

State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Dunder, Judge

Billy Lee Lisenby, JR. Appellant

v.

State of South Carolina Respondent

Cases: 2013-000852
2013-000864

Record ON Appeal

Billy Lee Lisenby JR, #200273

PRO-SE

200 Prison Rd

Enoree, S.C. 29335

General Counsel

Christopher Florian

4444 Broad River Road

Columbia, S.C. 29221

Dated: June 21, 2013

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SC Court of Appeals

LEGAL MAIL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, #200279,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0546-AP
Grievance No. KRCI 0233-12

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Possession of Any Cell Phone or Other Type of Communication Device (898 under SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate was sanctioned with the loss of sixty (60) days good time credits so a liberty interest is involved. Appellant contends this disciplinary conviction should be overturned because he is innocent of the violation, his due process rights were violated, and finally that SCDC failed to abide by its own policies and procedures.

Inmate testified that he had submitted a written request for Correctional Officers Moore and Lee to be present as witnesses. Inmate's accuser, Officer Hunt, testified that Officers Moore and Lee were present at the time of the incident that formed the basis of the disciplinary charge. The Hearing Officer stated that Officers Moore and Lee were part of the Agency Search Team and that they would not be contacted. The Hearing Officer made no attempt to contact the witnesses nor offered any explanation as to why the witnesses would not be allowed to testify.

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, 76-7 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where ne

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testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, 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, and that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 1-05 S. Ct. 2192, 85 L.Ed.2d 553 (1985). The burden of persuasion regarding the existence and sufficiency of these institutional concerns rests with prison officials, rather than the prisoner. Smith v. Massachusetts Dep't. 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...[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.

In this case, the hearing officer offered no explanation for her refusal to allow testimony from the witnesses requested by Inmate. In its brief the Department argues that "it is clear from the record that his requested witnesses would have given testimony that was repetitive to the evidence that had already been presented." When Inmate asked that the two witnesses be called the hearing officer asked him what he expected them to testify about. Inmate simply stated, "That was the three people that found the contraband." One member of the three-person search team had already testified and Inmate did not provide any explanation tending to indicate that the testimony of officers Moore and Lee would not be cumulative. It was within the hearing officer's discretion to limit cumulative testimony.

Therefore, for the foregoing reasons the Department's decision is **AFFIRMED.**
AND IT IS SO ORDERED.



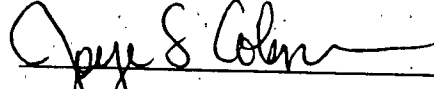
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 22, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Joye S. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 22, 2013
Columbia, South Carolina


Joye S. Coleman
Judicial Law Clerk

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SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, #200279,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0547-AP

Grievance No. KRCI 0235-12

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs (903 under SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate was sanctioned with the loss of sixty (60) days good time credits so a liberty interest is involved. Appellant contends this disciplinary conviction should be overturned because he is innocent of the violation, his due process rights were violated, and finally that SCDC failed to abide by its own policies and procedures.

Inmate testified that he had submitted a written request for Correctional Officers Moore and Lee to be present as witnesses. Inmate's accuser, Officer Hunt, testified that Officers Moore and Lee were present at the time of the incident that formed the basis of the disciplinary charge. The Hearing Officer stated that Officers Moore and Lee were part of the Agency Search Team and that they would not be contacted. The Hearing Officer made no attempt to contact the witnesses nor offered any explanation as to why the witnesses would not be allowed to testify.

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, 76-7 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the

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SC ADMIN. LAW COURT

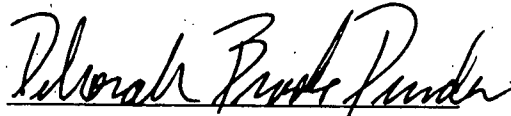
testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, Segarra v. McDade, 706 F.2d 1301 (4th Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4th Cir. 1982)(en banc); Brown v. Frey, 889 F.2d 159 (8th Cir. 1989). However, prison officials must provide a reason for their refusal to call a witness, and that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 1-05 S. Ct. 2192, 85 L.Ed.2d 553 (1985). The burden of persuasion regarding the existence and sufficiency of these institutional concerns rests with prison officials, rather than the prisoner. Smith v. Massachusetts Dep't. 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...[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.

In this case, the hearing officer offered no explanation for her refusal to allow testimony from the witnesses requested by Inmate. In its brief the Department argues that "it is clear from the record that his requested witnesses would have given testimony that was repetitive to the evidence that had already been presented." When Inmate asked that the two witnesses be called the hearing officer asked him what he expected them to testify about. Inmate simply stated, "That was the three people that found the contraband." One member of the three-person search team had already testified and Inmate did not provide any explanation tending to indicate that the testimony of officers Moore and Lee would not be cumulative. It was within the hearing officer's discretion to limit cumulative testimony.

Therefore, for the foregoing reasons the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.



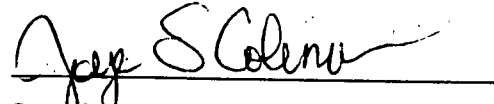
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 22, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Joye S. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

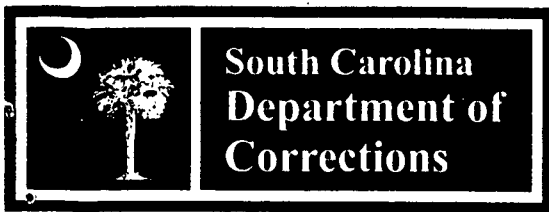
March 22, 2013
Columbia, South Carolina


Joye S. Coleman
Judicial Law Clerk

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MAR 22 2013

SC ADMIN. LAW COURT



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

September 28, 2012

The Honorable Deborah Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

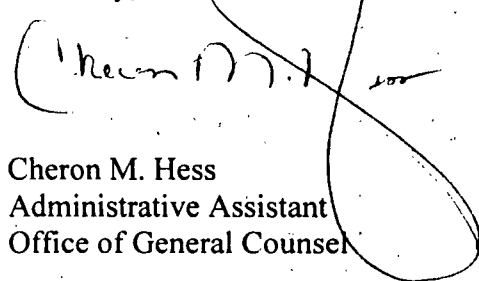
Re: Billy Lee Lisenby, #200273, vs. SCDC
Docket No. 12-ALJ-04-0546-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosure

cc: Inmate Billy Lee Lisenby, #200273
Tyger River Correctional Institution

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, # 200273,	)	Docket No.: 12-ALJ-04-0546-AP
	)	
Appellant,	)	RESPONDENT'S BRIEF
	)	
v.	)	Honorable Deborah Durden
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Billy Lee Lisenby ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on February 15, 2012, challenging his disciplinary conviction for Possession of Any Communication Device, offense 898 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on March 12, 2012. This grievance was also investigated and denied. In his Notice of Appeal, Appellant claims his disciplinary conviction should be overturned on the basis that he is actually innocent, his due process rights were violated, and that the South Carolina Department of Corrections failed to abide by their own policies and procedures. For the reasons that follow, SCDC respectfully requests the disciplinary conviction be upheld.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), 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 the fact-finder as to the evidence relied upon.

