

Court of Appeals
Columbia, South Carolina

Initial Brief
For the
Appellant

Appellate Case No.: 2015-000656

Kevin Briggs, SCDC #274123 Appellant

V.

South Carolina Department of Corrections Respondent

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APR 30 2015

SC Court of Appeals

Kevin Briggs, SCDC #274123
Ridgeland C.I. / CA-04
Post Office Box 2039
Ridgeland, SC 29936-2039

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Grounds Presented

The Appellant states that the disciplinary charge against him was wrongful due to:

1- violation of the South Carolina Department of Correction's (the Department) Policy OP – 22.14(3)(3.1); OP – 22.19(8)(8.1), and 2- the action of the Respondent's Hearing Officer (DHO R.L. Turner) was arbitrary and capricious. See South Carolina Annotated Code § 1-23-380(5)(f).

The Appellant argues the Respondent's brief to the Administrative Law Court stating the Appellant had not exhausted the grievance system put in place by the Department.

Background of Case

On 07 February 2013, Officer Petit was conducting a 6am Formal Count when he came to Room 126 (located at Tyger River Correctional Institution), the lights were off – so the Officer keyed the door open to check for occupants. When he opened the door to the room, the Officer noticed a small bag at the top of the foot containing eleven small orange pills. There was no name on the bag. The room was assigned to Inmates Artha Whitfield, SCDC #341911 and Kevin Briggs, SCDC #274123.

The Captain of the Shift requested that a 903 charge (Trafficking and/or Use of Possession of Narcotics, Marijuana, or Unauthorized Drugs, including Prescription Drugs, or Inhalants; the Actual or Constructive Trafficking, Use or Possession of Drugs of any description. –Refer to OP – 22.14). An investigation was started.

The Appellant was notified and formally charged on 21 February 2013 at 8:18am by Sgt. M. Poole. The hearing actually took place on 27 February 2013 at 9:19am; however, the charge document shows no tape number or even if the hearing was recorded. The Appellant pled “Not Guilty” of the offense code 903, but was found guilty.

The Hearing Officer (R.L. Turner) stated the reasons for the guilty verdict was: 1- The testimony of officer Pettit and that his report was true and correct as written; 2- Photo evidence; and 3- The 19-79 Medical Report indicating that the prescription drugs found in the small bag was of the same kind that was issued to the Appellant but had expired on 03 February 2013. (This was the only evidence that convicted the Appellant in these proceedings.)

Ground One

“The Appellant states that the disciplinary charge against him was wrongful due to: 1- Violation of the South Carolina Department of Correction’s (the Department) Policy OP – 22.14(3)(3.1); OP – 22.19(8)(8.1), and 2- The action of the Respondent’s hearing officer (DHO R.L. Turner) was arbitrary and capricious. See South Carolina Annotated Code § 1-23-380(5)(f).

The Appellant stated also that during the hearing that he was found guilty of the 903 Possession of Narcotics (Prescription Medication), and that the conviction was wrongful, due to the following reasons: 1- Violation of the South Carolina Department of Correction’s (the Department) Policy OP – 22.14(3)(3.1); OP – 22.19(8)(8.1), and 2- The action of the Respondent’s hearing officer (DHO R.L. Turner) was arbitrary and capricious. See South Carolina Annotated Code § 1-23-380(5)(f) states: “...the court may reverse or modify the decision if substantial rights of the (Appellant) have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: arbitrary or capricious or characterized by abuse or secretion or clearly unwarranted exercise of discretion.

The Appellant continued stating the Incident Report/DHO Tapes state the prescription medication was found in a “common area” and the Appellant never had possession. The Appellant also states that there was no witness to the search of the Appellant’s living quarters. Neither of the inmates claimed the medication as their own and only the Appellant was charged.

Due to the facts stated above and in the background, the Department's actions were arbitrary and capricious, which violates the integrity of the South Carolina Department of Correction's policies and the Appellant's constitutional rights were deliberately ignored:

The Appellant is subject of "Loss of Property" interest as a result of this disciplinary, as he was employed through Prison Industries where he was receiving a wage. The job was terminated because of the disciplinary action.

