IN THE STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

ADMINISTRATIVE LAW JUDGE DEBORAH B. DURDEN

CASE NO. 13-ALJ-04-0965-AP

APPELLATE CASE NO. 2014-000226

MICHAEL JONES, #237769, - APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, - - - - - - - - - - - - - RESPONDENT.

APPELLANT'S INITIAL BRIEF

CHRISTOPHER D. FLORIAN, ESQ

SCDC OFFICE OF GENERAL COUNSEL

P.O. BOX 21787

COLUMBIA, SC 29221-1787

(803) 896-855

MICHAEL L. JONES #237769

PCI D-X #21

430 OAKLAWN Rd.

PELZER, SC 29669

MR. Michael L Jones

Table of Contents

Citations of Authority

34) SWEET V. SOUTH CAROLINA DEPT OF CORRECTIONS, 529 F.2d 854 (C.A. S.C. (1975)).

35) THOMPSON V. SOUTH CAROLINA COMM'N ON ALCOHOL AND DRUG ABUSE, 229 S.E. 2d 718 (1976)

36) WILKINSON V. AUSTIN, 125 S.Ct. 2384 (2005)

37) ZINERMON V. BURCH, 110 S.Ct. 975 (1990)

STATEMENT OF ISSUES ON APPEAL

I. DID ALJ ERROR IN CONCLUDING APPELLANT HAD NO STATE-CREATED LIBERTY INTEREST IN HIS INDEFINITE AND PERPETUAL SUBSEQUENT WITHHOLDMENT OF HIS CUSTODY AND CUSTODY'S ACCRUED EARNED WORK CREDITS?

II. DOES APPELLANT'S INDEFINITE LOSS OF ACCRUED EARNED WORKED CREDITS FOR A THREE TIME PREVIOUSLY CLASSIFIED DISCIPLINARY VIOLATION AND PERPETUAL SUBSEQUENT SHAM REVIEWS IMPOSE ATYPICAL AND SIGNIFICANT HARDSHIP ON APPELLANT?

III. DOES PERRY CORR. INST. WARDEN LARRY CARTLEDGE CONDUCT AMOUNT TO ARBITRARY GOVERNMENTAL ACTION?

STATEMENT OF THE CASE

THIS MATTER IS BEFORE THE COURT OF APPEALS PURSUANT TO THE APPEAL OF Michael Jones (APPELLANT), AN NON-VIOLENT SENTENCE INMATE(I/M) INCARCERATED WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (SCDC). APPELLANT FILED A STEP 1 GRIEVANCE WITH THE (SCDC) ASSERTING DUE PROCESS VIOLATIONS IN FORM OF SHAM REVIEWS IN RELATION TO his INDEFINITE SOLITARY CONFINEMENT AND INDEFINITE DEPRIVATION OF HIS ALREADY ACCRUED EARNED WORK CREDITS(EWCS). ON DECEMBER 12, 2013, APPELLANT RECEIVED SCDC'S FINAL DECISION, which DENIED APPELLANT THE RELIEF he REQUESTED IN his GRIEVANCE. ON DECEMBER 17, 2013, APPELLANT FILED NOTICE OF APPEAL TO ADMINISTRATIVE LAW COURT. ON JANUARY 16, 2014, ADMINISTRATIVE LAW Judge Deborah B. DUREN SUMMARILY DISMISSED APPELLANT'S APPEAL WITH PREJUDICE STATING LACK OF LIBERTY INTEREST. ON JANUARY 30, 2014, APPELLANT FILED THIS APPEAL WITH THE COURT OF APPEAL ASSERTING [redacted] LIBERTY INTEREST (STATE-CREATED) PRESENT, DUE PROCESS VIOLATIONS PRESENT, ARBITRARY GOVERNMENTAL ACTION, ATYPICAL AND SIGNIFICANT HARDSHIP ON his PERSON IN RELATION TO ORDINARY INCIDENTS IN PRISON LIFE ROUTINELY IMPOSED. APPELLANT APPEAL THUS, FOLLOWS.

