

Antoine d'Origny #292911
vs

South Carolina Department
of Corrections defendant

State of South Carolina Court of Appeals Court

Appellate case No. 2014-002922

(Appellate BRIEF) **RECEIVED**

JAN 09 2015

SC Court of Appeals

The pro se Appellant Antoine d'Origny, hereby briefs the
APL Grievance No. POL00444-H and states as follows:

HISTORY

1. This matter is before the South Carolina Court of Appeals pursuant to the Notice of Appeal to the Administrative Law Court by the appellant per Grievance #120944-H
2. Appellant states Administrative Law Judge (ALJ) dismissed his denied of claim of a CRIST National protected liberty interest.
3. Appellant states his / her rights established by law has been violated when they denied him with a 30 day policy which is the only one which can attest to whether the alleged evidence was preserved by their committee on Policy.
4. Moreover, The South Carolina Department of Corrections and who is failed to properly investigate the grievances requested by appellant and original by S.C. Public Employees AP-2714 (South Carolina Department of Corrections).

Questions presented

5. When Appellant made a "General" statement on grounds for Appeal S.C. Code Ann. § 1-23-380 (A) (6) can he/she be held liable for a denial of appeal filed without allowing Appellant to do a "Brief" was this a violation?
6. Was Appellant's right to a fair trial or was determined in error of the reliable procedure and substantial evidence of the whole record?
7. Was Appellant allowed to call witnesses & present the necessary evidence in his defense?
8. Did Evidence Commissioner (ALJ) and ALJEN decision violated or policy and procedure?

ARGUMENTS

(5) - When Appellant made a "General" statement on grounds for Appeal S.C. Code Ann. § 1-23-380 (A) (6) and Administrative Law Judge order of Dismissal was filed without allowing Appellant to do a "Brief" was this a violation?

The ALJ has subject matter jurisdiction when the Department disciplines and inmate and imposes a punishment that deprives the inmate of a constitutionally protected liberty or property interest. *Al-Shabazz v. State*, 358 S.C. 354, 369, 527 S.E.2d 742 (2000); *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 163 S.E.2d 5 (2000). *Ex. Ind. Further*

Clarification that the court has jurisdiction of all inmates grievance appeals that have been properly filed. In *Al-Shehazz v. State*, the court held, on inmate may seek review of (SCDC's) final Decision in an Administrative manner under the Administrative Procedure Act (APA) placing review of these cases with ambit of the APA will ensure that inmate receives 1. Due Process, which consist of notice, a Hearing and Judicial Review. A General statement of the grounds for appeal was made per S.C. Code Ann § 1-23-380(CA) (6). Appellant is not alleging the loss of the opportunity to earn sentence related credits pursuant to § 24-13-210(A) or § 24-13-230(A) so a matter of law or S.C. Code Ann § 23-600(D), which provides that an administrative law judge shall not hear an appeal from an inmate in custody of the Department of Correction allege the loss of credits is not the issue on this Appeal. Administrative Law Judge order of Dismissal was prejudicial to Appellant because § 1-23-380 Judicial Review court may not substitute its judgment of the Agency as to the weight of the evidence on question of fact. The Court may affirm the decision of the Agency or remand the case for further proceedings. The court may reverse or modify decision if substantial rights of the appellant have been prejudiced because Administrative findings, inferences, conclusions, or decision are (A) in violation of constitutional or statutory provision (B) in excess of the statutory Authority of the Agency (C) made upon unlawful procedure (D) affected by other error of law (E) clearly erroneous in view of the reliable, probative, and substantial evidence on the record or whole. When the Administrative didn't allow Appellant to do a Brief to (ALJ), were he could show a state-created liberty or property interest were Administrative ruling deprived him of canteen phone a visit over six months because the agency was clearly erroneous, or arbitrary or capricious or an Abuse of its discretion in the view of substantial evidence on the whole record: quoting *Judick v. South Carolina Department of Corrections* 374 S.C. 334, 649 S.E.2d 35 (2007) and *Porter v. Public Service Commission*, 333 S.C. 12 (S.C. 1983).