The Respondent's brief to the Administrative Law Court built their case stating the Appellant had not exhausted the grievance system put in place by the Department and requested a dismissal. The Appellant had completed the Agency's grievance process.

See Lee County School Dist Board of Trustees v. School Academy Planning Committee, 371 S.C. 561, 641 S.E. 2d 24 (SC 2007) states: "...although under the Administrative Procedures Act (APA), the Supreme Court may not substitute its judgment for that of a state agency as to the weight of the evidence on questions of fact, it may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record." See also, Turner v. South Carolina Dept of Health and Environmental Control, 377 S.C. 540, 661 S.E. 2d 118 (SC App. 2008).

The Appellant sent a reply stating a Writ of Mandamus is required where the Respondent had violated the Department's Policy GA - 01.12(11) regarding the answering and returning of said grievance forms per the following argument.

See Stinney v. Sumter School Dist. 17, 382 S.C. 352, 675 S.E. 2d 760 (SC App. 209) stated: "...statute, providing that a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a

contested case is entitled to judicial review.” See also, Brown v. James, 389 S.C. 41, 697 S.E. 2d 604 (SC App. 2010) cites: “... requirement to exhaust administrative remedies, and thus could appeal to circuit court without participating in hearing.” which the Appellant did, and was directed to file with the Supreme Court of South Carolina.

Ground Two

“The Appellant argues the Respondent’s brief to the Administrative Law Court stating the Appellant had not exhausted the grievance system put in place by the Department.”

The Appellant gave or related what was forwarded and pending in Step One grievance. The Appellant filed the initial grievance on or about 16 March 2013; it was returned unprocessed on 11 April 2013, was amended and entered on 12 April 2013. The Appellant’s complaint was that the correctional officer violated the Department’s Policy OP – 22.19(8)(8.1); when the Officer searched the living quarters at Tyger River Correctional Institution – neither the Appellant and/or the cellmate were present when the contraband was confiscated; actual and/or constructive possession of contraband was a critical element that was never demonstrated and/or established before the disciplinary hearing. The Step One grievance was denied and the conviction was upheld. The Warden signed the Step One grievance on 12 July 2013, and was given to the Appellant on 17 August 2013. The Appellant filed a Step Two grievance also in August 2013 appealing the Warden’s decision. Again, the Appellant stated that the medication was found in a common area – there were no witnesses and that the hearing officer never demonstrated and/or established actual and/or constructive possession of the fore-mentioned contraband; and that the Medical Form 19-79 showing the Appellant had once had a prescription similar does not make the Appellant guilty of the 903 charge. The Department’s headquarters stated there was no reason for the reversal to the hearing

officer's decision and was signed 02 December 2013 and given to the Appellant on 06 December 2013.

On 29 May 2013, the Appellant filed a brief with the Administrative Law Court after receiving nothing from the Department concerning the grievances filed and/or any action from the Department showing or stating their intentions. The Appellant received a response from the Respondent on 06 September 2013. The Administrative Law Court basically dismissed the Appellant's brief because he suffered no loss of good time due to this charge. The order was signed on 28 March 2014. Due to the unit/dorm the Appellant was assigned was on a Security Lockdown, it was almost a week before he received the order from the Court.

The Appellant had due process rights that forbids and/or prohibits the Department's staff from violating the Department's policies and it happened in this case contrary to South Carolina Code Annotated Section § 1-23-380(5)(f): "... arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. See Al-Shabazz v. State, 527 S.E. 2d 742, 750 (2000). More GA – 01.12(11) stressed, "... the maximum extension that may be given is 90 days. Under certain circumstances, the grievance process may exceed 215 days." (Based on the policy dated 01 September 2009.) But effective 19 March 2013 – GA – 01.12(11) states, "... the extension is at the Step One level only, no extensions are required at the Step Two level.

