

January 13th, 2015

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

JAN 16 2015

SC Court of Appeals

RE: Derrick A. Young, (#273562), Appellant
as Prose Litigant v. South Carolina
Department of Corrections, Respondent,
Case No. 13-ALJ-04-0809-AP,
Grievance No. PCI-1018-13

Dear Mr. Richstad:

Enclosed for filing is the order from the administrative law court in the above case. As I stated in the previous letter, I was unable to provide the order with the notice of appeal because the law library staff had not returned the copies. Where as I did receive the couple copies of the order today, also enclosed are the following:

1. Proof of Service of the order from the administrative law court, the respondent's final decision and the respondent's initial decision, on the respondent and administrative law court.
2. A copy of the request to staff member form which I made the request for copies of the above stated documents in, dated 1-5-15, as proof that I sent out to have copies made well in advance of the 30 day period to submit the notice of appeal. Where the last day of that period was 1-10-15, which was a Saturday, so I sent it, (notice of appeal) on 1-12-15, the very next business day.
3. A copy of the debit form showing that the appellant did not receive copies of the above stated documents till 1-13-15.

Mr. Hochstad, whereas I filed the notice of appeal on 1-12-15, I also filed a motion for leave to proceed in forma pauperis and an affidavit therefor. I would need and wish to know that this would exempt me from any cost on appeal and could you please inform the judge assigned to my case that I am not financially able to provide the cost for copies for the record on appeal per Rule 210, SCACR or the final briefs per Rule 211, SCACR. And I would need for him to specify upon ruling on the motion for leave to proceed in forma pauperis, the amount of copies I am to serve upon the party(ies) and the reviewing court in reviewing and deciding on the motion for leave to proceed in forma pauperis.

Whereas the appellant is in segregation and does not have means to produce typewritten or machine duplicated copies of handwritten material, it is important that the reviewing court know that the respondent's housing institution will not allow appellant to machine duplicate copies of handwritten material per agency policy & procedure GA-11.03(01), "Inmate Access to the Courts." It is important the judge assigned to the above case take this in consideration when ruling upon the motion for leave to proceed in forma pauperis. And the time for serving the appellant's initial brief shall run from the time the motion for leave to proceed in forma pauperis is ruled upon and served upon the appellant.

Your time is greatly appreciated.

Derrick Young
Derrick A. Young, (# 293562)
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 29512

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah B. Durden, Administrative Law Judge

Case No. 13-ALJ-04-0809-AP

Derrick A. Young, (#293562)

Appellant

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v.

JAN 16 2015

South Carolina
Department of Corrections

SC Court of Appeals

Respondent

PROOF OF SERVICE

I, Derrick A. Young, certify that I have served the order from the administrative law court, the respondent's final decision and the respondent's initial decision in the above case on the Office of General Counsel, counsel for the respondent at P.O. Box 21787, Columbia South Carolina 29221-1787 and the Administrative Law Court at 1205 Pendleton Street, Suite 224, Columbia South Carolina 29201, by depositing a copy of it in the United States Mail, postage prepaid on January 14th 2015.

Derrick Young
Derrick A. Young, (#293562)
Evans Correctional Institution
P.O. Box 295120A
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Derrick A. Young, #273562,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0809-AP

Grievance No. PCI 1018-13

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ORDER

JAN 1 5 2015

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Threatening to Inflict Harm on an Employee and/or Members of the Public (809) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed, which resulted in a loss of 48 days good time credit. Inmate appeals on the grounds that there were due process violations because: 1) Counsel Substitute failed to obtain documentary evidence for the hearing; 2) Appellant alleges he was denied the opportunity to make a statement at the hearing; and 3) Appellant argues that his Counsel Substitute failed to properly cross-examine witnesses.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id. When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. Consequently, the review in these cases is limited to the record presented.

