

INSIDE IS APPELLANT Roy Meswan #296325
APPEAL OF Final ORDER FROM THE Admin Law
Court, to S.C. COURT OF APPEALS, APPELLANT'S
COPY OF ~~RECEIVED~~ and Transcr. Pt. and memorandum
along with certificate of service.

RECEIVED

OCT 23 2014

SC Court of Appeals

x Roy Meswan
#296325

Roy M^eSwain #296325
Appellant.

Docket No. 14-ALJ-04-023
GRIEVANCE No. KRCI 1165

v.
SOUTH CAROLINA Department of corrections
Respondent.

HONORABLE CAROLYN C. MATTHEW
APPELLANT'S OBJECT
TO RESPONDENT'S BRIEF

STATEMENT OF CASE

This Matter before The Administrative Law Court "ALC"
Pursuant to the appeal of "APPELLANT" Roy M^eSwain #29632
Inmate in South Carolina Department of Correction's "S.C.D.C."

Appellant is appealing his August 2, 2013 Disciplinary
conviction Case No. 16. For offense 904, Possession of Escape too.

on August 9, 2013 Appellant Filed a step 1 Grievance Seeking
Reversal of his disciplinary conviction Because "THE INCIDENT REPO.
INCORRECTLY LISTED APPELLANTS RACE."

Step 1 was denied on August 27, 2013. Appellant Filed a
step 2 on October 10, 2013. which was also denied on
February 7, 2014.

Responsible Official denied each step Finding The Evidence
Presented Sufficient to support the Disciplinary conviction, and
stated that Appellant was afforded "Due Process". This appeal Follows:

ARGUMENT

on August 22, 2014 Respondent Filed Respondents Brief Stating
"Reasons" why Appellant's disciplinary conviction

FILED

And on today August 31, 2014 Appellant Files
Appellant's objection to Respondents Brief Stating ARGUMENT
of why Appellant's disciplinary conviction

SC ADMIN LAW COURT

Reason No. 1 states that: Because Appellant Received
The "Due Process" to which he was Intitled. #4
P. 10

APPELLANT'S ARGUMENT TO REASON NO. 1 IS:

on July 16, 2013 Contraband Officer Cpl. Hunt charged
Appellant Roy McSwain #296325 on Incident Report under
a "MISTAKEN IDENTIFICATION" Cpl. Hunt said that Appellant
was a "Black Male" when he in fact is a "white Male."

Therefore Appellant lists his rights that were violated by

VIOLATION OF DUE PROCESS RIGHTS:

1. A Inmates Due Process Rights are violated if he/she is
punished for conduct that "is not" proscribed by Rules or
Policy. Coffman v. Trickey, 884 F.2d 1057, 1058-60 + N. 1 8th Cir. 1

VIOLATION OF 4TH AMENDMENT:

2. The 4th Amendment Promises the Rights of the People
to be secure in their Persons, "and Papers."

VIOLATION OF S.C.D.C STATEMENT/GUIDELINES:

3. Says The Inmate Disciplinary system will be completed
in compliance with "ALL" applicable State and Federal
Statutes, Rules, and Regulations and in a manner that
insures inmates are afforded adequate "Due Process Right."

VIOLATION OF CONSTITUTIONAL RIGHTS:

4. A Right so Guaranteed to the Citizens by The United
States Constitution and State Constitutions and so guaranteed
as to prevent legislative interference

VIOLATION OF 5TH AMENDMENT DUE PROCESS CLAUSE

5. Prohibits Identification testimony that derives from
impermissibly suggestive procedures that may lead to a
mistaken identification.

APPELLANT States That The Salient Facts
That were brought Forth by Respondent in Respondent
Brief Dealing with The Disciplinary hearing are ALL
IRRELEVANT To APPELLANT'S Argument.

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APPELLANT is arguing The FACT That he, Alk
with his "Rights" are being violated.

Lieutenant Jefferson "herself testified" That she was
certain" That The Inmate Involved was a "White Male"
Making This The "Number one" Fact That should
be Recognized by The Administrative law Judge, Due to
The Fact That on The "charge Paper / Incident Report" APPELLANT
IS Identified AS a "BLACK MALE".