See Berry v. SCHEC, 742 S.E. 2d 2, 5 (2013) citing "... that failure to exhaust administrative remedies goes to prematurely of the case not subject matter jurisdiction." If the Department would advance the position on 19 March 2013 change of their

grievance policy to attempt to justify the delay in the Step One ruling which GA – 01.12(13.4) cites, “... the Warden will respond to the grievance no later than 40 days from the date the grievance was formally entered into the OMS system by the Institutional Grievance Coordinator (with the exception of a disciplinary hearing appeal, when will be responded to within 30 days).” Surely, the Warden has exceeded the time limit for a response to the Appellant’s Step One and has violated his due process appeal rights. There has been no documentation granting an extension of time to rule therein.

See Stinney v. Sumter School Dist. 17, 382 S.C. 352, 675 S.E. 2d 760 (SC App. 209) stated: “...statute, providing that a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review.” See also, Brown v. James, 389 S.C. 41, 697 S.E. 2d 604 (SC App. 2010) cites: “... requirement to exhaust administrative remedies.”

The Respondent stated in their “Brief in Support of Motion to Dismiss” that “an inmate may seek further judicial review of the Administrative Law Court’s final decision by filing a Notice of Appeal in the Court of Appeals,” pursuant of South Carolina Code Annotated §1-23-610(A)(1). However, under the Administrative Procedure Act (APA), a reviewing tribunal may reverse or modify the decision of the agency where it is arbitrary or capricious or constitutes an abuse of discretion. The Appellant files for a writ of Mandamus in the lower tribunal for its consideration. See McEachern v. South Carolina Employment Security Commission, 370 S.C. 553, 635 S.E. 2d 644 (SC App. 2006). Also see Original Blue Ribbon Taxi Corp. v. South Carolina Department of Motor Vehicles, 380 S.C. 600, 670 S.E. 2d 674 (SC App. 2008) stating: “...A reviewing court may reverse or modify the decision of the Administrative Law Court (AIC) judge if

the findings, conclusions, or decision reached is clearly erroneous in view of the ...
substantial evidence on the whole record or is affected by an error of law.”

The Appellant is within his rights to petition the lower tribunal for its help in the reversal of the Administrative Law Court under South Carolina Code Annotated §1-23-610(A)(1)(f) and see McEachern v. South Carolina Employment Security Commission, 370 S.C. 533, 635 S.E. 2d 644 (SC App. 2007).

The Appellant has a right to request damages under the due process clause where a property interest is pointed thereto. Slezak v. SCDC, 605 S.E. 2d 506 (2004) and see also GA – 01.12(1-2) “Monetary.” The Appellant was engaged in the Prison Industries Program and was earning a minimum wage prior to the disciplinary hearing and his prison employment was terminated. In short, the Appellant should not be required to suffer economic loss because the Respondent violated their policies.

Conclusion

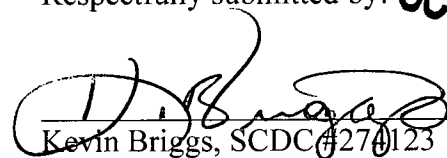
Wherefore, this honorable Court should grant this Writ of Certiorari and require the Department (the Respondent) to reverse the disciplinary action against the Appellant – expunge the action from the Appellant’s disciplinary history and award the Appellant the loss wages accrued by this disciplinary measure.

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Respectfully submitted by:



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Sword to and Subscribed by me this

27 day of April, 2015.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

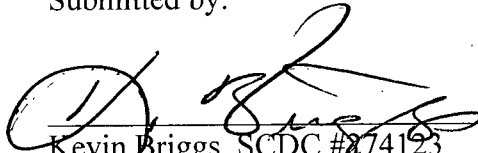
Certificate of Service

The undersigned, Kevin Briggs, the Appellant, does certify that service of this Motion for Writ of Certiorari in the above action was made upon the Respondent by placing same in the United States Mail, first class postage prepaid, at the below addresses clearly indicated on said envelopes on this 27th day of April 2015, addresses as follows:

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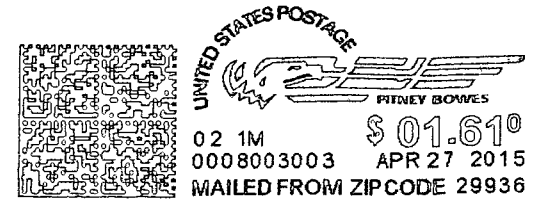
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