

The South Carolina Court of Appeals

Appeal From Administrative Law Court

Appellant Case No: 2012-213396 & 2012-213434

Billy Lee Lisenby, JR, #200273 Appellant

vs.

South Carolina Department of Corrections Respondent

Appellant's Supplemental Record ON Appeal

Dated: July 7th 2014

RECEIVED

JUL 11 2014

SC Court of Appeals

Billy Lee Lisenby JR,

#200273

P.O. Box 205

Lieber C. I

Ridgerville, S.C. 29472

Shanika K. Johnson

4444 Broad River Rd

Columbia S.C. 29221-1787

II. PLACE OF PRESENT CONFINEMENT

A. Name of Prison/Jail/Institution: _____

B. What are the issues that you are attempting to litigate in the above-captioned case? _____

C. (1) Is there a prisoner grievance procedure in this institution? Yes _____ No _____

(2) Did you file a grievance concerning the claims you are raising in this matter? Yes _____ No _____

When _____ Grievance Number (if available) _____

D. Have you received a final agency/departmental/institutional answer or determination concerning this matter (i.e., your grievance)? Yes _____ No _____

E. When was the final agency/departmental/institutional answer or determination received by you? _____

If possible, please attach a copy of your grievance and a copy of the highest level decision concerning your grievance that you have received.

F. If there is no prison grievance procedures in this institution, did you complain to prison, jail, or institutional authorities? Yes _____ No _____

G. If your answer is YES:

1. What steps did you take? _____

2. What was the result? _____

III. PARTIES

In Item A below, place your name, inmate number, and address in the space provided. Do the same for additional plaintiffs, if any.

A. Name of Plaintiff: _____ Inmate No.: _____

Address: _____

In Item B below, place the full name of the defendant, his official position, and place of employment in the space provided. Use Item C for additional defendants, if any.

B. Name of Defendant: _____ Position: _____

Place of Employment: _____

C. Additional Defendants (provide the same information for each defendant as listed in Item B above):

Index

Incident Report of C/o Ayers dated December 18, 2010	Page 1
Disciplinary Report For Charge of 856	Page 2
Transcript of January 5, 2011 D.H.O 856	Page 3-8
Disciplinary Mental Health Statement For 856	Page 9
Appellant's Notice of Appeal RCI 79-11	Page 10-14
Incident Report of Assoc. Warden Bueten, date 12-20-2010	Page 15
Disciplinary Report charge 809	Page 16
Transcript of January 5 th 2011 (809)	Page 17-23
Disciplinary Mental Health Statements	Page 24
Step 1 Grievance RCI-0101-11	Page 25-26
Step 2 Grievance RCI-0101-11	Page 27
Appellant's Notice of Appeal For RCI-0101-11	Page 28-29

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: July 7th 2014

/s/ Billy Lee Lisenby
Billy Lee Lisenby JR, #200273
P.O. Box 205
Lieber C. E.
Ridgville SC. 29472

RECEIVED

JUL 11 2014

SC Court of Appeals

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT**

10-00117
Page 1 of 1

010-12-300

Institution/Center: RIDGELAND CORRECTIONAL INSTITUTION				Date of Report: 12-18-10	
Reporting Official (Full Name): OFC.KENNETH AYERS				Time of Report: APPROX:10:00PM	
Employee ID #:				Date of Incident: 12-18-10	
Location of Incident: SMU CELL #124 NORTH WING				Time of Incident: APPROX:9:55PM	
Inmate(s)/Resident:	SCDC#	Age	Sex	Race	Employee(s)/Witnesses Involved:
1. LIENBY,BILLY	200273		B/M		1. LT.JOSEPH POWELL
2. BRITT,KEON	290741		B/M		2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: WHILE I OFC.KENNETH AYERS WAS COUNDUCTING A SECURITY CHECK IN SMU EAST WING I HEARD BANGING COMING FROM THE NORTH WING.I APPROACHED CELL #124 WHICH IS OCCUPIED BY INMATES LIENBY,BILLY B/M #200273 AND BRITT,KEON B/M #290741.I OBSERVED THAT THE GLASS ON THE FOOD SERVICE WINDOW WAS BROKEN.I QUESTIONED THE INMATES ABOUT THE WINDOW IN WHICH INMATE LIENBY STATED THAT HE WAS THE CAUSE OF THE WINDOW BREAKING.INMATE LIENBY STATED THAT HE IS BEING RESTRICTED BY NOT BEING ABLE TO CLEAN HIS CELL,GETTING EXTRA FOOD TRAYS AND GETTING RAZOR ON SHOWER NIGHT.A-2 SHIFT LT.POWELL WAS INFORMED OF THIS INCIDENT.I RECOMMEND INMATE LIENBY,BILLY BE CHARGED WITH (856)DAMAGE,LOSS DESTRUCTION,OR DEFACING OF PROPERTY VALUED AT LESS THAN 100 DOLLARS.

Signature: *Kenneth W Ayers* Title: *Officer*

Evidence:

Disposition of Evidence: *E 12-23-10 RS*

Supervisor's Comments: I RECOMMEND I/M LIENBY BE CHARGED WITH (856) DUE TO HIS ADMITTANCE OF BREAKING WINDOW. I ALSO RECOMMEND RESTITUTION FOR THE WINDOW.

Printed Name: LT.JOSEPH POWELL

Signature: *Joseph Powell* Title: LT. Date/Time: 12-18-10/10:20P

Major/Responsible Authority: *Charge inmate Lisenby with 856. Refer to DHO, third officer for 856.*

Printed Name: *C Anthony Burton*

Signature: *Anthony Burton* Title: *H/W/O* Date: *12-19-10*

STG Related - Refer to STG Committee

Yes No Unknown

This incident is DRUG related

Yes No Unknown

Responsible Authority Action Taken

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

RESERVED
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 10-00117 Inmate Name: BILLY LIENBY SCDC#: 200273

Living Area: SMU - 124 Job: N/A Custody: DD2

Offense Date: 12 18 10 Offense Time: 9:55 AM Institution: SMU CELL #124 NORTH WING/RIDGELAND C.I.