LAW/ANALYSIS

Since a state created liberty interest is involved, it is necessary to determine if Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for

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serious misconduct. Al-Shabazz, 527 S.E.2d at 750. However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has enunciated the following five requirements which, if established, will ensure procedural due process in inmate disciplinary matters:

(1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that inmate should be allowed to call witnesses and present documentary evidence; (4) that counsel substitute...should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Al-Shabazz, 527 S.E.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

In this case, Appellant was served with notice of the charge on April 12, 2013 and the hearing was held on April 16, 2013. The Disciplinary Hearing Officer relied upon the Offense Report written by Lieutenant Robertson, the supporting report of Officer Morgan, the testimony given by the Appellant at the hearing, and the testimony of counsel substitute in reaching his decision. Appellant was represented by counsel substitute. Counsel substitute testified that he initiated contact with each of Inmate's witnesses. One correction officer told counsel substitute that she had nothing to contribute to Appellant's hearing. Counsel substitute also questioned another inmate, who stated that he did not want to be involved in Appellant's disciplinary matter. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

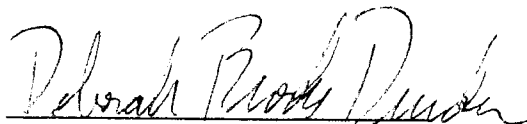
Appellant also contends Counsel Substitute failed to obtain Officer Morgan's supplemental report, therefore violating Appellant's due process rights. However, in Appellant's Step 1 Grievance he merely mentions the supplemental report. There is no evidence in the record that Appellant asked Counsel Substitute to obtain, or that Counsel Substitute failed to obtain, the supplemental report prior to his disciplinary hearing. Therefore, this argument has no merit.

Next Appellant contends that he was not allowed to make a statement at his disciplinary hearing. A review of the hearing transcript demonstrates that Appellant did in fact testify. He told the Hearing Officer that the correctional officers fabricated the entire incident. Appellant also stated that he "never said anything threatening...of a threatening nature." The Appellant was afforded the minimal due process as required by Wolff. For that reason, I find this argument is also without merit.

Finally, Appellant alleges that Counsel Substitute failed to properly cross-examine witnesses. Notably, in Wolff, supra, the U.S. Supreme Court did not require that an inmate must be provided a counsel substitute. Rather, the Court held that: "Where an illiterate inmate is involved, however, or whether the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff." Wolff, 94 S.Ct. at 2982. Here, Appellant did not allege or establish that he was illiterate or that this case was of sufficient complexity to necessitate assistance in presenting his case. Therefore, the Department was not constitutionally required to afford counsel substitute to assist the Appellant in his defense. Appellant provided his counsel substitute a list of questions to ask of any witnesses called. Furthermore, the record reflects that counsel substitute attempted to contact all the witnesses and found that Officer Greco stated she had nothing relevant to add to the case and inmate Roosevelt Bryant stated that he did not wish to become involved in Appellant's disciplinary matter. I find the Department complied with the minimal due process required by Wolff, and Appellant is entitled to no more.

Where an inmate has received the minimal due process required in an inmate disciplinary matter, no further inquiry is needed and the decision of the hearing officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, the Court will not substitute its judgment for that of the agency because there is substantial evidence to support the conviction which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

THEREFORE, IT IS ORDERED that the decision appealed from is **AFFIRMED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

December 3, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 3rd day of December, 2014
By: [Signature]
S.C. Administrative Law Court

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201

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P.C.I. MAILROOM

COLUMBIA
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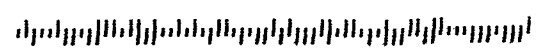
Derrick A. Young, #273562
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669



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E. Sam
DEC 11 2014

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Derrick Young
SCDC NUMBER: 273562
INSTITUTION: Perry Co. Inst.
HOUSING UNIT: SMU-B-Dorm-X-17
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. PCI 1018-13
Code: General DH
Policy Disc. Hear
Class. HD: 4.16.13
Date Received APR 23 2013
IGC Initials g
809

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 4.16.2013, Derrick Young attend disciplinary hearing for (809) "Threatening to Inflict Harm on/Assaulting an Employee" Case # 63. Residing Hearing Officer - R.L. Turner. Grievant was found guilty; based accusers and supporting report. On 3.26.2013, following such allegations grievant was placed in PHD/SMU. 19-29A Form fails to make mention that grievant was placed in SMU following such allegations. Accuser, Supervisor, and Major/Responsible Authority fails to mention grievant was placed in PHD/SMU throughout 19-29A Form. Like wise, grievant was not reviewed within 72 hours of placement in PHD/SMU. Which is in violation of "SMU" Policy, OP-22.12, § 1.2 and 1.3. 1.2: However the inmates placement in PHD must be reviewed within 72 hours of initial placement including weekends and holidays. §1.3: The Warden/Duty Warden or an approved - Continuance attache

ACTION REQUESTED: Grievant request IGC review all grievants claims and pertinent paperwork prior to forwarding to Warden. Grievant request that upon his claims being reviewed and responded upon, disciplinary infraction (809) "Threatening to Inflict ..." be (rev.) reversed, vacated, dismissed, privileges reinstated.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

N/A

Derrick Young 4.20.2013
Grievant Signature Date

ACTION TAKEN BY IGC:

SEE WARDEN'S RESPONSE

Ms. Johnson APR 29 2013
IGC Signature Date

N/A
Grievant 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.

