

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Judge Robinson

Case NO. 14-ALJ-04-0069-AP

Billy Lee Lisenby JR, #200273 Appellant

v.

South Carolina Department of Corrections Respondent

Record ON Appeal

Dated: Aug. 21st, 2014

Attorney For Respondent
General Counsel
P.O. Box 21787
Columbia, S.C. 29221

PRO-SE

Billy Lee Lisenby JR, #200273
Lieber C. I
P.O. Box 205
Ridgville, S.C. 29112

RECEIVED
AUG 27 2014
S.C. COURT OF APPEALS

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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: Aug. 21st 2014

Billy Lee Lisenby

Billy Lee Lisenby JR, #200273

Lieber C. I E-B26

P.O. Box 205

Ridgely S.C. 29472

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Appeal From Administrative Law Court
Administrative Law Judge Robinson

Case NO: 14-ALJ-04-0069-AP

Billy Lee Hisenby JR, #200273 Appellant

V.

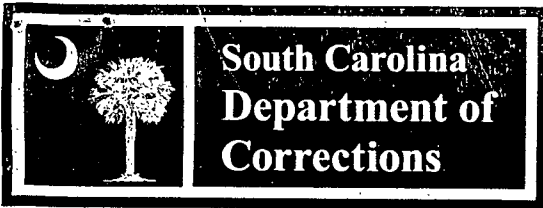
South Carolina Department of Corrections Respondent

PROOF OF SERVICE

I hereby certify that I have served Respondent a copy of Appellant's Record on Appeal, by depositing a copy of same in the United States Mail postage prepaid, Aug, 21st, 2014, addressed as follows:

General Counsel
P.O. Box 21787
Columbia, S.C. 29221

Billy Lee Hisenby JR
Billy Lee Hisenby JR, #200273
Lieber C. I
P.O. Box 205
Ridgeville, S.C. 29972



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

March 14, 2014

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

Reference: Inmate Billy Lisenby, #200273 vs. SCDC
Docket No. 14-ALJ-04-0069-AP

Dear Judge Shirley C. Robinson:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance TYRCI 1553-12, 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 to me in the enclosed self-addressed envelope.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheron M. Hess", is written over a large, stylized circular flourish.

Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Billy Lisenby, #200273
File

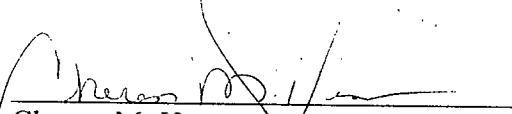
1

CERTIFICATE OF SERVICE

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

Inmate Billy Lisenby, #200273
McCormick Correctional Institution

Columbia, South Carolina
March 14, 2014


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

Due: 2-9-13

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

REC'D FEB 8 2013
Office Use Only

INMATE NAME: Billy Lowmy
SCDC NUMBER: #200293
INSTITUTION: Jaycee Prison C.E. Lee
HOUSING UNIT: SMU #48
WORK ASSIGNMENT: N/A

Grievance No. TYRC1-1553-12
Code: General _____
Policy _____
Disc. Hear. #133 836
Class. 4D-12-17-13
Date Received 2-12-13
IGC Initials JL

RECEIVED
FEB 13 2013

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *There is no evidence to show I waived my right to a hearing. By me not being allowed to attend my hearing I was denied my constitutional right to call witnesses, and confront my accusers.*
Please view my Step 1.

Billy Lowmy 2-6-13
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Disrespect (8.36) on December 17, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanctions 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 decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

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

2.