Offense Description: 856 DAMAGE, LOSS, DESTRUCTION, OR DEFACING OF PROPERTY VALUED AT LESS THAN \$100.00: THE INTENTIONAL OR RECKLESS DAMAGING, DESTROYING OR DISFIGURING PROPERTY BELONGING TO A GOVERNMENT AGENCY, A PRIVATE CITIZEN, AN EMPLOYEE, OR ANOTHER INMATE. POSSESSION OF DAMAGED, DESTROYED, OR DISFIGURED PROPERTY ALSO QUALIFIES AS A VIOLATION OF THIS OFFENSE.

Charging Officer Employee: KENNETH AYERS Title: OFC.
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 NOT WANT MY ACCUSER PRESENT AT THE HEARING

I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

I WAIVE MY RIGHT TO A HEARING

I WANT A COUNSEL SUBSTITUTE Langford

I DO NOT WANT A COUNSEL SUBSTITUTE

SMU SEGREGATION ONLY

Date & Time Notified: 1 2 11 8:35 AM By (Print): Fuller Roy SGT

Inmate Signature: Billy Lienby SCDC#: 200273 Date: 1 1 11

HEARING INFORMATION:

Hearing Date: <u>1 5 11</u>	Hearing Time: <u>9⁴⁵ am/pm</u>	Tape: <u>1511</u>	Side: <u>A</u>	Start: <u>194</u>	End: <u>273</u>
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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 AT THE HEARING.

Inmate denied charge;

Evidence: no pictures

OFFENSE CODES	<u>856</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

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: Based on C/O K. Ayers' narrative

HEARING LENGTH: 13 (MINUTES)

SANCTIONS:

Loss of Privileges (Days): Telephone ϕ

* Property (Days): _____

* Canteen (Days): ϕ

* Other (Days): _____

* Disciplinary Detention (Days): ϕ

Reprimand:

Extra Duty: _____

Visit Suspension Thru: _____ ϕ

Cell Restriction (Days): _____ Appeal Right Given

Loss of Good Time (days): 30

Restitution: \$ 81.00

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: notices and seriousness of offense

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS yes

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Billy Lienby DATE: 1/5/11

HEARING OFFICER (PRINT NAME) Shirley A. Singleton

APPROVED/REVERSE/MODIFY Paul Cohen Warden REASON _____

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.)

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

DOCKET No.: 25 GRIEVANCE No.: RCI 79-11

INMATE NAME: Billy Lisenby, SCDC #200273

DATE: January 05, 2011

CHARGE: 856 – Damage, Loss, Destruction, Defacing of Property Valued at Less than \$100.00

DHO: Inmate, state your name and number.

I/M: Lisenby, Billy, 200273.

DHO: This case number 117 being recorded on January 5, 2011, at approximately 9:45 in the a.m. The purpose of this hearing is to treat this matter before me with fundamental fairness and arrive at a just decision. Inmate Lisenby you must conduct yourself properly. Failure to do so will result in you being removed from the hearing and your case being heard in your absence. All testimony is to be truthful and honest. Do you understand that?

I/M: Yes ma'am.

DHO: You're being charged with the offense of 856 – Damage, Loss, Destruction or Defacing of Property Valued at Less than \$100.00. As in the intentional or reckless damaging, destroying, or disfiguring property belonging to a governmental agency. The alleged offense occurred on December 18, 2010, at approximately 9:55 in the p.m. Special Management Unit, Cell 124 Northwing. Charging officer is Officer Kenneth Ayers. On January 1st, 2011, Inmate Billy Lisenby, you signed for receipt of your charge papers. Did you receive a copy of that?

DHO: Disciplinary Hearing Officer

I/M: Inmate

C/S: Counsel Substitute

I/M: Yes ma'am.

DHO: At that time, you indicated you did not want your accuser present and that you wanted assistance from counsel. Did you have an opportunity to speak with Ms.

Langford?

I/M: Yes ma'am.

DHO: If you plead guilty or if I find you guilty, you will not earn good time for the month. In addition, other sanctions may be imposed. These sanctions are verbal reprimand, loss of good time, restitution, telephone, canteen, visit suspension, disciplinary detention. Do you understand the sanctions?

I/M: Yes ma'am.

DHO: The narrative uh, before we proceed with the narrative on, you were initially served on December 30th, 2010, at approximately 9:20 by Sgt. M. Scott. It was noted sir that you did not sign your SCDC number and therefore, on January 1st, you were reserved. The narrative reads: on the above date and approximate time, while I, Officer Kenneth Ayers, was conducting a security check in the Special Management Unit East Wing, I heard banging coming from the North Wing. I approached cell 124 which is occupied by Inmate Billy Lisenby, SCDC #200273, and Inmate Keon Britt. I observed that the glass on the food service window was broken. I questioned the inmates about the window, in which Inmate Lisenby stated that he was the cause of the window breaking. Inmate Lisenby stated that he is being restricted by not being able to clean his cell, get an extra food tray, and getting razors on shower night. A-2 shift Lt. Powell was informed of the incident. To the offense of 856 Inmate Lisenby, how do you plea?

I/M: Not guilty.

DHO: Alright, Ms. Langford.

C/S: Um, Ms. Singleton, um, Inmate Lisenby was sworn to bring out the fact that he is uh, habitually convicted uh, of non-assertive offense written up for each one during this right here because he should not actually be uh, held under closed actions.

DHO: Thank you so very much. Alright Inmate Lisenby. Let's talk about the incident. Okay. The uh, supervisor's comments indicated that you did admit to breaking the uh, breaking the window. Did you break the window sir?

I/M: No ma'am.