Appellant submits that due process will be sacrificed by the courts to summarily affirm the AIC dismissal of this appeal prior to full briefing. Cf. *Barlow v. S.C. Dept of Corr.* NO. 2012-UP-375, 2012 WL 844375, at *1 (S.C. Ct App. June 2012) (unpublished).

When Appellate court chooses to find facts in accordance with its own view of the evidence, the court must state distinctly its findings of fact and the reason for its decision. *Garner v. Burr* (S. Ct. 2009) 381 S.C. 494, 673 S.E.2d 818.

Appellant submit to the grievance agency a SCDC 19-11 (Request to Staff Form) under state policy procedure OPP 22.14 section (8.2.4) for witness to be present so they can attest to the 19-29A SCDC Incident Report Form was a box quoting STG-Related - Refer to STG-Committee check yes or no. The box was checked Yes. This brought SCDC policy No. OP-21-01 where witness is the designate Investigator to STG-Committee who is sole responsible for this policy and procedure, to verify if in fact the material is STG-related and the individual possession it has been validate or not.

Where an Appeal which alleges specific instance of law which are not conclusively refuted by the record before the agency, a question of fact is raised which can only be resolved by a evidentiary hearing. SEE Sharper v. State 279 S.C. 264, 305 S.E2d 247 quote Norman v. State 276 S.C. 278, 297 S.E2d 707 (1981). This was a violation to the 6th Amendment were I had a right to be confronted with witness against me, to have compulsory process for obtaining witness in my favor. This violation make Plaintiff have a ability to show that the challenged regulation impinges on a constitutional right, which is an equal protection setting requires a showing of Discriminatory intent. CAIhou - EL. V. Robinson, 76 F.3d 1261 (4th Cir 1995) Therefore Administrative Law Judge Order of Dismissal was a violation to S.C. Code Ann § 1-23-380 (A)(6) by not allowing him a Brief.

(6) Was Appellant Due Process rights violated or was clear erroneous in the reliable probative and substantial evidence on the whole record?

Appellant was charge by the agency SCDC case # PCI-044-14 in violation of a (832) Unauthorized Inmate Organization Activity or participation in a Security Threat Group (STG) or SGT Activity. (SCDC) has set up a Policy Procedure since 1995 SEE IN RE Long Term Administrative Sanction of Inmates Designated as Five Percenters 174 F.3d 464. The SCDC Policy - No. CP-21.01 is a Security policy were the Director may designate a group as an STG consideration classification of an individual as an STG member requires approval up the prison chain of command, including the approval of the prison Warden and SCDC Deputy Director of operations. An inmate who is classified as an STG member is notified of the fact and given an opportunity to respond.

Appellant submit (2) evidence to the the government agency on a SCDC 19-10 Form under state policy/procedure CPP 22.14 section (8.2.4) (15.5) for Investigator Pearson and Investigator Patterson to be present to attest whether policy/procedure was followed on 19-29 a form Incident Report that the box was check yes to refer to STG Committee (SEE Exhibit 1). To show this is a procedure performed of Security to be follow. SEE Incumag v. Sterling 2014 WL 958679 D.S.C. 2014.

The Investigator of (CIU) Mr. Pearson Attest to the procedure being followed in his Affidavit (*14). Pearson attest that this above process is designate to allow the department to identify & maintain control of STG material which are considered Contraband (*16). When addressing the record with reliable probative and substantial evidence, for witness to be present to attest to STG material for committee and given Inmate who is classified as an STG member is notified of the fact and given an opportunity to respond, whether the appellant was validate by (CIU) to be a member of this organization (*15) quoted: Incumag v. Sterling 2014 WL 958679 D.S.C. 2014

Appellant has showed his Due process was violated and the decision of the agency was clearly erroneous, or arbitrary or capricious or an abuse of its discretion in the view of substantial evidence on the whole record: Porter v. Public Service Commission, 333 S.C. 12 (1998). The Supreme Court stated as Due process that the accused must be given "a written statement by the fact finder as to evidence relied upon to convict the appellant was clearly erroneous; see Wolff v. McDonnell 418 U.S. 539, 566 (1974). when applying the record and evidence presented would this allowed a reasonable mind to reach the same conclusion as the agency made: see In Pearson v. JDS Converter & Industries Corporation 327 S.C. 393, 489 S.E.2d 219, Southendley v. South Carolina State Budget Control Board 325 S.C. 413 (S.C. App 1994) which states the same. Therefore Applicant Due process which was clearly established was violated.