STATEMENT OF FACTUAL/PROCEDURAL HISTORY

ON NOVEMBER 6th, 2012, APPELLANT WAS TAKEN OUTSIDE OF SCDC POLICY/PROCEDURE PREREQUISITES BEFORE AN ADMINISTRATIVE SEGREGATION REVIEW BOARD AND SUBSEQUENTLY CLASSIFIED AS SECURITY DETENTION (S.D.) IN SOLITARY CONFINEMENT WITHIN SCDC PERRY CORR. INST. (PCI) D-DORM HIGH ALPHA MAXIMUM SECURITY SPECIAL MANAGEMENT UNIT (SMU). APPELLANT LOSS OF CUSTODY WAS FOUNDED UPON AN ASSAULTIVE WITHOUT A WEAPON DISCIPLINARY RULE VIOLATION FROM JANUARY 4th, 2011. PREVIOUSLY THE APPELLANT HAD BEEN CLASSIFIED THREE TIMES IN RELATION TO THIS DISCIPLINARY (DISC.) RULE VIOLATION, ONCE IN APRIL, 2011 AT HIS ANNUAL REVIEW OF WHICH APPELLANT WAS ADVANCED IN CLASSIFICATION SECURITY CUSTODY IN GENERAL POPULATION (GP) FROM MEDIUM OUT (ME) TO LOWEST SECURITY CUSTODY AVAILABLE TO HIM MINIUM IN (MI). THE APPELLANT WAS REVIEWED AGAIN IN MAY, 2011 AND REMAINED IN GP MI. APPELLANT WAS AGAIN REVIEWED IN OCTOBER, 2011 WITH SAME RESULT. THE APPELLANT MAINTAINED DISC. FREE M.I. CUSTODY FROM JANUARY 4th, 2011 TILL NON-ASSAULTIVE DISC. VIOLATION JUNE 7th, 2012. APPELLANT WAS SERVING HIS SANCTIONS IMPOSED DISC. DETENTION (D.D.) TIME OF 358 DAYS FOR JUNE 26th, 2012 CONVICTION. ON NOVEMBER 6th, 2012, THE APPELLANT WAS SERVING HIS D.D. TIME, FOUR MONTHS DISC. FREE, WHEN APPELLANT WAS ARBITRARILY TAKEN BEFORE THE ADMINISTRATION SEGREGATION (ADMIN SEG) BOARD AND ARBITRARILY SD to INDEFINITE SOLITARY CONFINEMENT CUSTODY [redacted] FOR 22 MONTH OLD JANUARY 4th, 2011 VIOLATION. APPELLANT WAS ASSIGNED INDEFINITE SOLITARY CONFINEMENT AND INDEFINITELY DEPRIVED OF ALL HIS ACCRUED EARNED WORK-CREDITS (ENCS) SOLELY DUE TO PERSONAL PREJUDICIES OF WARDEN CARTLEDGE WHO HAS PERSONALLY STATED APPELLANT REGARDLESS OF RULES COMPLIANCE WILL NEVER BE ALLOWED OFF SD WHILE AT PCI. APPELLANT HAS SUBSEQUENTLY BEEN TO (16) SIXTEEN INMATE CLASSIFICATION COMMITTEE (ICC) (30) DAY REVIEWS AND DENIED NOTICE OF REVIEWS, ANY BRIEF FACTUAL SUMMARY OF WHAT HE IS SUPPOSE TO FACE, ANY OPPORTUNITY TO ANALYZE THE ALLEGATION(S), ANY OPPORTUNITY FOR REBUTTAL, AND DENIED RELEASE FROM INDEFINITE DEPRIVATION AND ISOLATION ALL (16) TIMES, THOUGH HE HAS COMPLIED WITH ALL RULES AND REGULATIONS WHILE HOUSED WITHIN SMU AND REMAINS DISC. CLEAR. (10) TEN ICC S.D. REVIEWS APPELLANT RECEIVED ROTE BOILPLATE RESPONSES ASSAULTIVE DISC. HISTORY THREAT TO STAFF AND INMATES (I/M'S) NO DETAIL OF WHAT CONDUCT OR EVIDENCE USED TO SUPPORT ROTE JUSTIFICATION. (6) REVIEWS APPELLANT HAS RECEIVED VAGUE ROTE BOILPLATE RESPONSE SECURITY CONCERNS. APPELLANT HAS BEEN S.D. FOR 4 YEARS DISC. CONVICTION CLEAR 1003 DAYS AT NO TIME HAS APPELLANT APPEARED BEFORE ANY ICC BOARD. APPELLANT HAS NEVER SIGNED ANY SCDC FORM(S) 18-39 "CLASSIFICATION WAIVERS" WAIVING HIS RIGHT TO APPEAR BEFORE THE BOARD IN PERSON OR TO RECEIVE NOTICE AND OPPORTUNITY TO BE HEARD AT MINIMUM IN WRITING. ALL (16) REVIEWS THUS FAR HAVE BEEN NON-LEGITIMATE SHAMS PER WARDEN CARTLEDGE'S ARBITRARY ABUSE OF HIS DISCRETIONARY AUTHORITY.

STANDARD OF REVIEW

PRO-SE ACTION, REQUIRES THE COURT TO LIBERALLY CONSTRUE his PLEADINGS AND hold his PLEADINGS TO LESS STRINGENT STANDARDS THAN THOSE DRAFTED BY ATTORNEYS. Rush v. Patterson, 2011 WL 7063648 (D.S.C.). AN APPELLATE COURT IS bound bY ALC Judge's Finding UNLESS clearly erroneous. STATE V. BACCUS, 625 S.E. 2d 216, 220 (2006). S.C. CODE ANN. § 1-23-610(B) IS THE CONTROLLING APPLICABLE State STATUE Guiding THIS HONORABLE APPELLATE COURT'S review. GRANTING The reVIEWING Tribunal THE AUTHORITY TO AFFIRM THE LOWER COURT'S DECISION, REMAND THE CASE for FurTher Proceedings; it MAY REVERSE OR MODIFY The DECISION IF THE SUBSTANTIVE RIGHTS OF THE Petitioner have been Prejudiced because OF THE Findings, Conclusion, or decision. The ReVIEWING Tribunal Review OF The ALJ's ORDER MUST BE CONFINED TO THE Record. COURT OF APPEALS MUST NOT AFFIRM AGENCY'S FINDINGS IF THEY ARE NOT SUPPORTED BY SUBSTANTIVE evidence AND Are controlled by LEGAL error, CLEARLY erroneous IN VIEW OF the RELIABLE, PROBATIVE AND SUBSTANTIAL evidence ON The Record. SUBSTANTIAL evidence IS NOT A Mere SCINTILLA OF EVIDENCE, but evidence Which CONSIDERING THE record AS A WHOLE, would allow REASONABLE MINDS TO reach THE CONCLUSION THE AGENCY reached. ANY AGENCY Guide LINES should BE GIVEN its PLAIN AND ORDINARY MEANING. Bee v. Aven, INC., 543 S.E. 2d 232, 234 (S.C. APP. 2001). Prisoners Are entitled TO Judicial review IN CONCERNS OF CONDITION OF CONFINEMENT AND CUSTODY EVEN When CHALLENGE ON ITS FACE MAY BE Perceived NOT TO ALLEGE A Protected LIBERTY INTEREST In order TO ENSURE THE Challenged CONDITIONS or degree OF CONFINEMENT ARE WITHIN the SENTENCE IMPOSED AND ARE NOT OTHER WISE VIOLATIVE OF The Constitution, or Whether Prison OFFICIALS have ACTED ARBITRARILY, CAPRICIOUSLY, OR FROM Personal bias. AL-SHABAZZ V. STATE, 527 S.E. 2d 742, 756 (S.C. 2000). THE REQUIREMENTS OF Procedural DUE PROCESS ONLY APPLY TO The DEPRIVATION OF INTERESTS ENCOMPASSED BY THE FOURTEENTH AMENDMENTS Protection OF LIFE, LIBERTY, AND PROPERTY. IO 750. THE STATUTORY right TO SENTENCE-RELATED Credits IS A Protected LIBERTY INTEREST UNDER 14TH AMEND. ENTITLING AN I/M TO MINIMAL DUE PROCESS TO ENSURE The STATE-CREATED RIGHT WAS NOT ARBITRARILY ABROGATED. Id 750. AN I/M SUBJECT TO LEGITIMATE REQUIREMENTS OF PRISON DISCIPLINE AND SECURITY, RETAINS his CONSTITUTIONAL RIGHTS TO DUE PROCESS, TO EQUAL PROTECTION, AND TO Protection AGAINST Cruel AND UNUSUAL PUNISHMENT, These RIGHTS Conferred Are binding ON The STATES. SWEET V. SOUTH CAROLINA DEPT' OF CORRECTIONS, 529 F. 2d 854, 859 (C.A.S.C. (1975)).

