

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE S. PHILLIP LENSKI
CASE NO. 13-ALS-04-0824-AP

APPELLATE CASE NO. 2014-000432

JAMES GUNNELLS #305475 _____ APPELLANT,

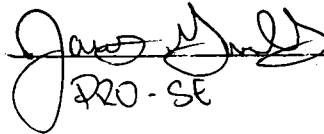
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS _____ RESPONDENT.

APPELLANTS INITIAL BRIEF

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SC Court of Appeals

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CITATIONS OF AUTHORITY

- 1.) AL-SHABAZZ V. STATE, 527 S.E.2d 742, 756 (S.C. 2000)
- 2.) JIJUMAA V. OZMINT, 507 F.3d 281, 283 (4th CIR. 2007)
- 3.) IQBAL V. HASTY, 490 F.3d 143, 161 (2d. CIR. 2007)
- 4.) LINDSEY V. SCDC, 2009-ALTJ-04-0125-AP (SEPT. 16, 2009)
- 5.) MATTHEWS V. ELDRIDGE, 424 U.S. 319 (1976)
- 6.) MORRISSEY V. BREWER, 96 S. CT AT 2604
- 7.) NIX V. EVATT, 850 F. SUPP, 455 S.C.
- 8.) PEE V. AVM, INC., 543 S.E.2d 232, 234 (S.C. APP. 2001)
- 9.) RUSH V. PATTERSON, 2011 WL 7063648 (D.S.C.)
- 10.) SANDHU V. CONNER, 515 U.S. 472 (1995)
- 11.) S.C. CODE ANN. § 1-23-610 (B) (SUPP. 2006)
- 12.) SCDC POLICY / PROCEDURES, OP-21.04, OP-22.14
- 13.) STATE V. BACCUS, 625 S.E.2d 216, 220 (2006)
- 14.) SWEET V. SOUTH CAROLINA DEPT. OF CORRECTIONS, 529 F.2d 854, 859 (C.A. SC 1975)
- 15.) WILKINSON V. AUSTIN, 545 U.S. 209, 125 S. CT. 2384
- 16.) HEWITT V. HELMS, 459 U.S. 460, 471-472, 103 S. CT. 864, 871-872, 74 L. ED. 2d 675 (1983)

STATEMENT OF ISSUES ON APPEAL

- I. DID ALJ ERR IN CONCLUDING APPELLANT HAD NO STATE-CREATED LIBERTY INTEREST BECAUSE HE LOST NO GOOD TIME AS A RESULT OF HIS DISCIPLINARY CONVICTION?
- II. DID ALJ ERR IN NOT RULING ON, OR ADDRESSING A CONSTITUTIONALLY PROTECTED 14TH AMENDMENT (DUE PROCESS) VIOLATION BY NOT ALLOWING APPELLANT THE OPPORTUNITY TO CALL WITNESSES ON HIS BEHALF WHEN PERMITTING HIM TO DO SO WOULD NOT BE HAZARDOUS TO SAFETY OR CORRECTIONAL GOALS?

STATEMENT OF THE CASE

THIS MATTER IS BEFORE THE COURT OF APPEALS PURSUANT TO THE APPEAL OF JAMES GUNNELLS (APPELLANT), AN INMATE INCARCERATED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (S.C.D.C.). APPELLANT FILED A STEP 1 GRIEVANCE WITHIN (S.C.D.C.) ASSERTING A DUE PROCESS VIOLATION IN THE FORM OF NOT ALLOWING THE APPELLANT TO PRODUCE EVIDENCE / CALL WITNESSES AT HIS DISCIPLINARY HEARING HELD ON JUNE 07, 2013. THE STEP ONE WAS FILED ON JUNE 12, 2013, AND THE ISSUE WAS NEVER ADDRESSED BY THE WARDEN AND ULTIMATELY DISMISSED. THE APPELLANT THEN FILED A STEP 2 GRIEVANCE ON JULY 01, 2013 ATTEMPTING TO GET THE ISSUES RESPONDED TO, BUT AGAIN TO NO AVAIL, AND THE ISSUE WAS NEVER ADDRESSED. APPELLANT RECEIVED THE AGENCY'S FINAL DECISION ON SEPTEMBER 10, 2013 WHICH DENIED APPELLANT THE RELIEF HE REQUESTED IN HIS GRIEVANCE. ON OCTOBER 23, 2013 APPELLANT FILED A NOTICE OF APPEAL TO THE ADMINISTRATIVE LAW COURT. ON NOVEMBER 13, 2013 APPELLANT'S CASE WAS ASSIGNED TO ADMINISTRATIVE LAW JUDGE S. PHILLIP LENSKI. ON JANUARY 31, 2014 A ORDER OF DISMISSAL WAS FILED DISMISSING APPELLANT'S APPEAL WITH PREJUDICE STATING THERE WAS NO STATE-CREATED LIBERTY INTEREST IMPLICATED. ON FEBRUARY 28, 2014 APPELLANT FILED THIS APPEAL WITH THE COURT OF APPEALS ASSERTING STATE-CREATED LIBERTY INTEREST IS PRESENT, DUE PROCESS VIOLATIONS ARE PRESENT, ATYPICAL AND SIGNIFICANT HARDSHIP ON HIS PERSON IN RELATION TO ORDINARY INCIDENTS OF PRISON LIFE ROUTINELY IMPOSED. APPELLANT'S APPEAL THUS FOLLOWS.