7- Was Appellant allowed to call witness & present documentary evidence in his defence?

Appellant submit to the grievance agency a SCDC 19-11 (Request to Staff Form) under state policy/procedure OP 22.14 section (8.2.4) for witness to be present so they can attest to the P-29a SCDC Incident Report Form has a box quoting STG related - Refer to STG committee check yes or no. The box was check yes. This brought SCDC policy NODP-21.01 were witness is the designate Investigator to STG Committee who is sole responsible for this policy and procedure to verify if in fact the material is STG related and the individual possession it has been validate or not, so he can argue and present evidence he isn't part of or is part of the organization. when the court look at the evidence on Appeal from Docket # 14-ALJ-04-0934-AP, Grievance: PCI 0444-14 and (EXHIBIT 1), Inmate should be allowed to call witness & present documentary evidence in his defence. If permitting him to do so will not jeopardize inst. Safety or corr Goals see Morrissey v. Brewer 408 U.S. At 489, 92 S.Ct. 2604 p. 2479.

(8)- Did Grievance Coordinator (IGC) and Warden Decision was based on policy/procedure?

The Agency (SCDC) has established policy/procedure to protect Inmate substantive and procedural Due process to the 14th Amendment that govern the agency and Inmate to follow. So the Appeal process, Administrative law court S.C. case Amist-23-380 (AXL6) was adopted in AL-Shabazz v. State 338 S.C. 354; Skipper v. South Carolina Department of Corrections, 361 S.C. 327 (2004). Therefore the policy/procedure SCDC OP-21.01 is address in Inmate Long Term Administrative Segregations, Inmate's Designate five reviewers (STG); Incumag v. Sterling 2014 NL 95867 (S.C. 2014).

The SCDC Agency give Inmate a chance to be heard by (IGC) and Warden on SCDC Form 10-5 Grievance form were they applied policy/procedure in accordance to Substantive/Procedural Due process. Appellant in (EXHIBIT 1) address policy OP 22.14 (8.2.4) for accuser to be present under policy OP 22.14 (15.5) because the SCDC 19-29 Form had the box check yes STG related Refr to STG Committee which brought the matter to a Security issue.

Upon policy/procedure 22.14 section (19.2) (19.3). The hearing officer shall acted in substantial compliance with policies/procedure and was the Decision of hearing officer was based on substantial evidence. Warden decision on SCDC Grievance Form 10-5-10-5A state the Accuser present testify that the material was STG related when Accuser isn't part of the STG committee to make that Decision and when Appellant request threw policy 22.14 (8.2.4) (15.5) to have the STG/CIU Investigator present was denied by DHO Turner claiming non-involvement, but upon policy 21.01 they are the only one can address this issue per policy.

This challenge is not completely to the grievance system, but rather is a challenge to the method and procedure ignored by respondent when they failed to act per policy Pursuant Turtick V. S.C. Dept of Protection, Parole and Pardon Service, 576 S.E.2d 196

Moreover the Inmate Grievance Coordinator (IGC) and Warden failed to properly investigate the Grievance as requested by appellant and required by SCDC Policy/procedure 22.14 (Inmate Disciplinary System).

Conclusion

For this above reason stated in S.C. Code ANN § 1-23-610(B) (Supp 2011) and § 1-23-380(C) explaining that appellate court may only reverse decision of the (ALC) Administrative Law Court if the substantive rights have been prejudice Wakat. Reeder Constr Co. 330 S.C. 242, 498 S.E.2d 650, So the appellate court can chooses to find facts in accordance with its own view of the evidence the court must state distinctly findings of fact and the reason for its Decision: Carpenter V. Burr (S.C. 2009) 381 S.C. 494, 673 S.E.2d 818

Reverse/Remand for action.

