

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No.: 2013-002278

Michael Goins #302385 ----- Appellant,

v.

South Carolina Department of Corrections ----- Respondents.

APPELLANT'S FINAL BRIEF

Dated: May 1<sup>st</sup>, 2014

Pro Se Appellant,  
Mr. Michael Goins #302385  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

**RECEIVED**

MAY 08 2014

**SC Court of Appeals**

# TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STANDARD OF REVIEW	3
ARGUMENT AND CITATION OF AUTHORITY	4
I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?	4
II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?	5
III. DID ADMINISTRATIVE LAW JUDGE ERR IN HIS DECISION TO DISMISS APPELLANT'S CASE	6
CONCLUSION	7
CERTIFICATE OF COUNSEL	8
PROOF OF SERVICE	9

## TABLE OF AUTHORITIES

### CASES

AL-SHABAZZ V. STATE, 338 S.C. 354, 527 S.E.2d 742 (2000)	2
LAKE V. REEDER CONSTR. CO., 330 S.C. 242, 498 S.E.2d 650, 653	3
DURANT V. S.C. DEPT. OF HEALTH & ENVIRONMENTAL CONTROL, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004)	3
WOLFF V. McDONNELL, 418 U.S. 539, 566 (1974)	4
STATE V. BRAYBOY, 409 S.C. 207, 214-15, 736 S.E.2d 679, 683 (Ct. App. 2012)	4
PEARSON V. JPS CONVERTER & INDUS. CORP., 327 S.C. 393, 498 S.E.2d 219 (Ct. App. 1997)	5
LARK V. BI-LO, INC., 276 S.C. 130, 276 S.E.2d 304 (1981)	5
WEAVER V. SOUTH CAROLINA COASTAL COUNCIL, 423 S.E.2d 340 (S.C. 1992)	
PORTER V. S.C. PUBLIC SERV. COMM'N, 333 S.C. 12, 507 S.E.2d 328 (1998)	7

### STATUTES

S.C. Code Ann. § 1-23-610 (B)

S.C. Code Ann. § 1-23-380 (5)

## STATEMENT OF THE ISSUES ON APPEAL

- I. Was Appellant afforded all constitutionally required due process?
- II. Is Respondent's final agency decision supported by substantial evidence?
- III. Did Administrative Law Judge err in his decision to dismiss Appellant's case?

## STATEMENT OF CASE

This matter comes before this honorable court pursuant to the Appeal of Michael Coins ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of trafficking, use or possession of Narcotics, Marijuana or Unauthorized Drugs, including prescription drugs or inhalants, offense 903 under SCDC policy OP-22.14, following a disciplinary hearing. Appellant lost 3 days of good time due to the disciplinary conviction.

Appellant filed a step one grievance on December 20, 2012, challenging his conviction. This grievance was supposedly investigated but denied. Appellant filed a step two grievance on April 13, 2013, which was also denied. Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

The ALC dismissed the Appellant's appeal alleging that the Appellant did not timely file his brief as required under ALC rule 6(d). The Appellant highly disagrees and begs to differ.

Appellant now seeks review of the ALC's decision. For the reasons that follow, Appellant respectfully requests that the ALC's decision be overturned and that the conviction be reversed and vacated.

## STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the appellable standard of review:

The review of the Administrative Law Judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the findings, conclusion or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by a abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-386(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an Administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id In determining whether the ALC's decision was supported by substantial evidence, the court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dept of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004)

## ARGUMENT AND CITATION OF AUTHORITY

### I. APPELLANT WAS NOT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary hearings are not criminal trials in federal or state courts. They should still be conducted with strict scrutiny to both the hearing body and all parties. The goal to derive of an fundamentally fair decision at an disciplinary hearing should not be altered by the hearing body. Due process requires the following in prison disciplinary cases:

- a) Notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) No right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974)

The requirements enumerated in Wolff were not fully complied with in this case. The Appellant did receive adequate notice of the charge. Appellant did receive adequate disclosure of evidence against him. Appellant was afforded the opportunity to confront and cross-examine adverse witnesses. Appellant did receive adequate aid of counsel substitute. Appellant also receive written statement by the fact-finder as to the evidence relied upon to convict him. Furthermore, the appellant did not receive a neutral and detached hearing body.

Appellant is asserting that DHO Turner was not neutral and detached in the hearing. DHO Turner would not listen to Appellant nor his counsel substitute when they both told him that it was an mistake, that he was charged incorrectly because LPN J. Nations made an error stating on the 19-79 form that the medication was dose by dose instead of KOP. (see designation of Matter). State v. Brayboy, 401 S.C. 207, 214-15, 736 S.E.2d 679, 683 (Ct. App. 2012) ("Error is harmless if it could not reasonably have affected the result of the trial")

This error was very well harmful to the Appellant's trial. If CPN Mrs. Jennifer Nations would not have made this slight "pen error", the results of the hearing would have been different. If DHO Turner would have been neutral and detached during the hearing he would have seen the slight "pen error" by Mrs. Nations. Counsel substitute Mrs Gray told DHO Turner during the hearing that the Appellant showed her the same supposedly dose by dose medications in his window when she interviewed him before the hearing. (See Record on Appeal, Transcript, pg#4, line #5.)