These requirements were complied with in this appeal. The Disciplinary Offense Reports (DOR) and Major Disciplinary Report and Hearing Record shows appellant had notice of the charges (Possession of Any Communications Device), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on February 14, 2012), a neutral and detached hearing body (hearing officer), the opportunity to have the aid of counsel substitute, and a written statement of findings (Major Disciplinary Report and Hearing Record).

There is ample evidentiary support for the disciplinary conviction for possession of any communications device. The Disciplinary Hearing Officer relied on Incident Reports of Officers Colt and Hunt, the testimony of Officer Hunt, and pictures of the evidence. After reviewing all of the evidence presented, the disciplinary hearing officer found appellant was guilty based on the testimony and report. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985).

("The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.")²

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The record conclusively establishes that the "substantial evidence on the whole record" supports SCDC's final agency decision. The hearing officer found appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

APPELLANT'S ARGUMENT THAT RESPONDENT DID NOT FOLLOW AGENCY POLICY SHOULD BE BARRED

Appellant has also alleged that Respondent did not adhere to its policies in conducting the hearing. Section 15.3 of SCDC Policy OP-22.14, Inmate Disciplinary System, states that an inmate is allowed to call witnesses unless the Hearing Officer decides that the testimony of such witnesses is repetitive, irrelevant, or is likely to jeopardize the life or safety of persons or the security and order of the institution. The policy further states that if the Hearing Officer refuses to let an inmate call a witness he or she must write the reason for the denial on the Disciplinary and Hearing Record.

² In Hill, the Court further elaborated, "The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction,

A state's failure to follow its own procedural regulations does not establish a violation of due process, although there is a right to procedures which meet constitutional due process standards before a person is deprived of a substantive liberty interest established under the state regulations. Jackson v. Cain, 864 F.2d 1235, 1251-1252 (5th Cir. 1989). In this matter, although the Disciplinary Hearing Officer did not write his reasoning for denying Appellants witness request in his report, it is clear from the record that his requested witnesses would have given testimony that was repetitive to the evidence that had already been presented. The Hearing Officer allowed Appellant to read seven (7) inmate letters into the record. These inmates testified that Appellant did not claim ownership of the contraband, which contradicted the testimony and report of Officer Hunt. Appellant then requested that other security personnel be called to testify.

It is clear from the record that further testimony from security personnel would have been repetitive to that of Officers Hunt and Colt. It is also clear that the Disciplinary Hearing Officer gave Appellant ample opportunity to present evidence on his behalf and afforded Appellant Due Process as discussed in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974).

CONCLUSION

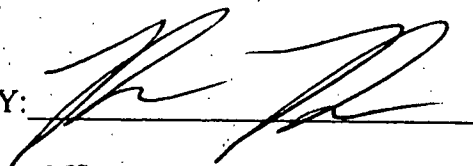
Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

BRADFORD A. RAWLINSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

nor any other standard greater than some evidence applies in this context." Id. (citations

BY:



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Columbia, South Carolina 29221
(803) 896-8508

September 28, 2012
Columbia, SC

omitted).



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

October 2, 2012

The Honorable Deborah Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

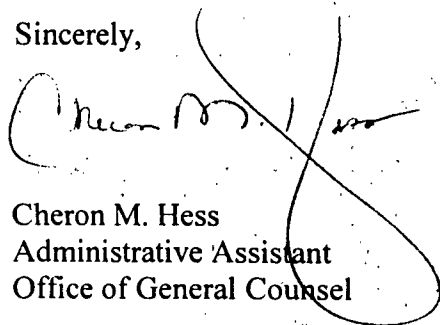
Re: Billy Lee Lisenby, #200273, vs. SCDC
Docket No. 12-ALJ-04-0547-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosure

cc: Inmate Billy Lee Lisenby, #200273
Tyger River Correctional Institution

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

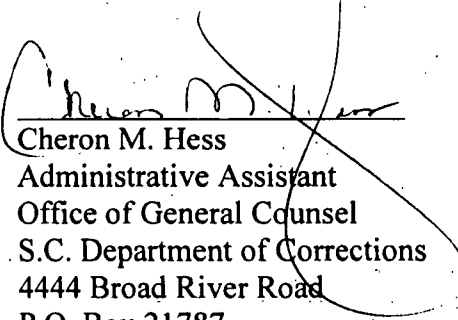
Respondent.

)
)
)
) **Certificate of Service**

)
) Docket# 12-ALJ-04-0547-AP
)
)
)

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Billy Lee Lisenby, #200273
Tyger River Correctional Institution


Cheron M. Hess
Administrative Assistant
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

October 2, 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lisenby, # 200273,	)	Docket No.: 12-ALJ-04-0547-AP
	)	
Appellant,	)	RESPONDENT'S BRIEF
	)	
v.	)	Honorable Deborah Brooks Durden
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
_____	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Billy Lisenby ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on February 10, 2012, challenging his disciplinary conviction for trafficking, use, and/or possession of narcotics, marijuana, or unauthorized drugs, offense 903 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on March 13, 2012. This grievance was also investigated and denied. In his Notice of Appeal, appellant claims his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests the disciplinary conviction be upheld.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP

(September 5, 2001); the Supreme Court held the ALC's jurisdiction was limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest.¹ See Sullivan at 443, 586 S.E.2d at 127.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 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 the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Service Commission of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

Prison disciplinary cases are not criminal trials in federal or state courts; they are

¹ As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), 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 the fact-finder as to the evidence relied upon.

