

State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Judge Carolyn C. Matthews
Case No.: 14-ALJ-04-074-AP

Appellate Case No. 2014-002417

Van Starling #226109 _____ Appellant,

v.

S.C.D.C. _____ Respondent.

Appellants Initial Brief

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SC Court of Appeals

Table of Contents

Citations of Authority

1. Statement of Issues on Appeal
2. Statement of the Case
3. Statement of Factual/Procedural History
4. Standard of Review
4. Argument And Citations of Authority
5. "cont."
6. Conclusion
7. Certificate of Service

Citations of Authority

1. Rush v. Patterson, 2011 WL 70031248 (D.S.C.)
2. State v. Baccus, 625 S.E.2d 216, 220 (2006)
3. S.C. Code ANN § 1-23-610 (b) (Supp. 2006)
4. PEE V. AVM, INC., 543 S.E.2d 232, 234 (S.C. App. 2001)
5. Al-Shabazz v. State, 527, S.E.2d 742, 756 (S.C. 2000)
6. Sweet v. S.C.D.C., 529 F.2d 854, 859 (C.A.S.C. 1975)
7. Matthews v. Eldridge, 424 U.S. 319 (1976)
8. Sandin v. Conner, 515 U.S. 472 (1995)
9. Wilkinson v. Austin, 545 U.S. 209, 125 S.Ct. 2384
10. Incumaa v. Ozmint, 507 F.3d 281, 283 (4th Cir. 2007)
11. IQBAL v. Hastig, 490 F.3d 143, 161 (2d Cir. 2007)
12. S.C.D.C. Policy 22.14
13. Morrissey v. Brewer, 410 S.Ct. At 2004.

Statement of Issues on Appeal

I. Did ALJ ERR In Concluding Appellant Received Proper
Dul Process?

Statement of The case

This Matter IS before The Court of Appeals Pursuant To The Appeal Of Van Staxing (Appellant), An Inmate Incarcerated In The South Carolina Dept. Of Corrections (S.C.D.C.). Appellant Filed A Step 1 Grievance within (S.C.D.C.) Asserting A Due Process Violation In The Form Of Not Allowing The Appellant To Produce Any Evidence At His Disciplinary Hearing Held On July 26, 2013. The Step 1 was Filed On August 6, 2013, And The Issue Was Never Addressed by The Warden And Ultimately Dismissed On August 16, 2013. On August 26, 2013, Appellant Filed A Step 2 Grievance Attempting To Get The Issues Responded To, but Action Was Denied. On November 15, 2013, The Responsible Officials Denied The Step 2 Grievance. Appellant Then Filed A Notice Of Appeal To The Administrative Law Court And The ^{Case} Was Assigned To Administrative Law Judge Carolyn C. Matthews. Appellant Appeal Was Dismissed Stating There Was NO Violation Of Due Process. Appellant Now Files This Appeal with The Court Of Appeals Asserting State Created Liberty Interest IS Present, Due Process Violations Are Present Creating Atypical And Significant Hardship On His Person In Relation To Ordinary Incidents Of Prison Life Routinely Imposed. Appellants Appeal Thus Follows:

Statement of Factual/Procedural History

On June 25, 2013, Appellant was transferred to Perry Correctional Institution from Kirkland (MSU). On July 3, 2013, Appellant received written notice through the Classification Committee that he was receiving a custody status change due to pending charges being investigated. On July 16, 2013, Appellant was finally given notice of (2) institutional infractions that supposedly occurred while Appellant was still housed at Kirkland (MSU). At this time Appellant asked for evidence to be presented on his behalf which consisted of the security camera footage that was recorded on the day in question (June 14, 2013) and also the questions Appellant presented to be asked at the hearing. On July 26, 2013, Appellant was taken before disciplinary hearing officer Ms. Gidewell for the pending infractions. Appellant was found guilty of both infractions and sentenced to 90 days disciplinary detention, 360 days loss of property, canteen, telephone and visitation, plus 60 days loss of good time for the charge of 904: Possession of escape tools. Then an additional 60 days of detention, 180 days loss of property, canteen, telephone and visitation, plus 30 days loss of good time for the charge of 911: Possession of a weapon. Not to mention a longer prison sentence due to the loss of good time. The evidence Appellant requested was never presented which clearly violated Appellant's due process rights. Appellant also is not guaranteed to be released back to general population being as though security detention is an indefinite term of confinement and this is what Appellant is going through at this time.