DHO: Okay, well you didn't want me to know about the incident then. If you didn't do it, let's hear it.

I/M: It is impossible for me to break the window cause Warden Cohen moved me to that room cause they had...

DHO: They had what?

I/M: (inaudible).

DHO: Okay. Uh huh.

I/M: It's impossible for me to do that.

DHO: What the...the food service window too?

I/M: Yes ma'am.

DHO: Okay. Well isn't that something? Well, who did? Apparently something was broken, he heard a banging.

I/M: I don't know.

DHO: Okay.

I/M: (Inaudible)

DHO: No sir, but I do have a cost, what they cost to repair it. So, they repaired something.

I/M: The glass had not been repaired.

DHO: Excuse me?

I/M: Yes ma'am. There's nothing I see need repairing.

DHO: Okay, so whatever happened is still there? Is the glass is still out then?

I/M: (inaudible)

DHO: Okay, so the glass has not been repaired? Thank you counsel. Okay, I've heard the charge, I've provided the accused an opportunity to make statements, and present evidence and witnesses. Take him out for me.

DHO: State your name and number.

I/M: Billy Lisenby, 200273.

DHO: To the offense of 856 - Damage, Loss, Destruction or Defacing of Property Valued at Less than \$100.00, you pled not guilty, denying the charge. I find you guilty based on Officer Ayers' narrative. Sanctions imposed: verbal reprimand, 30 days loss of good time, restitution in the amount of \$81.00. You have fifteen days from today's date in which to grieve my decision. Do you understand the sanctions?

I/M: Yes ma'am. (Inaudible)

DHO: Uh, mine it shows 81 sir. Total to be repaid \$81.00. You'll get a copy of it when you sign it.

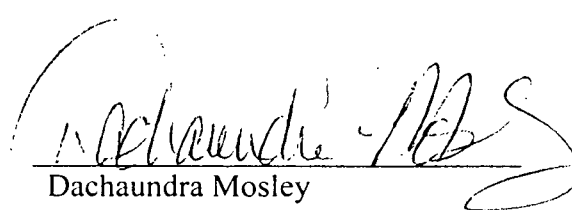
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, # 200273,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent.)

**CERTIFIED
TRANSCRIPT**


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.



Dachaundra Mosley
Transcriptionist
Office of General Counsel
South Carolina Department of
Corrections

SWORN TO before me this
24 day of Feb, 2012

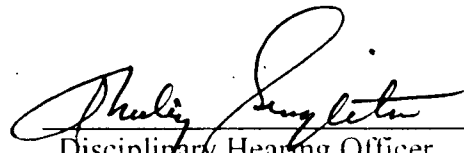
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 9-18-2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

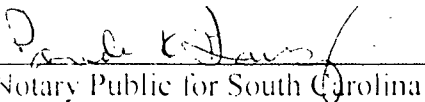
Billy Lisenby, # 200273,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent.)
_____)

CERTIFICATION

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 is true, accurate, complete, and constitutes the entire record of the proceedings.


Disciplinary Hearing Officer
South Carolina Department of
Corrections

SWORN TO before me this
22nd day of Feb, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/5/2012

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY MENTAL HEALTH STATEMENT
RIDGELAND CORRECTIONAL INSTITUTION

INMATE Billy Lisenby SCDC# 200273, WAS CHARGED

WITH THE FOLLOWING OFFENSE: (856) Damage, Loss, destruction, or defacement of property valued at less than \$100.00
ON 12/18/10 AT 9:55 PM
DATE TIME

Mental Health was asked to provide a statement regarding the inmate's mental status at the time the offense occurred. After researching the incident and the inmate's mental health functioning, it has been determined that the inmate:

 A. Lacked the capacity to appreciate the wrongfulness of their actions at the time of the offense, for the following reason(s):

B. Although classified as mentally ill, was able to understand the nature and quality of the committed.

IF YOU REQUIRE ADDITIONAL INFORMATION, PLEASE CONTACT ME USING THE INFORMATION BELOW:

COUNSELOR: [Signature]

EXTENTION: 3265 / 3267

Revised: 10/09

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby JR, #200273
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

NOTICE OF APPEAL

DOCKET NO. ALJ-04-
GRIEVANCE NO.: RCT-06-34-10

Notice is hereby given that Billy Lee Lisenby JR does hereby appeal the final decision of the South Carolina Department of Corrections dated 11-13-10 and received on 12-10-10, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The above Appellant is appealing his DHO conviction for the charge of SSC Damage, Loss, Destruction or Detaining of Property Valued at less than \$100.00. He is appealing due to actual innocence, and denial of due process. Policy CP 22.14 Section 17.2 states "Note: A finding of guilt as a result of a disciplinary hearing will result in the inmate's failure to earn good time for the month in which the violation occurred and may also result in the loss of good time as shown in the above chart." This incident occurred in May 2010, but I fail to earn the good time (20) days for the month of June 2010. This is illegal taking of good time. On the Step 2 the Responsible Official's Decision and Reason states "A mental health statement was presented at your hearing." This is not true at no time did anything concerning Appellant's mental health status come up at his hearing. Next the Responsible Official's Decision and Reason states "You were formally charged on June 4, 2010 when the officers entered into the Automated (CRT) System and hearing was on June 23, 2010 which is 20 days from when you were formally charged." Nothing in any reports or documentation says that Appellant was formally charged and entered in the (CRT) Automated System on June 4, 2010. But the incident report does show that the Major signed off on it on 6-1-10 and the hearing was not held until June 23, 2010. This is a violation See Attachment 2-5

Billy Lee Lisenby JR, #200273
Appellant's Name

Billy Lee Lisenby
Signed

PO. Box 2039 ASU 124
Mailing Address

Dec. 26, 2010
Dated

Ridgeland SC 29916
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Billy Lisenby (your name), on the 26 day of Dec., 2010, in Ridgeland (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:
Name of person/Agency served: Clerk's Office South Carolina Administrative Law Court

Address: 1205 Pendleton St, Suite 224
City, State, Zip Code: Columbia, SC 29201

FILED
DEC 30 2010
6-4
SC ADMIN. LAW COURT

Billy Lee Lisenby JR
Print your name Sign your name
(See reverse side for instructions)

Billy Lee Lisenby

of OP 22.11 Section 7.2 "Once the inmate is formally charged (and placed in the official 'Inmate Waiting' list), the hearing will be held within 21 calendar days." It took her 22 days to hear Appellant's case. Policy was not followed and no extension was obtained. Again nothing was shown in waiting that Appellant was formally charged on June 1st 2010. It only shows he was formally charged on June 1st 2010.