STATEMENT OF FACTUAL / PROCEDURAL HISTORY

ON MAY 03, 2013 APPELLANT WAS PLACED IN MAXIMUM SECURITY SPECIAL MANAGEMENT UNIT (SMU) ON PRE-HEARING DETENTION STATUS (P.H.D) FROM AN INCIDENT THAT TOOK PLACE IN Q-3-B (HOUSING UNIT) (GENERAL POPULATION) ON MAY 02, 2013. ON MAY 09, 2013 APPELLANT WAS FINALLY GIVEN NOTICE OF THE PENDING DISCIPLINARY HEARING TO BE HELD FOR THE INSTITUTIONAL RULE VIOLATION AND GIVEN THE ONLY CHANCE AVAILABLE TO PRESENT A FORM S.C.D.C. 19-11 REQUEST TO STAFF MEMBER FOR MY WITNESSES TO BE PRESENT ON MY BEHALF. AT THIS TIME (5-09-13) MS. POLLMAN THE SERVING OFFICIAL TOOK THE REQUEST WITH HER AND LEFT S.M.U.. ON JUNE 07, 2013 APPELLANT WENT IN FRONT OF DISCIPLINARY HEARING OFFICER MS. GLIDEWELL FOR THE PENDING INFRACTIONS. APPELLANT WAS ULTIMATELY FOUND GUILTY OF THE INFRACTIONS AND SENTENCED TO SERVE 360 DAYS OF DISCIPLINARY DETENTION (D.D.) WITH A LOSS OF VISITATION, CANTEEN, PHONE AND PROPERTY FOR THE SAME (360) DAYS TO BE SERVED AFTER THE COMPLETION OF THE DISCIPLINARY DETENTION TIME. APPELLANT WAS ALSO SUBJECTED TO HAVE HIS OLD (D.D.) TIME WHICH WAS WAIVED BY THE WARDEN PREVIOUSLY, REINSTATED TO COMPLETE, ALSO AFTER COMPLETION OF THE (360) DAYS THAT APPELLANT RECEIVED ON JUNE 07, 2013. APPELLANT INSTEAD OF COMPLETING HIS (D.D.) TIME ON MAY 03, 2014, NOW HAS (D.D.) TIME WHICH IS EXTENDED TO MARCH 22, 2017, AND AT THAT TIME THERE IS NO GUARANTEE THAT APPELLANT WILL BE RELEASED BACK TO GENERAL POPULATION BEING AS THOUGH HE FACES THE POSSIBILITY OF BEING RE-CLASSIFIED INTO SECURITY DETENTION (S.D.) STATUS WHICH IS AN INDEFINATE TERM OF CONFINEMENT. AT THE HEARING (DISCIPLINARY) HELD ON JUNE 07, 2013 APPELLANT WAS DENIED THE CHANCE TO CALL WITNESSES ON HIS BEHALF BY HEARING OFFICER MS. GLIDEWELL. SHE (D.H.O. GLIDEWELL) STATED SHE NEVER RECEIVED OR WAS PRESENTED ANY REQUEST FOR WITNESSES FROM APPELLANT. APPELLANT STATES THIS IS CLEARLY FALSE INFORMATION BEING AS THOUGH HE PROVIDED ALL PARTIES A COPY OF HIS REQUEST FOR WITNESSES WHICH CLEARLY SAYS THE REQUEST WAS WRITTEN ON MAY 09, 2013, IT WAS STAMPED AS RECEIVED BY THE DISCIPLINARY DEPARTMENT ON MAY 14, 2013, AND MY HEARING WAS HELD ON JUNE 07, 2013 WHICH SHOWS I CLEARLY REQUESTED WITNESSES IN A TIMELY AND SUFFICIENT MANNER AND WAS DENIED THE RIGHT WITHOUT ANY JUSTIFICATION. I ALSO TRIED TO SPEAK ABOUT MY OPPORTUNITY TO CALL WITNESSES BRIEFLY ON THE RECORD AND WAS TOLD BY (D.H.O.) MS. GLIDEWELL NOT TO SPEAK ABOUT IT THAT IT'S NOT AN ISSUE, WHICH IT CLEARLY IS THE CATALYST OF THE WHOLE HEARING.