[Signature] 2/24/2013
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)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

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

REC'D REC 2 8 2012 **410**

STEP 1

INMATE NAME: Billy Lee Lisenby JR,
 SCDC NUMBER: #200273
 INSTITUTION: Tyger River C.I
 HOUSING UNIT: SMU #48
 WORK ASSIGNMENT: N/A

Office Use Only
 Grievance No. TYRCI 155312
 Code: General _____
 Policy _____
 Disc. Hear. #133 836 d
 Class: HD 12-17-13
 Date Received 1-18-13
 IGC Initials JL

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 12-17-12 when I woke up from sleeping at approx. 1:30 PM I observed an SCDC Form 19-69 stating "I had been found guilty of 836: Disrespect." Next it stated in part "I am required to attend the hearing." I contend I never refused to attend the hearing. On 12-12-12 at 12:17 PM Sgt. R. Groves served me a change paper for 836: Disrespect. I did not check that "I do not want to be present at my hearing" and I did not check "I waive my right to a hearing." Instead I checked "I do want my accuser present at the hearing," and "I want a counsel substitute." On 12-14-12 Counsel Substitute Medver (name maybe misspelled) came to visit me, and I asked him to get or obtain statements from Inmate Christopher Allan Ruiney #336389, and Inmate John Fortunato #347020, he assured me he would do this, but never did. Although he didn't obtain the statements I was prepared for the hearing, and I obtain statements from Ruiney, and Fortunato see Exhibit #1 and #2. Also I asked my C/S to have L.T. Copeland present as a witness. I do not know if he spoke with L.T. Copeland or not. I do not know how they conducted my hearing in my absence and I never signed a waiver, or told anyone I didn't want to attend my hearing. My C/S knew I had a valid defense, if they thought I was refusing to attend my C/S should've come and consulted with me to confirm the allegation. No S.C. DC Employee came to escort me, or ~~ask~~ ask me did I want to attend a hearing on 12-17-12 I have enclosed (4) sworn affidavits to support my claim. The Affidavits are from I/M Demario Clyburn #260856, Christopher Allan Ruiney #336389, Moses L. Stallings #341006 and John M. Fortunato #347020 and they are listed as exhibits 3-6, (see enclosed.) OP-22.14 Section 7.2 states in part "In addition, an inmate may waive his/her right to a hearing and indicate such on SCDC Form 19-69. When an inmate waives his/her right to a hearing, the hearing OFFICER will review the waiver section of the SCDC Form 19-69, conduct the hearing in the absence of the inmate, determine guilt or innocence." Had the D.H. viewed See Attachment #1 →

ACTION REQUESTED:
I ask that my case be overturned.

See Exhibit 1-6

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

ACTION TAKEN BY IGC:

Billy Lee Lisenby 12-24-12
 Grievant Signature Date

Considered grievance issue, contacted appropriate staff, reviewed all pertinent information and documentation. See Warden's Response for decision.

3.

J. LeCamp 1-31-13
 IGC Signature Date

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

DIA
 Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Lisenby;

This is in response to TYRCI-1553-12, case #133. You have appealed the results of your 12/17/12 Disciplinary Hearing where you were found guilty on the charge of 836 Disrespect. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence.

Based on this information, your appeal is without merit and therefore denied. If not satisfied with my response, see Step 5 below.

Jim Riley 2/1/13
Warden Signature Date

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

Bill Lisenby 2-4-13
Grievant Signature Date

J. Leonard 2-4-13
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

The waiver section of the SCDC Form 19-69 then he would've seen I didn't waive my right to attend my hearing. OP-22.14 Section 14. Presence of Inmate AT Disciplinary Hearing: States in part:

"14.1 Inmates charged with rules violations will be present at their disciplinary hearings unless s/he has waived the right to be present or if the DHO determines that his/her behavior prior to, or during the hearing justifies their exclusion."

There is no evidence to show I waived my right to a hearing. In *Battle v. Barton* (cite as 970 F.2d 779 (11th Cir. 1992)) it states:

"An inmate's right to attend a prison disciplinary hearing is one of the essential due process protections afforded by the Fourteenth Amendment and recognized in *Wolff*."

By me not be allowed to attend my hearing I was denied my constitutional right to call witnesses, and confront my accuser.

