

Petition For A Writ of Certiorari To The  
Court of Appeals  
The State of South Carolina  
In The Supreme Court  
Appeal From the Administrative Law Court  
Ralph K. Anderson, III, Administrative Law Court Judge  
Opinion No. 2012-UP-411 filed July 11, 2012

Billy Lee Lisenby, JR.,

Appellant

v.

South Carolina Department of  
Connections,

Respondent

Petition For Writ of Certiorari

Billy Lee Lisenby JR, #200273  
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Enoree S.C. 29335  
Pro-Se

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Certificate of Counsel

Appellant is a pro-se litigant that certifies that the Petition for Rehearing was made and Finally Ruled on by the Court of Appeals on September 25<sup>th</sup> 2012.

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## Questions Presented

1. Did the Court of Appeals err that Appellant be charged and found guilty of 801 Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the public with Means and/or Intent to Kill or Injure; and no physical evidence was shown showing the officer was injured?
2. Did the Court of Appeals err in holding that Appellant be sentenced to 720 days disciplinary detention time for his first offense of 801 Assault and/or Battery of a SCDC Employee when Policy OP-22.14 Section 17.1 states the maximum he could be received was 0-360 days disciplinary detention time?
3. Did the Court of Appeals err in holding that Appellant receive a harsher sentence in his rehearing for utilizing his rights to appeal?
4. Did the Court of Appeals err in holding that Appellant be found guilty without noting on his 19-29A form that he has a mental health disorder?
5. Did the Court of Appeals err in holding that Appellant's case be re-heard ~~and~~ <sup>when</sup> nothing in policy OP-22.14 states a case can be reheard after being overturned at the ALC level?
6. Did the Court of Appeals err in holding that Appellant be denied the right to present witnesses?
7. Did the Court of Appeals err in holding that Appellant's case be heard in violation of the 21 calendar <sup>day</sup> time limit?
8. Did the Court of Appeals err in holding that Appellant be violated because the Respondent's fail to abide by the Inmate Grievance System 6A01.12?

## Statement of The Case

On April 16, 2009, Appellant was convicted of an inmate disciplinary offense for assault and/or battery of an SCDC employee with intent to kill or injure. As a result of the disciplinary conviction, appellant lost 120 days of accrued good time credit. (Exhibit 1, Disciplinary Report and Hearing Record dated April 16, 2009).

On April 17, 2009, appellant filed a Step One inmate grievance challenging his disciplinary conviction. The grievance was later denied. On May 19, 2009, appellant filed a Step Two inmate grievance. This grievance was also denied. (Exhibit 2, Inmate Grievance TCI 0442-09).

On July 22, 2009 appellant filed a Notice of Appeal in the South Carolina Administrative Law Court (ALC). (Exhibit 3, Notice of Appeal for TCI 0442-09). In the process of responding to this appeal, SEDC elected to overturn the ~~conviction~~ conviction. (Exhibit 4, Motion To Remand). As a result of SEDC's decision to remand for a new hearing, the ALC dismissed the appeal as moot. (Exhibit 5, Order Granting Dismissal for Mootness).

On Remand, at a hearing on October 26, 2009, appellant was again convicted of an inmate disciplinary offense for assault and/or battery of an SCDC employee with intent to kill or injure. As a result of the disciplinary conviction, appellant lost 150 days of accrued good time credit. (Exhibit 6, Disciplinary Report and Hearing Record dated October 26, 2009).

On Oct. 27, 2009, appellant filed a Step One inmate grievance challenging the new disciplinary conviction. This grievance was denied. On February 3, 2010 appellant filed a Step Two inmate grievance. This grievance was denied. (Exhibit 7, Inmate Grievance RCI 0917-09).

On May 17, 2010 Appellant filed a Notice of Appeal in the South Carolina Administrative Law Court (ALC). (Exhibit 8, Notice of Appeal for RCI 0917-09). By way of an order filed January 23, 2011, Chief Administrative Law Judge Ralph King Anderson, III upheld the conviction. (Exhibit 9, Order of Dismissal).

Appellant filed a notice of appeal in the South Carolina Court of Appeals. Following briefing, the Court of Appeals affirmed the disciplinary conviction. (Exhibit 10, Unpublished Opinion No. 2012-Up-111). Appellant filed a petition for rehearing in the Court of Appeals on July 17, 2012 (Exhibit 11, Petition for Rehearing). The Court of Appeals remitted the appeal on July 27, 2012; however, the Court recalled the remittance by way of Order file August 24, 2012 (Exhibit 12, Remittance and Order Recalling Remittance). On September 25, 2012 the Court of Appeals denied the petition for Re-hearing. (Exhibit 13, Order Denying Petition for Rehearing).

Argument 1

1. Did the court of Appeals err that Appellant be charged and found guilty of 801 Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the public with Means/Intent to Kill or Injure; and no physical evidence was shown showing the officer was injured?  
There was no evidence on the officer's report saying she was injured, Appellant was not forced to pay restitution, there was no evidence nor injury packet presented showing an injury occurred. Also no picture or doctor's report was given. Motion injury must occur to charge and convict on inmate of 801 Assault and/or Battery.

