The State of South Carolina
In The Supreme Court

Appeal From Administrative Law Court
Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 2012-UP-411 (S.C. Ct. App. filed July 11, 2012)

Billy Lee Lisenby, JR., ... Petitioner,

v.

South Carolina Department of Corrections ..... Respondent

Appellant's Final Brief

Feb. 20th 2013

Billy Lee Lisenby, JR, #200273
200 Prison Road
Enoree, S.C. 29335
Pro se Petitioner

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Index

Statement of Issues on Appeal

1. Did the Court of Appeals ERR in not ruling in Appellant's favor when he was sentenced for a 2nd offense and it was his first? He received 720 days when the max he could've received was 360 days.

2. Did the Court of Appeals ERR in not Ruling in Appellant's favor when the Respondents used a 1999 Level 12 offense conviction of striking an office to convict Appellant of a 2nd offense of 801 Assault and Battery which is a Level 1 offense. There are two (2) totally different charges?

3. Did the Court of Appeals ERR in not ruling in Appellant's favor when the Respondents used a 1999 conviction to enhance his 801 Assault and Battery to a 2nd offense. The 1999 conviction was a Level 2 offense?

4. Did the Court of Appeals ERR in not Ruling in Appellant's favor and no where in Appellant's Report did it say the officer was injured?

5. Did the Court of Appeals ERR in not ruling in Appellants favor when the Respondents violated his Constitutional Rights and policy by punishing him for utilizing his appeal rights and giving him a harsher sentence on his rehearing by taking 150 days good time when in the original case they only took 120 days good time?

6. Did the Court of Appeals ERR in not Ruling in Appellant's favor by Respondent's [redacted] not noting on the 19-299 form the Appellant had a mental health issue?

7. Did the Court of Appeals ERR in not Ruling in Appellant's favor when nothing in policy states "the Department can rehear a overturned case at the Step 2 or ALC?

8. Did the Court of Appeals ERR in not Ruling in Appellant's favor in using additional evidence in the Rehearing?

9. Did the Court of Appeals ERR in not Ruling in Appellant's favor when the Respondent's didn't hear his case within 21 days?

10. Did the Court of Appeals ERR in not ruling in Appellant's favor when the Respondent's didn't receive an extension to exceed the 60 day time limit?

11. Did the Court of Appeals ERR in not ruling in Appellant's favor when the Respondent's didn't receive an extension to exceed the 30 day time limit?

12. Did the Court of Appeals ERR in not ruling in Appellant's favor when the Respondent's didn't receive an extension to exceed the 125 day time limit?

13. Did the Court of Appeals ERR in not ruling in Appellant's favor when the Respondent's didn't have his (10) witnesses statements present at the hearing?

[redacted]

Statement of The Case

Appellant filed an appeal with the ALC following the denial of the grievance he filed with the Department of Corrections. Appellant was convicted of violating SCDC Disciplinary Code § 801 (Assault and/or Battery of an SCDC Employee). As a result of his conviction, he lost one hundred fifty (150) days of "good time" credit. He filed a grievance and was denied.

The ALC dismissed his appeal on Jan. 28, 2011 without making specific findings on each issue. On Feb. 6th 2011 Appellant filed a 59(e) asking a Motion to Alter or Amend a Judgment be brought about so the Judge can make specific findings on each issue. The Respondent's have fail to respond to this motion.

Arguments

1. Appellant only has (1) one conviction of 801 Assault and battery a Level 1 offense, and the max he could've received for a 1st offense of a level 1 charge is 360 days Disciplinary Detention. The Respondent's convicted him of a 2nd offense and sentenced him to 720 days Disciplinary Detention. See Exhibit #1 where Classification worker MRS. Pugh states "as of date you have (1) one Assault on Employee."

   The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've Ruled in his favor.

2. The Respondent's were not suppose to use a 1999 Level 2 offense conviction of striking an officer to convict Appellant of a 2nd offense of 801 Assault and Battery which is a Level 1 offense. These are two (2) totally different charges.

   The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

3. The Respondent's used a 1999 conviction to enhance his 801 Assault and Battery to a 2nd offense. The 1999 conviction was a Level 2 offense. SCDC Inmate Disciplinary policy states in part 16.4" Inmates released from the Dept of Corrections and returned to the Agency within (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation." Appellant was out of prison almost six years from Nov. 2002 until May 2008. So his past history could not be used against him.

   The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've Ruled in his favor.

4. Appellant was convicted of 801 Assault and battery, in order for an inmate to be convicted of this an injury must occurr. See Exhibit #2 No where in the officers report does she state she had been injuried. Under the evidence section she didn't put anything, there was nothing given to the Appellant showing an injury occurred. Also he was not charged restitution, when an injury occurres the inmate must pay restitution. Also an injury packet was not given to the ALJ or Appellant showing an injury occurred. So by policy he cannot be convicted of 801 Assault and Battery.