Additionally in "Matthews v. S.C. DEPT OF CORR,
Case No. 04-ALJ-04-00248-AP" says: an administrative law
Judge May Not Reverse or modify an agency's decision unless
substantial Rights of The APPELLANT have been prejudiced
because The decision is clearly erroneous in view of
The Substantial evidence on The whole Record, arbitrary
or affected by a Error of law.

APPELLANT states his Rights HAVE BEEN Prejudiced!

"ADMINISTRATION OF THE GOVERNMENT RULE MAKING AND ADJUDICATION"
§ 1-23-380. Judicial Review upon Exhaustion of Administrative
Remedies. Page 262, A.6. Says:
The Court "May" Reverse or Modify The decision "IF" Substantial
Rights of The APPELLANT have been prejudiced because The
Administrative Findings, Inferences, Conclusions or decisions
are: A. In violation of Constitutional or Statutory Provisions;
B. Made upon unlawful Procedure; D. Affected by error of law.

APPELLANT States That all The above has been violated against him

CONCLUSION

- * S.C.D.C "DID Not" AFFord APPELLant all OF his ^{#4} Due Process Safeguards to which he is Intitled to. ^{Pg 1A}
- * Contraband OFF:cer CPL Hunt Violated APPELLants Right "AND" S.C.D.C Policy.
- * D.H.O OFF:cer along with ResPonsible OFF:cal "Failed" to Realize That APPELLants Rights were being violated, and Failed to Follow Policy.
- * APPELLant is in fact a "WHITE MALE" and Not a "BLACK MALE" as he is Described/accussed of being.

Thus, APPELLant Roy McSwain S.C.D.C #296325 ResPectfully Request That this Coc Reverse his Disciplinary conviction, and Dismiss this case against him.

ResPectfully Submitted,
 BY: Roy McSwain #2963
 Roy McSwain #296325
 Lee C.I/SMU RM#71
 990 Wisacky Hwy
 Bishopville S.C. 29010

Bishopville, South Carolina
 August 31, 2014

cc: Honorable Judge Carolyn C. Matthews
 { S.C.D.C Office of General Counsel }
 E. Dee Dee Bowers

~~ADMINISTRATIVE LAW COURT~~
COURT OF APPEALS

Roy McSwain #296325
Appellant.

Docket No: 14-ALJ-04-0234-AP
Grievance No: KRCI 1165-13

APPEAL OF FINAL ORDER.

RECEIVED

OCT 23 2014

SC Court of Appeals

VS.

South Carolina Department of Corrections
Respondent.

This matter is before The Administrative law Court "ALC"
Pursuant to the Final order made by The Honorable
Judge Carolyn C. Matthews, in Reference with "Appellant"
Roy McSwain #296325, a Inmate who is Incarcerated in
The South Carolina Department of Corrections "S.C.D.C" who
Filed his 1st Notice of appeal on The Date of "March 4 2014".

Appellant's Incident Report "Form 19-29 A" was Filed on "July
16. 2013" on which appellant appeals on The grounds that his
conviction is unsupported by the evidence and violates his
Due Process Rights. Appellant was Found guilty on "August 2, 2013"
For a "904 Possession of escape tools" by D.H.O hearing officer
Bittinger, who stated evidence against appellant presented at D.H.O
hearing was relied upon.

on "August 9, 2013" appellant Filed a step 1 Grievance Seeking
Reversal of his conviction. because The Incident Report
Incorrectly listed appellant's Race.

on "August 29th, 2013" The warden ISSUED a Response
upholding The disciplinary Conviction, Thereafter on "October 10
2013" appellant Filed a step 2 Grievance on "February 7, 2014"
The Responsible Official denied the step 2 Grievance Finding
The Evidence Presented sufficient to support the Disciplinary
Conviction.

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Appellant Filed his 1st notice of Appeal with the "ALC" stating his arguments which were that D.H.O Officer along with S.C.D.C Contraband Officer CPL Hunt violated S.C.D.C Rules/Regulations, guidelines, along with Appellant's Due Process Rights Followed by his Constitutional Rights, and his 4th and 5th Amendments.

S.C.D.C "Respondent" Then Filed a Respondent's brief and Motion to dismiss Appellant's appeal on "April 25, 2014" stating that the case was moot due to the fact that Case #17 "897" Possession of Security equipment" was included on the same charge paper "Form 19-29 A" along with charge "904 Possession of escape tools" which was also included / shared the same Grievance #, "KRCI-1165 13".

