

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE, CAROLYN C. MATTHEWS

Case No.: 2014-DD2356

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SC Court of Appeals

Michael Goins ----- Appellant.

v.

South Carolina Department of Corrections ----- Respondents.

REPLY BRIEF

Dated: December 29, 2014

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

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SC Court of Appeals

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ISSUES

The Respondents responded to the Appellant's Initial Brief and designation of Matter with their Respondent's Brief and Designation of Matter. Now Comes the Appellant's Reply Brief.

The Respondents are asserting that the Appellant was afforded all Constitutionally required due process rights at his disciplinary hearing and that the Respondent's Final agency decision was supported by substantial evidence. The Appellant begs to differ.

The Appellant requested that his key witness, Ofc. Wilson be present at the hearing. Ofc. Wilson has first-hand personal knowledge of the incident in which he was standing "Right There" when it happened. Ofc. Wilson was not present at the hearing nor did Counsel substitute Ms. Kollock obtain an written statement from him.

It is well established that an prisoner has an due process right to call witnesses and present documented evidence on his/her behalf at the hearing. See Al-Shabazz v. State, 527 S.E.2d 742 (2000). See Also Brown v. Braxton, 373 F.3d 501 (4th Cir. 2004); Osborne v. Lamanna, 2005 WL 4751201 (D.S.C. 2005).

And Even though the Disciplinary hearing Officer, Mr. Turner, did not even try to justify why he did not contact my key witness, there would not have been an substantial reason to not call an "officer" witness. See McDaniel v. SCDC, 09-AJ-04-00025-AP (D.S.C. 2009). (While this Court recognizes the mischief that might be worked if this right is extended to extremes, in

the case at hand the witness sought was an employee of Respondent and there is no excuse for his absence. That alone is ground for reversal.) See Also Goins v. SCDC, 14-ALJ-04-0056-APC (stating that if the key witnesses requested can not be present at the hearing by phone or in person then the Counsel substitute is to obtain written statements from the witness(es) and have the DHO read them into the record.) See S.C. Code Ann § 1-23-610.

The due process right to call witnesses and produce documented evidence at Disciplinary proceedings is well established in state and Federal Courts. In this case, Disciplinary hearing officer Turner and Counsel substitute did not call Appellant's key witnesses which, indeed, violated Appellant's due process rights. Conviction should be reversed and remanded.

The Respondents also allege that their final agency decisions is supported by substantial evidence. Appellant can show otherwise.

The Disciplinary Hearing Officer relied totally on the accuser, IGC Ms. Johnson, conclusory statements at the hearing and in the incident report. DHO Turner states that the conviction is supported by the incident report and the accuser's testifying at the hearing. Appellant's key witness, Mr. Wilson, would have contradicted everything the accuser testified to and put in her incident report in which he was "right there" if he had been able to give his testimony at the hearing. Landry v. F.D.I.C., 204 F.3d 1125 (D.C. 2000) (it is well established that the substantial evidence rule requires consideration of the evidence on both sides; Evidence that is substantially viewed in isolation may become insubstantial when contradictory evidence is taken into account). Taking this into account, IGC Ms. Johnson's conclusory

statements become insubstantial when Appellant's key witness Dtc. Wilson's testimony is accepted. Respondents Final agency decision is not supported by substantial evidence when colliding with the testimony of the key witness.

"Just as conviction upon a charge not made valid would be sheer denial of due process, so is it a violation of due process to convict and punish a man without evidence of his guilt." Thompson v. City of Louisville 362 U.S. 199, 206 (1960). This conviction is meritless. Appellant respectfully requests an reversal to remand.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Honorable Court should reverse and remand the administrative agency's decision in this case. California v. Green, 399 U.S. 149, 187 (1970) "due process does not permit a conviction based on no evidence."

December 29, 2014
Pelzer, South Carolina

Michael Goins
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IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS

CASE NO.: 2014-002356

Michael Goins ----- Appellant.

v.

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

PROOF OF SERVICE

I, Michael Goins, Appellant, do hereby certify that I did serve the following documents on the foregoing 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.) SCRC Office of General Counsel P.O. Box 21787 Colo., S.C. 29221-1787

SWORN to and subscribed before me
this 30th day of December, 2014
Nancy Merchant (U.S.)
Notary Public For South Carolina
My commission expires: 1-23-2022

31. Michael Goins
Michael Goins # 302385
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S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

IN RE: Case No.: 2014-002356

December 29, 2014

Dear clerk,

Please find enclosed for your filing Appellant's Reply
Brief in the above referenced case. With kindest regards.

Respectfully,
Michael Goins

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Michael Goins #302385
Perry Corr. Inst. C-V-14
1220 Cobblown Rd.
Pelzer, S.C. 29669

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