The Respondents are intentionally prolonging inmates appeal process, and by doing so they are violating Policy GA-01.12 Inmate Grievance System [redacted] and OP-22.14 Disciplinary policy. Even further they are violating 'Due Process of Law.' They constantly ignore the time limits set forth to answer appeals, without obtaining extensions, or continuances. But if the inmates violate any time limits these appeals are considered abandoned. In this case it took Respondents 170 days to answer [redacted] Appellant's Step 1 and Step 2 without obtaining extensions, or continuances. This is [redacted] unfair. Policy GA-01.12 plainly states in section

11.

"Responses: Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either Form 10-S or 10-5a) and will be served by the Inmate Grievance Coordinator to the inmate personally. Exceptions to this procedure will be required to be approved by the Chief, Inmate Grievance Branch. The response will state the reasons for the decision reached and inform the grievant of his/her rights of appeal. Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within 125 days except when the Chief/Designee, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the Inmate Grievance Coordinator will notify the inmate in writing. (Note: The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed 215 days.) (See also Procedures #13 and #14.)"

This was not done in Appellant's case and it took the 170 days to respond.

The Respondents also violated GA-01.12 Section 13.6 Appeal Process which states in part:

"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. The responsible official's decision will be returned to the Institutional Inmate Grievance Coordinator. The Institutional Inmate Grievance Coordinator will then serve the response to the grievant within five (5) working days and have him/her sign and date it acknowledging receipt."

[redacted] It took well over 60 days to respond to Appellant's appeal/grievance from July 19th 2010 to Nov. 13th 2010.

It took the grievance clerk well over (5) working days to serve the response on Appellant from Nov. 13th 2010 to 12-10-10.

This alone should be enough to overturn his case.

11

Attachment (2) of 5

Appellant was accused of hitting and breaking a window with his hand. The mental health care professional should have been notified because he has a mental health issue noted on his MedClass screen. See Policy OP 22.14 Section 3.3 states "If the inmate has a mental health issue noted on his/her MedClass 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 19-27A. In these instances, a memorandum from the mental health care professional [redacted] must be included as an attachment to SCDC form 19-27A, "Incident Report," attesting to the inmate's mental status and accountability for his/her actions. None of this was done, and this is a violation of policy. [redacted]"

Appellant's witness Timothy Hestie was denied because the SGT said no inmates was in wing at the time of the incident. Timothy Hestie was on the wing, and (2) two inmate run-inwards were passing out laundry. That was not a reason to deny my witness.

Also Appellant asked that his roommate Brandon Middleton #332714 be present as a witness, because he is the one who broke the window. They fail to call him as a witness. Both of our names was on the report, but Appellant was the only one charged. By the DHO not calling Appellant's witnesses she violated 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), 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."

The Respondent's violated 13.1 which states "SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information:

"13.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion." This was not done in Appellant's case. Neither one of Appellant's witnesses fall under the guidelines to be denied. Furthermore she did not document on the 19-69 why she denied Appellant's roommate Brandon Middleton, as a witness. She also violated OP 22.14 Section 15.7 which states as follows:

"The failure of the accused inmate to present non-favorable evidence to contradict the staff member's report will prevent the report to be the only evidence used against the inmate. If, on the other hand, the accused inmate presents non-favorable evidence which, if true, would contradict the facts alleged in the staff member's report, the hearing must take at least one of the following steps at the hearing prior to the final disposition of the case:

15.7.1 question the charging employee's

15.7.2 examine additional documentary evidence (beyond investigation reports and/or written statements by the charging employee or witnesses) or

15.7.3 question other witnesses."

By Appellant stating that he didn't bust the window contacted the report and the DITO should have questioned L.T. D Patrick, and Appellant's roommate Brendan McEllehan #332719.

Also they put me in the restraint chair for (8) four hours and still gave me a disciplinary interaction.

This is double jeopardy.

Also Appellant constantly is being charged with non-assaultive disciplinary infractions, and they are not abiding by Policy OP-22.14 "Inmate Disciplinary Policy" Section 21 which states as follows:

Disciplinary Charges For Inmates In Special Management Unit and Maximum Security Unit: Inmates housed in SMU and MSU, who chronically commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC 19-29A. The interaction will be entered into the offense Management System Disc screen using Type Action "03" which will show as, "Closed-Other Action Taken/ Internally Resolved."

The Respondents have not been doing this for anybody. Also they should've charged Appellant's roommate and [redacted] Appellant, and let the DITO be the fact-finder. Appellant's roommate is 6'6" 236 pounds, and he had a cut on his hand from busting the window. Appellant is only 5'5" 130 pounds.

Appellant has been deprived a state created liberty interest in this matter because he had to earn his 20 days for the month. See *Stewart v. SCDC* 605 S.E. 2d 506 (2004).

Appellant was denied due process for Respondents not allowing [redacted] him to have witnesses under *Wolff v. McDonnell*, 418 U.S. 539 (1974) and for the FactFind not being impartial.

