

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

John D. McLeod Administrative Law Judge

Appellate Case No. 2014-001096

Perry Gilmore #344879

APPELLANT

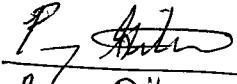
v.

South Carolina Department
of Corrections

RESPONDENT

INITIAL BRIEF OF APPELLANT

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Columbia, SC 29221
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MAR 19 2015

SC Court of Appeals

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TABLE OF AUTHORITIES

Cases

- Belton v. State, (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554
Wolff v. McDonnell, 418 U.S. 539 (1974)
Castaneda v. Marshall, 1997 WL 123253 at *3 (M.D. Cal. March 10, 1997)
Sandefur v. Lewis, 937 F. Supp. 890, 895 (D. Ariz. 1996)
Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 568
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Lehman v. City of Shaker Heights, 418 U.S. 298
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Ex Parte Hudgings, 249 U.S. 378
United States v. Seale, 461 F.2d 345 (7th Cir. 1972)
Lawrence v. Texas, 539 U.S. 558 (2003)
Conner v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E. 2d 608

Statutes

S.C. Code § 1-23-380 (A)(6)

Court Rules

South Carolina Appellate Court Rules: Rule 202(1), SCACR

Other Authority

S.C. Constitution Article I § 22

STATEMENT OF ISSUES ON APPEAL

1. Judge McLeod's ruling ("ruling") fails S.C. Code §1-23-380 (A)(6) review ("review") where, to make the conviction, the Hearing Officer relied on the Accusers report accusing an inmate named Gilmore Perry who is listed on said report as being black and having inmate number 344874 and Appellant's name is Perry Gilmore, he is white, and his inmate number is 344879.
2. Ruling fails review where the Accuser negated her claim that she saw Appellant masturbating by failing to list herself as the 'employee involved' under the caption provided for such on the incident report and the Hearing Officer relied on the incident report as the only evidence she relied on to convict Appellant.
3. Ruling fails review, where, because Appellant lost goodtime credits as the result of being convicted of the relevant disciplinary offense, South Carolina Department of Corrections (SCDC) procedure OP-22.14 §§ 3 thru 3.2 creates liberty interests where it mandates the Accuser, on the incident report, write her full name, sign her real, full signature, list herself as the employee involved, list the Appellant's name, and list the Appellant's inmate number, and she did neither.
4. Ruling fails review where Judge McLeod did not rule on each and every issue raised with detailed findings of fact and conclusions of law.
5. Ruling fails review where: 1) Appellant was in his home; 2) Appellant did not come out of his cell and go to Accuser and expose his genitals to her eyes, Accuser, by personal choice, went to Appellant's cell unannounced and looked in exposing her eyes to Appellant's body causing herself to see what she saw to further her self-serving personal agenda to get paid; 3) Accuser was not a captive audience; and 4) Respondent permits Appellant to expose his genitals in others view in his cell.

STATEMENT OF CASE

Appellant appeals to the Court of Appeals Administrative Law Judge John D. McLeod's decision upholding the decision of Respondents convicting Appellant of disciplinary offense called Exhibitionism and Public Masturbation and sanctioning him with, inter alia, revocation of goodtime credits.