STANDARD OF REVIEW

PRO-SE ACTION, REQUIRES THE COURT TO LIBERALLY CONSTRUCT 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 (ALJ'S) FINDING UNLESS ITS CLEARLY ERRONEOUS. STATE V. BACCUS, 625 S.E. 2d 216, 220 (2006). SECTION 1-23-610 OF THE SOUTH CAROLINA CODE ANN. (B) (SUPP. 2006) SETS FORTH THE STANDARD OF REVIEW WHEN THE COURT OF APPEALS IS SITTING IN REVIEW OF A DECISION BY THE ALC ON AN APPEAL FROM AN ADMINISTRATIVE AGENCY. "THE REVIEW OF THE ADMINISTRATIVE LAW JUDGES ORDER MUST BE CONFINED TO THE RECORD." ID. THE COURT OF APPEALS MAY REVERSE OR MODIFY THE DECISION ONLY IF SUBSTANTIVE RIGHTS OF THE APPELLANT HAVE BEEN PREJUDICED BECAUSE THE DECISION IS CLEARLY ERRONEOUS IN LIGHT OF THE RELIABLE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; ARBITRARY OR OTHERWISE CHARACTERIZED BY AN ABUSE OF DISCRETION, OR AFFECTED BY OTHER ERROR OF LAW. ID. ANY AGENCY GUIDELINES SHOULD BE GIVEN ITS PLAIN AND ORDINARY MEANING. PEE V. AVM, INC. 543 SE. 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 OTHERWISE 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). AN INMATE 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 DEPARTMENT OF CORRECTIONS, 529 F.2d 854, 859 (C.A.5.C. 1975).

I. DID ALJ ERR IN CONCLUDING APPELLANT HAD NO STATE-CREATED LIBERTY INTEREST BECAUSE HE LOST NO GOOD TIME AS A RESULT OF HIS DISCIPLINARY CONVICTION?

AN INMATE DOES NOT HAVE TO LOSE GOOD TIME CREDITS TO HAVE A STATE-CREATED LIBERTY INTEREST. A CONDITION OF CONFINEMENT COULD IMPLICATE A STATE-CREATED LIBERTY INTEREST. IN SANDIN THE COURTS ADOPTED A TWO-PRONG APPROACH TO DETERMINE IF A PRISONERS CONSTITUTIONALLY PROTECTED LIBERTY INTERESTS ARE IMPLICATED BY HIS CONDITIONS OF CONFINEMENT. IN THIS TWO-PRONG TEST AN INMATES INTEREST IN HIS CUSTODY STATUS OR CONDITIONS OF CONFINEMENT IS PROTECTED BY THE DUE PROCESS CLAUSE IF THE DEPARTMENTS ACTIONS CONCERNING THAT INTEREST; (1) RESULT IN AN ATYPICAL AND SIGNIFICANT HARDSHIP, IN EITHER DURATION OR DEGREE OF RESTRICTION IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE; OR (2) AFFECT THE DURATION OF THE PRISONERS SENTENCE. ID. AT 486-487. ONCE A COURT DETERMINES A LIBERTY INTEREST IS PRESENT, IT WILL THEN INQUIRE AS TO WHAT PROCESS IS DUE BY CONSIDERING THE THREE FACTORS SET FORTH IN MATTHEWS V. ELDRIDGE, 424 U.S. 319 (1976). THE FIRST SANDIN PRONG ADDRESSES LIBERTY INTEREST DETERMINATIONS RELATED TO STATE-CREATED LIBERTY INTERESTS. BECAUSE APPELLANT IS CURRENTLY SERVING A LIFE WITHOUT PAROLE SENTENCE, THE SECOND PRONG UNDER SANDIN IS NOT APPLICABLE TO APPELLANT.