Case #17 "897" was Filed on "October 14, 2014" and was upheld on "March 31, 2014" which led "Respondent" to believe that Case #16 "904" was also upheld being that both incidents were under the same Grievance #.

Appellant Then Filed his objection to Respondent's brief and Motion to dismiss on "April 29, 2014" stating that Case #16 was in fact "Not Moot".

on "May 5, 2014" "ALC" granted a 90 day extension to Respondent for further Review of Appellant's charge, appeal, and transcript.

Appellant Filed his objection to motion and Response to Respondent's motion to Enlarge time to File Record on "May 6, 2014" which a day after extension was granted to Respondent.

Thereafter Respondent Filed Respondent's brief against Appellant on "August 2, 2014" which Appellant Filed his objection to Respondent's brief and motion to dismiss with the "ALC" on "September 2, 2014" which was Ignored by the Courts, which then led to the Final order by "ALC" Carolyn C. Matthews.

This appeal follows..

STANDARD OF REVIEW

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Appellant States that he has followed Rule 58 "Record after Final decision" in V. Special Appeals "Rules of ALC" and also adds in affirming, as Modified, The ALC's en banc decision of McNeil v. S.C. Dept of Corr. 02-ALJ-04-0036-AP (September 5, 2001). The Supreme Court held the ALC's Jurisdiction was limited to 1. Cases in which a Inmate contends Prison Officials have erroneously calculated his sentence, sentence-related credits, or custody status; 2. Cases in which S.C.D.C. has taken a Inmate's State-Created Liberty interest in major disciplinary hearings; and 3. Cases in which a inmate's confinement implicates a state-created liberty interest. See Sullivan, 335 S.C. at 443, 586 S.E.2d at 127.

Moreover, Regarding categories (2) and (3), supra, our Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is state created. See Wicker v. S.C. Dept's of Corr., 360 S.C. 421, 602 S.E. 2d 56 (2004) (emphasizing that the ALC's Jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [i.e., in Wicker] "is not to be viewed as expanding the Jurisdiction of the [ALC] in any other circumstances. Slezak v. S.C. Dept of Corr., 361 S.C. 327, 605 S.E. 2d 506 (2004) (holding that the ALC "May summarily dismiss those appeals that do not implicate a Inmate's State created liberty or Property interest")

Also Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000) says that: The ALC's Appellant Jurisdiction in Inmate appeal is limited to state-created liberty interest typically involving: 1. Cases in which a Inmate contends that Prison Officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and 2. Cases in which a Inmate has received Punishment in a major disciplinary hearing as a result of a serious Rule violation. "Appellant states that the above listed has been violated"

The Supreme court has enunciated the following Requirement which if established will ensure Procedural due Process in Inmate disciplinary matters.

Final order from "ALC" Carolyn C. Matthews stated on her Final "order" to appellant on Page 2, Section 5: That The Person hearing the matter in a D.H.O hearing who may be Prison officials or employees must be Impartial.

Id at 371, 527 S.E 2d at 751 < ~~citing~~ Wolff v McDonnell 418 U.S. 539, 563-72 < 1974 >.

ARGUMENT

Appellant states that he "in fact" has a "libert interest" in the conviction against him, because S.C.D.C's actions toward him when finding him guilty under a False Identification was against S.C.D.C Policy, and Appellants Rights.

In Appellants D.H.O Transcript Lieutenant Jefferson testified that the man involved with the incident that took place on Appellants Incident Report "Form 19-29A" was a white male, where on the Incident Report the identification of the inmate involved was indeed a Black male. (< See Transcript Page 2 >)

Appellant states that this is clearly a technicality and a violation of S.C.D.C Policy, which includes the guidelines of S.C.D.C, Inmates due Process Rights and the 4th, and 5th Amendment.

D.H.O officer Brittinger was told by appellant ~~that~~ at D.H.O hearing, and on Record (< see Transcript Page 4. >) that the inmate involved was not him. That he was not a Black male, but a white male, and that there was another inmate at Kershaw Prison who shared Appellants last name "McSwain" who was in fact a "Black" male.

