

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

CASE No.: 2013-002277

Michael Goins # 302385 ----- Appellant,

v.

South Carolina Department of Corrections ----- Respondent.

APPELLANT'S FINAL REPLY BRIEF

March 3, 2014

Mr. Michael D. Goins # 302385
430 Oakblow Road
Pelzer, S.C. 29669

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SC Court of Appeals

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STATEMENT OF THE CASE

This matter comes before this Honorable court pursuant to the appeal of Michael Gains (Appellant), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of Public Masturbation, offense 854 under SCDC Policy DP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 36 days of good time due to the disciplinary conviction.

Appellant filed a step one grievance on June 7, 2012, challenging his 854 conviction. This grievance was forwarded to the Inmate Grievance Branch, uninvestigated, and denied as a step 2 response. Appellant then appealed to the Administrative Law Court.

After the parties filed briefs, the ALC affirmed SCDC's final decision, finding the disciplinary hearing comported with due process. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence.

Appellant now seeks review of the ALC's decision. For the reasons that follow, Appellant respectfully request that the ALC's decision be Remanded, reversed & vacated.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable 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 finding, 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 abuse of discretion or clearly unwarranted exercise of discretion.

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALJ'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 ALJ 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

ARGUMENT AND CITATION OF AUTHORITY

The Appellant requested, per SCDC Policy DP-22.14 section 8.2, to have Sgt. Robertson as a witness at the hearing to testify that the appellant was innocent of the charges brought against him. The counsel substitute never interviewed the witness.

Courts have repeatedly held that refusal to call witnesses with personal knowledge of the incident in question denies due process. Fox v. Coughlin, 893 F.2d 475, 478 (2d. Cir. 1990). This is especially so when a prisoner faces a credibility problem trying to disprove the charge of a prison guard. Ramera v. Kerby, 936 F.2d 1102, 1104 (10th Cir. 1991), and when the hearing officer refuses to hear any witnesses corroborating the accused inmate. Graham v. Baughman, 772 F.2d 441, 445 (8th Cir. 1983), Green v. Nelson, 442 F.Supp. 1047, 1057 (D. Conn. 1977). The right to call witnesses in ones behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539 (1974). In McDaniel v. SCDC, DP-ALJ-04-0025-AP, Judge John D. McLeod ~~was~~ Reversed and Remanded the case because inmates due process right to call witnesses was violated.

The respondents, in their response brief, only argue the fact there was substantial evidence that supports the conviction against appellant. The respondents rely on the incident report and the accusers testimony as substantial evidence. The evidence relied upon is erroneous which is totally against S.C. Code Ann. § 1-23-610 (B) (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 petitioners have been prejudiced because of the finding, conclusion, or decision is:(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record----). The incident report is erroneous.

Pursuant to SCDC Policy OP-2214 "Inmate Disciplinary System" section 4.1, 4.2 & 4.4, the Major/Responsible Authority had Nine (9) calendar days to sign the incident report and check the box to informally resolve, administratively resolve or send the charge to a Disciplinary hearing. This must be done. The Major/responsible authority in this case did not sign or check a box, which is clear in the Record on appeal, which makes the incident report and Disciplinary hearing incomplete and erroneous. 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 substantive evidence on entire record, or ~~the~~ 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).

CONCLUSION

Since it is undisputed that appellant was neither allowed to present witnesses in his own behalf, confront his accuser nor was the Major/Responsible Authority acting in the scope of their duties making the hearing erroneous, Appellant's procedural as well as substantive due process rights were violated. (Procunier v. Navarette, 434 U.S. 555 (1978)). The Appellant asks that the conviction be reversed, remanded & vacated and all sanctions be lifted.

March 3, 2014
Pelzer, S.C.

Respectfully Submitted,
Michael Yains

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PROOF OF SERVICE

I, Michael Goins, appellant, do hereby certify that I did on March 6, 2013 serve a copy of these documents on the following agencies by depositing a copy of the in the U.S. Mail, postage prepaid, to the following addresses:

- 1) S.C. DC Office of General Counsel P.O. Box 21787 Colo, S.C. 29221
- 2) S.C. Court of Appeals P.O. Box 11629, Colo, S.C. 29211

SWORN to and subscribed before me
this 6 day of March 2014.
Tamara Conwell (I.S.)

Notary Public For South Carolina

My commission expires: September 25, 2023

LSI Michael Goins
Michael Goins # 302385
430 Oaklawn Rd.
Pelzer, S.C. 29669

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