I. DID ALJ ERROR IN CONCLUDING APPELLANT HAD NO STATE-CREATED LIBERTY INTEREST IN his INDEFINITE DEPRIVATION OF ALREADY ACCRUED EARNED WORK-CREDITS AND INDEFINITE SOLITARY CONFINEMENT SECURITY CUSTODY?

THE APPELLANT IS A NON-VIOLENT PRISONER WHO RECEIVES GOOD-TIME AND EARNED WORK-CREDITS(ENCS). ENCS ARE RELATED DIRECTLY TO AN I/MS CURRENT CUSTODY STATUS. SCDC POLICY/PROCEDURE, OP-21.04 (2.9)(42); OP-21.07(2.2)(8.1)(5.2.1)(5.2.3). ENCS ARE USED TO COMPENSATE I/MS FOR THEIR ACTIVE LABOR PERFORMED AND ACTIVE PARTICIPATION IN ACADEMIC OR VOCATIONAL PROGRAMS ACCORDING TO THE I/M'S CUSTODY DESIGNATION. EACH I/M JOB ASSIGNMENT WILL BE PLACED IN ONE OF FOUR JOB CLASSIFICATION LEVELS, AND ENCS WILL BE AWARDED ON THE BASIS OF CUSTODY: MINIMAL OUT (MIO) I/MS; MINIMAL OUT RESTRICTED (MOR) I/MS CLASSIFY AS LEVEL 2. MINIMUM IN (MI) I/MS WILL BE LEVEL 3 UNTIL BEHAVIOR AND TIME REQUIREMENTS TO (MOR) THEN MOVE TO ENC LEVEL 2 MEDIUM OUT (MO) I/MS ARE ENC LEVEL 5. SCDC POLICY, OP-21.07 (8.1). PRISONERS CONFINED TO SMU WILL NOT BE ELIGIBLE TO RECEIVE ENCS PERMENANTLY WHILE IN THE SMU AND LOSES ALL ACCRUED ENCS AFTER FIRST DAY OF ABSENCE FROM his SCHOOL/VOCATIONAL OR EMPLOYMENT ASSIGNMENT PROGRAM. SCDC POLICY, OP-21.07 (5.2.1). ANY TIME AN I/M IS PLACED IN SMU---ENCS WILL BE RESUMED ONLY WHEN THE I/M RETURNS TO (AND PARTICIPATES IN) his WORK, SCHOOL, OR VOCATIONAL ASSIGNMENT. Id (5.2.3). WHEN SCDC CHANGES A PRISONER'S CUSTODY STATUS THE PRISONER LOSES WHATEVER ENCS HE HAS ACCRUED, WHICH IN EFFECT LENGTHENS THE DURATION OF THE PRISONER'S SENTENCE. Gilchrist v. Pinson, 2013 WL 3946278 P.2 (D.S.C.). APPELLANT LOSS ALL ACCRUED ENCS UPON INITIAL SMU PLACEMENT FOR A DEFINITE PERIOD OF TIME TO BE RESUMED UPON his COMPLETION OF his D.D. TIME SANCTION. ON NOVEMBER 6TH, 2012, APPELLANT INDEFINITELY LOSS ALL his ACCRUED ENCS AND BECAME INDEFINITELY BARRED FROM RESUMING THEM LENGTHEN APPELLANT SENTENCE DURATION FROM MAY, 2022 TO AUGUST 21, 2024 OVER 720 DAYS. THE FEDERAL DISTRICT COURT OF SOUTH CAROLINA HAS HELD A SCDC I/M CUSTODY STATUS CONSTITUTED A PROTECTED LIBERTY INTEREST, DUE TO THE CLAIMED RELATIONSHIP BETWEEN CUSTODY, ENCS, AND THE DURATION OF PRISONER'S CONFINEMENT. Gilchrist v. Pinson, AT P. 3 SEE ALSO: FN2. IT HAS BEEN CLEARLY ESTABLISHED APPELLANT HAS A PROTECTED LIBERTY INTEREST IN his CUSTODY DEPRIVATION.