D.H.O hearing officer chose to ignore Appellants statement, and also ignored that if officer found Appellant guilty that he would be violating Institutions Policy.

lieutenant Jefferson's statement proved that the incident report was false, and D.H.O hearing officer Bittinger failed to take heed to policy when the violation was brought up by appellant, and because of this appellant seeks relief against him.

Appellant also states that D.H.O officer was well aware of the false identification on the report, being that he admitted this on record at hearing - see transcript page 6" which also is evidence on appellants behalf, that appellant chooses to use against S.C.D.C.

Appellant Inmate Mesvian states that by him being found guilty of the charge that is being used against him "not possession of escape tools" that his due process rights are being violated because inmate Mesvian is now being punished for conduct that is not proscribed by rules or policy - Coffman v. Trickett, 884 F.2d 1057, 1058-60 and N.I (8th Cir).

Appellant also brings up the fact that his 4th Amendment is being violated seeing that ~~within~~ the 4th amendment promises the right of the people to be secure in their persons, and "papers".

Appellant states that he is in fact in danger, because he is locked in a solitary confinement for a charge where he was falsely identified, which now sets appellants' Max-out date year and causes the loss of 90 days goodtime which shows that appellant has a liberty interest.

D.H.O hearing officer Bittinger along with S.C.D.C and S.C.D.C General Counsel failed to follow the correct procedure on how an inmate should be charged.

Mrs. a Smith stated on the request to staff member "Form 19-29 A" that is attached with "this" appellants appeal that is being used on appellants behalf as evidence that by an inmate being identified as a Black Male when the inmate involved on a incident report is a white male, that this is clearly a technicality.

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Appellant has a liberty interest being that his
Constitutional Protected Rights were violated. see Wolff
v. McDonnell 418 U.S. 539 (1974)

The Supreme Court found that, when prisoners lose good time credits, because of a disciplinary offense, they are entitled to a fair and impartial decision maker in hearing which appellant states that he did not receive after stating the technicality to D.H.O. hearing officer.

Hearing officer failed to allow inmate a fair and impartial decision by ignoring the evidence that was verbally presented to him by appellant.

Appellant also shows that the punishment he received is an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life being that he was charged with a false written incident report that showed a false identification.

S.C.D.C. statement/guidelines state that:
The inmate disciplinary system will be complete in compliance with "ALL" applicable state and federal statutes, rules, regulations, and in a manner that insures inmates are afforded adequate due process rights, which appellant was not afforded when D.H.O. officer along with S.C.D.C. failed to take heed to the technicality that was presented to hearing officer.

S.C.D.C. Contraband officer CPL Hunt who filed the false incident report is also in violation.
CPL Hunt is not new to the prison system, and was well aware of how to complete an incident report form 19-29A but yet still failed to follow rules and policy.

S.C.D.C. Disciplinary Policy "22.14" says: That the supervisor review responsibilities are to complete S.C.D.C. incident report form "19-29A" in ~~compliance~~ compliance, which CPL Hunt failed to do.

The listed violations that S.C.D.C. committed also are violation appellants 5th Amendment

Appellant states that the 5th Amendment due process clause prohibits identification testimony that derives from impermissibly suggestive procedures that may lead to a irreparable mistaken identification.

Appellant presented evidence at hearing and in step 1 along with his step 2 Grievance which were all ignored.

Furthermore the 4th Amendment forbids the government from conducting unreasonable searches/seizures. Appellant brings this matter up showing that the 4th Amendment protects your places and things. "Things" such as an incident report that is not correct. So this along with the other violations are listed together with appellant 5th Amendment that was violated.

In Hudson v. Palmer, 448 U.S. 517, 530 (1984) The Supreme Court held that prisoners don't have a reasonable expectation of privacy in their cells. So prison officials can search inmates as a routine matter without having to produce anything like a search warrant, but in cases where a search warrant/ incident report is false, this leads to a much higher violation which is violation of the 4th and 5th Amendment followed by S.C.D.C. Rules and Regulations.

§ 1-23-380. Judicial Review upon exhaustion at Administrative Remedies. "Page 262 A.G. says: The court may reverse or modify the decision if substantial rights of the appellant have been ~~not~~ prejudiced because administrative findings, inferences, "conclusions" or decisions are: "A. In violation of constitutional or statutory provisions, "section C" made upon unlawful procedure; and Section "D" that says if affected by error or law.

