

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

CASE NO.: 2013-002277

Michael Goins #302385 ----- Appellant,

v.

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

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PETITION FOR REHEARING EN BANC

Dated:

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

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**SC Court of Appeals**

Pursuant to the South Carolina Appellate Court Rules, Rule ~~200~~ 221, The Petitioner is requesting an Petition For Rehearing En Banc of the November 12, 2014 order Affirming the decision in Appellate Case Number 2013-002277. For the foregoing reasons, this Petition stands:

- 1.) As stated in the November 12, 2014 order from this Court, The Appellant raised four (4) issues in his appeal. One (1); That the Administrative Law Court (ALC) erred when it found he was afforded due process. Two (2); found there was substantial evidence to support his disciplinary conviction, three (3); dismissed his appeal without allowing him to file a reply brief, and four (4); Affirmed his conviction when the South Carolina Department of Corrections (SCDC) officials failed to follow their own policies and procedures in their handling of his charge.
- 2.) This Court Affirmed the ALC's decision, and although it is not very clear why the decision was affirmed in the November 12, 2014 order for the following reasons: To issues 1 & 2 of the Appellants appeal this court affirmed those decisions alleging that Appellant was afforded all required due process and there is substantial evidence on the record as a whole to warrant the conviction. The Appellant Begs to differ.
3. As enumerated in Al-Shabazz v. State, 338 S.C. 354, 371 (2000) and Wolff v. McDonnell, 418 U.S. 539, 566 (1974), an inmate should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals. Appellant requested an officer witness, Sergeant Robertson, to testify on his behalf. In the Disciplinary hearing, the Appellant asked the Hearing officer where was his witness. The DHO stated he had not received the Appellant's request to have an witness present. It would have been logical for the DHO to call an continuance, as illustrated in the SCDC Policy OP-22.14, to have the officer witness there to testify. There is no significant excuse for not having an officer witness present at the hearing. See Goins v. SCDC, 14-ALJ-04-0056-AP. See also McDonnell v. SCDC, 09-ALJ-

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04-00025-AP. This denial to let the Appellant have the testimony on his behalf of an Officer witness ~~is~~ must be viewed as a violation of his due process right to call witnesses on his behalf. Appellant, indeed, was denied all constitutionally required due process rights and the conviction should be remanded just on this ground alone.

4.) This Court also agreed that there was enough evidence to support the conviction against the appellant. The substantial evidence that the DHO used to support the conviction against the appellant was the incident report and an Request to Staff Member form supposedly written by the appellant. Both of those pieces of evidence are erroneously entered into evidence. The anonymous Request to Staff Member form that had the Appellants name on it was erroneously entered into evidence. The appellant knew nothing of the anonymous form and the DHO never verified the appellant's signature from him nor his counsel substitute so how was it solidified that the appellant wrote it? The incident report is clearly erroneously read into the evidence. As the Appellant declared in his Initial & Final Briefs, Pursuant to S.C. Code Ann. § 1-23-610(B)(c) the incident report makes this conviction made upon unlawful procedure. The unlawful procedure is the fact that the incident report was not signed off on by anyone. Not the Major, Warden, Associate warden nor an Administrative Captain. The SCRC Policy DP-22.14 Section 4.2 clearly illustrates that the Major / Responsible Authority **MUST** check a box as to their going to informally resolve, Administratively resolve or refer the incident to an disciplinary hearing and sign and date the incident report within three (3) days of the incident. No one signed the incident report or checked the box referring the incident to an disciplinary hearing. The entire hearing was held upon ~~unlawful~~ unlawful procedure. On these grounds alone the conviction should be remanded.

5.) This Court also agreed with the ALC's decision on appellant's issues 3 and 4. Issue 3 is as clear as day. Any competent person will not affirm the ALC's abuse of discretion. This court stated in its November 12, 2014 order that

issues not raised to and ruled on by the ALC are not preserved for appellate consideration. Petitioner's question is, how can he raise this issue in the ALC when the issue is against the ALC? The duty of this court is to review the decisions of the ALC. The ALJ erroneously and biasly affirmed the Respondents decision. Pursuant to the SCALC Rules, rule 60(A) the appellant had sixty-five (65) days to file his initial brief. The respondents had Eighty-five (85) days to file their brief then the appellant had Ninety-five (95) days to file his reply brief. The Appellant filed his initial brief on September 13, 2013, within 65 days of the date of assignment. The Respondent filed their brief on September 25, 2013 which was within 85 days of the date of assignment. The Appellant had until at least October 5, 2013 to file his Reply brief but on October 1, 2013 the ALJ filed his order affirming the Respondents decision. That's plain clear abuse of discretion. There's no other way to review the ALJ's conduct and if this court affirms his actions that's another violation of judicial conduct. On this ground alone the conviction should be remanded.

6.) This court also stated in its November 12, 2014 order that the appellants assertions of SCOC not following their own policies and procedure were not appealable in this court. Even though the policies and procedures the appellant was contesting dealt immediately with the conviction at hand, that should be appealable. The court can not show how that is not appealable.

### CONCLUSION

THEREFORE, For the foregoing reason given above, the Petitioner has proven the burden of showing that the conviction is erroneous, arbitrary and an abuse of discretion. The conviction should be remanded.

Pelzer, South Carolina

Michael Stains  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

CERTIFICATE OF COUNSEL

I, Michael Goins, pro se litigant, hereby certify that this Petition for Rehearing En Banc complies with Rule 224, SCACR.

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

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PROOF OF SERVICE

I, Michael Goins, hereby certify that I did serve the Petition for Rehearing En Banc on the following agencies by depositing a copy of the same into the U.S. Mail, postage prepaid, to the following addresses:

- 1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2.) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221-1787

SWORN to and subscribed before me  
this 25 day of November, 2014.

Nancy C Merchant (L.S.)  
Notary Public For South Carolina

My commission expires: 1-23-2020

s/ Michael Goins

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

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Michael Goins # 302385  
Perry, C.T. 2-114  
430 Dahlburn Rd.  
Pelzer, S.C. 29669

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*S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211*

THE DEPARTMENT OF CORRECTIONS HAS  
NOT CENSORED THIS ITEM, THEREFORE,  
THE DEPARTMENT DOES NOT ASSUME  
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.  
S. C. DEPARTMENT OF CORRECTIONS