These requirements were complied with in this appeal. The Disciplinary Offense Reports (DOR) and Major Disciplinary Report and Hearing Record shows appellant had notice of the charges (use, possession of narcotics, marijuana), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on February 14, 2012), a neutral and detached hearing body (hearing officer), aid of counsel substitute, and a written statement of findings (Major Disciplinary Report and Hearing Record).

Appellant claims he was denied the right to examine members of the Agency Search Team at the disciplinary hearing. The Agency Search Team conducts institutional searches as directed by the Director, Division of Security. Each institution assigns an employee to serve in the capacity of an accusing official to ensure the Agency Search Team members can perform their sole duty of conducting searches. With the volume of searches performed, and the volume of contraband found during these searches, the Agency Search Team would become ineffective if they were required to participate in inmate disciplinary hearings. As the Wolff Court acknowledged, the full panoply of due process right does not apply to prison disciplinary proceedings; there must be mutual accommodation between institutional needs and objectives and the provisions of the

Constitution that are of general application. Wolff, 418 U.S. at 556.

There was ample evidentiary support for the disciplinary conviction for possession of marijuana. Officer Hunt reported that during a shakedown of appellant's room, several cell phones and 22 grams of a green leafy substance were discovered in two holes in the wall. Appellant claimed ownership of all items. The green leafy substance was tested and determined to be marijuana as it contained THC. After hearing all of the evidence presented, the disciplinary hearing officer found appellant was guilty based on Officer Hunt's report and testimony. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) ("The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.").²

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the "substantial evidence on the whole record" supports SCDC's final agency decision. The hearing officer found appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

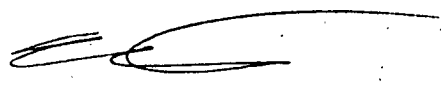
² In Hill, the Court further elaborated, "The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context." Id. (citations omitted).

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

CHRISTOPHER FLORIAN
Deputy General Counsel

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: 

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4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

October 2, 2012
Columbia, SC

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE**

DOCKET No.: 12-ALJ-04-0546-AP GRIEVANCE No.: KRCI 233-12

INMATE NAME: Billy Lisenby SCDC No.: 200273

INSTITUTION: Kershaw Correctional Institution

DATE: February 14, 2012

**CHARGE: 898-The Possession of Any Cell Phone or Other Type of Communication
Device**

903-The Use, Possession of Narcotics or Marijuana

DHO: The purpose of this hearing is to treat the matter before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in removal. State your name and number for the record, sir.

I/M: My na...name Billy Lisenby, 200273.

DHO: You are appearing before the Kershaw Correctional Institution Disciplinary Hearing being recorded on February the 14th, 2012, at approximately 10:42 a.m. I'm Mrs. Sellers. Inmate Lisenby is representing himself. Are you ready to proceed, sir?

I/M: Uh, yes ma'am, but I asked for, uh, a Counsel Substitute.

DHO: Okay, but your reading score's a 10 grade. Um, if you read less than 6th grade, then we will give you one, but your reading score's a 10th grade. So, your not entitled to one unless you got some mental problems. Do you see Ms. Cooper or Ms. Gardner?

I/M: Yes ma'am.

DHO: Okay. Well, it says that you have no mental health problems. So, that's what the computer is saying.

I/M: Well, (inaudible) out patient and am on medication right now.

DHO: Disciplinary Hearing Officer

I/M: Inmate

OFC: Accuser

C/S: Counsel Substitute

DHO: Okay. Well, let me check the computer, see if they made a mistake, but that's showing that you don't have any mental health problems. When was the last time you seen them?

I/M: About two (2) weeks ago. I'm in class with them. I take a class with them.

DHO: Okay. It's noted that you have no mental health, and this was noted as of January the 20th, 2012. So, you need to get back with them cause the computer is saying that you don't have any mental health problems. Um, but you had already talked with Armstrong, so I don't even have a problem with you, um, having Armstrong in here. Mr. Armstrong. I want to note that um, Lisenby is not entitled to a Counsel Substitute, but being that you already spoke with him, I have no issue with letting you be in here and, um, assisting him in any manner that you, um, see fit. Um, the Incident Report that was written by Officer Hunt, 050111, is dated February the 4th, 2012 at approximately 3:05 p.m. The Location is Oak A-Side 11; and it reads: Officer Hunt and the Agency Search Team conducted a routine shake down of Oak A-Side Room 11 and found a Verizon Samsung cell phone in a hole in the bottom of the wall. Both Rooms, 11 and 10, have access to this bottom hole in the wall. Then at the top of the wall, inside a hole, we found two (2) Verizon Samsung cell phones, two (2) Samsung cell phone chargers, 22 grams of what appeared to be a green leafy substance. Only Room 11 has access to the top hole in the wall and one surge...surge powtech turned into a cell phone charger plugged in the wall. Inmate Lisenby, Billy, 200273, claimed ownership to all items listed that was found in Room 11 and is being charged with 898-Possession of a Cell Phone, 903-Possession of Marijuana. The above marijuana was NIC Test. The test was positive for THC. I want to note that

at the beginning of this hearing, um, when Inmate Lisenby entered the hearing area, he stated to me that his ex-father-in-law was a part of a baby mama...

I/M: Daddy.

DHO: His baby mama daddy was involved in the search of his cell, which was Colt.

Okay. I want to note that I do have an Incident Report from Colt and it's dated February the 4th, 2012, 3:24 p.m; Location: Oak A; and it reads: I, Stanly Colt, 42234, was on Oak A-Side doing room search...searches with the Agency Search Team. Inmate Billy

Lisenby, 200273, stated that he had a baby by my daughter and that I was here to set him up. I did not enter Inmate, two thou...200273, Billy Lisenby's room. I did not know that Inmate Lisenby was in the system with the Department of Correction. Inmate, 200273, Billy Lisenby, does have a baby by my daughter. You were served this offense of 903 and 898 on February 7, 2012 at 11:05 p.m. and you were served by Sergeant Edward Hunter. On the offense of 898, which is the Cell Phone and/or Charger, sir, how do you plead?

I/M: Not guilty.

DHO: On the charge of 903, which is the Use, Possession of Narcotics or Marijuana, how do you plead?

I/M: Not guilty.

DHO: Do you have any witnesses or any evidence, Mr. Armstrong?