II. DOES APPELLANT'S INDEFINITE LOSS OF ACCRUED ENCS AND INDEFINITE SOLITARY CONFINEMENT FOR A THREE TIMES PREVIOUSLY CLASSIFIED DISC. VIOLATION AND PERPETUAL SUBSEQUENT SHAM REVIEWS IMPOSE ATYPICAL AND SIGNIFICANT HARDSHIP ON APPELLANT?

THE APPELLANT HAVING ESTABLISHED THAT he HAS A STATE-CREATED PROTECTED LIBERTY LIBERTY INTEREST, REQUIRES THE COURT TO DECIDE WHAT PROCESS IS DUE THE APPELLANT. Wilkinson v. Austin, 125 S.Ct. 2384, 2395 (2005). A PRISONER'S STATE-CREATED LIBERTY INTEREST REQUIRES

MINIMAL DUE PROCESS BE EMPLOYED. SULLIVAN V. SCDC, 586 S.E.2d 124 (2003). A CONDITION OF CONFINEMENT COULD IMPLICATE A STATE-CREATED LIBERTY INTEREST. A PRISONER'S STATE-CREATED LIBERTY INTEREST. A PRISONER'S STATE-CREATED LIBERTY INTEREST, WHICH ARE PROTECTED BY THE DUE PROCESS CLAUSE, WILL GENERALLY BE LIMITED TO FREEDOM FROM RESTRAINT THAT IMPOSES ATYPICAL AND SIGNIFICANT HARD SHIP ON THE I/M IN RELATION TO THE ORDINARY INSTANCES OF PRISON LIFE. Id. THE 14TH AMEND. DUE PROCESS CLAUSE PROTECTS AGAINST DEPRIVATIONS OF LIFE, LIBERTY, AND PROPERTY. A LIBERTY INTEREST MAY ARAISE FROM THE CONSTITUTION ITSELF, BY REASON OF GUARANTEES IMPLICIT IN the Word LIBERTY OR IT MAY ARISE FROM AN EXPECTATION CREATED BY STATE POLICIES. WILKINSON V. AUSTIN, 125 S.Ct. AT 2393. THE APPELLANT IS BEING SUBJECTED TO ARBITRARY RESTRAINT AND CUSTODY LOSS THAT TAKES his ALREADY ACCRUED EWC BY Warden CARTLEDGE ARBITRARILY VIOLATING SCDC POLICY/PROCEDURE SAFE GUARDS, WHICH IMPOSE ATYPICAL AND SIGNIFICANT HARDSHIP UPON APPELLANT NOT ORDINARILY ROUTINELY IMPOSED. PRISON WALLS DO NOT FORM A BARRIER SEPARATING PRISON I/MS FROM PROTECTIONS OF THE CONSTITUTION (CONST.) I/M'S CONSTITUTIONAL RIGHTS MUST BE EVALUATED WITHIN THE CONTEXT OF THEIR INCARCERATION. LOVELACE V. LEE, 472 F.3d 174, 199 (4TH CIR. V.A. 2006). WHAT PROCEDURE PROTECTIONS ARE DUE DEPENDS ON THE EXTENT TO WHICH AN INDIVIDUAL WILL BE CONDEMNED TO SUFFER A GRIEVOUS LOSS. MORRISSEY V. BREWER, 92 S.Ct. 2593, 2600 (1972). ANY AGENCY GUIDE LINE SHOULD BE GIVEN ITS PLAIN AND ORDINARY MEANING. PEE V. AVM, INC., 543 S.E.2d 232, 234 (S.C. APP. 2001). APPELLANT WAS MINIMUM IN (MI) CUSTODY SERVING D.D. TIME OF 358 DAYS. PURSUANT TO SCDC POLICIES AND PROCEDURES USING EXPLICITLY UNMISTAKABLE MANDATORY LANGAUGE THE APPELLANT WAS TO SERVE ALL OF his D.D. TIME TO COMPLETION BEFORE BEING ELIGIBLE FOR RE-CLASSIFICATION INTO INDEFINITE SD CUSTODY IN SMU. SCDC POLICIES, OP-21.04 (6.8.7); OP-22.12 (2.1.3); OP-22.14 (17.1 NOTE). THE S.C. SUPREME COURT HAS HELD IF A BOARD DEVIATES FROM OR RENDERS its DECISION WITHOUT CONSIDERATION OF THE APPROPRIATE CRITERIA it ESSENTIALLY ABROGATES AN I/M'S RIGHTS AND, THUS INFRINGES ON A STATE-CREATED LIBERTY INTEREST. COOPER V. SOUTH CAROLINA DEPT' OF PROBATION, PAROLE, AND PARDON SERVICES, 661 S.E.2d 106, 111 (S.C. 2008). THE APPELLANT WAS AUTOMATEDLY PROJECTING M.I.3 CUSTODY STATUS ON NOVEMBER 6, 2012 AND OVER FOUR MONTHS DISC. CONVICTION FREE. DISC. CONVICTION OF NON-ASSAULTIVE OFFENSE VIOLATION ON JUNE 26, 2012 DID NOT WARRANT OR RESULT IN A CLASSIFICATION STATUS CHANGE AND SHOULD NOT HAVE BEEN NEGATIVELY ASSESSED UNTIL NEXT ANNUAL REVIEW. SCDC POLICY, OP-21.04 (27.8). ON NOVEMBER 6TH, 2012, APPELLANT WAS DEPRIVED INDEFINITELY OF his ACCRUED EWCS AND ASSIGNED INDEFINITE ADMINISTRATIVE SOLITARY CONFINEMENT AT THAT TIME FOR A 23 MONTH OLD ASSAULTIVE WITHOUT A WEAPON DISC. RULE VIOLATION CONVICTION FROM JANUARY 4TH, 2011, WHICH STEMMED FROM APPELLANT