"Accordingly once SCDC established the administrative Framework set forth in policy, or SCDC personnel are bound to follow it. An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. *U.S. v. Margen*, 193 F.3d 252 (4th Cir. 1999) *U.S. v. McEneaney* 420 F.2d 309 (4th Cir. 1969); and *U.S. v. Starnes*, 74 S.Ct. 499 (1954)" Then put this as a summary, "where an entire procedural framework, designed to insure the fair processing of an action affecting an individual is created, but then not followed by an agency, it is prejudicial."

Conclusion

Appellant ask that his case be concluded and vacated due to violation of his Constitutional rights.

Respectfully submitted,

Billy H.

Dated: Dec. 26, 2010

Billy Lee King Jr.

Conclusion

Appellant ask that his case be concluded and vacated due to violation of his Constitutional rights.

Dated: Dec. 26, 2010

Respectfully submitted,

Billy H.

Billy Lee King Jr.

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

Case#: 10-00118 Inmate Name: BILLY LISENBY SCDC#: 200273

Living Area: SMU - 124 Job: N/A Custody: DD2

Offense Date: 12/20/10 Offense Time: 9:00 AM/PM Institution: A/W/O OFFICE/RIDGELAND C.I.

Offense Description: 809 THREATENING TO INFLICT HARM ON OR ASSAULTING AN EMPLOYEE AND OR MEMBERS OF THE PUBLIC: COMMUNICATION, VERBAL OR WRITTEN, BY AN INMATE TO AN INDIVIDUAL THAT HE INTENDS TO INJURE THAT PERSON OR COMMIT A VIOLENT OR UNLAWFUL ACT DANGEROUS TO HUMAN LIFE, PRESENTLY OR IN THE FUTURE OR ONE WHO COMMITS PHYSICAL ACT OF A THREATENING NATURE, AND THE PROBABLE RESULT OF SUCH THREATS OR ACTION IS TO PLACE THE INDIVIDUAL IN FEAR OF BODILY INJURY.

Charging Officer/Employee: C. ANTHONY BURTON Title: ASSOC. WARDEN

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 Langford

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 12/23/10 11:22 AM/PM By (Print): Sgt M Scott

Inmate Signature: Billy Lisenby SCDC#: 200273 Date: 12/23/10

HEARING INFORMATION:

Hearing Date: <u>1/5/11</u>	Hearing Time: <u>10²⁰</u> am/pm	Tape: <u>1511</u>	Side: <u>A</u>	Start: <u>371</u>	End: <u>468</u>
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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 AT THE HEARING.

Inmate denied charges.

Accuser not available - Capt. K. Bishop present
Evidence: SCDC 19-11 - Request for Staff Member

OFFENSE CODES	<u>809</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

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: Based on Alw Burton's narrative and evidence.

HEARING LENGTH: 17 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) 180 + 30 = 210

* Property (Days) _____

* Canteen (Days) 180 + 30 = 210

* Other (Days) _____

* Disciplinary Detention (Days): 30

Reprimand:

Extra Duty: _____

Visit Suspension Thru 1 180 + 30 = 210

Cell Restriction (Days): _____

Loss of Good Time (days): 30

Restitution: \$ 0 **

Appeal Right Given

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: nature and seriousness of offense.

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS Yes

DATE INMATE PLACED IN PHD / /

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Billy Lisenby DATE: 1/5/11

HEARING OFFICER (PRINT NAME) Shirley A Singleton

APPROVED/REVERSE/MODIFY [Signature] Warden REASON _____

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.)

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

DOCKET No.: 44 GRIEVANCE No.: RCI 101-11

INMATE NAME: Billy Lisenby, SCDC #200273

DATE: January 5, 2011

**CHARGE: 809 – Threatening to Inflict Harm on/Assaulting an Employee and/or
Members of the Public**

DHO: Inmate, state your name and number.

I/M: Billy Lisenby, 200273.

DHO: This is case number 118 being recorded on January 5, 2011, at approximately 10:20 in the a.m. The purpose of this hearing is to treat the matter before me with fundamental fairness and arrive at a just decision. Inmate Lisenby, you must conduct yourself properly. Failure to do so will result in you being removed from the hearing and your case being heard in your absence. Your accuser is C. Anthony Burton, Associate Warden. At this time he is not available. Your accuser instead sir will be Captain Carl Bishop, who does have knowledge of the incident and did sign off on the report. Uh, Captain Bishop all testimony is to be truthful and honest sir. Do you understand?

OFC: Yes ma'am.

DHO: Inmate Lisenby, you're being charged with the offense of 809 – Threatening to Inflict Harm on or Assaulting an Employee or Member of the Public, as in any communication, verbal or written, by an inmate to an individual that he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future; or one who commits a physical act of a threatening nature; and the probable

DHO: Disciplinary Hearing Officer

I/M: Inmate

OFC: Accuser

C/S: Substitute Counsel

results of such threats or action is to place the individual in fear of bodily injury. The alleged offense occurred on December 20, 2010, at approximately 9 o'clock in the a.m., in the Associate Warden's office. Charging officer is C. Anthony Burton. On December 23, 2010, Inmate Lisenby, you were served the charge papers. Did you receive a copy of them?

I/M: Yes ma'am.

DHO: At that time you indicated you wanted your accuser present. Once again your accuser is Captain Bishop. You also indicated that you wanted assistance from counsel. Did you have an opportunity to speak with Ms. Langford?

I/M: Yes ma'am, I did get the copy of the um request form.

DHO: Okay, I...I'm gonna read it into the record, okay? So you'll have full knowledge on what we're...what's being referenced. If you plead guilty or if I find you guilty, you will not earn good time for the month. In addition, other sanctions may be imposed. The sanctions are verbal reprimand, loss of good time, telephone, canteen, visit suspension, disciplinary detention. Do you understand the sanctions that may be imposed?

I/M: Yes ma'am.