C/S: Ma'am, he stated to me prior to, uh, being aware that he had a charge of somebody searching his room, he was in visitation at that time. Uh, he has some statements from some inmates stating that he never claimed ownership, what so ever, in reference to this charge. He do feel strongly that even though that there is a Incident

Report written stating that his baby's granddaddy came into his room, uh, he...he feels strongly that...that it ac...actually did occur. And he said that uh...

DHO: Okay. You was in visitation? That's what you're saying?

I/M: Yeah. When I came...I came off visitation while they were shaking my room down. They had already found it when I came off. They...my roommate and them was sitting outside the door...

DHO: Okay.

I/M: ...outside the door, and then they...they handcuffed me and set me on the bench.

DHO: Okay.

I/M: And I...I walked up, like I say, after everything was found and everything, and , um, they asked me, like I said, they didn't even...like they...

DHO: They asked you what?

I/M: The...the...the contraband, the...the contraband...

DHO: You were starting to tell me they asked you...

I/M: Yeah, they asked me...

DHO: They asked you what?

I/M: While I was on the bench, they asked me did I know any contraband was in my room. I said "No". So, that's when they came around. They didn't even show me all this. The...the phones and all, they didn't show me none of this. They...they asked me, they said, "Was it yours?" I said, "No. It's not mine". I was sitting on the bench, so when I came in and, uh, they said, "Well, somebody gonna have to own up to it". They said, "We gonna charge all of ya'll then". And when I get this back, they say that I, uh, claim ownership. I went to the Major and the Major had already sent it in. I went to him,

matter of fact, uh, on visit this week and I told the Major...and the Major said, uh, everybody should have been charged. He said, "I didn't charge everybody"? I said, "No. You just charged me." I said, "I ain't claim the ownership of nothing." I'm about to get a MO. I'm...I've never had a phone charge or a drug charge. I've been doing this for 20 years. Never...I've never had anything like this before.

DHO: You had asked that your accuser be present. Your accuser is Officer Hunt. He's here via telephone. Officer Hunt, is your report true, sir?

OFC: It is ma'am.

DHO: Would you like to make any additional statements?

OFC: Uh, that, um, he did claim all ownership of all contraband that was in his room.

DHO: Okay. Um, was you present when he claimed it or did someone tell you he claimed it?

OFC: No, I was present.

DHO: Okay. Um, Lisenby says that when the shakedown was taking place, he was in visitation?

OFC: Uh, when I...when I found the contraband...

DHO: Mm hm.

OFC: ...uh, Inmate Lisenby was present.

DHO: Okay. When you say you was in visitation, what was you doing in visitation?

I/M: On visit.

DHO: You was on visit.

I/M: I was. When I came...when I came in, he was sitting down doing Incident Reports...

DHO: Okay.

I/M: ...doing Incident Reports. They were down in the room, he was doing, him and, um, Ms., uh, the lady I asked for a wit...be a witness. Ms. Moore and Officer Lee, they were sitting down doing Incident Reports on the bench.

DHO: Mm hm.

I/M: They handcuffed me and put me on the bench.

DHO: Okay.

I/M: And...and my roommates and them and the people next door, and the, uh, guy that you just brought up here, all them was sitting on the floor.

DHO: Where was Lisenby at when he claimed ownership, sir?

OFC: Uh, outside the, right at his room.

DHO: Okay. So, the two people that you just called their names, what are they to verify?

I/M: They were...they were the, um, that was the three people that found the contraband. They were the ones in the room shaking down: Ms. Moore, Colt and Lee. Those are the ones uh, ...

DHO: Okay. That's part of the Agency Search Team. Okay, they won't be contacted.

Um, I thought you was saying that somebody can say that you was in visitation at the time.

I/M: Uh, no. Uh...uh...uh...duh, the, uh, contraband (inaudible). Yeah, I sent my shoes out that day.

DHO: Okay, but you said when you got down there, they had already found the items.

I/M: Mm hm.

DHO: And nobody asked you anything?

I/M: Yeah, uh, the Agency Team and Lieutenant Thompson and, uh, Hicks and all them came around me. I never spoke to uh, uh...

DHO: Hunt?

I/M: I don't even know what Hunt look like. I can't tell you what Hunt look like. I don't know Hunt. I just got informed, and I don't know what Hunt looks like to this day. And they asked me...they didn't get my ID...they didn't get, ask for my ID...ask for nothing. They asked me was it mine. I said, "No". They asked me I knew anything about it. I said, "No, I don't know anything about it". And then, they, uh, said that all people would be charged...everybody be charged, so I went back in. They took...sent me in my room and I end up getting a charge paper, Nobody else got one. I was the only one cause I screamed, Lieutenant Thomas, that, I said, "That man don't supposed to be in my room, cause I got a, uh, restraining order against that man". I mean, he got a restraining order against me, and Lieutenant Thompson told...

DHO: We already read the Incident Report. The institution will deal with that. That don't have anything to do with me or the disciplinary process. Um, Hunt, okay, I'm a ask again. Um, you asked Inmate Lisenby whether these items belonged to him?

OFC: I asked who these items, uh, belonged to. Inmate Lisenby said he claimed the items.

DHO: Okay, and the roommate, which was Gaines, did he say anything?

OFC: No.

DHO: Okay. Was anyone else present when Inmate Lisenby stated that these items belonged to him?

OFC: Uh, the Search Team was around me, but I couldn't tell you a name of anyone.

DHO: Okay.

OFC: But what I can say is, anything that I put on that Incident Report...

DHO: Mm hm.

OFC:...that they claimed it. I definitely wouldn't, uh, have put...put that on there.

DHO: Mmmk.

I/M: I...I believe in everybody having a fair trial. If he wouldn't have claimed it, it wouldn't be on my Incident Report.

DHO: Okay. Do you have any other questions, Mr. Armstrong...for Hunt?

C/S: No, not for Hunt.

DHO: Who you have questions for?

C/S: I think he...he got all these statements that he's...

DHO: Okay. You want to read them for the record? Go ahead.