Date: 1-1-15

Respectfully submitted,

Antoine J. Chavis

Antoine J. Chavis #242911

Perry C-I / B-X-4

430 Oakwood Road

Delzaville S.C. 291449

Exhibit 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

MAR 24 2014

TO: NAME: <i>Sgt Cotter</i>	TITLE: <i>Contractor</i>	DATE:
INMATE'S NAME: <i>Antoine China</i>		SCDC #: <i>292911</i>
INSTITUTION: <i>PerM</i>		LIVING QUARTERS: <i>Q3 B-101</i>

In writing in regard of my folder being taken because of my Nation of Islam symbol on it. If you check the computer you will see it's part of the NOI since I was 12 which my sister is my student minister. I will like to have my folder back I'm not part of any S.T.G organization. I'm also waiting on my material to come back from Mrs Perry have had investigators who know what I am... please take this matter serious and proper investigate who claim I don't be around here getting in trouble nor starting a uprise. This happen after I come from C.A.C in the kitchen don't know the Sgt name but he said he was going give to yall for review.

Thanks!

P.S.
you told me
to write you
on this issue.

DISPOSITION BY STAFF MEMBER: *when was the folder taken?
who confiscated it?*

DATE: <i>3/25/14</i>	SIGNATURE: <i>Sgt. Daniel cotter</i>
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

RECEIVED

TO: NAME: Inmate Records / Discipline	TITLE: APR 14 2014	DATE: 4-13-14	APR 18 2011
INMATE'S NAME: Antoine J. Chins	SCDC #: 292911	DISCIPLINARY	
INSTITUTION: Perry	LIVING QUARTERS: Q3-B-101		

I'm submitting request to staff with these question and asking for Investigator Pearson or investigator Patterson Under Agency Director policy/procedures opp 22.14 (8.2.4) also these are the only (STG) committee I'm aware of and need to know did they review the evidence by policy/procedure to say this symbol Unlabeled or Unapproved policy/procedure opp 22.14(15.5) For Accuser

- 1) Is you Authorized to consider what is (STG) material by the (STG) committee?
- 2) who gave you authorized to say the symbol on the folder is a S% symbol and not a Nation of Islam?
- 3) Did contraband ever review this material and submitted to the (STG) committee per policy?

OSK reeking
ERROR-300

P.S. can you also review this charge #63 under 4.4 of the policy. Thanks!

DISPOSITION BY STAFF MEMBER:

I am not able to answer this request as I ~~do~~ not know what training or qualifications staff have for making judgements about potential STG. You need to direct your question to Sgt. Cotter

DATE: 4/22/14	SIGNATURE: Pollins
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14-03101

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Antoine S. China
 SCDC NUMBER: 292911
 INSTITUTION: Perry
 HOUSING UNIT: Q3-B-101
 WORK ASSIGNMENT: BAC-Rec

APR 18 2014

Office Use Only
 Grievance No. PCL-0444-11
 Code: General
 Policy
 Disc. Hear. §32-4-15-14
 Class.
 Date Received APR 21 2014
 IGC Initials JS

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) an appealing case #1
conviction 4/15/14 DFD hearing base on policy/procedure being violated were it was denied
witness under policy/procedure (5.5) (3.2.4) It was the responsibilities of hearing officer to make sure
that policy was follow to determine whether the material which was use as evidence went thru
it procedure to be verified as (STG material). SCDC form 19-29A Box for STG Related - was check yes
to Refer to STG Committee. Contraband never received the material to send to STG committee per
policy SCDC OP 21.01 (See Attach Request March 24 2014 Sgt. Cotter). No one hear us qualified to say the mater
is STG related by T Agency Director Investigator. This was clearly violated. Per OP 22.14 section (9.2)(9.5) (I) The hear
officer acted in substantial compliance with policies/procedure (2) The decision of hearing officer was based on substantive
evidence, because STG material so say never went to the STG committee per policy see above (3) Under the circumst
the sentence imposed was proportionate to the violation. Level (3) offence §32-1st offence only can get 60 D.D
and 0-180 privileges taken. I was given 90 D.D. 370 of all privileges taken which is over the amount supposed
be imposed. These are clear technicalities, procedural error, misinterpretation of evidence.