STANDARD OF REVIEW

PRO-SE ACTION, REQUIRES THE COURT TO LIBERALLY CONSTRUCT HIS PLEADINGS AND HOLD HIS PLEADINGS TO LESS STRINGENT STANDARDS THAN THOSE DRAFTED BY ATTORNEYS. RUSH V. PATTERSON, 2011 WL 7063648 (D.S.C.). AN APPELLATE COURT IS BOUND BY (A.L.J.'S) FINDING UNLESS IT'S CLEARLY ERRONEOUS. STATE V. BACCUS, 165 S.E.2d 216, 220 (2016). SECTION 1-23-610 OF THE SOUTH CAROLINA CODE ANN. (B) (CURR. 2006) SETS FORTH THE STANDARD OF REVIEW WHEN THE COURT OF APPEALS IS SITTING IN REVIEW OF A DECISION BY THE A.L.C. ON AN APPEAL FROM AN ADMINISTRATIVE AGENCY. "THE REVIEW OF THE ADMINISTRATIVE LAW JUDGES ORDER MUST BE CONFINED TO THE RECORD." Id. THE COURT OF APPEALS MAY REVERSE OR MODIFY THE DECISION ONLY IF SUBSTANTIVE RIGHTS OF THE APPELLANT HAVE BEEN PREJUDICED BECAUSE THE DECISION IS CLEARLY ERRONEOUS IN LIGHT OF THE RELIABLE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD, ARBITRARY OR OTHERWISE CHARACTERIZED BY AN ABUSE OF DISCRETION, OR AFFECTED BY OTHER ERROR OF LAW. Id. ANY AGENCY GUIDELINES SHOULD BE GIVEN ITS PLAIN AND ORDINARY MEANING. PEE V. AVM, INC., 543 S.E.2d 232, 234 (S.C. APP. 2001). PRISONERS ARE ENTITLED TO JUDICIAL REVIEW IN CONCERNS OF CONDITION OF CONFINEMENT AND CUSTODY EVEN WHEN CHALLENGE ON ITS FACE MAY BE PERCEIVED NOT TO ALLEGE A PROTECTED LIBERTY INTEREST IN ORDER TO ENSURE THE CHALLENGED CONDITIONS OR DEGREE OF CONFINEMENT ARE WITHIN THE SENTENCE IMPOSED AND ARE NOT OTHERWISE VIOLATIVE OF THE CONSTITUTION, OR WHETHER PRISON OFFICIALS HAVE ACTED ARBITRARILY, CAPRICIOUSLY, OR FROM PERSONAL BIAS. AL-SHABAZZ V. STATE, 527 S.E.2d, 748, 756 (S.C. 2000). AN INMATE SUBJECT TO LEGITIMATE REQUIREMENTS OF PRISON DISCIPLINE AND SECURITY, RETAINS HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS, TO EQUAL PROTECTION, AND TO PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT; THESE RIGHTS CONFERRED ARE BINDING ON THE STATES. SWEET V. S.C.D.C., 529 F.2d 854, 859 (C.A.5.C., 1975).