I/M: Yes ma'am. Um...huh, Jeremy Gaines, uh, testified, um, I was present, that's my roommate, I was present when the contraband was found in 2, uh, in Billy's Room 273, uh, 200...273, the wall by Contraband Officer's Curt, Moore and Lee. Inmate Lisenby did not claim ownership to the contraband. This is on second floor, 2012. This is true to the best of my knowledge. Uh, Antonio Singel...Singletary, when the contraband was found on the second, four of 12, in Billy Lisenby's room. I was, uh, beside him and Inmate Lisenby never claimed ownership of the contraband that was found by C/O Colt, Moore and Lee. Uh, Dominic Austin, when the contraband was found on the second, four of 12, in Billy Lisenby's room, uh, Inmate, uh, Lisenby never claimed ownership of the contraband that was found by C/O Colt, Moore, and Lee. James L. Gathers, on

second, four of 12, when the contraband was found in Billy Lisenby's room, he did not claim ownership the...of the contraband that was found by...by C/O Colt, uh, Moore, and Lee. Um, Daniel Gray, when the cell phone was found on second, four of 12, of Billy Lisenby's room, uh, Inmate Lisenby never claimed ownership of the cell phone and the contra...and...and the contraband was found by C/O Colt, Moore and Lee out of Room 10 and 11. Uh, Melvin Huntly, on second, 24, of 2012, I was present when C/O Colt, C/O Moore, and C/O Lee found the contraband in Billy Lisenby's room. Mr. Lisenby did not claim ownership to the contraband. To my knowledge, with the proper search and seizure consist of, if nobody claims the contraband, everybody get charged. The officers failed to follow procedure. David Brimfield, uh, on second, four of 12, when contraband was found in the wall of Billy Lisenby's room, he didn't...he didn't claim ownership. Officers Colt and Lee found the contraband. I swear under penalty of perjury, that the above is true and correct to the best of my knowledge.

DHO: Question. Okay, you just read 7 statements from, um, different inmates. Where were all of these inmates during the time of...of your room search, cause 7 people is not assigned to your room?

I/M: No. They were...they, um, they were on the floor. When I went out in the, on the floor beside the room, they was searching each room.

DHO: Okay.

I/M: You see, people be dropping stuff down, to...so they make everybody come out and sit on the floor.

DHO: Right. Mm hm.

I/M: So, everybody be out there together.

DHO: Okay.

I/M: And see, they, um, the Antonio Singletary and them shar...shared the wall with me, and then, the...the next room, Antonio Singletary and them share the wall with that room too.

DHO: Okay.

I/M: And they found contraband on both sides of their wall. Okay. They charged them with the other side of the wall, but they didn't charge them with my side of the wall.

DHO: Mm hm. Do you have anything else?

I/M: No ma'am.

DHO: Do you have anything else, Hunt?

OFC: Uh, no ma'am.

DHO: Mr. Armstrong?

C/S: No ma'am.

DHO: At this time, I'm gonna recess this hearing to arrive at a decision.

DHO: Restate your name and number for the record, sir?

I/M: Billy Lisenby, 200273.

DHO: Inmate Lisenby, I found you guilty of the offenses 898 and 903 based on the written and verbal testimony of Hunt and pictures of the evidence. I want to note that Inmate Lisenby did read 7 statements, um, from other inmates in reference to him not admitting ownership as the Incident Report, um, alleges. Your sanction for the 903 is: 360 days loss of privileges, to include canteen, phone, contact visit suspension. Your sanction for the 898 is: 180 days disciplinary detention; 180 plus 360 = 540 days loss of privileges, to include canteen, phone, contact visit suspension; and 3, excuse me, 60 days,

um, loss of good time. This is due to it being your first offense of 898 and 903. You will receive a copy of the Hearing Record explaining the results and appeal process. You have the right to appeal my decision by filing SCDC Form 10-5 with the Grievance Coordinator and get the assistance of the Grievance Coordinator in completing the grievance form if you're unable to read and write. You are dismissed and this hearing is concluded.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT**

Billy Lisenby, 200273,

Appellant,

-vs-

South Carolina Department of Corrections,

Respondent.

CERTIFIED TRANSCRIPT

Docket No.: 12-ALJ-04-0546-AP

This is to certify that the following transcript of this tape-recorded administrative disciplinary hearing is a true, accurate and complete transcript of the proceedings and testimony hereby transcribed.

I do further certify that I was not present at the administrative disciplinary hearing that has been transcribed.



Christina Keltett
Transcriptionist
Office of General Counsel
South Carolina Department
of Corrections

SWORN TO before me this
14th day of August, 2012.

W. Payne Hall (L. S.)

Notary Public for South Carolina

My Commission Expires: 4-6-2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, 200273,

Appellant,

-vs-

South Carolina Department of Corrections,

Respondent.

CERTIFICATION

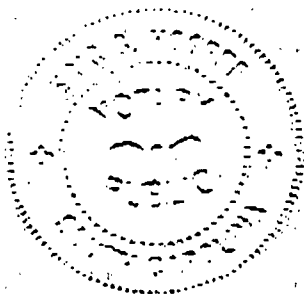
Docket No.: 12-ALJ-04-0546-AP

This is to certify that I am the Disciplinary Hearing Officer who presided at the administrative disciplinary hearing in this matter. I have reviewed the attached transcript of this tape-recorded hearing and hereby certify the transcript as true, accurate, complete and constitutes the entire record of the proceedings.


Disciplinary Hearing Officer
South Carolina Department of Corrections

SWORN TO before me this
13th day of August, 2012.

 (L. S.)
Notary Public for South Carolina
My Commission Expires: Feb. 9th, 2020



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM**

STEP 1

FEB 15 2012

INMATE NAME: Billy Lee Lisenby JR.
 SCDC NUMBER: #200273
 INSTITUTION: Kershaw C.I.
 HOUSING UNIT: Oak All
 WORK ASSIGNMENT: Down

Office Use Only
 Grievance No. KCCP 80235-12
 Code: General
 Policy
 Disc. Hear. 103 #123
 Class. AD 211412
 Date Received 2/16/12
 IGC Initials PK

