONAL INST. V. HILL, 472 US. 445, 454 105 S. CT 2768 2774. 86 L. ED. 2d 356 (1985).

THE CHARGING OFFICER'S TESTIMONY WAS HEAR SAY BECAUSE HE WASN'T PRESENT WHEN THE CONTRABAND WAS FOUND, VIOLATION OF SOUTH CAROLINA DEPARTMENT OF CORRECTION. OP-22.19. PRISONS - 13 (10) - PRISON DISCIPLINARY PROCEEDINGS ARE OVER TURNED ONLY WHERE NO EVIDENCE IN RECORD SUPPORTS THE DECISION. SMITH V. RABALAIS, 559 F. 2d 539 545 (5th CIR 1981) BROUSSARD V. JOHNSON 253F 3d 874 (5th CIR 2001)

### CONCLUSION

APPELLANT WAS WRONGLY FULLY CONVICTED OF A CELLPHONE CHARGE WHERE THE EVIDENCE DOES NOT MEET THE ELEMENTS OF THE OFFENSE NOR DEFINITION. UNDER THE ADMINISTRATIVE PROCEDURES ACT (APA) APPELLANT REQUEST THE SUPREME COURT TO REVERSE OR MODIFY THE DECISION.

Respectfully submitted  
Migemy Massey Jr - 184059  
Walden - W-5 - Room - 55-B  
4340 Broad River Rd  
Columbia, SC 29210

I Migemy Massey Jr - PRO-SE APPELLANT IN ABOVE CASE HERE BY  
 SWEAR THAT I HAVE SERVED SCDC OFFICE OF COUNSEL - CHRISTOPHER  
 TORIAN AND CAROLYN C. MATH NEWS, JUDGE OF ALC MENTAL MAIL.  
 THIS 31<sup>st</sup> DAY OF JANUARY - 2014

Migemy Massey Jr

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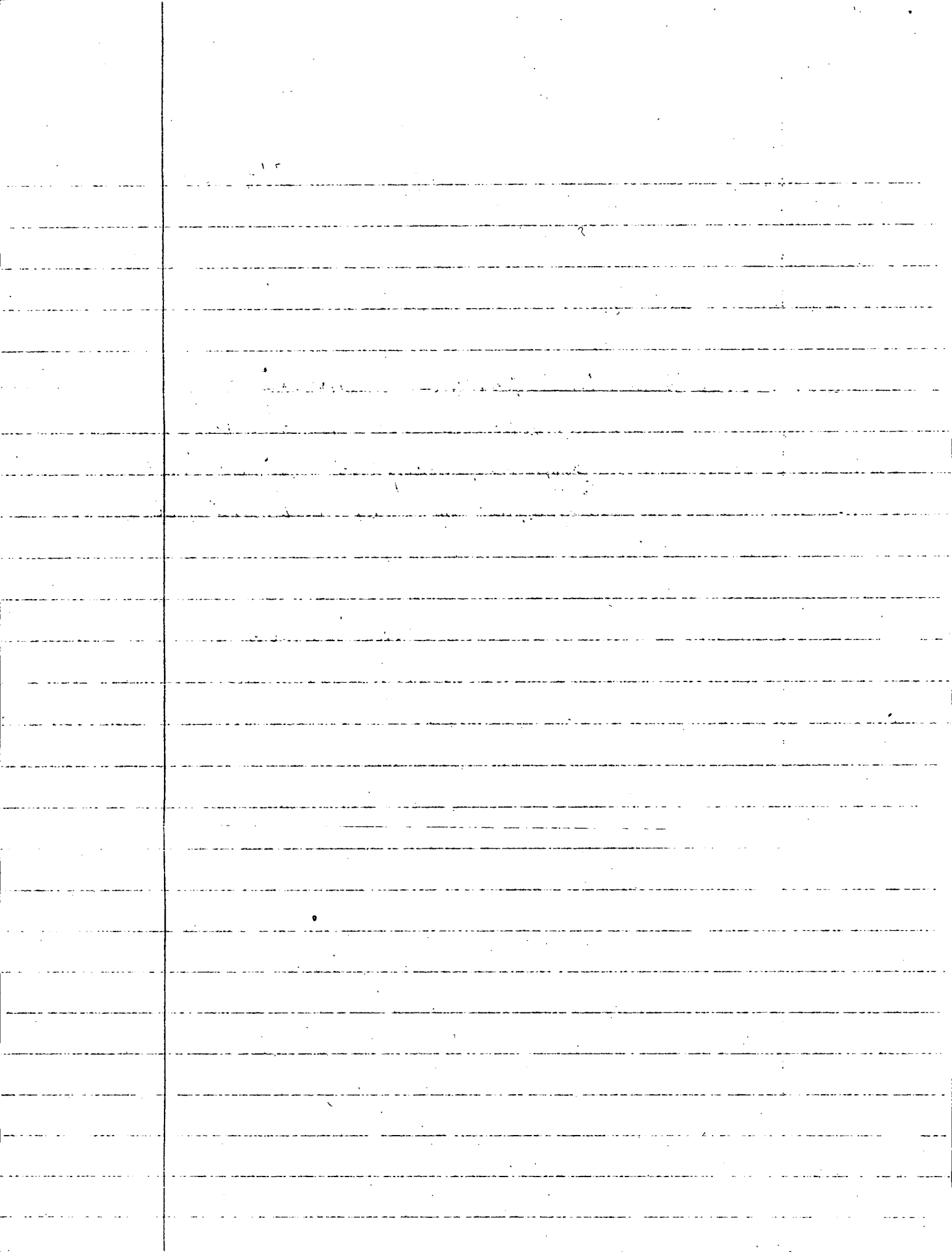
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note :

Served : Office of Counsel

ALC Judge Matthews  
Supreme Court South Carolina  
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Jerry Massey



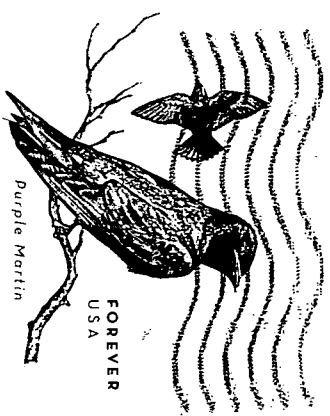
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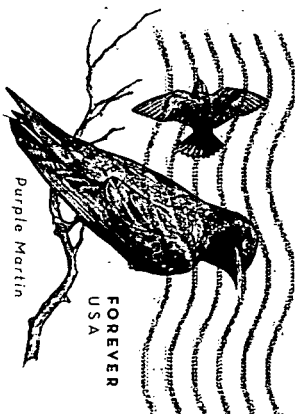
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