ACTION REQUESTED: Charge 63 Dismissed for violating policy/procedure by the hearing officer
find out why policy was broken. STG committee never received the material to verify what or what not STG
material. why contraband never received the material also. Request to staff Kiosk # Be Answer 14-032404, 14-032554
14-031730. Sanction is clearly in violation to the policy... Also need to be Dismissed because this
was very vindictive behavior by Administrative official, who are trained to follow policy/procedure...

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Request to staff TO Sgt Cotter March 24, 2014
Request to staff - Agency Director for Investigation STG committee - C14-032404 Mr. Pearson
Policy/Procedure 14-052586 - Mrs. Webb
Religion/Programs 14-031730 - Mr. Patterson
Antoine S. China 4-14-14
 Grievant Signature Date

ACTION TAKEN BY IGC:

*See Reverse for
Wardens Response*

[Signature]
 IGC Signature Date

WARDEN'S DECISION AND REASON:

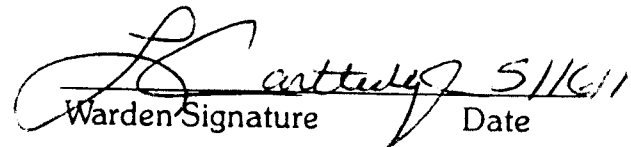
Inmate China, Antoine 292911

In regards to **PCI-0444-14 case #63, 832 Unauthorized Inmate Organization Activity or Participation in a Security Threat Group (STG) or SGT Activity. HD 04/15/14**

All pertinent information has been reviewed to include all documents, photo copies of the material in question, and your disciplinary recording. The evidence presented was sufficient to support a guilty verdict for this charge. You were given the chance to make a statement and ask all of your relevant and non repetitive questions to the accuser. Sgt. Palmer receives training by SCDC in order to identify STG material. Cpl. Burzinski has also been trained in the identification of STG symbols and testified at your hearing that the symbol in question was indeed a symbol used by the 5 percenters. Your request to have Investigator Pearson and Director Patterson present at your hearing was denied by DHO Turner due to their non-involvement in this case.

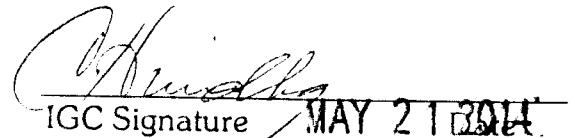
Based on this information, your grievance is **denied**. If you wish to appeal my decision, see Step 5.

An 832 charge is a Level 2 offense and carries 0-180 days DD time for a first offense. You received 90 days. There also is a mandatory 180 days loss of privileges. 90 days DD + 180 privilege loss = 270 days.


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.

Antoine China
Grievant Signature MAY 21 2014


IGC Signature MAY 21 2014

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 to the Institutional Grievance Coordinator.

The State of South Carolina
In the Court of Appeals
[In the Supreme Court]

Appeal From the Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Lower Case No. 2014-AJ-04-0934-AP
Appellate Case No. 2014-002422

Antoine J. China # 292911 Appellant
- v -

South Carolina Department of Corrections Respondent

Affidavit
PROOF OF SERVICE

I certify that I have served a notice to proceed in forma pauperis for Appellee Brief, case # 2014-002422 by depositing a copy of it in the United States Mail postage pre paid by depositing on January 4, 2015 addressed to attorney of record Daniel J. Crooks III, S.C. Department of Corrections P.O. Box 21787, 4444 Broad River Road Columbia S.C. 29221 and South Carolina Court of Appeals Janou Abbet Kitchens, clerk Post Office Box 116291, Columbia, South Carolina 29211

Date: 1-4-2015

1 s/ Antoine J. China

Antoine J. China # 292911
Perry, II / B-X-4
430 Oakdown Road
Delzer S.C. 29669

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JAN 09 2015

SC Court of Appeals