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy) On 2-14-12 I was found guilty of 703 Use, Possession of Narcotics, Marijuana, of the pleading not guilty. I'm seeking actual justice, violation of due process, and failure to abide by policy and procedure. I presented (7) statements by inmates Jeremy Gaines #217813, Antonio Singleton #235477, James L. Gutierrez #20672, Daniel Gray #235709, Melvin Hurley #340142, and Aaron Brimfield #331101, stating I never claimed ownership of the contraband, and that Go Luit, Moore, and Lee found the contraband. (4) Four inmates were housed in the Receiving Unit I was the only one charged. This is not the correct protocol, all inmates were supposed to be charged and the D.H.O. was supposed to be the fact-finder. At the hearing the D.H.O. never presented any evidence that the alleged marijuana tested positive for THC. Also they never showed a picture of the marijuana just the photos and charges. This is a violation of policy OP-22.14 Section 15.1 which states "At the start of the hearing, the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the inmate must produce the contraband, a sample of the contraband, or a picture of the item should be produced at the hearing. Also, if the contraband involves a controlled substance, i.e., illegal drugs such as marijuana, the Hearing Officer must have available a copy of SCDC Form 19-79 "Controlled Substance Testing and Disposition Form," that establishes the exact type of illegal drug found in the possession of the inmate." The DHO did not have the SCDC Form 19-79 available. The D.H.O. refused to call my witnesses Go Luit, Go Moore, and Go Lee. I asked the my witnesses on the record and the D.H.O. stated "We do not call people from the Agency Search Team as witnesses." Prior to the hearing I sent the D.H.O. and Counsel Substantive a S.C.D.C. Form 1411 Request to Staff member asking that Go Luit, Go Moore, and Go Lee be called as my witnesses. This is a violation of OP-22.14 Section 15.3 which states "The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), 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. If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on the SCDC Form 19-69 "Disciplinary Report and Hearing Record," in the space provided." See Page 2

ACTION REQUESTED: I ask that my case be overruled and that the tape recording be made available to the appropriate reviewing authority, before deciding my appeal as stated in OP-22.14 Section 23.4.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

Billy Lee Lisenby Feb 14th 2012
 Grievant Signature Date

ACTION TAKEN BY IGC:

Reviewed disciplinary documentation.
 See Warden's Response.

34.

☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

P. Hough 3/2/12
 IGC Signature Date
N/A
 Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Lisenby;

This is in response to KRCI-0235-12. You have appealed the results of your 2/14/12 Disciplinary Hearing where you were found guilty on the charge of 903 Use or Possession of Narcotics, Marijuana or Unauthorized Drugs, Including Prescription Drugs, or Inhalants. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on the written and verbal testimony of Officer Hunt and a picture of the evidence. Based on this information, your appeal is without merit and therefore denied.

If not satisfied with my response, see Step 5 below.

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Billy Lisenby 3-8-12
Grievant Signature Date

William R. Adams 3-6-12
Warden Signature Date
J. North 3/8/12
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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. None of this was done, and the reason for denying my witnesses were not on SCDC Form 18-69. If my witnesses couldn't have been present the D.H.O. could've gotten them on speaker phone. See OP 22.14 Section 15.5 in part which states "Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded." Wolff v. Mc Donnell, 99 Sct 2963 (1979) supports the fact that I have a Constitutional Right to have my witnesses called in my behalf. The D.H.O. obtained a statement from C/o Cuts, but refused to obtain statements from C/o Moore and C/o Lee, which would've been in my favor.

Sworn Affiant

On 2-4-12 I was present when C/o Coit, C/o Moore, and C/o Lee found that Contraband in Billy Lisenby's room # 200273 Room. Mr. Lisenby did not claim ownership to the Contraband and to my knowledge the proper Search and Seizure consist of, if no body claims the Contraband every body get charged. The Officers above fail to follow procedure.

Malin Huntley - S-DC 340142

Sworn Affidavit

On 2-4-12 when the contraband was found in
Billy Lumbly's #200273 room he did not claim ownership of
the contraband, that was found by 40 Cent, 40 Mack, and 40 Lee.

James L. Garthwaite

Swear Affidavit

When the Contraband was found on (2-4-12) in Billy Lisenby #200273
room, I was beside him on the floor. Inmate Lisenby never claimed ownership
of the Contraband, that was found by %Curt, %Alston, and %Lee.

Dominique Alston #309295

Suarez Affidavit

When the Contraband was found (2-4-12) in Billy Lisenby #200273 room, I was beside him on the floor. Inmate Lisenby never claimed Ownership of the Contraband, that was found by % Curt, % Alouse, And % Lee.

Antonio Singleton #295492

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

MAR 23 2012

STEP 2

INMATE GRIEVANCE

INMATE NAME: Billy Lee Kirby Jr.

SCDC NUMBER: #200290

INSTITUTION: Kershaw C.I.

HOUSING UNIT: Oak Hill

WORK ASSIGNMENT: N/A

MAR 4 3 2012

KERSHAW CI
GRIEVANCE

Office Use Only

Grievance No. ICKCT-0235-1

Code: General

Policy

Disc. Hear. 903 #123

Class. HR 2/14/12

Date Received 3/13/12

IGC Initials pin

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): In the Appeal they state that I was found guilty based on Officer Hunt's picture and evidence. For the 903 charge C/O Hunt never showed any evidence that a bag of marijuana exist, he never showed a picture of the marijuana, or a test showing the marijuana tested positive for THC. I'm a victim of selective prosecution, because they never showed any evidence that I claim ownership of the contraband. (7) inmates wrote statements saying I didn't claim ownership of the contraband. Several inmates had access to the contraband, and I was the only one charged. This is not protocol, all (9) inmates were suppose to be charged and the D.H.O was suppose to be the Fact-Finder. The D.H.O Refused to call my witnesses C/O Moore, C/O Lee. I asked for my witnesses on the record and the D.H.O stated "We do not call people from the Agency Search Team as witnesses." Nothing in policy OP-22.14 supports this. Prior to the hearing I sent the D.H.O and Counsel Substantive a S.C.D.C Form 1911 Request to Staff member asking that C/O Moore, and C/O Lee be called as my witnesses. (See Enclosed Request to Staff.) Pursuant to Wolff v. McDonnell, 94 S.Ct. 2963 (1974) supports the fact that I have a Constitutional right to have my witnesses called in my behalf. Also I was denied the right to confront my accuser. C/O Hunt, C/O Moore, and Lee found the contraband, and C/O Hunt wrote the incident up. Hunt admits he was not in the room when the contraband was found. I ask my case be overturned.