APPELLANT WAS INITIALLY SEGREGATED IN SOLITARY CONFINEMENT ON MAY 03, 2013. ON JUNE 07, 2013 APPELLANT WAS CONVICTED OF THE DISCIPLINARY OFFENSE OF "809", AND WAS SANCTIONED WITH (360) DAYS OF DISCIPLINARY DETENTION TO BE SERVED IN THE SPECIAL MANAGEMENT UNIT (SMU), WHERE APPELLANT IS NOW CONFINED AND HAS BEEN SINCE THE INITIAL CHARGING. AS A RESULT OF THE CONVICTION, APPELLANT ALSO LOST HIS CANTEEN, PROPERTY, PHONE AND VISITATION PRIVILEGES FOR AN ADDITIONAL (360) DAYS TO BE STARTED ONLY AFTER COMPLETION OF THE INITIAL DISCIPLINARY DETENTION TIME APPELLANT RECEIVED ON JUNE 07, 2013. THE CONVICTION IS ALSO CLASSIFIED AS AN "ASSAULTIVE" OFFENSE, EVEN BEING THAT NOTHING ASSAULTIVE TOOK PLACE DURING, BEFORE OR AFTER THE INCIDENT. NOW APPELLANT ALSO FACES THE GREAT RISK OF BEING RE-CLASSIFIED AND HAVING HIS CUSTODY LEVEL REDUCED FROM (D.D.) TO THE MORE RESTRICTIVE SECURITY DETENTION (S.D.), WHICH IS THE HIGHEST SECURITY LEVEL OF INMATE ALLOWED IN S.C.D.C. (SMU). ONCE AN INMATE IS PLACED ON (S.D.) STATUS THEY ARE THEN HELD INDEFINITELY WITH NO GUARANTEE OF EVER BEING RELEASED. SEE WILKINSON V. AUSTIN, 545 U.S. 209, 125 S. CT 2384. (INMATES INCARCERATED IN OHIO STATE PRISON AND PLACED ON SEGREGATION FACE PROBLEMS OF EXTREME ISOLATION. (O.S.P.) CELLS HAVE METAL DOORS WITH METAL STRIPS ALONG THEIR SIDES AND BOTTOMS WHICH PREVENTS CONVERSATION OR COMMUNICATION WITH INMATES. ALL MEALS ARE TAKEN ALONE IN THE INMATES CELL INSTEAD OF A COMMON EATING AREA. OPPORTUNITY FOR ANY VISITATION IS RARE AND IN ALL EVENTS CONDUCTED THROUGH GLASS WINDOWS. IT IS FAIR TO SAY (O.S.P.) INMATES ARE DEPRIVED OF ALMOST ANY ENVIRONMENTAL OR SENSORY STIMULI AND OF ALMOST ALL HUMAN CONTACT. ASIDE FROM THE SEVERITY OF THE CONDITIONS, PLACEMENT AT (O.S.P.) IS FOR AN INDEFINITE PERIOD OF TIME, LIMITED ONLY BY AN INMATES SENTENCE. FOR AN INMATE SERVING A LIFE SENTENCE, THERE IS NO INDICATION HOW LONG HE MAY BE INCARCERATED AT O.S.P. ONCE ASSIGNED THERE. AUSTIN! SUPRA, AT 740.) THE CONDITIONS DESCRIBED IN WILKINSON ARE IDENTICAL TO THE CONDITIONS INMATES FACE AT (P.C.I.) A MAXIMUM SECURITY