Throwing his Plastic I/M Identification Card upon A Nurse's Foot. This Conviction of Jan. 4, 2011 Did not Automatedly Simulate Nor Manual Custody Status Change and Thus was Reviewed at Appellant's Next Classification Annual Review in April of 2011. Appellant was Reviewed According to SCDC I/M Classification Plan Policy/Procedure and Due to De-Minius Nature of the Offense was Advanced to the Least Restrictive Security Custody Available to him at his Sentence Time Served M.I.3 from M.E.3. Appellant was Classified at ICC Reviews Two More Times. Once in May 2011 at PCI, Before the Same ICC chairperson who Later SD him For the Same Reviewed Offense, ICC Board Voted and Approved Appellant to Remain in General Population M.I.3. Once More Again in October 2011 with Same Results. Appellant Remained Assaultive Disc. Free For the Entire (22) Twenty-Two Months Before initial SD Confinement Imposement, (16) Sixteen of Those Months Completely Disc. Free and the Appellant Currently Remains Assaultive Disc. Clear For 1,110 Days and Completely Disc. Clear For 603 Days. Pursuant to SCDC Policy/Procedure OP-21.04 Requisite Criteria section (44) Custody Criteria, A Prisoner with only (1) Assaultive without A Weapon Conviction in Past (12) months Automatedly Scores M.I. The Appellant was (22) month clear. Section (44) Also Provides A Prisoner With up To (3) Major Disc. Convictions in Past (12) Month Automatedly will Still Score M.I. Appellant had (1) Major Conviction in the Past (12) Month At That Time and was Already over (4) months Disc. Free. Appellant was Arbitrarily Deprived Indefinitely his Accrued EWCS and Assigned Indefinite Solitary Confinement on the Person at Whim of Warden Cartledge's Prejudices. (Exhibits _____). The Apparent Failure by the Board To Consider the Requisite Criteria in Rendering its decision Constitutes an Infringement of a State-Created Liberty Interest and, Thus, Requires Minimal Due Process Procedures. Cooper v. S.C. Dept of PPPS, 661 S.E.2d at 112. Where the Board offerred No Indication that it Considered the Policy Mandatory Required Criteria the Courts can only Conclude That the Board's Decision was Arbitrary and Capricious. Id 112. The Loss of Const. Amend. Freedoms, For Even Minimal Periods of Time Constitute Irreparable Injury. Elrod v. Burns, 96 S.Ct. 2673, 2690 (1976). The Appellant Being Assigned Indefinite Administrative Segregation Alone Requires the State to Provide him with Adequate Periodic Reviews hearings To Consider Release From Indefinite Solitary Confinement. Admin. Seg. Can not Be used As A Pretext For indefinite Confinement of an I/M. Hewitt v. Helms, 103 S.Ct. 864, 874 FN9 (1983) Later overruled on other Grounds. As A Fundamental Right A Prisoner is entitled To the Constitutional Guarantee of A Review hearing Implementing the Minimal Due Process Requirements Before A Neutral And Detached hearing body. Morrissey v. Brewer, 96 S.Ct At 2604. having Been Clearly Established As A Constitutional Right To Protection From Admin. Seg. Being

used AS A PRETEXT FOR Indefinite Confinement OF AN I/M In Segregated housing, A decision by Prison Officials TO KEEP AN I/M IN SEGREGATED MUST Be Supported by Some evidence. Superintendent V. Hill, 105 S.Ct. 2768 (1985); See ALSO: Lark V. BI-LO Inc., 276 S.E. 2d 304, 306-07 (1981). Due Process is NOT Satisfied Where The Periodic Reviews ARE A Sham; The Reviews MUST Be MEANINGFUL And NOT SIMPLY Perfunctory. GIANO V. KELLY, 869 F. Supp 143, 150-51 (2nd Cir. 1994); See ALSO: Rhinehart V. Gomez, 1998 WL 118179 P.4 (N.D.CAL.). ADMIN. SEG. MAY NOT Be used AS A PRETEXT FOR CONFINING AN I/M WHEN he No LONGER PRESENTS A Threat TO The Security OF THE FACILITY. THUS, DECISION MAKER MUST DETERMINE IF The REASON FOR ADMIN. SEG. CONFINEMENT REMAINS VALID AND MUST Review "THEN AVAILABLE" evidence. In This Context, "THEN" MUST MEAN TO Refer TO The POINT AT Which occurs. Evidence That Become AVAILABLE Following Initial Review OF The I/M The DECISION MAKER IS OBLIGATED TO Consider THAT evidence And DECISION MAKING OFFICIAL IS REQUIRED To BASE Their DECISION ON The AVAILABLE evidence And on RATIONALE CONSISTENT With The DEFINED FUNCTIONS OF ADMIN. SEG.. GIANO V. KELLY, 2000 WL 876855 (W.D. NY); SCDC Policies / Procedures, OP- 22.04 (16.1) (39.3); DP-22.12 (4.1.1) (5.1) (6.1); (SEE ALSO: Exhibits _____). The APPELLANT has The CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT TO NOTICE And OPPORTUNITY TO Be heard. The ALJ APPLYING The MATTHEWS BALANCING TEST, MATTHEWS V. Eldridge, 96 S.Ct. 893 (1976); See ALSO: Wilkinson, AT 2395, Reader in its Roy Garey Lindsey, #167021 V. South Carolina DEPT' OF CORRECTIONS, 09-ALJ-04-0125-AP P.6 (S.C. ADMIN Court 2009) DECISION THAT DUE Process REQUIRES The SCDC TO EMPLOY Procedures Which Would Allow The APPELLANT: (1) NOTICE OF The ADMIN Proceeding And A brief SUMMARY OF The FACTUAL BASIS FOR THE Review; (2) AN OPPORTUNITY TO Review The INFORMATION To be Considered by The Board; And (3) AN OPPORTUNITY TO Rebut Errors in The FILE by COMMUNICATING With The Board AT A MINIMAL In Writing IF NOT In Person. The APPELLANT has NEVER SIGNED ANY Policy Required SCDC FORM 18-39, "I/M CLASSIFICATION WAIVER", WAIVING his RIGHT TO APPEAR AT Review hearing (SEE: OP-22.12 (4.3.1)), BUT APPELLANT has NEVER BEEN To ANY OF his Previous (16) SUBSEQUENT Review hearing Nor PROVIDED ANY NOTICE TO Be TO Present evidence ON his behalf TO REBUT ANY Errors IN File BEING USE To JUSTIFY ASSAULTIVE AND/OR GANG Security CONCERN REASONING. ADMIN AGENCIES ARE AFFORDED Wide LATITUDE IN decisions, As Shown in the deferential STANDARD OF APPELLATE Review. However, The writing OF Orders Without SUFFICIENT DETAIL OR ANALYSIS, COUPLED With this STANDARD OF Review, CAN MAKE Their DECISIONS AS A PRACTICAL MATTER UNASSAILABLE ON APPEAL. The FINDINGS OF FACT OF AN ADMIN BODY MUST Be SUFFICIENTLY DETAILED To ENABLED The REVIEWING COURT TO DETERMINE Whether FINDINGS ARE SUPPORTED BY The EVIDENCE And Whether The LAW has BEEN PROPERLY APPLIED To These FINDINGS. IMPLICIT FINDINGS