Billy Lee Kirby Jr. March 9th 2012
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants (903) on February 14, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanctions imposed, which included the loss of -60- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 4/30/12
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

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(SEE REVERSE SIDE FOR INSTRUCTIONS)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD**

Case#: 122, 123 Inmate Name: Lisenby, Billy SCDC#: 200273
 Living Area: OA11 Job: NA Custody: NA
 Offense Date: 2 / 4 / 12 Offense Time: 3:05 XXM/PM Institution: Kershaw

Offense Description:

Case 122 - 898 - Possession of a Cell Phone and/or Charger
 Case 123 - 903 - Use, Possession of Narcotics, Marijuana

Charging Officer/Employee: Chris Hunt (Al Contraband) Title: Officer
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

- ☐ I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
☐ I DO NOT WANT TO BE PRESENT AT MY HEARING
☒ I DO WANT MY ACCUSER PRESENT AT THE HEARING
☐ I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- ☐ I WAIVE MY RIGHT TO A HEARING
 SMU/SEGREGATION ONLY
☒ I WANT A COUNSEL SUBSTITUTE
☐ I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 2 / 7 / 12 11:05 AM/PM By (Print): SGT Edward C Hunter
 Inmate Signature: Billy Lisenby SCDC#: 200273 Date: 2 / 7 / 12

HEARING INFORMATION:

Hearing Date: 2 / 14 / 12 Hearing Time: 10:42 am/pm Tape: Side: Start: End:

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS DURING THE HEARING.

(1) NMH 10:0 NTV
Several statements were read for the record by Jm Lisenby.

OFFENSE CODES	898	903		
INMATE PLEA (G, NG, None)	NG	NG		
FINDINGS (G, NG, DS)	G	G		

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER EXPLAIN IN DETAIL: Written verbal testimony of Hunt & pictures of the evidence.

HEARING LENGTH: 10 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 60A
360 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
360 * Canteen (Days) 180F360=540 Visit Suspension Thru _____
360 * Other none (Days) 180F360=540 Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 180 898 (360 + 903 = 180 + 360 = 540 -> 898)

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st offense of 898 + 903

CREDIT FOR PHD TIME SERVED? YES/NO

IF YES, DAYS _____

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Billy Lisenby

DATE: 2-14-12

HEARING OFFICER (PRINT NAME) J. S. Jones

APPROVED/REVERSE/MODIFY _____

REASON _____

Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record

Canary - Inmate (Service of Disciplinary Report)

Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)

Pink - Central Record

*(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

2/27
2/14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page 1 of 1

Institution/Center: Kershaw	
Date of Report: 2-3-12 CH 2-4-12	Time of Report: Approx 3:15 pm
Reporting Official: Ofc. Hunt, Chris 050111	Date of Incident: 2-4-12
Location of Incident: Oak A side room 11	Time of Incident: Approx 3:05 pm
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. Lisenby, Billy 200273 B/m	1. Agency Search Team
2. Gaines, Jeremy 297848 B/m	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I, Ofc. Hunt and The Agency Search Team conducted a routine Shakedown on Oak A side room 11 and found a Verizon Samsung cell phone in a hole in the bottom of the wall both rooms 11 and 10 have access to this bottom hole in the wall. Then at the top of the wall inside a hole we found two Verizon Samsung cell phones, two Samsung cell phone chargers, twenty two grams of ~~to be~~ ^{Arrow} what appears to be a green leafy substance only room 11 has access to the top hole in the wall, and one surge powtech turned into a cell phone charger plugged in the wall. Inmate Lisenby, Billy 200273 claimed ownership to all items listed that was found in room 11 and is being charged with 898 possession of a cell phone, 903 possession of marijuana. The above Marijuana was NIK tested. The test was positive for THC. CH

Signature: Ofc. Hunt

Evidence: 3 cell phones, 2 Verizon Samsung, 2 Samsung cell phone chargers, 22 grams marijuana, altered charger

Witness(es):

Supervisor's Comments: Refer to the Major for further action.

Signature: [Signature] Title: Capt Date/Time: 2/4/12

Major/Responsible Authority: 5:00pm

Forwarded to Ofc. Hunt, I'm charged with 898, 903

Signature: [Signature] Title: MAFV Date: 2/1/12

STG Related - Refer to STG Committee
() Yes (X) No () Unknown

This Incident is DRUG related
(X) Yes () No () Unknown

nmh 10:0

Action Taken

() Informal Resolution
() Administrative Resolution
() Refer to Disciplinary Hearing