S.M.U. IN THE S.C.D.C. THERE ARE METAL DOORS WITH FLAPS TO COVER THE VIEWING WINDOW WHERE THE OFFICERS CAN OPEN OR CLOSE AT THEIR DISCRETION. THERE ARE BIG WOODEN BOXES PLACED IN FRONT OF EACH CELL SO THERE IS NO DISTINCTIVE CONVERSATION TO BE HAD, OR CIRCULATION MOVABLE THROUGH THE CELL BEING AS THOUGH THE DOOR IS BLOCKED. THIS IN ITS SELF CAN CAUSE A SIGNIFICANT HARDSHIP BECAUSE IT CAN AND HAS CAUSED RESPIRATORY ISSUES AS WELL AS UNSANITARY LIVING CONDITIONS FROM NOT BEING ABLE TO PROPERLY KEEP YOUR CELL CLEAN. ALL MEALS ARE PLACED IN AND EATEN IN THE CELL ALONE. THE CHANCES FOR VISITATION ARE NON-EXISTENT BEING AS THOUGH YOU LOSE ALL PRIVILEGES AT THE TIME OF A CONVICTION, AND THAT TIME ONLY STARTS AFTER YOU COMPLETE YOUR ORIGINAL (D.D.) TIME. SO UNLESS AN INMATE HAS BEEN CONFINED FOR HIS TIME IN TOTALITY HE HAS NO OPTION FOR VISITATION UNLESS ITS A LEGAL / ATTORNEY VISIT AND IT WOULD ALSO BE CONDUCTED IN A BOOTH THRU A GLASS WINDOW. S.C.D.C. (S.M.U) INMATES MAY NOT PARTICIPATE IN PRISON EMPLOYMENT, EDUCATION OR OTHER ORGANIZED ACTIVITY. INMATES ARE CONFINED TO THEIR CELLS TWENTY-FOUR HOURS A DAY, SEVEN-DAYS A WEEK WITH FEW EXCEPTIONS. INMATES DO RECEIVE SHOWERS ON MON., WED., FRI., FOR (15) MINUTE PERIODS IF THEY MEET THE CRITERIA. TO RECEIVE YOUR SHOWER YOU MUST GO THROUGH A DEMENTING PROCESS OF A EXPLICITLY UNCOMFORTABLE STRIP SEARCH, THEN YOUR PLACED IN DOUBLE HANDCUFFS, SHACKLES (LEG IRONS) AND A RETRIEVAL (DOG CHAIN/LEASH) CHAIN IS THEN ATTACHED TO YOUR WRIST WHICH MAKES A THIRD CUFF, THEN YOUR WALKED FROM YOUR CELL TO BE RE-LOCKED IN A CAGED SHOWER. INMATES MAY ALSO RECEIVE OUTSIDE RECREATION WHICH IS ONLY GIVEN UNDER EXTREME CIRCUMSTANCES (SECURITY, WEATHER, COMPLIANCE, ETC.) BUT ALL MUST EXIST IN UNISON FOR AN OPPORTUNITY TO RECEIVE THE RECREATION. THE INMATES WHO ARE IN APPELLANTS CUSTODY LEVEL BECAUSE OF THIS CONVICTION HAVE TO RECEIVE RECREATION WHILE BEING KEPT IN RESTRAINTS, (DOUBLE HANDCUFFS, SHACKLES, BLACK BOX W/LOCK, CHAIN TO CONNECT WRISTS TO ANKLES). THIS POSITION IS VERY PAINFUL TO BE PLACED IN FOR AN EXTENDED AMOUNT OF TIME

