

The Supreme Court of South Carolina

Billy Lee Lisenby JR, #200273, Petitioner,

v.

South Carolina Department of Corrections, Respondent

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Appellate Case No. 2012-213124

APR 07 2014

Lower Court Case, 2010 AZ 0400508

S.C. SUPREME COURT

Petition For Joinder of Claims

Petitioner moves the court to join this Writ of Certiorari with the Petition For Sentence Reduction, in the interest of judicial economy & states as follows:

1. The main objective of his Writ of Certiorari & the Petition For Sentence Reduction, is to get a reduction & an adjustment in my sentence then ultimately released from prison.
2. The Petitioner is clearly entitled to some relief.
3. Wherefore, in the interest of Judicial economy I pray that this Writ of Certiorari is joined with my Petition For Sentence Reduction.

April 1st 2014 S.C.
dated

Billy Lee Lisenby, Jr.
Billy Lee Lisenby, JR. #200273
SMU-B21, MCC I
386 Redemption Way
McCormick, S.C. 29399

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The Supreme Court of South Carolina

Billy Lee Lisenby JR; #200273, Petitioner

v.

South Carolina Department of Corrections, Respondent

Appellate Case NO. 2012-213124

Lower Court Case NO. 2010-AZ-0400508

Petition FOR Reinstatement/Reconsideration

Petitioner hereby petitions this court FOR Reinstatement/Reconsideration ENBANC, & states as follows:

1. Petitioner requested the presence of ten (10) witnesses. None of these witnesses were present at the hearing, & per policy the charge was first offense, not a second as convicted.

Witnesses

2. A qualified right to call witnesses in one's behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974). Prison officials have considerable discretion in determining whether to permit an inmate's witness to testify. Zaczek v. Hutto 642 F.2d 74, 76-77 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. Segarra v. McDade, 706 F.2d 1301 (4th Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4th Cir. 1982) (en banc); Brown v. Frey, 889 F.2d 159 (8th Cir. 1989). However, prison officials must provide a reason for their refusal to call a witness, & that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 105 S.Ct. 2192, 85 L. Ed. 2d 553 (1985). The burden of persuasion regarding the existence & sufficiency of these institutional concerns rests with prison officials, rather than the prisoner. Smith v. Massachusetts Dept. of Corrections, 936 F.2d 1390 (1st Cir. 1991).

Prison officials may choose to explain their decision at the hearing, or they may choose to explain it later [REDACTED]
[S]o long as the reasons are logically related to institutional safety or correctional goals, 'the explanation should meet the due process requirements as outlined in Wolff. Ponte v. Real, 471 U.S. at 497.

3. In this case, the hearing officer gave no explanation for refusing to allow the witnesses to appear & S.C.D.C. offered none in their brief.

First Offense

4. Petitioner only has one (1) conviction for 801 Assault & Battery per policy. See attached Exhibit #1 - Response of Classification Worker Mrs. Pugh, Pugh stated that "as of date you have one (1) Assault on Employee". The DHU convicted Petitioner for a 2nd offense & sentenced him to 720 days Disciplinary Detention & 150 days loss of good time. The max Petitioner could receive for a First offense is half of this, 360 days Disciplinary Detention.

5. Therefore, at a minimum Petitioner is entitled to some relief, i.e., resentenced to 360 days Disciplinary Detention.

AID TO AN Employee

6. On August 23, 2011 Petitioner substantially assisted SGT. Miles & C/O Smith from being seriously injured or killed. See attached Exhibit #4 - Petitioner 11-13-13 letter to the 4th Circuit Solicitor & Exhibit #2 - Petitioner's mother 11-13-13 letter.

7. There is no dispute as to Petitioner's heroic actions. See Exhibit #3 - William R. Byars, JR. 2-21-13 letter. SCDC does not dispute Petitioner's substantial assistance.

8. Pursuant to § 17-25-65, if the Petitioner gives "[a]id to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed" is entitled to a sentence reduction. See Rule 29, SCRCrimP.