Ross v. Medical Univ. of S.C. States:

"South Carolina Constitution of 1895 p. 21 (1969) Article I, § 22 provides in part No person shall be finally bound by judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and opportunity to be heard, nor shall he be subject to the same person for both prosecution and adjudication."

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

Case#: 133 Inmate Name: BILLY LISEBY SCDC#: 200273

Living Area: SMU 48A Job: _____ Custody: DD2

Offense Date: 12/10/12 Offense Time: 10:25 AM/PM Institution: TYRCI

Offense Description:

836: Disrespect: The failure of any inmate to observe proper decorum or who willfully engages in action or make statements to a person which are discourteous in nature, which may or may not include the use of profanity.

Charging Officer/Employee: G. BOBO 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:	
<input type="checkbox"/> I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING.	<input type="checkbox"/> I WAIVE MY RIGHT TO A HEARING
<input type="checkbox"/> I DO NOT WANT TO BE PRESENT AT MY HEARING	<input type="checkbox"/> I WANT A COUNSEL SUBSTITUTE
<input checked="" type="checkbox"/> I DO WANT MY ACCUSER PRESENT AT THE HEARING	<input checked="" type="checkbox"/> I DO NOT WANT A COUNSEL SUBSTITUTE
<input type="checkbox"/> I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING	
Date & Time Notified: <u>12/12/12 12:17 AM/PM</u> By (Print): <u>Sgt R Grove</u> Inmate Signature: <u>Billy Liseby</u> SCDC#: <u>#200273</u> Date: <u>12/12/12</u>	

HEARING INFORMATION:

Hearing Date: <u>12/17/12</u>	Hearing Time: <u>10:50 am/pm</u>	Tape: _____	Side: _____	Start: _____	End: _____
-------------------------------	----------------------------------	-------------	-------------	--------------	------------

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

(1) I am assigned CIS (MHA) mental health staff and I am not available to attend the hearing. (2) I am refused to go ahead to the hearing. (3) I provided no questions to CIS.

OFFENSE CODES	<u>836</u>	<u>836</u>	
INMATE PLEA (G, NG, None)	<u>None</u>	<u>None</u>	
FINDINGS (G, NG, DS)	<u>Not closed</u>	<u>0</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: closed officer action (B)

HEARING LENGTH: 4 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 30
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 * Canteen (Days) 240 (20x150) Visit Suspension Thru 240 (20x150)
 * Other Yelp (Days) 240 (20x150) Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 60

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 5th 836 charge lost prior 7/5/08.

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS _____

DATE INMATE PLACED IN PHD: _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 12/17/12

HEARING OFFICER (PRINT NAME): B. Turner

APPROVE/REVERSE/MODIFY: [Signature] Warden REASON: _____

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

White - Institutional Record 4 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.)

(SPP RUPPSA maxout - 411217)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

7.0
#1331
12/11/12

SMU 48 A 002

Institution / Center: TYRCI	
Date of Report: 12/10/12	Time of Report: 11:05 A.M.
Reporting Official: OFC. G. Babo 037445	Date of Incident: 12/10/12
Location of Incident: SMU CELL # 48	Time of Incident: 10:25 A.M.
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. BILLY LIENBY 200273 B/M	1.
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I, OFC. G. BABO 037445 WAS GIVING JUICE TO THE INMATES ON THE WEST WING. I/M LIENBY, BILLY SCDC # 200273 STARTED CURSING ME. I/M LIENBY STATED, "YOU NOTHING BUT A STANKY ASS CRACKER MOTHERFUCKER" AND "YOU DICK SUCKING ASS." I KEPT ON GIVING JUICE TO INMATES ON THE WING. END OF REPORT.