OF FACT ARE NOT SUFFICIENT. Heater of Sea Brook, Inc. V. Public Serv. Comm'n, 503 S.E.2d 739, 742 (1998); SEE ALSO: OP-21.04(46)(46.1); OP-22.12(4.2). Periodic Review Defined By Supreme Court WAS CLEAR That The Review Must Be Sufficient "To DISPEL ANY NOTIONS That The CONFINEMENT WAS A Pretext". Thus, it is CLEARLY established That A ProForma Review Process Which FAILS To TAKE into Consideration Readily AVAILABLE Information Relevant TO The REASONS FOR The IM's CONFINEMENT, [redacted] Their Persistent Invocation OF ROTE Boiler PLATE RATIONALE, And Their Failure To INQUIRE INTO the Continuing Validity OF THAT RATIONALE AMOUNTS TO A DENIAL OF DUE PROCESS GIANO V. KELLY, 2000 WL876 855; See ALSO: Porter V. SouthCarolina Public Service Com'n, 507 S.E.2d 328, 332 (Ct.App. 1998); ABRAHAM V. County OF GREENVILLE SC, 237 F.3d 386-387 (4th Cir. 2001). "[T]HE LENGTH OF CONFINEMENT CANNOT BE IGNORED in Deciding Whether The CONFINEMENT MEETS A Constitutional STANDARDS. A VIOLATILE Condition MAY BE Tolerable For A Few DAYS And intolerably Cruel For WEEKS OR MONTHS. Hutto V. Finney, 98 S.Ct. 2565, 2571 (1978). THE DURATION AND The FREQUENCY OF Such DEPRIVATIONS ARE HIGHLY RELEVANT To Whether The Conditions OF A Prisoner's CONFINEMENT Should Be considered ATYPICAL. IT HAS BEEN WIDELY ACCEPTED SEGREGATION SENTENCES OF (125-288) DAYS ARE Characterized AS RELATIVELY LONG And Thus NECESSITATING SPECIFIC ARTICULATION OF FACTUAL FINDINGS. Sims V. Artuz, 230 F.3d 14, 23 (9th Cir. 2000). "[C]ONFINEMENT IN NORMAL SMU Conditions FOR (305) DAYS is A A SUFFICIENT DEPARTURE From The ORDINARY incidents OF PRISON LIFE To REQUIRE Procedural DUE Process Protections under Sandin. GIANO V. SELSKY, 238 F.3d 223, 226 (2d Cir. 2001). The APPELLANT HAS BEEN CONFINED TO ADMIN SEG For (470) DAYS IN SMU, DISC. FREE For (603) DAYS FOR A (1,110) DAY OLD THREE TIMES PRIOR TO ADMIN SEG CLASSIFIED Disc. Rule Violation. PROPERLY CONSTRUCTED, Sandin'S BASE LINE REQUIRES NOT MERE INQUIRY into The MOST RESTRICTIVE Conditions Prison officials have LEGAL Authority TO IMPOSE For ADMIN REASON, but FACTUAL DETERMINATION OF THE MOST RESTRICTIVE Conditions Prison officials "ORDINARILY" or "ROUTINELY" IMPOSE ON Similar Situated Prisoners. Hatch V. District of Columbia, 184 F.3d 846, 857 (C.A.D.C. 1999). APPELLANT HAS The STATE-Created EXPECTATION When A decision IS MADE Regarding his CUSTODY, his ELIGIBILITY To EARN WORK credits will be CONSISTENT. OP-21.04(42)(1.4)(2.1)(2.4)(29.1)(31). The APPELLANT'S STATE-created EXPECTATION, Indefinite Loss OF ACCRUED ENCS, And Indefinite ADMIN SEG SOLITARY CONFINEMENT For (470) DAYS And Counting FOR A (3) TIMES PRIOR TO SO CLASSIFIED (1,110) DAY OLD INFRACTION While BEING (603) DAYS DISC. VIOLATION CLEAR WORK A MAJOR DISRUPTION ON THE APPELLANT'S ENVIRONMENT, SENTENCE DURATION, Thus, CONSTITUTING ATYPICAL AND SIGNIFICANT HARD SHIP UPON him NOT ROUTINELY IMPOSED.