AND VERY UNCOMFORTABLE AT ALL TIMES. THIS RESTRAINT ISSUE CAUSES ALOT OF THE INMATES TO REFUSE RECREATION WHEN ITS GIVEN BECAUSE THEY SAY ITS "ANIMALISTIC." APPELLANT AGREES THAT ITS A "CAGED ANIMAL" FEELING, BUT THE OPPORTUNITIES ARE SO RARE FOR THE "REC" THAT HE ACCEPTS THE CIRCUMSTANCES JUST FOR SOME FRESH AIR, EVEN THOUGH HE CANT DO ANY THING BUT STAND STILL THE ENTIRE TIME. INMATES CAN ALSO COME OUT FOR SICK CALL (MEDICAL), MENTAL HEALTH (PSYCHIATRIST), COURT (TRANSPORTATION), D.H.O. (DISCIPLINARY), OR RELOCATION TO ANOTHER DORM/CELL. THESE ARE THE ONLY MOVES. APPELLANTS CORRESPONDENCE HAS ALSO BEEN CURTAILED DRASTICALLY WHILE BEING HOUSED IN (S.M.U.). S.M.U. LIMITS INMATES TO ONLY (2) TWO ENVELOPES PER MONTH WITH NO OTHER OPTION AVAILABLE. INMATES IN GENERAL POPULATION ARE UNLIMITED IN THE MAIL THEY SEND OR RECEIVE, AND THE MOST RESTRICTED INMATE IN POPULATION CAN STILL HAVE (16) SIXTEEN ENVELOPES PER MONTH, PLUS THE OPTION TO PAY POSTAGE AT THE MAILROOM CONSIDERING HE HAS SUFFICIENT FUNDS. FOR APPELLANT AND OTHER INMATES THIS IS VERY HARD BECAUSE HE IS FIGHTING CONVICTIONS AS WELL AS OTHERS AND HAS TO DECIDE WHO IS MORE IMPORTANT EVERY MONTH, FAMILY OR FREEDOM, AND IT MAKES THE LOVED ONES FEEL NEGLECTED BECAUSE YOU STILL HAVE TO CHOOSE WHO IS THE MOST IMPORTANT. THIS IS A BAD SITUATION FOR THOSE WITH KIDS AND FAMILIES WHO ARE CLOSE WITH, BECAUSE FOR SOME AS SUCH AS MYSELF WITH A LIFE SENTENCE, THEY ARE ALL WE HAVE AND BOTH SIDES LOOK FORWARD TO LETTERS BECAUSE ITS SOMETIMES THE ONLY WAY TO COMMUNICATE. APPELLANT IS ALSO SEVERALLY LIMITED IN THE AMOUNT AND KIND OF PERSONAL PROPERTY ALLOWED TO BE KEPT IN CELL. THE FOURTH CIRCUIT HAS HELD THAT "ALL THREE LEVELS OF M.S.U." "SERIOUSLY RESTRICT AN INMATES ORDINARY PRISON PRIVILEGES" AND THAT EVEN THE LEVEL THREE INMATES WHO RETAIN THE MOST PRIVILEGES, ARE "GREATLY RESTRAINED IN ACTIVITY AS COMPARED TO THEIR GENERAL POPULATION COUNTERPARTS" Id. SEE INCLUMAA V. OZMINT, 507 F.3d 281, 283 (4TH CIR. 2007). APPELLANTS CONDITIONS OF CONFINEMENT HAVE BEEN RESTRICTED SEVERELY, THE LENGTH OF TIME TO BE CONFINED IN S.M.U. IS ALSO A NOTICE TO BE TAKEN A FACTOR OF. AS APPELLANT HAS STATED, PRIOR TO THIS CONVICTION HE WAS IN GENERAL POPULATION WITH (317) DAYS OF BEING MAJOR DISCIPLINARY FREE, NOW HE IS SUBJECTED TO THE WAIVED DISCIPLINARY TIME WHICH IS SORT OF A ACT SIMILAR IN NATURE TO DOUBLE JEOPARDY. NOW THE GOOD BEHAVIOR THAT GOT APPELLANT EARLY RELEASE INITIALLY IS NOW VOIDED AND THE TIME IS BROUGHT BACK FOR AN UNDETERMINED AMOUNT OF PUNISHMENT. ALTHOUGH THE COURTS HAVE NOT DEVELOPED A CONSENSUS REGARDING HOW MUCH TIME IN CONFINEMENT CONSTITUTES AN "ATYPICAL AND SIGNIFICANT HARDSHIP" BUT THE MAJORITY OF UNITED STATES COURTS OF APPEALS HAVE CONSIDERED THE NATURE OF CONFINEMENT AND ITS DURATION IN DETERMINING WHETHER THE CONFINEMENT IMPOSES AN "ATYPICAL AND SIGNIFICANT HARDSHIP." "SEGREGATION OF LONGER THAN 305 DAYS IS SUFFICIENTLY ATYPICAL TO REQUIRE PROCEDURAL DUE PROCESS PROTECTION UNDER SANDIN." SEE TORAL V. HASTY, 490 F.3d 143, 161 (2d. CIR. 2007). THEREFORE THE DECISION TO PLACE APPELLANT IN CONFINEMENT IN S.M.U. IMPLICATES A CONSTITUTIONALLY PROTECTED LIBERTY-INTEREST WHICH REQUIRES THAT HE BE AFFORDED DUE PROCESS. LINDSEY V. S.C.D.C., 2009-ALT-04-0125-AP (SEPT. 16, 2009). PURSUANT TO S.C.D.C. POLICY OP-21.04. APPELLANT HAS THE CHANCE TO BE CONVERTED INTO SECURITY DETENTION (S.D.) STATUS WHICH IS "OPEN END" AND HAS AN INDETERMINATE RELEASE DATE. THE NATURE OF CONFINEMENT AND THE QUESTIONABLE LENGTH OF CONFINEMENT ALL A MOUNTS TO AN "ATYPICAL AND SIGNIFICANT HARDSHIP" IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE" UNDER THE SANDIN STANDARD, WHICH CREATES A LIBERTY INTEREST IN APPELLANTS CUSTODY STATUS AND CONDITIONS OF CONFINEMENT.