Appellant states that all of the above have been violated against him.

CONCLUSION

Appellant Roy McSwain #296325 shows, and states that he has presented enough evidence on his behalf listing the violations that S.C.D.C has committed against him, and asks that the court find favor on his behalf.

Thus disciplinary

Appellant respectfully request that his conviction be reversed, and dismissed.

Respectfully Submitted,
x Roy McSwain #296325
Roy McSwain
Lee CI / SMC #50
990 W. Sackety Hwy,
Bishopville, S.C. 29610

Bishopville, South Carolina.

October 8 2014
COURT OF APPEALS

cc: ALC clerks office
S.C.D.C General Counsel
(E. Dee Dee Bowers)

Certificate of Service.

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy of proof, postage paid in the United States mail addressed to the parties or their attorney(s).

This day of October on the 8th
By: Appellant Roy McSwain #296325

Request to STAFF.

12-10-13

to: Deputy Warden Davis

From: Roy Meswain # 296325 / Sma # 71

Request:

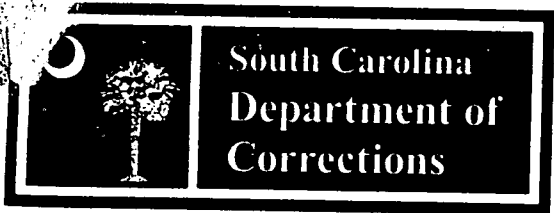
If a Inmate is Identified as a Black/Male when he is a white/male on a Incident Report would you call this a Technicality or a Procedural Error?
Thanks..

- Roy Meswain -

Response:

ms. Admida
12/10/13

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NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

August 22, 2014

The Honorable Carolyn C. Matthews
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201


Reference: Inmate Roy McSwain, #296325 v. SCDC
Docket No. 14-ALJ-04-0234-AP

Dear Judge Matthews:

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 or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,


E. Dee Dee Bowers
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Roy McSwain, #296325
File

October 8 2014

Clerk's Office

South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

Reference: Inmate Roy McSwain #296325 vs. S.C.D.C.
Docket No: 14-ALJ-04-0234-AP

Dear Clerk's Office:

Find enclosed a copy of appellants Appeal of Final order consisting of The Honorable Carolyn C. Matthews Final order to Inmate McSwain "Appellant" Involving Grievance # KRCI 1165-13, Disciplinary Report, and hearing Record, Incident Report, and disciplinary transcript, as well as other supporting documents in the above referenced case.

Please file the originals and return a clocked-in copy of the cover letter back to me in the Prison if at all possible.

Sincerely,

X Roy McSwain #296325
Roy McSwain

Lee C.I-SMA-#50

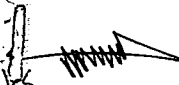
990 W. Sackety Hwy

Bishopville, S.C. 29010

Enclosures

cc: ~~the~~ Clerk's Office "Court of Appeals"

< S.C.D.C. General Counsel Office >
E. Dee Dee Bowers

vs. 

Appellant,

Court of Appeals.

Certificate of Service

South Carolina Dept of Corrections,
Respondent.

Docket # 14-ALJ-04-0234-AP

Clerks Office, Court of Appeals.

I hereby certify that a copy of the foregoing motion was served upon General Counsel and Administrative law court clerk's office on October 8, 2014

Furthermore adds that the address he sent these motions to were sent back to him today on 10-16-14 with the correct address to send his appeal to.

Appellant states that he was not aware of the difference between the two addresses at the time being that the clerk's office address was listed on the back on "ALC" appeal form.

Appellant also adds that proof of memorandum along with his appeal was sent back, which shows effort and should still meet the court of appeals dead line.

Appellant sends his appeal of final order on Oct. 16, 2014 seeking relief for charges against him. Address as follows

are: S.C. Court of Appeals, P. box 11629 Columbia S.C. 29211
:S.C.D.C. General Counsel, Po box 2187, 4444 Broad River Rd, Columbia
S.C. 29221-1787.