I. DID A.L.J. ERR IN CONCLUDING APPELLANT RECEIVED PROPER DUE PROCESS?

A CONDITION OF CONFINEMENT COULD IMPLICATE A STATE-CREATED LIBERTY INTEREST. IN SALDIN THE COURTS ADOPTED A TWO-PRONG APPROACH TO DETERMINE IF A PRISONERS CONSTITUTIONALLY PROTECTED LIBERTY INTERESTS ARE IMPLICATED BY HIS CONDITIONS OF CONFINEMENT. IN THIS TWO-PRONG TEST AN INMATES INTEREST IN HIS CUSTODY STATUS OR CONDITIONS OF CONFINEMENT IS PROTECTED BY THE DUE PROCESS CLAUSE IF THE DEPARTMENT'S ACTIONS CONCERNING THAT INTEREST; (1) RESULT IN AN ATYPICAL AND SIGNIFICANT HARDSHIP, IN EITHER DURATION OR DEGREE OF RESTRICTION IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE; OR (2) AFFECT THE DURATION OF THE PRISONERS SENTENCE. Id. AT 486-487. ONCE A COURT DETERMINES A LIBERTY INTEREST IS PRESENT, IT WILL THEN INQUIRE AS TO WHAT PROCESS IS DUE BY CONSIDERING THE THREE FACTORS SET FORTH IN MATTHEW V. ELDRIDGE, 424 U.S. 319 (1976). HERE IN SAID CASE APPELLANT WAS DENIED HIS RIGHT TO PRESENT NON-FRIVOLOUS EVIDENCE WHICH COULD HAVE PROVEN THAT HE IN FACT WAS INNOCENT AGAINST THE FALSE CLAIMS PLACED UPON HIM. NOW APPELLANT IS ALSO SUBJECT TO BE HELD ON (S.M.U.) INDEFINITELY WITH NO GUARANTEE OF EVER BEING RELEASED. INMATES PLACED ON SEGREGATION ALSO FACE PROBLEMS OF EXTREME ISOLATION. THE CELLS HAVE METAL DOORS WITH STRIPS ALONG THEIR BOTTOMS TO PREVENT CONVERSATION OR COMMUNICATION, ALL MEALS ARE TAKEN ALONE IN THE CELL INSTEAD OF A COMMON EATING AREA. OPPORTUNITY FOR ANY VISITATION IS RARE AND IN ALL EVENTS CONDUCTED THROUGH GLASS WINDOWS. IT IS FAIR TO SAY THAT (S.M.U.) INMATES ARE DEPRIVED OF ALMOST ANY ENVIRONMENTAL OR SENSORY STIMULI AND OF ALMOST ALL HUMAN CONTACT. THE CONDITIONS DESCRIBED IN WILKINSON ARE IDENTICAL TO THE CONDITIONS DESCRIBED THAT INMATES FACE AT (P.C.I.) A MAXIMUM SECURITY S.M.U. WITHIN THE S.C.D.C. THERE ARE METAL DOORS WITH FLAPS TO COVER THE VIEWING WINDOW WHERE THE OFFICERS CAN OPEN OR CLOSE AT THEIR DISCRETION; AND ARE ALWAYS CLOSED WHEN SOMEONE COMES AROUND SO YOU NEVER CAN SPEAK TO NO ONE. THE AIR CIRCULATION IS MINIMAL BECAUSE THERE IS NO INTAKE VENT TO HELP CIRCULATE AIR WHICH CAN AND HAS CAUSED RESPIRATORY ISSUES AS WELL AS UNSANITARY LIVING CONDITIONS FROM NOT BEING ABLE TO PROPERLY KEEP THE CELL CLEAN. S.C.D.C. (S.M.U.) INMATES MAY NOT PARTICIPATE IN PRISON