DHO: Okay. The narrative reads: on the above date and approximate time, I, C. Anthony Burton, Associate Warden for Operations, received a Request to Staff from Inmate Billy Lisenby, SCDC #200273. The contents of the Request to Staff contained profane language and threatening remarks. This is in quotes: "But if they go to fucking with me, I'm going to fuck with them." He's recommending that you be charged with the offense of...well you are charged. You're charged by the major, Major Eichelberger. You're charged with 809 – Threatening to Inflict Harm or Assault an Employee. As evidence we

have the SCDC Form... Form 19-11. It is a Request to Staff. I'm going to read it into the record. It's addressed to Associate Warden Burton; dated December 17, 2010; with the inmate's name of Billy Lisenby, SCDC #200273; Cell ASU 124 at Ridgeland Correctional Institution. The narrative reads: I'm been laying low not and not fucking with nobody. Well, on December 2, 2010, your officers were in the process of rolling on me to beat my ass behind a chipped window that I had nothing to do with. If it wasn't for Lt. Powell, Officer Smalls, and Nurse Lloyd, they would've beat my ass: They was about 30 officers. Next, y'all moved me out the damn room I've been in for eighteen months because my roommate threw cups at the looks like (inaudible). Now Sgt. Morris is walking around opening cell doors without handcuffing us looking for strays. But I didn't get rec five times a week. I cannot get a haircut and shaved. I cannot hardly clean my room. I had stopped doing paperwork but if they're going to fuck with me, I'm going to fuck with them. I wasn't bothering anybody. Now, I'm pissed off. I can't get you to respond and now I'm serving my entire 720 days. Fuck it! Now you can ship me to Level 3. Don't I score out? I'm ready to go. Your fucking officers...your off...your officers fucking with me for nothing. That is its entirety. That is the offense. Inmate Lisenby, to the offense of 809 – Threatening to Inflict Harm on or Assaulting an Employee, how do you plea?

I/M: Not guilty.

DHO: Inmate has pled not guilty. Ms. Langford.

C/S: Yes ma'am. From my understanding from what you have read in that incident report, in no way shape or form, do I hear where he has actually, threatened. The only

thing I hear is the profanity of making the statement that basically in his profan...,
profane language is either just going to retaliate through writing.

DHO: Okay. Alright Inmate Lisenby I'll take your comments sir.

I/M: That's what I meant. I was going to retaliate through paperwork. Not because I
didn't meant to assault anybody and I didn't want anybody to assault me. I was...I
was....

DHO: What do you mean by the officers are messing with you? I guess that's what I
don't under...I don't quite get uh, the messing with part.

I/M: They...they come into the rooms, opening doors, and then they put bogus
paperwork on me about (inaudible).

DHO: Okay.

I/M: (Inaudible)

DHO: Okay. Okay, Captain Bishop, you have any comments regarding the incident sir?

OFC: Okay. (Inaudible)

DHO: Okay. Hold...hold...hold up. Say what now?

OFC: (inaudible)

DHO: Wait a minute. Hold it. Hold it. I don't know if this...because it's kind of blurred
or muffled here. Okay, speak a little slower and then I'll repeat it so we can get it
recorded. Go ahead.

OFC: Okay. According to his statement....

DHO: Okay, according to his statement, from the report that I read into the record?

OFC: Yes ma'am.

DHO: Okay.

OFC: The term Inma fuck with you means retaliation; and retaliation means threatening.

DHO: Okay. Alright. Anything else Ms. Langford?

C/S: Well, I want to make this statement, it depends on how interpret.

DHO: It's interpretation.

C/S: Interpretation to fuck. Because if we all understand what fuck really means, it has nothing to do with actually bodily harming someone. It's a sexual act.

DHO: Well, some see it as a violent act ma'am, some don't.

C/S: Just interpretation is what we're getting at.

DHO: Okay. I've heard the charges and provided the accused an opportunity to make statements and present evidence and witnesses. Take him out the room please. Alright, state your name and number.

I/M: Billy Lisenby, 200273.

DHO: To the offense of 809 – Threatening to Inflict Harm on/Assaulting an Employee or Member of the Public, you pled not guilty, adamantly denying the charge. I do find you guilty based on Associate Warden Burton's narrative and the evidence submitted. I'd like to remind you Inmate Lisenby, that a threat is a perception. Sanctions imposed: verbal reprimand, 30 days loss of good time; telephone, canteen, visit suspended 180 days each; 30 days disciplinary detention. You have fifteen days from today's date in which to grieve my decision. Do you understand the sanctions?

I/M: Yes ma'am.


STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, # 200273,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent.)

**CERTIFIED
TRANSCRIPT**

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 Kellett
Transcriptionist
Office of General Counsel
South Carolina Department of
Corrections

SWORN TO before me this
7th day of March 2012

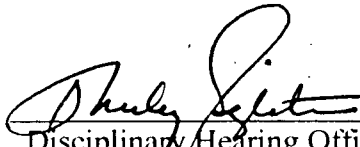
N. Dayne Haile (L.S.)
Notary Public for South Carolina
My Commission Expires: 4/6/2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Billy Lisenby, # 200273,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent.)

CERTIFICATION

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 is true, accurate, complete, and constitutes the entire record of the proceedings.


Disciplinary Hearing Officer
South Carolina Department of
Corrections

SWORN TO before me this
1 day of March, 2012.