9. There is no genuine issue as to any material fact, Petitioner is entitled to, by law, a sentence reduction.

Conclusion

10. Due process has been violated, where my right to be heard has been violated by respondent refusing my witnesses' presence. The hearing officer gave no explanation for refusing to allow the witnesses to appear & SCDC offered none in their brief. Therefore, the charge must be vacated with prejudice &/or Remand to the DHU for a Re-hearing. (3rd Hearing!!!)
11. Due process has been violated, where Petitioner was sentenced outside the sentencing guidelines. Therefore, this Court should order Petitioner to be immediately released from SMU, then released from prison.
12. In the interest of justice & Fundamental, Petitioner has substantially assisted SGT. Miles & C/o Smith from being seriously injured or killed & should have his sentence reduced.

April 1st, 2014, S.C.
dated

x Billy Lee Lisenby, Jr.
Billy Lee Lisenby, JR, #200273
SMU-B21 MCC1
386 Redemption Way
M^c Cormick, S.C. 29899

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FBI/DOJ

The Supreme Court of South Carolina

Billy Lee Lisenby JR, #200273, Petitioner

v.

South Carolina Department of Corrections, Respondent

Appellate Case No. 2012-213124

Lower Court Case No. 2010-AL-0400508

PROOF OF SERVICE

I hereby certify that I served a copy of this with exhibits Petition For Reinstatement/
Reconsideration and Petition For Joinee of Claims on; Office of Attorney General; PO Box 11549;
Columbia, S.C. 29211-1549, and Christopher Florian / SCDC Staff Attorney, 4444 Broad River Rd;
Columbia, S.C. 29201

Dated: April 1st, 2014

Billy Lee Lisenby JR
Billy Lee Lisenby JR, #200273
SMU-21 MCC I
386 Redemption Way
McCormick, S.C. 29899

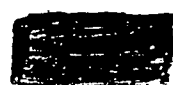
South Carolina Department of Corrections
Request To Staff

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MRS. Pugh Classification	MAY 20 2009	Date:
Billy Lisenby	INMATE RECORDS TURBEVILLE CI	5-18-09
Turbeville		SCDC# 200273
		Living Quarters: ASU-152

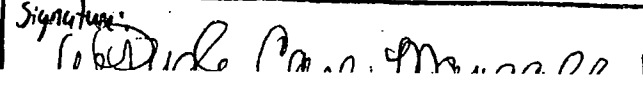
I have (2) holds on me in the computer for NC. But NC. has sent Fax after to Columbia advising sentences for Flee/Evade Arrest 08CRS050328 and Attempted Assault on a Government official 08CRS1685. Run concurrent with my S.C. time. My charge for Attempted Murder 08CRS050328 was dismissed when I pled guilty to the same. NC. is constantly faxing S.C. and they refuse to up-date it.

How many 801 Assault and/or Battery of S.C. Department of Corrections Employees do I have on my Record?

 Page 1 Exhibit #1

holds are there stating you were sentenced on these yes and should not be release until completed. date you have (1) one Assault on Employee

01/14/09

Signature: 

Patricia Ann Lisenby

355 Hickory St.
Ruby, South Carolina 29741

Home: 843-634-3475
Cell: 843-680-3845

November 13, 2013

Fourth Circuit Solicitor
William B. Rodgers, JR.
PO Box 616
Bennettsville, SC 29512

RE: Substantial Assistance to the State, Reduction of Defendant's Sentence.

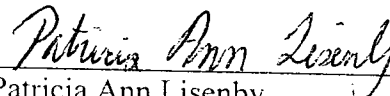
Honorable Solicitor,

Enclosed is a letter from my son, Billy Lee Lisenby Jr., #200273, an inmate in the South Carolina Department of Corrections. I am asking that you please use your judicial power and file a motion pursuant to 17-25-65, Substantial Assistance to the State, Reduction of Defendant's Sentence, section (4):

"Aid to a Department of Corrections employee or volunteer
who was in danger of being seriously injured or killed."

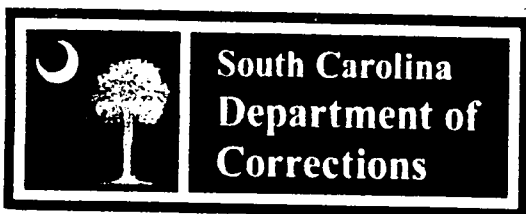
I ask that you take this into deep consideration.