II. DID ALJ ERB IN NOT RULING ON, OR ADDRESSING A CONSTITUTIONALLY PROTECTED 14TH AMENDMENT (DUE PROCESS) VIOLATION BY NOT ALLOWING APPELLANT THE OPPORTUNITY TO CALL WITNESSES ON HIS BEHALF WHEN PERMITTING HIM TO DO SO WOULD NOT BE HAZARDOUS TO SAFETY OR CORRECTIONAL GOALS?

APPELLANT WAS ENTITLED TO DUE PROCESS RIGHTS AT HIS DISCIPLINARY HEARING AND WAS DENIED THE RIGHT TO PRODUCE EVIDENCE / CALL WITNESSES ON HIS BEHALF WITH NO JUSTIFICATION. AN INMATE MAY CALL WITNESSES UNLESS THE HEARING OFFICER DECIDES THAT THE TESTIMONY OF SUCH WITNESSES IS REPETITIVE, IS NOT-RELEVANT TO THE CASE, OR IS LIKELY TO JEOPARDIZE THE LIFE OR SAFETY OF PERSONS, OR THE SECURITY AND ORDER OF THE INSTITUTION. SEE S.C.D.C. POLICY OP. 22:14 SECTION 15.3. IF THE WITNESSES ARE DENIED BY THE HEARING OFFICER, THE HEARING OFFICER MUST WRITE HIS/HER REASONS FOR THIS DENIAL ON THE S.C.D.C. FORM 19-69, "DISCIPLINARY REPORT AND HEARING RECORD," IN THE SPACE PROVIDED. (IF AN EMPLOYEE HAS BEEN CALLED AS A WITNESS AND HAS INFORMATION THAT IS RELEVANT TO THE CASE, THEN HE/SHE IS OBLIGATED TO PROVIDE SAID INFORMATION.) THIS WAS AND IS APPELLANTS MAIN ISSUE. APPELLANT FOLLOWED S.C.D.C. POLICY AND REQUESTED WITNESSES IN A TIMELY MANNER. SEE (EXHIBIT "A", REQUEST TO STAFF). AT THE HEARING APPELLANT HAD CLEARLY REQUESTED A SUPERVISING OFFICER (SGT. BILYON) TO BE PRESENT. THIS WITNESS WAS BENEFICIAL FOR APPELLANT BECAUSE HE HAD FIRST HAND KNOWLEDGE OF THE INCIDENT AND COULD HAVE REFUTED THE ACCUSING OFFICIALS REPORT WHICH WAS THE ONLY EVIDENCE USED TO CONVICT APPELLANT. APPELLANTS COUNSEL SUBSTITUTE WAS SUPPOSED TO INTERVIEW ALL WITNESSES PRIOR TO THE HEARING AND WAS SUPPOSED TO NOTIFY THE HEARING OFFICER OF ALL WITNESSES THE ACCUSED REQUESTED. SEE POLICY 22:14 SECTIONS 8.2.3, 8.2.4, 8.2.5. ONCE A PRISONER IS PLACED ON SEGREGATION, HE IS THEN INCAPABLE OF INTERVIEWING OR OBTAINING STATEMENTS FROM POTENTIAL WITNESSES. COURTS CONCLUDE THERE IS A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT TO SUFFICIENTLY COMPETENT COUNSEL WHEN A PRISONER IS FACING A DISCIPLINARY HEARING. SEE NIX V. EVATT, 850 F. SUPP. 455 S.C. ON THE S.C.D.C. FORM 19-69 DISCIPLINARY REPORT AND HEARING RECORD THERE IS NO DOCUMENTATION AS TO THE REASONS WHY THE WITNESSES WERE DENIED PURSUANT TO POLICY 22:14 SECTION 18.1.2. SEE (EXHIBIT "B" 19-69 FORM). THIS IS A PROCEDURAL VIOLATION OF THE UNIVERSAL REQUIREMENTS AND ARE NOTICE OF ACTS OF MISCONDUCT PRISON OFFICIALS SAY THE INMATE COMMITTED AND AN OPPORTUNITY TO RESPOND TO THE CHARGES BEFORE A TRUSTWORTHY DECISION MAKER. SEE HEWITT V. HELMS, 459 U.S. 460, 471-472, 103 S. CT. 864, 871-872, 74 L. ED. 2d 675 (1983). S.C.D.C. IS AN AGENCY AND AGENCIES HAVE GUIDELINES AND POLICY ESTABLISHED. THESE POLICIES ARE SET TO MONITOR BOTH EMPLOYEES AND INMATES. IF AN INMATE BREAKS A RULE HE IS PENALIZED, THE SAME SHOULD APPLY FOR OFFICERS OR THEIR COUNTERPARTS. THESE POLICIES ARE GIVEN THERE EVERYDAY PLAIN AND ORDINARY MEANING. PEE V. AVM, INC., 543 S.E. 2d 232, 234 (S.C. APP. 2001). AS A FUNDAMENTAL RIGHT, A PRISONER IS ENTITLED TO THE CONSTITUTIONAL GUARANTEE OF A REVIEW HEARING IMPLEMENTING THE MINIMUM DUE PROCESS REQUIREMENTS BEFORE A NEUTRAL AND DETACHED HEARING BODY. MORRISSEY V. BREWER, 96 S. CT. AT 2604. APPELLANT HAS PROVEN AN ABUSE OF DISCRETION ON THE PART OF THE DISCIPLINARY PROCEDURES. APPELLANT WAS CLEARLY DENIED HIS RIGHT TO CALL WITNESSES FOR NO KNOWN FACT OTHER THAN A CLEAR ABUSE OF AUTHORITY.