Argument 2

2. Did the Court of Appeals err in holding that Appellant be sentenced to 720 days disciplinary detention time for his first offense of 801 Assault and/or Battery of a SCDC Employee when Policy OP-22.14 Section 17.1 states the maximum he could've received was 0-360 days disciplinary detention time?  
Per policy OP-22.14 Section 17.1 the maximum amount of disciplinary detention Appellant could've received for his 1st offense of 801 Assault and/or Battery of a SCDC Employee was 0-360 days. But they went against policy and gave him 720 days.

Argument 3

3. Did the court of Appeals err in holding that Appellant received a harsher sentence in his re-hearing for utilizing his rights to appeal?  
Nothing in policy OP-22.14 supports Respondent's giving appellant a harsher sentence in his re-hearing by taking 150 days good time when in the original case and hearing he only loss 120 days.

Argument 4

4. Did the Court of Appeals err in holding that Appellant be found guilty without noting on his 19-29A form that he has a mental health divorce?  
OP-22.14 Section 3.5 of the Disciplinary policy states:

"If the inmate has a mental health issue noted in his/her medical screen or is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29A. (This change amended by Change Memo #2, dated June 5, 2008). In these instances, a memorandum from mental health care professional must be included as an attachment to SCDC form 19-29A, "Incident Report" attesting to the inmate's mental status and accountability for his/her action."

by failing to document anything dealing with Appellant's mental health status on form 19-29A violated due process.

Argument 5

5. Did the Court of Appeals err in holding that Appellant's case be re-heard when nothing in policy OP-22.14 states a case can be reheard after being overruled at the ALC level?

Nothing in policy states that the Department can have a re-hearing on Step 2 or ALC. Policy only states on section 24.2 Step 1 Grievance "A Warden can request through the division of Operations that a hearing be re-heard at their level if the reasons noted in 24.1 are applicable."

It doesn't speak anywhere about a re-hearing at Step 2, or ALC level.

Even more the only person who can dismiss a charge is the DHO. The Warden can approve the hearing results, overturn a guilty finding, or reduce the sanction of the hearing. But a re-hearing can only be held if the case is dismissed. See Section 24.1 Also it plainly states "where exceptional circumstances are found to exist, the Division of Operations may order that a disciplinary case be re-heard. This may be ordered if it is determined a disciplinary charge was dismissed, but compelling reasons exist for proceeding again with a re-hearing of the disciplinary violation"

It states if the charge was dismissed, not if it's been overruled. At where does it state an overruled charge can be re-heard.

Black's Law Dictionary shows that dismiss and overturn have (2) two totally different definitions see as follows:

Dismiss - to send something away; specific; 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)

By Policy Appellant's re-hearing was illegal.

Argument 6

6. Did the Court of Appeals err in holding that Appellant be denied the right to present witnesses?  
Appellant was denied his right to call witnesses, because the D.H.O and Counsel substitute didn't give his witnesses ample amount of time to respond. The Cs sent an email/phone call to another institution 10 mins. before the hearing. There was 10 inmates, Tuckerville C.I would have to find all ten (10) inmates and get them up front, and take their statements. Also they didn't document why appellant witnesses were denied.

Argument 7

7. Did the Court of Appeals err in holding that Appellant's case be heard in violation of the 21 calendar day time limit?  
Per Policy OP-22.14 Section "24.3 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."

The re-hearing was ordered on Oct. 5, 09 and Appellant's hearing was on Oct. 26, 09 that's 21 days. It says within not in 21 days. Appellant's charge should be overturned due to this error alone.

Argument 8

8. Did the Court of Appeals err in holding that Appellant be violated because the Respondent's fail to abide by the Inmate Grievance system GA-01.12?

The Respondent's violated the "Inmate Grievance System GA 01.12" on numerous occasions, the incidents and violations are as follows:  
Section 13.3 of The Inmate Grievance policy states "The Warden will respond to the grievant no later than 40 days from the initial receipt of the grievance (with the exception of a disciplinary hearing appeal, which will be responded to within 30 days.)"

It took the Warden (3) three months to respond to Appellant's Step 1 from Oct. 27, 09 to Jan. 26, 2010. This is well over 30 days, and no extension was issued.

Section 13.5 states "The Responsible official will render the final decision on the grievance within 60 days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision."

It took (3) three months for the Responsible official to respond to Appellant's Step 2. Section 11 states "Note: The maximum extension that may be given is 75 days. Under no circumstances will the grievance process exceed 150 days."

Conclusion

For the reasons stated, Appellant asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Billy Lee JR  
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PRO-SE

Dated: Oct. 17<sup>th</sup> 2012

The State of South Carolina  
In The Supreme Court

Appeal From The Administrative Law Court  
Ralph K. Anderson, III, Administrative Law Court Judge

Opinion NO. 2012-UP-411 filed July 14, 2012

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Appellant

v.

South Carolina Department of  
Corrections;

Respondent

PROOF OF SERVICE

Appellant swears under penalty of perjury that he has served the following counsel for Respondent  
a copy of Appellant's Petition For Writ of Certiorari to the following address:

Dated: Oct. 18<sup>th</sup> 2012

Christophe D. Flouren  
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Respectfully Submitted,

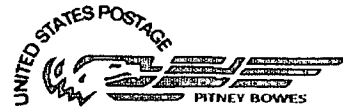
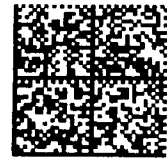
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