Sincerely,


Patricia Ann Lisenby

CC: Office of Inspector General Daniel Murphy
File

Exhibit #2



NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

February 21, 2012

AGENCY MAIL SERVICES

The Honorable Glenn G. Reese
502 Gressette Senate Building
Columbia, South Carolina 29201

RE: Inmate Billy Lee Lisenby, SCDC # 200273

Dear Senator Reese:

Thank you for your letter, dated February 2, 2012, inquiring about a sentence reduction for Inmate Lisenby.

In accordance with Section 17-25-65, South Carolina Code of Laws, inmates who substantially assist a Department of Corrections employee or volunteer who has been or is in danger of being seriously injured or killed may be eligible to receive a reduction of sentence. It will be the inmate's responsibility to notify the circuit solicitor in the county where his case arose. The final decision to grant or deny the sentence reduction is made by the chief judge or a circuit court judge currently assigned to that county and not by SCDC.

It appears that Inmate Lisenby and his mother have taken the appropriate course of action by contacting the Solicitor of the county in which the alleged heroic actions occurred.

I hope this response addresses your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

William R. Byars, Jr.

WRB:tfc

cc: Mr. Dexter Lee
Inmate Lisenby
Institutional File
Inmate Record
File

Exhibit #3

Billy Lee Lisenby, Jr. #200273
South Carolina Department of Corrections

4444 Broad River Road.

Columbia, South Carolina 29201

November 13, 2013

Fourth Circuit Solicitor
William B. Rodgers, Jr.
PO Box 616
Bennettsville, SC 29512

RE: Substantial Assistance to the State, Reduction of Defendant's Sentence.

Dear Solicitor,

I am writing you asking that you file a motion pursuant to 17-25-65, Substantial Assistance to the State, Reduction of Defendant's Sentence, section (4):

"Aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed."

On August 23, 2011, at approximately 2:30 PM while the Chester Field Unit at Lee County Correctional Institution was at pill line, a folk gang member and a blood gang member began to fight. At this time numerous inmates began brandishing homemade knives and shanks. Sgt. Miles and C/O Smith began using a large amount of chemical munitions and as a result both officers became blind. C/O Smith dropped her chemical munitions and keys and as she was fumbling for her keys and chemical munitions, several inmates began grabbing her. So I stepped up and grabbed her arm and made everybody step away, giving her the opportunity to retrieve the security items. I tried to take her to the water fountain but she would not go so I escorted her to the door where the nurse opened the door and I pushed her in.

While I was assisting C/O Smith, Sgt. Miles was stumbling around when a blood gang member was stepping behind with a homemade shank attempting to stab him. I then grabbed the gang members arm causing him to drop his weapon. Then when I made an attempt to help Sgt. Miles in medical, he used chemical munitions on me and everybody else that was standing there. I was denied medical treatment due to this.

Sgt. Miles is a white officer the bloods dislike. If it was not for my assistance this incident would have gotten out of hand. Lee County is the roughest prison in the state of South Carolina and Chester Field Unit is the roughest dorm.

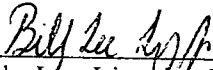
Exhibit #4

Now my life is on the line for protecting a racist Sgt. I filed a grievance on this issue and nothing has been done. Now I am being transferred from prison to prison because the bloods and folk gang members want to kill me.

Will you file a motion pursuant to section 17-25-65(4) in your circuit?

Your time and help will be highly appreciated.

Thanking you in advance!



Billy Lee Lisenby Jr., #200273

Exhibit #4

Billy Lee Linsby JR, # 200220
McCormick C.I.
386 Redemption Way
McCormick, S.C. 29899

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APR 01 2014

MCCI
MAIL ROOM

South Carolina Supreme Court

P.O. Box 11330

Columbia, S.C. 29211

LEGAL MAIL

The Department of Corrections has
not inspected this item. Therefore the
Department does not assume any
responsibility for its contents.