III. DOES PCI WARDEN LARRY CARTLEDGE'S CONDUCT AMOUNT TO ARBITRARY ACTION?

AS MENTIONED ABOVE IN DETAIL WARDEN CARTLEDGE AUTHORIZED THE DEPARTURE FROM SCDC POLICIES OP-21.04 (68.7); OP-22.12 (2.1.3); OP-22.14 (17.1 NOTE), HAVING APPELLANT RE-CLASSIFIED TO SD AN INDEFINITE SOLITARY CONFINEMENT STATUS OF WHICH ON THE WARDEN HAS AUTHORITY TO RELEASE AN I/M FROM. OP-22.12 (5.1). AN ACT IS INTENTIONAL IF: (1) IT IS DONE WILLINGLY; (2) THE ACTOR DESIRES THE RESULT OF HIS CONDUCT, WHATEVER [redacted] THE LIKELYHOOD OF THAT RESULT HAPPENING; OR (3) THE ACTOR KNOWS OR OUGHT TO KNOW THE RESULT WILL FOLLOW FROM HIS CONDUCT, WHATEVER HIS DESIRE MAYBE AS TO THAT RESULT. SWAKENBURG V. HARTFORD CAS. INS. CO., 383 S.E.2d 2, 6 (S.C. APP. 1989). WARDEN CARTLEDGE HAS PERSONALLY TOLD THE APPELLANT REGARDLESS OF HIS RULES COMPLIANCE OR DISC. FREE APPELLANT WILL NEVER BE ALLOWED OUT OF SOLITARY CONFINEMENT IN SMU WHILE AT PCI. WARDEN THROUGH THE USE OF HIS GRANTED POWER OF AUTHORITY CONTINUES TO PERPETUATE HIS ARBITRARY PREJUDICIAL STANCE PERSONALLY AND THROUGH HIS SUBORDINATES. (EXHIBITS _____)

PROVING ACTION IS DONE WITH PREMEDITATED DELIBERATENESS AND CONSCIOUS INTENT WILLINGLY DESIRING THE PRODUCED RESULT. IT IS TRUE THAT THE CONSTITUTION IMPOSES UPON THE STATE AFFIRMATIVE DUTIES OF CARE AND PROTECTION TO INDIVIDUALS IN ITS CUSTODY. WHEN THE STATE TAKES A PERSON INTO ITS CUSTODY AND HOLDS HIM THERE AGAINST HIS WILL, THE CONSTITUTION IMPOSES UPON IT A CORRESPONDING DUTY TO ASSUME SOME RESPONSIBILITY FOR HIS SAFETY AND GENERAL WELL BEING. DESHANEY V. WINNEBAGO COUNTY DEPT' OF SOCIAL SERVICES, 109 S.Ct 998, 1004-1005 (1989). THE DUE PROCESS CLAUSE ITSELF IS PHRASED AS LIMITATION ON A STATE POWER TO ACT. IT FORBIDS THE STATE [LOCAL GOVERNMENT AND ITS AGENTS] ITSELF TO DEPRIVE INDIVIDUAL OF LIBERTY WITHOUT DUE PROCESS OF LAW. LIKE ITS COUNTERPART IN THE 5TH AMEND. THE DUE PROCESS CLAUSE OF THE 14TH AMEND WAS INTENDED TO PREVENT GOVERNMENT FROM ABUSING [ITS] POWER, OR EMPLOYING AS AN INSTRUMENT OF OPPRESSION. IT PURPOSE IS TO PROTECT PEOPLE FROM THE STATE TO SECURE THE INDIVIDUAL FROM THE ARBITRARY EXERCISE OF THE POWERS OF GOVERMENT AND PREVENT GOVERNMENTAL POWER FROM BEING USED FOR PURPOSES OF OPPRESSION. ID 1003. WARDEN CARTLEDGE IS USING ADMIN SEG AS A PRETEXT TO INDEFINITELY SOLITARY CONFINE APPELLANT FOR THE UNDETERMINED DURATION OF HIS CONFINEMENT AT PCI TO SATISFY HIS PERSONAL BIASNESS. (EXHIBIT _____). HISTORY REFLECTS THE TRADITIONAL AND COMMON SENSE NOTION THAT THE DUE PROCESS CLAUSE WAS INTENDED TO SECURE THE INDIVIDUAL FROM THE ARBITRARY EXERCISE OF THE POWERS OF GOVERNMENT . . . BY REQUIRING THE GOVERNMENT TO FOLLOW APPROPRIATE PROCEDURES WHEN ITS AGENTS DECIDE TO "DEPRIVE ANY PERSON OF LIBERTY", THE DUE PROCESS CLAUSE PROMOTES FAIRNESS IN SUCH DECISIONS. AND BY BARRING CERTAIN GOVERMENT ACTIONS REGARDLESS OF THE FAIRNESS OF THE PROCEDURES USED TO IMPLEMENT THEM. DANIELS V. WILLIAMS, 106 S.Ct. 662, 665 (1986) (See CLEVELAND BOARD OF EDUCATION V. LOUDERMILL, 105 S.Ct. AT 1493-96 (1985); ZINERMON V. BURCH, 110