EMPLOYMENT, EDUCATION OR OTHER ORGANIZED ACTIVITY. INMATES ARE CONFINED TO THEIR CELLS TWENTY FOUR HOURS A DAY, SEVEN DAYS A WEEK WITH FEW EXCEPTIONS. INMATES DO RECEIVE SHOWERS ON MON., WED., FRI., IF THEY MEET THE CRITERIA. TO RECEIVE THEM YOU MUST GO THROUGH A DEMENTING PROCESS OF A EXPLICITLY UNCOMFORTABLE STRIP SEARCH, THEN PLACED IN DOUBLE CUFFS, SHACKLES, AND A RETRIEVAL (DOG CHAIN/ LEASH) CHAIN IS THEN ATTACHED WHICH MAKES A THIRD CUFF AND THEN YOUR WAIVED FROM YOUR CELL TO BE RE-LOCKED IN A CAGED SHOWER. INMATES RARELY ALSO RECEIVE OUTSIDE RECREATION WHICH IS ONLY GIVEN UNDER EXTREME CIRCUMSTANCES (SECURITY, WEATHER, COMPLIANCE, ETC.) BUT ALL MUST EXIST IN UNISON FOR THE OPPORTUNITY, WHICH IS VERY RARE. THEN BECAUSE OF CERTAIN CONVICTIONS INCLUDING APPELLANTS, INMATES HAVE TO RECEIVE RECREATION WHILE BEING KEPT IN RESTRAINTS, (DOUBLE CUFFS, SHACKLES, HAND BOX W/LOCK, CHAIN TO CONNECT WRIST TO ANKLE). THIS POSITION IS VERY PAINFUL TO BE IN FOR AN EXTENDED AMOUNT OF TIME AND CAUSES A LOT OF INMATES TO REFUSE RECREATION SAYING ITS (ANTHROPOMETRIC) AND A CAGED ANIMAL FEELING. ALTHOUGH SOME ACCEPT THE CIRCUMSTANCES JUST FOR SOME FRESH AIR EVEN THOUGH THEY CAN ONLY STAND THERE THE WHOLE TIME. APPELLANTS CORRESPONDENCE HAS ALSO BEEN CURTAILED DRASTICALLY WHILE BEING HOUSED IN S.M.U. S.M.U. LIMITS INMATES TO (2) ENVELOPES PER MONTH WITH NO OTHER OPTION AVAILABLE. INMATES IN GENERAL POPULATION ARE UNLIMITED IN THE MAIL THEY SEND OR RECEIVE, AND THE MOST RESTRICTED INMATE IN POPULATION CAN STILL HAVE (16) ENVELOPES PER MONTH, PLUS THE OPTION TO PAY POSTAGE AT THE MAIL ROOM CONSIDERING THEY HAVE SUFFICIENT FUNDS. THIS IS A HARDSHIP PLACED ON EVERY INMATE ON S.M.U., ESPECIALLY THOSE WHO HAVE CHILDREN AND CLOSE KWIT FAMILIES WHOSE ONLY WAY OF CONTACT IS BY MAIL. FOR INMATES STILL FIGHTING CONVICTIONS ITS EVEN HARDER BECAUSE YOU HAVE TO USE YOUR ENVELOPES FOR LEGAL MAIL POSTAGE ALSO WHICH TAKES AWAY FROM THE ONLY CONTACT WITH THEIR FAMILIES. THIS IS HARD BECAUSE FAMILY CONTACT IS SUPPOSED TO BE PART OF A REHABILITATION PROCESS FOR INMATES, BUT IS CLEARLY BEING DISREGARDED. THE FOURTH CIRCUIT HAS HELD THAT "ALL THREE LEVELS OF S.M.U." SERIOUSLY RESTRICT AN INMATES ORDINARY PRISON PRIVILEGES, AND THAT EVEN THE LEVEL THREE INMATES WHO RETAIN THE MOST PRIVILEGES ARE "GREATLY RESTRAINED IN ACTIVITY AS COMPARED TO THEIR GENERAL POPULATION COUNTERPARTS". Id. See INGRAMA V. OZMENT, 507 F.3d 291, 283 (4th CIR. 2007). APPELLANTS CONDITIONS OF CONFINEMENT HAVE BEEN RESTRICTED SEVERELY, THE LENGTH OF TIME TO BE CONFINED IN S.M.U. IS ALSO A NOTICE TO BE TAKEN A FACTOR OF. ALTHOUGH THE COURTS HAVE NOT DEVELOPED A CONSENSUS REGARDING HOW MUCH TIME IN CONFINEMENT CONSTITUTES AN "ATYPICAL AND SIGNIFICANT HARDSHIP" BUT THE MAJORITY OF UNITED STATES COURTS OF APPEALS HAVE CONSIDERED THE NATURE OF CONFINEMENT AND ITS DURATION IN DETERMINING WHETHER THE CONFINEMENT IMPRES AN "ATYPICAL AND SIGNIFICANT HARDSHIP." "SEGREGATION OF LONGER THAN 305 DAYS IS SUFFICIENTLY ATYPICAL TO REQUIRE PROCEDURAL DUE PROCESS PROTECTION UNDER SAUDIN," SEE TOLAL V. HASTY, 490 F.3d 143, 141 (2d CIR. 2007). THEREFORE THE DECISION TO PLACE APPELLANT IN CONFINEMENT, IN S.M.U. IMPLICATES A CONSTITUTIONALLY PROTECTED LIBERTY-INTEREST WHICH REQUIRES THAT HE BE AFFORDED DUE PROCESS OF LAW.