Virginia Robinson (L.S.)
Notary Public for South Carolina
My Commission Expires: May 20, 2021

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY MENTAL HEALTH STATEMENT
RIDGELAND CORRECTIONAL INSTITUTION

INMATE Billy Lisenby SCD# 200273, WAS CHARGED

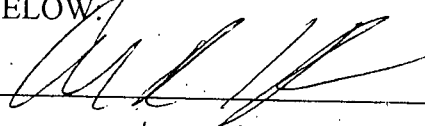
WITH THE FOLLOWING OFFENSE: (309) Intentionally to Inflict harm or Assaulting an Employee and/or members of the Public #7 and Use of Obscene, Vulgar or Profane Language #718
ON 12/20/2010 AT 9:00 AM
DATE TIME

Mental Health was asked to provide a statement regarding the inmate's mental status at the time the offense occurred. After researching the incident and the inmate's mental health functioning, it has been determined that the inmate:

 A. Lacked the capacity to appreciate the wrongfulness of their actions at the time of the offense, for the following reason(s):

B. Although classified as mentally ill, was able to understand the nature and quality of the committed.

IF YOU REQUIRE ADDITIONAL INFORMATION, PLEASE CONTACT ME USING THE INFORMATION BELOW.

COUNSELOR: 

EXTENTION: 3265 / 3267

Revised: 10/09

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1**

INMATE NAME: Billy Lee Liscoby JR.
 SCDC NUMBER: #200273
 INSTITUTION: Redland Corr Inst.
 HOUSING UNIT: ASU 124
 WORK ASSIGNMENT: N/A

JAN 21 2011

20.

Office Use Only
 Grievance No. RCI-0101-11
 Code: General
 Policy _____
 Disc. Hear. ✓ (809) #118
 Class. 1/5/11
 Date Received 1/31/11
 IGC Initials ML

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I'm appealing a Jan 5, 2011 conviction for 309 Threatening to Inflict Harm on or Assaulting an employee and on members of the Public. I was found guilty of the pleading not guilty. I'm accused of threatening Assoc. Warden Burton in stating "If they keep trucking with me I'm going to truck with them." It's plain to see I was talking about if the officers keep putting bogus write-ups, and harassing me, I'm going to start back putting paperwork on them. I plainly stated "I have not been putting paper work on anybody and I've been laying down." I never threaten to do harm to anybody. Nobody claim to be threaten by me. I was denied the right to have a copy of the alleged request form. OP-22.14 Section 8.2.6 states the Council Substitute must "Obtain any documentary evidence relevant to the case that is not already in the possession of the accused inmate." DHO Shirley Singleton refused to give a copy of the request form to my Council Substitute on me. On 12-23-10 at 11:22 pm I checked the appropriate box on my 19-69 form that states "I DO WANT MY ACCUSER PRESENT AT THE HEARING." I abide by policy OP-22.14 Section 15.4 which states "The inmate must request the accuser's(s) presence prior to the hearing utilizing Form 19-69." I was denied my right to confront my accuser, and no reason was given or placed on my 19-29A. The DHO violated OP-22.14 Section 15.5 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. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official." They never tried to get my accuser on the phone. They never stated why he was unavailable. This is a violation of 18.1 which states "SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following ^{see} attachments #1

ACTION REQUESTED: I ask that the tape recording of my hearing be made available to the appropriate reviewing authority before deciding the appeal. This request is pursuant of 22-14 Section 23.4. I ask this case be overruled.

* Appeal *

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

Billy Lee Jan. 18, 2011
 Grievant Signature Date

ACTION TAKEN BY IGC:

Your Disciplinary Hearing Appeal was investigated and forwarded to the Warden for his review/decision. See Warden's decision.

25

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

M. E. Montfort 1/28/11
 IGC Signature Date
N/A

Grievant Signature Date

information: 18.1.4 Whether questioning of the inmate's accusations, if requested, was denied and, if so, the reasons for the denial.

This was not done.

I'm presently being treated for Mental Health issues. I suffer from intermediate explosive disorder, which causes me to react without thought. This was never documented on my 19-29A form. Also my mental health counselor never spoke to me about this charge. They violated OP 22.14 Section 3.3, which states "Note: If the inmate has a mental health issue noted on his/her MEDClass 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. In these instances, a memorandum from the 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 actions."

This was not done.

The DHU knew I had a mental health problem from previous meetings, and hearings. She fail to abide by policy OP-22.14 Section 9.5 "The Hearing Office will ensure that inmates with mental health issues, or language barriers are provided the necessary assistance to understand the disciplinary proceedings. The necessary assistance may require the postponement of the disciplinary hearing. Note: Must be noted on SCDC Form 19-69 and on the hearing tape." This was not done.

I have been on SMU for 22 months and I habitually commit non-assaultive offenses. Per policy I can only go to the DHU once per month for non-assaultive charges. I was convicted of (3) three non-assaultive disciplinary offenses on Jan. 5, 2011. This is a violation of OP 22.14 Section 21 which states "Disciplinary Charges For Inmates in Special Management Unit And Maximum Security Unit: Inmates housed in SMU and MSU, who habitually commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29A. The infraction will be entered into the Offender Management System OMS using Type Action "03" which will show as, "Closed-Other Action Taken/Informally Resolved." If the inmate commits a non-assaultive charge and earns goodtime, s/he may be charged once per month and provided with a disciplinary hearing. These forms accrued goodtime may be taken for disciplinary violations."

This was not done in my case. SCDC continues to violate policy.

Also I should not have been convicted of Threatening anybody, because I didn't threaten to cause injury or harm to anybody.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Due: 2/7/11 44

INMATE NAME: Billy Lee Lisenby JR.
SCDC NUMBER: #200273
INSTITUTION: R.C.I.
HOUSING UNIT: BU124
WORK ASSIGNMENT: N/A

RECEIVED

FEB 17 2011

INMATE GRIEVANCE

Office Use Only
Grievance No. R.C.I. - 0101-11
Code: General _____
Policy _____
Disc. Hear. 809 1/5/11
Class. #118
Date Received 2/8/11
IGC Initials MIT

5-14-2011

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I was denied my right to confront my accuser. In no way did I threaten to do harm to anyone. Please review the tape of the hearing.