STATE GRIEVANCE [continuance]: designee will fill out SCDC Form 19-67, "Pre Hearing Detention Placement," and get all necessary signature. The inmate must be given the opportunity to sign the 19-67 Form; but if s/he will not sign form, two (2) SCDC employees must witness form to show that it was served to the inmate. The inmate must be given a copy of the completed 19-67 Form within 72 hours of placement in PHD. If the copy of the 19-67 that is given to the inmate is not legible, the Hearing Officer will (max) provide the inmate with a legible copy. (Note: If the placement in PHD was due to a disciplinary infraction the procedures in SCDC policy/procedure OP-22.14 "Inmate Disciplinary System," will apply as they relate to the disciplinary charge/hearing.) Once inmate is moved to PHD, the SMU supervisor will ensure that information that relates to inmate is entered on SCDC supply S-29 "SMU/PHD Log." By grievant not receiving 19-67 Form, prior to applicable procedures of "OP-22.14" "Inmate Disciplinary System," constitutes violation of policy and grievant's due process rights. When grievant mentioned that he did not receive 19-67 Form during hearing DHO Turner stated it was not his problem." While grievant made attempt to make verbal during hearing DHO Turner cut him off which is in violation of "OP-22.14" "Inmate Disciplinary System," § 15.2. Yet, grievant persists that that accuses allegations in 19-29A Form are fabrications to cover for accusers and involved employees (Ofc. Morgan) conduct towards grievant. Grievant also persists that when recorder (Lt. W. Golden) served 19-69 Form, he did not receive 19-29A supporting report by Ofc. Morgan. This violates "OP-22.14" "Inmate Disciplinary System," § 3.2; 8.2.1; 8.2.6. In retrospect of accusers 19-29A, he alleges grievant stated "nothing" in the beginning of narrative of report; he later alleges grievant stated "I Done Fucking Told You What I AM GOING TO DO, I Am Not Going To Wait." Yet prior to this statement accuser has documented that the only statement grievant made was "nothing" and he makes no mention of grievant previously stating that he was not going to wait. This is a clear inconsistency on accusers behalf in fabricating 19-29A Form, which violates subsection "3.2" of "OP-22.14." Upon grievant receiving service of notice of charges grievant did not receive a 19-29A Form, by Ofc. Morgan. Nor did recorder whom served grievant charges, (Lt. W. Golden) make mention or indicate that there was a supporting 19-29A Form by involved employee Morgan, this is in violation of "OP-22.14," § 8.2.1; 8.2.6. (8.2.6): Obtain any documentary evidence that is not already in possession of the accused inmate (documentary evidence-relevant to case.) By recorder Lt. W. Golden not providing accused inmate with copy of alleged supporting report; and by Counsel Substitute Norman not making an effort to attain such documentary evidence, violate "OP-22.14" subsections previously stated as well as grievant's due process rights.

CO
MAY 24 2013

QZA-214

Due: MAY 21 2013

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED

INMATE NAME: YOUNG, DERRICK
SCDC NUMBER: 213562
INSTITUTION: PCI
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

MAY 21 2013

Office Use Only
Grievance No. PCI-1018-13
Code: General DIT
Policy _____
Disc. Hear. HD: 4-16-13
Class. _____
Date Received MAY 24 2013
IGC Initials _____

809 9-10-13

SEP 18 2013

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Grievant, Mr. Derrick Young, furthers his appeal on several basis, violations of OP-22.14 "Inmate Disciplinary System" and OP-22.14 "SMU Policy". As grievant attempted to state in details why he should be relieved of this charge during disciplinary hearing, maintaining that accuser fabricated allegations against him, Disciplinary Hearing Officer R.H. Turner interrupted and cut grievants statement off, which in violation of OP-22.14, § 15.4: "The accused inmate, or the inmate's Counsel Substitute, may make a statement on the inmate's behalf. The accused inmate, or inmate's Counsel Substitute, may present documentary evidence." By DHO Turner interrupting and cutting grievants statement off it not only violated policy, Mr. Derrick Young 5-18-2013
(continuance attached) Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Threatening to Inflict Harm on an Employee and/or Members of the Public (8.09) on April 16, 2013, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -48- 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.