S.Ct. AT 983, 988 (1990)). [A]N Impartial Decision Maker is one, inter Alia, Does Not Prejudge the evidence And Who Can not SAY, With utter Certainty, how he would Assess evidence he has NOT heard. It Would be Improper For Prison Officials To decide The Disposition of A Case before it WAS heard. With the PASSAGE OF TIME, it becomes Incumbent ON PRISON OFFICIALS TO MEANINGFULLY Determine Whether Prisoner REMAINS A Threat TO Security. GIANO V. KELLY, 2011 WL 8768855; See ALSO: OP-21.04 (16.1); OP-22.12 (5.1) (6.1). WARDEN CARTLEDGE has Sole Authority OVER APPELLANT'S Release or CONTINUOUS CONFINEMENT IS FAR FROM AN IMPARTIAL DECISION MAKER. The Substantive Due Process Guarantee ensures A Person Deprived OF Liberty, At Minimum A RATIONAL BASIS; And NOT Be Arbitrary or overly VAGUE. In Re Treatment And Care of Luckabaugh, 568 S.E.2d 338, 346-347 (S.C. 2002) (Quoting ~~Either~~ Foucha V. Louisiana, 112 S.Ct. 1780, 1785 (1992)). To Survive A Strict Scrutiny ANALYSIS The Government ACTION MUST MEET A COMPELLING STATE Interest And be NARROWLY Tailored To EFFECTUATE That interest. Id 341; OP-21.04 (46) (46.1). The Constitution Requires THE GOVERNMENTAL ACTION ensure Involuntary Commitment Procedures Are ONLY USED To CONTROL A dangerous Person And NOT TO Broadly Subject ANY dangerous Person TO WHAT MAY be Indefinite Terms. The evidence Present AT the hearing MUST Show THE individual HAS "Serious difficulty IN Controlling behavior". Id 349. [T]he CONSTITUTIONAL GUARANTY OF EQUAL PROTECTION OF LAWS REQUIRES THAT ALL PERSONS SHALL BE TREATED ALIKE Under LIKE CIRCUMSTANCE And Conditions, both in The Privileges Conferred and in The Abilities Imposed ---- The EQUAL Protection GUARANTY IS intended To Secure EQUALITY OF Protection NOT ONLY For ALL, but AGAINST ALL Similarly Situated. ID 350 Quoting Thompson V. South Carolina Comm'n on Alcohol And Drug Abuse, 229 S.E.2d AT 722 (1976). The APPELLANT'S Indefinite Solitary CONFINEMENT IS NOT A ROUTINELY OR ordinarily IMPOSED UPON Similarly Situated Prisoners For A (3) Times ALREADY CLASSIFIED DISC. Rule Violation Prior to initial ADMIN SEG Review And (23) months old AT hearing Time NOW (1,110) DAY OLD NOW. The Equal Protection Clause ONLY Forbids "Irrational And UNJustified CLASSIFICATION". ID 351. APPELLANT believes he has Shown his Solitary CONFINEMENT CLASSIFICATION IS IRRATIONAL AND UNJUSTIFIED Founded UPON WARDEN CARTLEDGE'S PERSONAL Prejudices And Arbitrary ACTION. AJAJ V. U.S., 479 F. Supp. 2d 501, 509, 546 (D.S.C. 2007).

CONCLUSION

Wherefore, the Above Foregoing Reasons, Appellant Prays This Appellate Court orders SCDC to (1) Desist Arbitrary use of Admin Seg As Pretext For Indefinite Confinement; (2) Provide Appellant With Fair, Impartial, And Neutral Legitimate Reviews); (3) Provide Appellant With Notice of Review hearing, Brief Summary of Factual basis of hearing, Opportunity to Analyze The evidence To Be used Against him, And Opportunity For Rebuttal, AND ANY OTHER Relief This Honorable Court Deems Just And Proper. It has been Clearly established A Prisoner Retains his Constitutional Rights of Immunity From The Arbitrary And Capricious Imposition of Punishment For breaking Prison Disc. Rules. The Procedures required by These Cases ARE NOT intended To Be empty Rituals. When Prisoner has NOT broken ANY Rules, The State has an obligation To Provide An explanation For Treating him As Though he had. Confining him As Though he has breached Prison Rules, When in Fact he has NOT, is So Arbitrary And Capricious That it Deprive him of Due Process of Law. Sweet v. South Carolina Dept' of Correction, 529 F.2d At 867-868; Cooper v. SCDC Dept' PPPS, 661 S.E. 2d AT 112. Thus, Requested Relief Granted would Meet The ends of Justice.

Respectfully Submitted,

Mr. Michael L Jones

MR. Michael L. Jones
PCI D-X # 21
430 Oaklawn Rd.
Pelzer, SC 29669

Sworn To And Subscribed Before Me
This 20th DAY OF February, 2014.

Nancy C Mitchell (L.S.)
Notary Public:
1-23-2023
My Commission expires:

STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE DEBORAH B. DURDEN
CASE NO. 13-ALJ-04-0965-AP

APPELLATE CASE NO. 2014-000226

Michael Jones #237769, ---------- APPELLANT,
V.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ---------- RESPONDENT.

PROOF OF SERVICE

I, CERTIFY THAT ON THIS 27th DAY OF FEBUARY, 2014, I DID SERVE A COPY OF APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE UNCONCLUDED INTO THE RECORD ON APPEAL UPON THE FOLLOWING:

1) S.C. COURT OF APPEALS, JENNY A. KITCHINGS, CLERK, P.O. BOX 11629 COLUMBIA S.C. 29211
2) CHRISTOPHER D. FLORIAN, ESQ. SCDC OFFICE OF GENERAL COUNSEL, P.O. BOX 21787 COLUMBIA, SC 29221.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 27th DAY OF FEBUARY, 2014.
Mary C Muchant (L.S.)
NOTARY PUBLIC:
1-23-2023
MY COMMISSION EXPIRES:

RESPECTFULLY SUBMITTED,
MR. Michael Jones
MR. MICHAEL L. JONES
PCI
4300 AKLAWN RD.
DARLINGTON, SC 29069

MR. Michael L. Jones #237769
PCI 4430 OAKLAWN Rd.
PELZER, SC 29669

9MS

RECEIVED
FEB 27 2014
P.C.I. MAILROOM

Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAR 05 2014
SC Court of Appeals

LEGAL MAIL