APPELLANT WAS ENTITLED TO DUE PROCESS RIGHTS AT HIS DISCIPLINARY HEARING AND WAS DENIED THE RIGHT TO PRODUCE EVIDENCE ON HIS BEHALF WITH NO JUSTIFICATION. AN INMATE IS ALLOWED TO PRESENT EVIDENCE AS LONG AS IT IS RELEVANT TO THE CASE AND NON-FRIVOLOUS. SEE S.C.D.C. POLICY 22.14 SECTION 15.7. AT THE HEARING APPELLANT CLEARLY REQUESTED INFORMATION WHICH WOULD HAVE CONTRADICTED THE INITIAL CHARGE, BUT WAS DENIED THE OPPORTUNITY TO PRESENT THIS EVIDENCE AS IT WAS AN INCONVENIENCE TO S.C.D.C. S.C.D.C. IS AN AGENCY AND AGENCIES HAVE GUIDELINES AND POLICY ESTABLISHED. THESE POLICIES ARE SET TO MONITOR BOTH EMPLOYEES AND INMATES. IF AN INMATE BREAKS A RULE HE IS PENALIZED, THE SAME SHOULD APPLY FOR OFFICERS OR THEIR COUNTERPARTS. THESE POLICIES ARE GIVEN THERE EVERYDAY PLAIN AND ORDINARY MEANING. PEE V. ANM TUNG, 543 S.E.2d 232, 234 (S.C. APP. 2001). AS A FUNDAMENTAL RIGHT, A PRISONER IS ENTITLED TO THE CONSTITUTIONAL GUARANTEE OF A REVIEW HEARING IMPLEMENTING THE MINIMAL DUE PROCESS REQUIREMENTS BEFORE A NEUTRAL AND DETACHED HEARING BODY. MORRISSEY V. BREWER, 96 S.C.T. AT 2604. APPELLANT HAS PROVEN AN ABUSE OF DISCRETION ON THE PART OF THE DISCIPLINARY PROCEDURES. APPELLANT WAS CLEARLY DENIED HIS RIGHT TO PRESENT EVIDENCE FOR NO KNOWN FACT OTHER THAN A CLEAR ABUSE OF AUTHORITY. APPELLANT WAS DENIED HIS DUE PROCESS WHICH CREATED AN ATYPICAL AND SIGNIFICANT HARDSHIP "JUST BECAUSE". THESE TYPES OF ISSUES BLATANTLY DISREGARD WHAT

THE CONSTITUTIONAL SAFEGUARD WAS PUT IN PLACE TO PREVENT AND THIS VIOLATION SHOULD BE CORRECTED.

CONCLUSION

APPELLANT HAS SHOWN THAT CIRCUMSTANCES SURROUNDING HIS CONVICTION ARE AT BEST QUESTIONABLE. THERE IS A LIBERTY INTEREST PRESENT AND IT COMES FROM BEING DENIED DUE PROCESS. WHEREFORE THE ABOVE REASONS APPELLANT RESPECTFULLY PRAYS THIS APPELLATE COURT ORDERS (S.C.D.C.) TO 1.) REVERSE APPELLANTS CONVICTION AND OFFER THE OPPORTUNITY FOR A NEW HEARING; OR 2.) REVERSE THE APPELLANTS CONVICTION AND VACATE BECAUSE APPELLANT WAS DEPRIVED OF PROPER DUE PROCESS OF LAW. THUS, REQUESTED RELIEF WOULD MEET THE END OF JUSTICE.

RESPECTFULLY SUBMITTED,

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Certificate of Service

I, Van Starling, Certify that on the 4th Day of December, 2014, I did serve A copy of Appellant Initial Brief upon the following:

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