ARGUMENT

1. First issue on appeal incorporated by reference. See Exhibit ("Exh.") SCDC 19-69, "Disciplinary ("Disc.") Report and Hearing Record" showing Accusers report as only evidence the Hearing Officer relied on. See Exh. SCDC 19-29A, "Incident Report" showing accused named Gilmore Perry, being black, and having inmate number 344874.
See South Carolina Appellate Court Rules: Rule 202 (1), SCACR not listing prison disc. hearings as "lower court". See Belton v. State, (S.C. 1994) 313 S.C. 549, 443 S.E. 2d 554 (Employee could raise issue in higher court she did not raise in grievance hearing). See Rule 59 (e) Motion to Alter or Amendment Judgment preserving issues.
2. Second issue on appeal incorporated by reference. See Exh. SCDC 19-29A showing Accuser failed to list herself as employee involved. See Exh. SCDC 19-69 showing Accuser's report as only evidence Hearing officer relied on. See SCACR Rule 202 (1) not listing prison disc. hearings as lower court. See Belton, *Supra* (Employee could raise issue in higher court she did not raise below). See Rule 59 (e) motion to Alter or Amend Judgment preserving issues.
3. Third issue on appeal incorporated by reference. See Wolff v. McDonnell, 418 U.S. 539 (1974) (Statutory goodtime credits create liberty interest). See Castaneda v. Marshall, 1997 WL 123253 at *3 (N.D. Cal. March 10, 1997); Sandefur v. Lewis, 937 F. Supp. 890, 895 (D. Ariz. 1996), and Wicker v. South Carolina Department of Corrections, 360 S.C. 421-25, 602 S.E. 2d 56, 58 (2004) (State regulations create liberty interests post Sandlin). See SCDC procedure OP-22.14 § 3 thru 3.2 mandating Accuser, on incident report write her full name, sign her name, full signature, list herself as employee involved, list Appellant's name, and list Appellant's inmate number. See Exh. SCDC 19-29A, "Incident Report" showing Accuser did neither. See Exh. SCDC 19-69, "Disc. Report and Hearing Record" showing Appellant lost goodtime. See SCACR, Rule 202 (1) not listing prison disc. hearings as lower court. See Belton, *supra* (Employee could raise issue in higher court she did not raise below). See Rule 59 (e) motion to Alter or Amend Judgment preserving issues.
4. Fourth issue on appeal incorporated by reference. See S.C. Constitution Article I § 22 (Appellant entitled to judicial review when an agency decision affects his rights). See Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998) (the findings of an administrative body must be "sufficiently detailed to enable [the reviewing body] to determine whether the findings are supported by the evidence and whether the law has been applied properly. See Appellants Brief and Reply ~~not~~ raising issues. See Judge McLead's order not ruling on issues. See Rule 59 Motion to Alter or Amend Judgment preserving issues. Also see SCACR 202(1) not listing prison disc. hearing as lower court, and Belton, *supra* (Employee could raise issues not raised below).

5. Fifth issue on appeal incorporated by reference. See Exh. SCDC 19-29A, "Incident Report" showing Accuser doing cell checks. See SCDC procedure DP-22.12 857.1 stating cell checks be "unannounced". See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 69 and F.C.C. v. Pacifica Foundation, 438 U.S. 726, 742 (sexual harassment and indecency depends on "context"). See Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971) (guidelines entitled to great deference). See Adderley v. State of Florida, 385 U.S. 39, 41 and Jones v. N.C. Prisoners' Labor Union, Inc., 433 U.S. 119, 136 (correctional facilities not "public"). See Lehman v. City of Shaker Heights, 418 U.S. 298, 302 (a "captive audience" is one there by force and not by choice). See Supra at 308 ("[w]e are not faced with... forced exposure."). See Cohen v. California, 403 U.S. 15, 21 (a person can "avoid further bombardment of their sensibilities by averting their eyes."). See Ex Parte Hudgings, 249 U.S. 378, 383 ("An obstruction to the performance of... duty resulting from an act done is, then the characteristic upon which the power to punish... must rest.") and United States v. Seale, 461 F.2d 345, 369 (7th Cir. 1972) ("The obstruction must be material"). See Lawrence v. Texas, 539 U.S. 558 (2003) (convictions involving persons engaging in sexual act in the privacy of their home reversed, based on, not the right not to be looked at, but the Fourteenth Amendment right not to be punished for being seen engaging in sexual act). And finally, Respondent's policy prohibiting Appellant from exposing his genitals in view of others in same cell Respondent permits him to expose his genitals in staff and cellmates view to urinate, wash, and change clothes in is "underinclusive." Conner v. Town of Hilton Head Island, (S.C. 1994) 314 S.C. 241, 442 S.E.2d 608 (underinclusive ordinance regulating nudity violative). See Appellant's Brief & Reply Brief raising issues. See Judge McLeod's Order not ruling on issues. See Rule 59 (e) Motion to Alter or Amend Judgment preserving issues. See SCACR Rule 202 (1) not including prison disc. hearings as lower court. See Belton, supra (employee could raise issue in higher court not raised below).

CONCLUSION

For the foregoing reasons, ruling fails review and Appellant requests reversal.

~~Perry Gilmore~~

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March 13, 2015
Ridgeville, SC

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PROOF OF SERVICE

This certifies service of Designation of Matter to be included in the Record on Appeal has this 13 day of March 2015 been made on all parties to this appeal by placing same in the United States mail as has the Initial Brief of Appellant.

This 13 day of March 2015

By: P. J. [Signature]

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