Signature: *[Handwritten Signature]*

Evidence:

Witness(es): **S.**

Supervisor's Comments: *Refer to Major and as responsible authority*

Signature: *[Handwritten Signature]* Title: **Sgt.** Date/Time: **12-10-12 12:50 PM**

Major / Responsible Authority:

836

Signature: *[Handwritten Signature]* Title: **Capt.** Date: **12/11/12**

STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown
This Incident is DRUG related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown

Action Taken
<input type="checkbox"/> Informal Resolution
<input type="checkbox"/> Administrative Resolution
<input type="checkbox"/> Refer to Disciplinary Hearing

SWORN AFFIDAVIT

I WITNESSED INMATE BILLY LEE I:SCABY
200273 AND C/O BO BO ARGUING ON 12-10-12
OVER THE GRIEVANCE BOX. BUT I DIDNT HEAR
NEITHER ONE CURSE OR THREATEN THE OTHER.

I SWEAR UNDER THE PENALTY OF PERJURY THAT THE ABOVE
IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

CHRISTOPHER ANTON RAINY # 336389
S/W

Exhibit #1

Sworn Affidavit

I inmate John Fortunato # 347020 heard inmate Billy Lisenby # 200273 and OTC G. Bobo arguing over the grievance box on 12-10-12, but I did not hear neither inmate Lisenby or OTC Bobo curse or threaten each other.

I swear under penalty of perjury that this above statement is correct and true to the best of my knowledge.

12-17-12

* John M. Fortunato # 347020

* John M. Fortunato # 347020

7.

Exhibit #2

SWORN AFFIDAVIT

Inmate Billy Lisenby #2000273 did not refuse to go to his disciplinary hearing on 12-17-12. No SDC employee came to his door to take him to a hearing.

I swear under penalty of perjury the above is true and correct to the best of my knowledge.

Demetrius Clyburn #250856

Exhibit #3 8.

SWORN AFFIDAVIT

NO SCDC EMPLOYEE CAME TO INMATE BILLY
LISENBYS #200273 DOOR ON 12-17-12 TO
TAKE HIM TO A DISCIPLINARY HEARING. HE
NEVER TOLD ANYBODY THAT HE DIDNT
WANT TO ATTEND HIS HEARING.

I SWEAR UNDER THE PENALTY OF PERJURY THE ABOVE
IS TRUE AND CORRECT.

CHRISTOPHER ANIAN REINBY # 336389
S/N

Exhibit #4

9.

SWORN AFFIDANT

On 12-17-12 no OFFICER came to inmate. Billy Wisenby's #200273 Cell, to take him to the D.H.O. He never told anybody that he didn't want to attend his hearing.

I swear under penalty OF perjury the above is true and correct.

Sincerely
Mason L Stillings #341006

10.

Exhibit #5.

Sworn Affidavit

I inmate John M. Fortunato # 347020 am witness that on 12-17-12 inmate Billy Lisenby # 200273 did not refuse to be present at his D.H.O hearing, and no officer came to escort him to the hearing.

I swear under penalty of perjury
the above statement, is true and correct.

* John M. Fortunato # 347020

* John M. Fortunato # 347020

11.

Exhibit #6

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY MENTAL HEALTH STATEMENT**

INSTITUTION: Tybee

Inmate: Billy Hiscoby SCDC #: 200273
was charged with the following offense: Disrespect

on 12/10/12 (date) at 10:25 a.m. (time). Based on SCDC
19-24, "Incident Report" dated at 12/10/12 at 11:05 a.m. (time)
by Reporting Official Ofc. George Bobo
(Print Name)

Mental Health was asked to provide a statement regarding the inmate's mental status at the time the offense occurred. An assessment will be conducted within three business days after receiving the Incident Report. This assessment will serve a period of 15 working days should the inmate receive additional charges.

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 for the following reason(s): _____

B. Although classified as Mentally Ill, was able to understand the nature and quality of the act committed.

If you require additional information, please contact me using the information below:

Counselor: Rothscott at extension: 3620

This document serves as a Mental Health Procedure under General Provisions # 700.8