Therefore, DHO Turner was not detached and neutral in the hearing. An neutral and detached hearing body would have never found the appellant guilty with the defense that was presented by the appellant and his counsel substitute.

Wherefore, Appellant was not afforded all constitutionally required due process in his disciplinary hearing. For the reason explained above, SCDC's decision should be reversed.

## II. RESPONDENT'S FINAL AGENCY DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 498 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, INC., 276 S.C. 130, 276 S.E.2d 304 (1981). Reviewing court may reverse decision of administrative agency if substantial rights have been prejudiced because agency's findings, inferences, conclusions or decisions violate constitutional or statutory provisions, exceed statutory authority of agency, are based upon unlawful procedure, are affected by other error of law, are clearly erroneous in light of reliable, probative and substantial evidence on record, or are either arbitrary, capricious, or reflect abuse of discretion or other obvious unwarranted exercise of discretion. Weaver v. South Carolina Coastal Council, 423 S.E.2d 340 (S.C. 1992).

Appellant has produced substantial, undisputed evidence that conspicuously shows that the disciplinary conviction of this disciplinary infraction, was clearly erroneous, arbitrary and capricious. Appellant produced on Request To Staff Member written by appellant to the Health Care Authority / Administrator (HCA) at Perry Corr. Inst. (P.C.I.), Mr. Matthew Harper. (See Record on Appeal).

In the same exact Request To Staff Member form to Mr. Harper, Mr. Harper explained very accurately and concise what are all of the Appellant's KOP medications, in which he named all four (4) High Blood Pressure medications that the appellant was charged with namely Norvasc, HCTz, Lopressor & lisinopril. Mr. Harper is the "Health Care Administrator" at PCI in which he supervises all of the medical personnel here at P.C.I.. His testimony outweighs the per error of Nurse Nations.

It's clear that the Appellant's substantial evidence that he has produced undoubtedly overrules the erroneous evidence that was used to convict him.

THEREFORE, the respondent's final agency decision is not supported by substantial evidence and the disciplinary conviction should be overturned.

### III. ADMINISTRATIVE LAW JUDGE DID ERR IN HIS DECISION TO DISMISS APPELLANT'S CASE.

On July 26, 2013 the Appellant's case was assigned to Judge John D. McLeod. Pursuant to ALC rule 60(A) & 59, within ~~the~~ forty-five (45) days from the date of assignment to an administrative law judge (ALJ), the respondents had to have the records of the case filed making the records due by September 8, 2013. This was complied with. Pursuant to that exact same rule, Appellant had sixty-five (65) days to file his brief from the date the case was assigned to an ALJ which made the brief due by September 28, 2013. This was also complied with. On October 4, 2013, ALJ McLeod filed an dismissal of the Appellant's case for failure to timely file his Initial brief.

For the substantial undoubted reasons that follow, the Appellant asserts that the ALJ erred in his decision to dismiss his appeal.

Enclosed into the Record on Appeal is the Initial brief he filed with the ALC and agency with a proof of service and the exhibit. Also enclosed into the Record on appeal is the signed and dated SCDC form 10-14 which was signed & dated by the Mailroom supervisor and the appellant stating that the Mailroom supervisor sent the correspondence to the respondents and the ALC that the appellant sent was mailed on September 16, 2013.

It is highly impossible that the ALC did not receive the Appellant's Initial brief when the Notary public, Mrs. Merchant signed and dated the Proof of service stating that the Appellant's Initial brief was served on September 13, 2013, as well as the SCDC Form 10-14 signed and dated by the mailroom supervisor indicating that the correspondence that the appellant sent was mailed out on September 16, 2013. No evidence is more substantial than what the Appellant has presented.

Appellant has carried his burden of proving that the decision of the ALJ as well as agency is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's and the ALC's decision should be overturned.

### CONCLUSION

WHEREFORE, for all the reasons stated above, this Honorable Court should overturn the ALC and respondent's decision in this case.

Pelzer, South Carolina

May 1, 2014

Respectfully Submitted,

Michael Goins

Mr. Michael Goins #302385

430 Oaklawn Rd.

Pelzer, S.C. 29669

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appellant's Final Brief complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.

Michael Goins  
Mr. Michael Goins # 302385  
430 Oaklawn Rd.  
Pelzer, S.C. 29169

The STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE, JOHN D. McLEOD

Case No.: 2013-002278

Michael Goins ----- Appellant,

v.

South Carolina Department of Corrections ----- Respondents.

PROOF OF SERVICE

I, Michael Goins # 302385, do hereby certify that the Appellant's Final Brief along with this Proof of service was deposited into the U.S. Mail, postage prepaid, addressed to the following agencies:

- 1.) SCDC OFFICE OF GENERAL COUNSEL P.O. Box 21787 Columbia, S.C. 29221
- 2.) S.C. Court of Appeals P.O. Box ~~11629~~ 11629 Columbia, S.C. 29211

Pelzer, South Carolina  
May 5, 2014

Kl. Michael Lee  
Mr. Michael Goins # 302385  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

SWORN to and subscribed before me  
this 5<sup>th</sup> day of May, 2014.

Lanana Conwell (L.S.)  
Notary Public For South Carolina  
My Commission Expires  
My commission expires: September 25, 2023

**RECEIVED**  
MAY 08 2014  
SC Court of Appeals