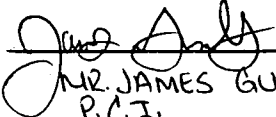
IN NO WAY, SHAPE, FASHION OR FORM WAS THERE EVER AN ISSUE WITH SECURITY OR WAS IT EVER PRESENTED TO BE A PROBLEM AT ANY TIME. APPELLANT WAS DENIED HIS DUE PROCESS "JUST BECAUSE". THESE TYPES OF ISSUES BLATANTLY DISREGARD WHAT THE CONSTITUTIONAL SAFEGUARD WAS PUT IN PLACE TO PREVENT AND THIS VIOLATION SHOULD BE CORRECTED.

CONCLUSION

APPELLANT HAS SHOWN THROUGH A PREPONDEROUS AMOUNT OF EVIDENCE THAT THE CIRCUMSTANCES SURROUNDING HIS CONVICTION ARE AT BEST QUESTIONABLE. THERE IS A LIBERTY INTEREST PRESENT AND IT COMES FROM BEING DENIED MY DUE PROCESS WHICH IN TURN SHOULD OFFER SOME FORM OF RELIEF.

WHEREFORE THE ABOVE REASONS, APPELLANT RESPECTFULLY PRAYS THIS APPELLATE COURT ORDERS S.C.D.C. TO 1.) REVERSE APPELLANTS CONVICTION AND OFFER THE OPPORTUNITY FOR A NEW HEARING WITH WITNESSES PRESENT; OR 2.) REVERSE THE APPELLATES CONVICTION AND VACATE BECAUSE APPELLATE WAS DEPRIVED OF A LIBERTY INTEREST WITHOUT PROPER DUE PROCESS OF LAW. THUS, REQUESTED RELIEF WOULD MEET THE ENDS OF JUSTICE.

RESPECTFULLY SUBMITTED,


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE S. PHILLIP LENSKI
CASE NO. 13-ALJ-04-0824-AP

APPELLATE CASE NO. 2014-000432

JAMES GUNNELLS #305415 _____ APPELLANT,

v.

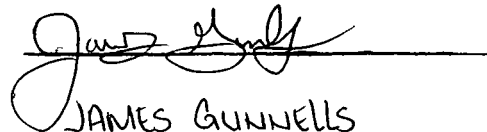
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS _____ RESPONDENT.

PROOF OF SERVICE

I, JAMES GUNNELLS, CERTIFY THAT ON THIS 24TH DAY OF MARCH, 2014. I DID SERVE A COPY OF APPELLANTS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED 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. S.C.D.C. OFFICE OF GENERAL COUNSEL, P.O. BOX 21787 COLUMBIA, S.C. 29221.

RESPECTFULLY SUBMITTED,



JAMES GUNNELLS
P.C.I.
430 OAKLAWN RD.
PELZER, S.C. 29669

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF March, 2014.

Tamara Council (L.S.)
NOTARY PUBLIC:

Sept 25 - 2023

MY COMMISSION EXPIRES:

RECEIVED

MAR 27 2014

SC Court of Appeals

MR. JAMES A. GUNNELLS #305475
P.C.I. (SMU D-X-9)
430 DAYLAWD RD.
PELZER, S.C. 29669

RECEIVED

MAR 27 2014

SC Court of Appeals

RECEIVED

MAR 24 2014

P.C.I. MAILROOM

JERRY A. KITTINGS (CLERK)
S.C. COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, S.C. 29211