

The State of South Carolina  
In The Court of Appeals

---

Appeal From The Administrative Law Court  
Deborah Brooks Darden, Judge  
Case NO: 12-ALJ-04-00444-AP  
Appellate Case NO. 2012-213396

Billy Lee Lisenby JR;

Appellant

v.  
South Carolina Department of Corrections,  
Respondent

---

Appellant's Final Brief

---

Billy Lee Lisenby JR, #200273  
990 Wisacky Hwy.  
Bishopville S.C. 29010  
Pro-Se

Christopher D. Florian  
S.C. Department of Corrections  
P.O. Box 21787  
Columbia, S.C. 29221

Dated: Feb. 5<sup>th</sup> 2014

**RECEIVED**  
FEB 20 2014  
**SC Court of Appeals**

Table of Contents

Table of Authorities ..... ii  
Statement of Issues on Appeal ..... 1  
Statement of The Case ..... 2  
Arguments #1, #2, #3 ..... 3-5  
Conclusion ..... 6

0

Table of Authorities

Cases

Wolff v. Mc Donnell, 418 U.S. 539, 563-72, 94 S.Ct 2963, 2978-82 (1974)

0

## Statement of Issues on Appeal

1. Did the ALJ err in failing to find that the language in the Request to Staff from Inmate did not contain life threatening, or bodily injury threats?
2. Did the ALJ err in failing to find that Appellant was denied his right to confront his accuser and no reason was given or placed on the 19-29A form?
3. Did the ALJ err in failing to find that the Respondent's violated policy by charging and convicting Appellant with (3) non-assaultive disciplinarys in one day?

RECEIVED

FEB 12 2013

SC Court of Appeals

0

## Statement of The Case

On Jan. 5<sup>th</sup> 2011 Appellant was convicted of 809 Threatening to Inflict Harm on or Assaulting an employee and or members of the Public. He appealed through Step 1 and Step 2 of S.C.D.C.'s grievance system and the conviction was affirmed. He then appealed to the ALJ and it was denied on October 3, 2012 by Deborah Brooks Dunder, Judge.

## Argument(s) # 1

The language in the Request to Staff from Inmate did not contain life threatening, or bodily injury threats.

Appellant is accused of threatening Assoc. Warden Burton in stating "IF they keep fucking with me I'm going to fuck with them." It's plain to see he was talking about if the officers continue putting bogus write-ups, and harassing him, he is going to start back putting paperwork on them. He plainly stated "I have not been putting paperwork on anybody and I've been laying down." Appellant never threaten to do harm to anybody. Nobody claim to be threaten by him. The appropriate charges would've been 818 Use of Obscene, Vulgar, or Profane Language or Gestures or 836 Disrespect. They are defined as follows:

"818 Use of Obscene, Vulgar or Profane Language or Gestures: The act of any inmate who verbalizes or writes lewd or indecent notes or letters to another person, or makes gestures or actions that are discourteous or disrespectful in nature, when the person who receives verbal statements, notes, letters, gestures, or actions complains of such."

"836 Disrespect: The failure of any inmate to observe proper decorum or who willfully engages in action or make statements to a person which are discourteous in nature, which may or may not include the use of profanity."

809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public: is defined as follows:

"Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future;"

The language in the Request to Staff does not fit the description of 809 Threatening to Inflict Harm.

## Argument #2

Appellant was denied his right to confront his accuser and no reason was given or placed on the 19-29A Form?

On 12-23-10 at 11:22 PM Appellant checked the appropriate box on the 19-69 Form that states "I DO WANT MY ACCUSER PRESENT AT THE HEARING." Appellant abided by policy OP-22.14 Section 15.4 which states "The inmate must request the accuser's (s) presence prior to the hearing utilizing Form 19-69." He was denied his right to confront <sup>his</sup> accuser, and no reason was given or placed on his 19-29A.

The Respondent's violated OP-22.14 Section 15.5 which states:

"Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official."

They never tried to get Appellant's accuser on the phone. They never stated why he was not available.

This is a violation of 18.1 which states:

"SCDC Form 19-69 "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information: 18.1.4 whether questioning of the inmate's accusers, if requested, was denied and, if so, the reasons for the denial."

Appellant's accuser was at the institution and he is the Warden, he is on call 24 hrs a day. Appellant's accuser is over operations even when he is not at work they can page him and he'll call back in mins. The D.H.O could've contacted his accuser easily, and had him on speaker phone. They called for approval to put me in the restraint chair at 2:00 AM one morning. By him being at the institution the day of Appellant's hearing he could've been called.

They have violated *Wolff v. McDonnell*, 418 U.S. 539, 563-72, 94 S.Ct 2963, 2978-82 (1974).

### Argument #3

The Respondent violated policy by charging and convicting Appellant with (3) non-assaultive disciplinarys in one day.

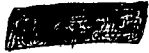
Appellant had been on SMU for 22 months and he habitually commit non-assaultive offenses. Per policy I can only go to the D.H.U once per month for non-assaultive charges. He was convicted of (3) three non-assaultive disciplinarys on Jan. 5, 2011. This is a violation of DP-22.14 section 21 which states:

"Disciplinary Charges for Inmates in Special Management Unit And Maximum Security Unit: Inmates housed in SMU and MSU, who habitually commit non-assaultive offenses will have the incidents, disposed of by utilizing S.C.D.C Form 19-29 A. The infraction will be entered into the offender Management System DISC screen using Type Action "03" which will show as, "Closed - Other Action Taken / Informally Resolved." IF the inmate commits a non-assaultive charge and earns goodtime, s/he may be charged once per month and provided with a disciplinary hearing. There fore, accrued goodtime maybe taken for disciplinary violations."

Respondent abide by this policy with all inmates except Appellant. This is a violation of U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 (stating "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.")

Conclusion

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

Dated:  Feb. 5<sup>th</sup> 2014

Respectfully Submitted,

Bill Lee *Bill Lee*

The State of South Carolina

In The Court of Appeals

Appeal From The Administrative Law Court  
Deborah Brooks Dunder, Administrative Law Judge

---

Case NO. 2012-213396

---

Billy Lee Lisenby JR; ..... Appellant

vs.

S.C. DC ..... Respondent

---

Proof of Service

---

I certify that I have served the Appellant's Final Brief by depositing a copy of each in the United States Mail, postage prepaid on Feb. 5<sup>th</sup>, 2014 addressed to the General Counsel P.O. Box 21787, Columbia, S.C. 29221 and South Carolina Admin. Law Court 1205 Pendleton Street, Suite 224 Columbia, S.C. 29201.

Dated: Feb. 5<sup>th</sup> 2014

1s/ Billy Lee Lisenby  
Billy Lee Lisenby JR, #200273  
990 Winacky Hwy.  
Bishopville S.C. 29006

**RECEIVED**

FEB 20 2014

**SC Court of Appeals**