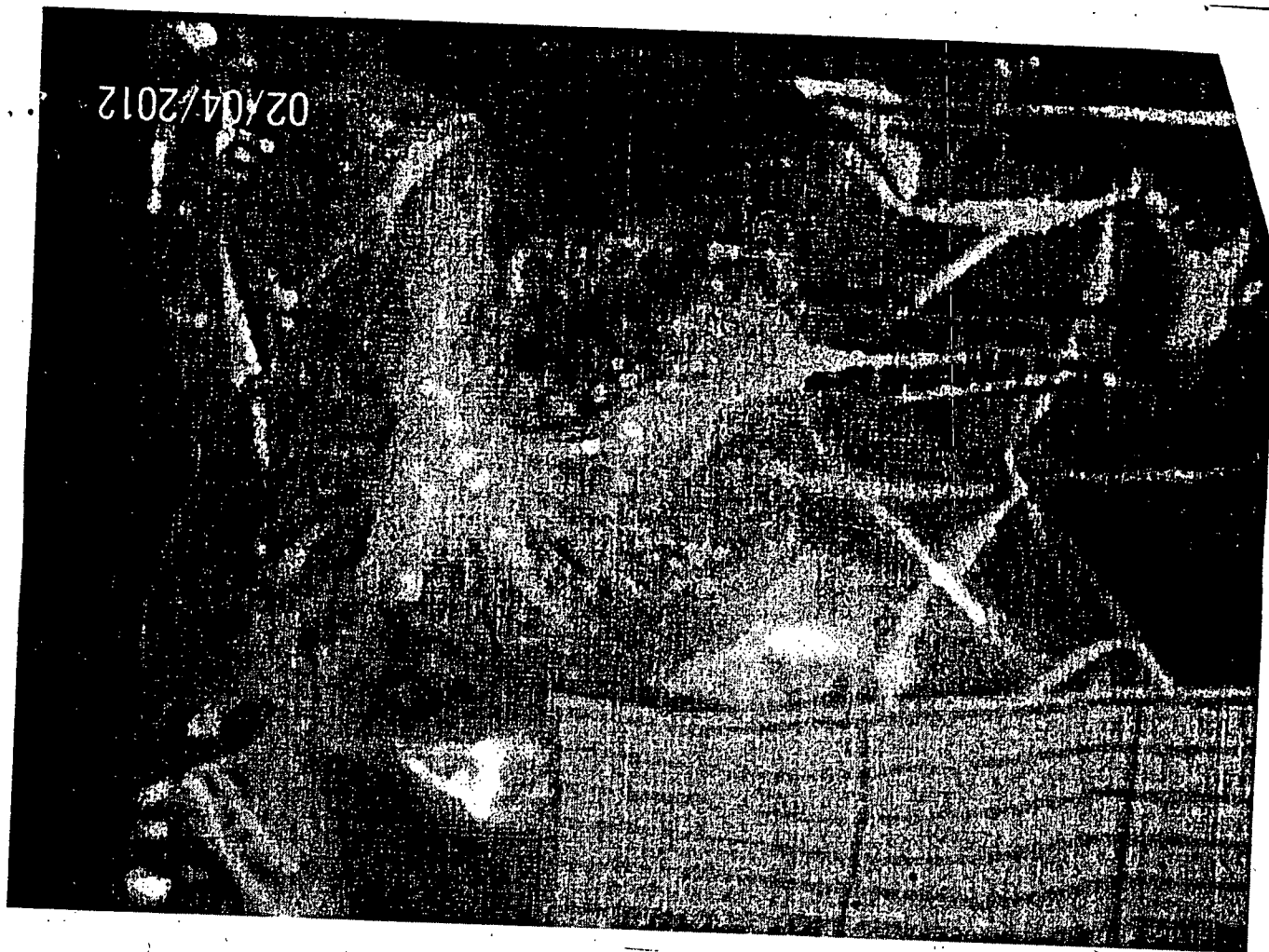
2/7

4/19/2016 360

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS INCIDENT REPORT

Page 1 of 1

Institution / Center: <u>Keishaw</u>	
Date of Report: <u>2-4-12</u>	Time of Report: <u>330 pm</u>
Reporting Official: <u>Stanley Coit</u>	Date of Incident: <u>2-4-12</u>
Location of Incident: <u>OAK A</u>	Time of Incident: <u>3:24 pm</u>
Inmate(s)/Resident: SCDC#	Age Race Sex Employee(s) Involved:
1. <u>Billy Lisenby 200273</u>	1. <u>Stanley Coit</u>
2.	2.
3.	3.
4.	4.
5.	5.
On the above date and approximate time: <u>I Stanley Coit #42234 was on OAK A Side doing room search with the Agency Search Team. Inmate Billy Lisenby #200273 stated that he had a baby by my daughter, and that I was here to set him up. I did not enter Inmate 200273 Billy Lisenby's room. I did not know that Inmate Lisenby was in the system with the Department of Corrections. Inmate 200273 Billy Lisenby does have a baby by my daughter.</u>	
Signature: <u>Stanley Coit</u>	
Evidence:	
Witness(es):	
Supervisor's Comments: <u>Forwarded to the Major.</u>	
Signature: <u>T. Coit</u> Title: <u>IT</u> Date/Time: <u>2-4-12 6:40 PM</u> STG Related - Refer to STG Committee ☐ Yes ☐ No ☐ Unknown This Incident is DRUG related ☐ Yes ☐ No ☐ Unknown	
Major / Responsible Authority:	
<u>Will Inform my supervisor and place 19-29A in OTC Coit file. NO</u> <u>Action taken.</u>	
Signature: <u>[Signature]</u> Title: <u>MAJOR</u> Date: <u>2-6-12</u>	



DHO MRS. Sellers

Feb. 10th 2012

Billy Linsby

200273

Kershaw C. I

Oak All

I need C/o Moore and C/o Lee present at my hearing
OR have them as my witness.

Case heard on 2-14-12

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2-21-12

A. Sellers

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
CONTROLLED SUBSTANCE AND DISPOSITION FORM

RECEIPT CONTROL NUMBER: _____

CONTROL/LOG NUMBER: 12-066

Institution: Kershaw

Date: 2/4/12

Inmate Name: Lisenby, Billy

SCDC #: 200273

Inmate Name: _____

SCDC #: _____

Inmate Name: _____

SCDC #: _____

DRUG/ALCOHOL ANALYSIS

Quantity/Weight: 20.9 g

Date Analyzed/Weighed: 2/4/12

Type of Test: () Valtox Drug

() Sight and Smell

(☒) Other: Nik

Test Results: (☒) Marijuana

() Cocaine

() Heroin

() Alcohol Content

() Other: _____

S/ Ofc. Hunt

PHARMACY PRESCRIPTION/MEDICATION VERIFICATION

Date Examined: _____

Quantity/Weight: _____

Examination Results: _____

Prescription Medications:

() Are

() Are not

issued by SCDC

() Were

() Were not

issued to inmate

S/ _____

DISPOSITION OF CONTRABAND/EVIDENCE BY CONTRABAND CONTROL OFFICER

Disposition Date: _____

Place: _____

() Destroyed

() Turned into Sled

() Held for Display

() Turned into Inmate Welfare Fund

() Returned to: _____

S/ _____

Witness Signature: _____

Title: _____

ember, 1996)

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(OVER)

Certificate of Counsel For Appellant

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

Dated: June 21, 2013

Billy Lee Lisenby Jr.

Billy Lee Lisenby Jr.

Pro-Se

2100 Prison Rd

Enoree, SC 29335

RECEIVED

JUL 01 2013

SC Court of Appeals

48.

LEGAL MAIL

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
Deborah Brooks Darden, Judge

Cases: 2013-000852
2013-000864

Billy Lee Lisenby JR, #200273

Appellant,

v.

South Carolina Department of Corrections

Respondent

PROOF OF SERVICE

I hereby certify that I have ~~been~~ served Appellant's Record on Appeal on Respondent's
by depositing a copy of same in the United States Mail, postage prepaid June 21st 2013, addressed
to the Respondents:

Christopher D. Florian
P.O. Box 21787
Columbia, S.C. 29221-1787

Billy Lee Lisenby JR
Billy Lee Lisenby JR, #200273
200 Prison Rd. Smu #43
Enoree S.C. 29335