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SC Court of Appeals

Roy Meswan #296325
Roy Meswan
Lee C.I / SMU #50
B.Shopville, S.C. 29010

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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OCT 23 2014

SC Court of Appeals

NOTICE OF APPEAL

Roy McSwain #296325

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

DOCKET NO 14-ALJ-04-0234-AP
GRIEVANCE NO.: KRCI 1165-13

Notice is hereby given that Appellant Roy McSwain #296325 does hereby appeal the final decision of the South Carolina Department of Corrections dated September 10, 2014 and received on September 11, 2014, 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)):

1. Inmates Due Process Rights are being violated

2. S.C.D.C Policy / Guidelines are being violated

3. Inmates 4th Amendment is being violated

4. Inmates 5th Amendment is being violated.

5. Inmates Constitutional Rights are being violated.

Roy McSwain

Appellant's Name

Lee CI 15MU Rm#50

990 W. Sackety Hwy, B. Shreveville SC 29306

Mailing Address

Roy McSwain

Signed

Oct. 8, 2014

Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Roy McSwain #296325 (your name), on the 8th day of October, 20 14, in B. Shreveville (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: ALC Clerk of Court S.C.D.C / *S.C.D.C General Counsel

Address: S.C.D.C General Counsel P.O. Box 2187 / 4444 Broad River Rd.

City, State, Zip Code: Columbia, S.C., 29201-1787

Print your name: Roy McSwain
(See reverse side for instructions)

Sign your name: Roy McSwain

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

Administrative Law Court

Clerk's Office

South Carolina Administrative Law Court

1205 Pendleton Street, Suite 224

Columbia, SC 29201

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.

Memorandum

TO: APPELLANT
FROM: CLERK'S OFFICE
DATE: 10-14-2014

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OCT 23 2014

SC Court of Appeals

See Attached!

The information you filed with the administrative Law Court is being returned to you for the following reason(s):

Enclosed is a copy of your final order. No other copies will be mailed until a fee of \$5.00 is received. A fee of \$5.00 is required for copies of 10 pages or less.

This office cannot assist you with this request. For assistance, please contact your Inmate Grievance Coordinator.

Please note that the ALC has no waiver forms for DOC appeals. You can only file 3 appeals in a calendar year, after that a \$25.00 fee is required for the 4th appeal. Make check payable to: S.C. Administrative Law Court.

Please sign, date, and return the enclosed Notice of Appeal.

The Administrative Law Court does not have statutory authority to hear Tort Claim actions. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann.15-78-10 et seq., the appropriate venue for filing this type of action is in circuit court.

This office cannot assist you with your request. For transcripts, contact the S. C. Court Administration, Court Reporting Section, 1015 Sumter St., Suite 200, Columbia, S.C. 29201

Any questions concerning the final decision of an Administrative Law Judge should be directed to the Court of Appeals, please contact the Court of Appeals Clerk's Office:

The S. C. Court of Appeals
Jenny Abbott Kitchings
PO Box 11629
Columbia, S.C. 29211

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**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Roy McSwain, # 296325,)	Docket No.: 14-ALJ-04-0234-AP
)	[Grievance No.: KRCI 1165-13]
Appellant,)	
)	Honorable Carolyn C. Matthews
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT'S BRIEF
)	
Respondent.)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Roy McSwain ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing his August 2, 2013 disciplinary conviction for offense 904, possession of escape tools.

On August 9, 2013, appellant filed a Step 1 grievance seeking reversal of his disciplinary conviction because the incident report incorrectly listed appellant's race. On August 27, 2013, the warden issued a response upholding the disciplinary conviction. Thereafter, on October 10, 2013, appellant filed a Step 2 grievance. On February 7, 2014, the responsible official denied the Step 2 grievance, finding the evidence presented was sufficient to support the disciplinary conviction and appellant was afforded due process. This appeal follows.

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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's

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appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127.]

Moreover, regarding categories (2) and (3), supra, our supreme court has consistently emphasized that the liberty or property interest implicated must be one that is state created. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in Wicker] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's state created liberty or property interest").

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Ind. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, "an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been

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prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law.” Matthews v. S.C. Dep’t of Corr., Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.); see S.C. Code Ann. § 1-23-380(5)(e); see also Marietta Garage, Inc. v. S.C. Dep’t. of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); S.C. Dep’t. of Labor, Licensing & Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the 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. Pub. Svc. Comm’n of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prison officials are in the best position to decide inmate disciplinary matters. In Al-Shabazz, the Supreme Court “underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a ‘hands off’ approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA.” Matthews v. S.C. Dep’t of Corr., *supra*, p.3 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters”) (citing Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757)); see also Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands

off" approach of South Carolina courts regarding internal prison discipline and policy).