Billy Lisenby 2-6-11
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Threatening to Inflict Harm on/Assaulting an employee and/or Members of the Public, (809), Level 2 offense, case #118, on January 5, 2011, as outlined in OP-22.14, "Inmate Disciplinary System", dated September 1, 2009, and the sanction(s) imposed, which included the loss of -30- 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 (DHO) 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. You were convicted based upon the preponderance of the evidence/testimony presented at your hearing. It is noted that this is your 7th conviction for this offense.

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.

27

U.P.A. 2/5/2011
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

(SEE REVERSE SIDE FOR INSTRUCTIONS)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

JAN 24 2012

Billy Lee Lisenby JR.

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

GENERAL COUNSEL

NOTICE OF APPEAL

DOCKET NO 12-ALJ-04-0625-AP
GRIEVANCE NO.: RCI 79-11

Notice is hereby given that Billy Lee Lisenby JR. does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-20-11 and received on 12-28-11, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Appellant is appealing a Jan. 5, 2011 conviction for SO9 Threatening To Inflict Harm on or Assaulting an employee and on members of the Public. Appellant was found guilty after pleading not guilty. I'm accused of threatening Assoc. Warden Bunker in stating "If they keep fucking with me I'm going to fuck with them." It's plain to see I was talking about if the officer keeps putting my ass back up, and harassing me, I'm going to start back pulling paperwork on them. I plainly stated "I have not been pulling paperwork on anybody and I've been laying down." I never threaten to do harm to anybody. Nobody claim to be threaten by me. I was denied the right to have a copy of the alleged request form. OP-22.14 Section 8.26 states the Council Substitute must "Obtain any documentary evidence relevant to the case that is not already in the possession of the accused inmate." DHO Shirley Singleton refused to give a copy of the request form to my Council Substitute on me. On 12-27-10 at 11:22 PM I checked the appropriate box on my 1969 Form that states "I Do Want MY ACCUSER PRESENT AT THE HEARING." I abide by policy OP-22.14 Section 15.4 which states "The inmate must request the accused(s) presence prior to the hearing utilizing Form 19-69." I was denied my right to confront my accuser, and no accuser was given or placed on my 19-29A. The DHO violated OP-22.14 Section 15.5 which states "Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker (See Attachment #1)"

Billy Lee Lisenby JR.
Appellant's Name

Billy Lee Lisenby JR.
Signed

1848 Goldmine HWY Keeshaw S.C. 29067
Mailing Address

Jan. 23rd 2012
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Billy Lee Lisenby JR. (your name), on the 23 day of Jan., 2012, in Lancaster (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: General Counsel

Address: 4444 Broad River Rd.

28

City, State, Zip Code: Columbia S.C. 29201

Billy Lee Lisenby JR. Billy Lee Lisenby JR.
Print your name Sign your name
(See reverse side for instructions)

Telephone during the hearing and the answers of the witness must be recorded. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official. They never tried to get my accuser on the phone. They never stated why he was unavailable. This is a violation of 13.1 which states "SCDC Form 19-69, 'Disciplinary Report and Hearing Record,' will be used to provide a written record of the hearing. The record will include the following information: 13.1.4 Whether questioning of the inmate's accuser, if required, was denied and, if so, the reasons for the denial."

My accuser was at the institution and he is the Warden he is on call 24 hrs. a day. My accuser ^{is over} operations ever when he is not at work they can page him and he'll call back in mins. The DHU could've contacted my accuser easily, and had him on speaker phone. They called for approval to put me in the restraint ~~box~~ at 2:00 AM one chain morning.

I'm presently being treated for Mental Health issues. I suffer from intermediate explosive disorder, which causes me to re-act without thought. This was never documented on my 19-29A form. Also my mental health counselor never spoke to me about this charge. They violated OP-22.14 Section 3.3 which states "Note: If the inmate has a mental health issue noted on his/her MEDClass 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. In these instances, a memorandum from the 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 actions."

This was not done.

The DHU knew I had a mental health problem from previous meetings, and hearings. She fail to abide by policy OP-22-14 Section 9.5 "The Hearing Officer will ensure that inmates with mental health issues, or language barriers are provided the necessary assistance to understand the disciplinary proceedings. The necessary assistance may require the postponement of the disciplinary hearing. Note: Must be noted on SCDC form 19-69 and on the hearing tape."

This was not done.

I ^{had} been on SMU for 22 months and I habitually commit non-assaultive offenses. Per policy I can only go to the DHU once per month for non-assaultive charges. I was convicted of (3) three non-assaultive Disciplinary on Jan. 5, 2011. This is a violation of OP-22.14 Section 21 which states "Disciplinary Charges for Inmates in Special Management Unit And Maximum Security Unit; Inmates housed in SMU and MSU, who habitually commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29A. The infraction will be entered into the Offender Management System DISC screen using Type Action "03" which will show as, "Closed-Other Action Taken/Informally Resolved." IF the inmate commits a non-assaultive charge and earns goodtime, s/he may be charged once per month and provided with a disciplinary hearing. Therefore, accrued goodtime may be taken for disciplinary violations."

This was not done in appellant's care. SCDC continues to violate policy.

Also I should not have been convicted of Threatening anybody, because I did not threaten to cause injury or harm to anybody.

The South Carolina Court of Appeals

Appeal From Administrative Law Court

Appellant Case No. 2012-213396 & 2012-213434

Billy Lee Lisenby JR; #200273 Appellant

v.

South Carolina Department of Corrections Respondent

PROOF OF SERVICE

I swear under penalty of perjury that I have served one copy of
The enclosed "Appellant's Supplemental Record on Appeal," on the Following:

Dated: July 7th 2014

Shanika K. Johnson
444 Y Broad River Rd.
Columbia S.C. 29221-1987

South Carolina ALC
1205 Pendleton St. Suite 224
Columbia S.C. 29201

Billy Lee Lisenby JR
Billy Lee Lisenby JR; #200273
P.O. Box 205
Lieber C.T
Ridgeville, S.C. 29472

RECEIVED
JUL 11 2014
SC Court of Appeals