   The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've Ruled in his favor.

5. Appellant's Constitutional Rights were violated when the Respondent's violated policy as well and punished him for utilizing his appeal rights and giving him a harsher sentence on his rehearing by taking 150 days goodtime when in the original case they only took 120 days goodtime.

   The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've Ruled in his favor.

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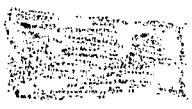

6. Appellant has a mental class of MI-3 out Patient Mental Health and Med Class: 3 Med Prob/Work Restriction. This was not noted on Appellant's 19-29A Form and it plainly states "they must note it on the 19-29A." See Section 3.3 of the disciplinary policy. Appellant suffers from intermediate explosive disorder and was not being treated or seen by mental health at the time of the assault. Appellant went from Jan. 2009, until May of 2009 without seeing a mental health professional. When he did see one they immediately put him on Neurotein a medicine used to balance the brain and moods.

The ALJ fail to rule on this issue or make specific findings on this [redacted] issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

7. Nothing in policy states the Department can re-hear a overturned case at the Step 2 or ALC. Policy only states in the disciplinary policy in section 24.2 Step 1 Grievance: A Warden can request through the Division of Operations that a hearing be reheard at their level if the reasons noted in 24.1 are applicable."

Appellant's charge was overturned not dismissed. Per Blacks Law Dictionary dismiss, and overturn have two(2) totally diffrent definitions see as follows:

Dismiss - To send Something away; specif, To Terminate <an action or claim> without further hearing esp. before the trial of the Issues involved. 2. To release or discharge <a person> from employment.

Overturn - To overrule or reverse <The Court overturned a long-established precedent>

Nothing in policy says an overturned case can be reheard only a dismissed case.

The Department of Corrections is violating their own policy, by re-hearing cases that have been overturned at the Step 2 level and ALJ. They can have the DHO dismiss the charge, the Warden can reverse or modify the inmates sanction, on Step 1 the Warden can overturn the inmates conviction, on Step 2 The Responsible official can overturn it. At the ALJ level it's left up to the Judge.

The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

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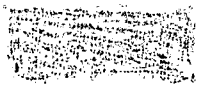

8. At Appellant's Re-hearing the DHO used additional evidence at this hearing. They cannot do this because Appellant's case was not overturned due to insufficient evidence. See 24.4 of the disciplinary policy that states "Evidence: Any evidence presented at the initial hearing may be presented at the re-hearings; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence, must be presented and considered at the re-hearing in order to find the inmate guilty."

Due to this the ALJ should've ruled in the Appellant's Favor.

9. The re-hearing was ordered on Oct. 5, 2009 and Appellant's hearing was on Oct. 26, 2009 that's 21 days. It's says within not in 21 days. See Section "24.3" of the disciplinary Policy which states "Time Limits: A re-hearing must occur within 21 calendar days from the date that the re-hearing is ordered and signed by the Division of Operations."

Appellant was prejudice by this because one of his witnesses were released from prison. If this case would've been handled on time his witness would've been present.

10. Respondent's never received an extension to exceed the 60 day time limit. It took them 107 days to respond that is very excessive and violation of Due Process. If an inmate miss his deadline by one day he is forever barred.

The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

11. Respondent's never received an extension to exceed the 30 day time limit, and 92 days is very excessive and a violation of Due Process.

The ALJ fail to Rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

12. Respondent's never received an extension to exceed 125 day time limit, and 199 days is very excessive and violation of Due Process.

The ALJ fail to rule on this issue or make specific findings on this issue. When it is plain to see it has merit and policy backs Appellant up. Respondent's fail to defend themselves to this allegation, so the ALJ should've ruled in his favor.

13. Appellant requested (10) ten witnesses by way of inmate request. Please note Appellant's Re-hearing was held at Ridgeland C.I the incident at hand occurred at Tuckerville C.I. His counsel substitute sent an email to Tuckerville C.I about 10 mins. before his hearing. He doesn't know if his counsel substitute's statement is credible. Because the Appellant received criminal charges in this matter all (10) ten witnesses wrote statements for Appellant's attorney. The counsel substitute provided no evidence of her statement that nobody contacted her. The DHO should've checked this for Accuracy.

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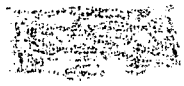

Conclusion

Wherefore, for all the reasons stated above, this court should overturn the Appellant's conviction.

Respectfully Submitted,

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Certificate of Compliance

The undersigned hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order of Aug. 17, 2007.

Billy Lee Lisenby

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Proof of Service

I hereby certify that I have served respondent a copy of the Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on Feb. 20, 2013 addressed to as follows:

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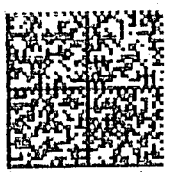

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