[Signature] 9/10/13
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.

Derrick Young
Grievant Signature

SEP 19 2013
~~SEP 18 2013~~
Date

Ms. Johnson
IGC Signature

SEP 19 2013
~~SEP 18 2013~~
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Inmate's Reason For Appeal (state specific dissatisfaction):
it prevented grievant from properly presenting his case, which is the purpose of subsection 15.4 of OP-22.14. Grievant maintains that he was not aware of or never received a copy of any supporting report by a Ofc. Morgan. Upon service of charges to grievant by (recorder) Lt. W. Golden, she provided grievant a copy of a 19-29A Form, "Incident Report" from Lt. J. Robertson, at the top of 19-29A Form "Incident Report", the heading of the "Incident Report" is documented as "Page 1 of 1" which is evidence that there was only one page to this disciplinary report. Yet, during the disciplinary hearing DHO Turner read a "supporting report" by Ofc. Morgan into the record. This in violation of §10 and 10.1 of OP-22.14. This is also in violation of §8.2.6. Subsection 10: Recorder: "s/he will be responsible for ensuring all documentation for each case is available"; 10.1 The Recorder will be ~~responsible~~ responsible for the following: . ensure the ~~SLDC~~ SLDC Form 19-67 will be served to the inmate at least 24 hours prior to hearing; yet, recorder failed to provide grievant with proper documentation. Subsection 8.2.6 Responsibilities (Counsel Substitute): Obtain any documentary evidence that is not already in the possession of the accused inmate. This disadvantaged grievant in presenting his case, where inmate had called Ofc. Morgan as a witness.

In accuser's (Lt. J. Robertson) 19-29A Form "Incident Report", he states: "I/M Young stated 'I done fucking told you what I am going to do'. Yet, in narrative of this report I/M Young was said to have made a single comment stating "nothing" previous to above stated comment allegedly made by I/M Young. For accuser Lt. J. Robertson to allege that inmate made the statement "I done fucking told you what I am going to do, I am not going to wait." This indicates that I/M Young would have made a prior statement dictating what he was going to do, yet, nowhere in the "Incident Report" does accuser state in the narrative prior to above stated alleged statement by I/M Young does accuser indicate I/M Young had attempted or indicated verbally that had told him what he was or was not going to do previous to that statement.

Where "SMU Policy", OP-22-12, § 1.2 & 1.3 dictates inmate will receive an initial review within 72 hours of initial placement in PHD/SMU. And inmate will be served a 19-67 "Pre Hearing Detention Placement" Form, signed by all necessary administrative personell, and inmate would be afforded opportunity to sign 19-67 Form. Inmate Young never received such form. this violation of "SMU Policy", OP-22.14, § 1.2 and 1.3.

South Carolina Department of Corrections
Request to Staff Member

To: Mr. Davis	Education/ Title: Law Library Personnel	Date: 1-5-15
From: Mr. Derrick Young		SCDC#: 273562
Institution: Evans Co. I.		Unit #: SM1-131
<p>I need copies of the paperwork enclosed. Number of copies on paper attached to material to be copied inside. Thank,</p> <p style="text-align: right;">D. Young</p>		
Disposition of Staff Member:		
Signature:		Date:

Item	Amount
Photocopies <i>Copies (36)</i>	<i>\$9.00</i>

[Signature]
 Inmate's Signature

CPI K. Davis
 Mailroom/Canteen Signature (Request filled by)

To be completed by
 SCDC staff:

Cost
<i>\$9.00</i>

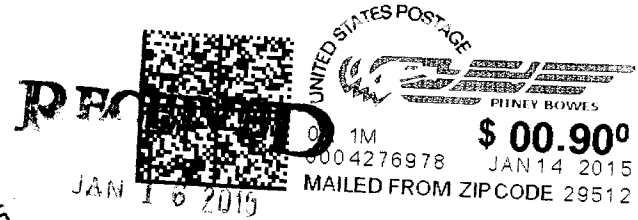
TOTAL

1.13.15
 Date

White - Inmate
 Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

Derrick A. Young (#273562)
Evans Corr. Inst.
P.O. Box 2951202
Columbia, SC 29512



JAN 14 2015
SC Court of Appeals

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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