ARGUMENT

On July 16, 2013, Corporal Hunt attempted to conduct a pat down search of appellant. Appellant reached in his back pocket and tried to run. Hunt placed appellant on the floor and appellant continued to resist. Sergeant Romaniello, Sergeant Jones, and Sergeant Henderson responded to assist. During the struggle appellant used his right hand to toss a homemade key on the floor. After appellant was taken to the special management unit (SMU), he was strip searched. The strip search resulted in the recovery of a piece of plastic and a piece of metal that could be used as a handcuff key.

Appellant claims that he should not have been convicted of the disciplinary offense because Hunt's report stated the inmate involved was a black male. However, appellant's identity was not in question because throughout the incident, appellant was in physical contact with the officers. Appellant admitted at the hearing that he was the inmate on the ground during the incident.

For the reasons that follow, appellant's disciplinary conviction should be affirmed.

I. BECAUSE APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

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 United States Supreme Court noted in Wolff v. McDonnell, 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;

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- 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.

418 U.S. 539, 566 (1974). SCDC complied with these procedural requirements in the administrative hearing at issue in this appeal.

First, Appellant had notice of the charges, as he was served with the charges on July 24, 2013, at 9:00 p.m. See SCDC Disciplinary Report & Hr'g R. Second, appellant, heard the evidence substantiating the charges at his August 2, 2013 disciplinary hearing. Third, appellant had an opportunity to be heard at the same hearing. Fourth, a neutral and detached hearing body was available in the form of a disciplinary hearing conducted by a neutral hearing officer, DHO Bittinger. Fifth, although appellant had assistance from counsel substitute at the hearing. Sixth, appellant was provided a written statement of findings in the form of the hearing transcript and a copy of the final hearing report. DHO Bittinger also provided Appellant with information on how he could appeal his conviction.

It is clear from the record on appeal that, as a matter of law, SCDC afforded Appellant the due process to which he was constitutionally entitled at his disciplinary hearing. To the extent that Appellant argues to the contrary in his brief, Appellant has failed to adduce evidence to support that SCDC violated his due process rights. Therefore, this Court should affirm SCDC's final agency action.

II. BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE CHARGE AND CONVICTION, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

The evidence presented at the hearing and relied upon by DHO Bittinger satisfies the "substantial evidence" standard of proof to uphold appellant's conviction. Here are the salient facts brought forth at the disciplinary hearing:

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1. Corporal Hunt's report states that on July 16, 2013, Corporal Hunt attempted to conduct a pat down search of appellant. Appellant reached in his back pocket and tried to run. Hunt placed appellant on the floor and appellant continued to resist. Sergeant Romaniello, Sergeant Jones, and Sergeant Henderson responded to assist. During the struggle appellant used his right hand to toss a homemade key on the floor. After appellant was taken to the special management unit (SMU), he was strip searched. The strip search resulted in the recovery of a piece of plastic and a piece of metal that could be used as a handcuff key. (Transcript pp.1-2).
2. Lieutenant Jefferson testified that although she was unable to see appellant's face during the struggle, she was certain the inmate involved was a white male. (Transcript p.5).
3. Appellant admitted that he was the inmate on the ground during the incident. (Transcript p.7).

DHO Bittinger weighed the evidence based on the facts and testimony presented at the hearing. Appellant has failed to make a showing to the Court that any of his rights have been prejudiced or that DHO Bittinger's decision was clearly erroneous, arbitrary, or affected by a legal error. Cf. Matthews v. S.C. Dep't of Corr., Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisionsaspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.).

Therefore, because appellant's conviction was supported by substantial evidence, SCDC respectfully requests the Court affirm SCDC's final agency action.

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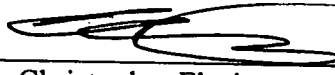
CONCLUSION

SCDC afforded Appellant all of the due process safeguards to which he was entitled. Moreover, DHO Bittinger relied on substantial evidence when making her decision to find appellant guilty of the disciplinary offense. Thus, SCDC respectfully requests that this Court affirm SCDC's final agency action.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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