

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Judge Deborah Brooks Dunder

Case: 12-ALJ-04-0546-AP

&

2013-000852

12-ALJ-04-0547-AP

Billy Lee Lisenby JR, #200273 Appellant,

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JUN 24 2015

v.

South Carolina Department of Corrections Respondent

SC Court of Appeals

Hearing or Rehearing of Case By The Court of Appeals
EM Banc Motion

The above Appellant ask that this court reconsider the following:

- I. Did the Administrative Law Judge err in not ruling in Appellant's favor when he was denied his right to call witnesses, and no written nor verbal reasons was given on why the denial was necessary?
- II. Did the ALJ err in not ruling in Appellant's favor when they presented no evidence of the marijuana, no Controlled Substance Testing Disposition Form was presented, and the picture they presented for the phones and charges, is not

Argument 1

As the record will show that Christopher Florian made the return on Respondent's Brief on Oct. 2, 2012 for the 903 - Use, Possession of Narcotics, Marijuana. Bradford A. Rawlinson Prepared the Respondent's Brief on September 28, 2012 for the charge of 398 - Possession of Any Communication Device. Both charges occurred on Feb. 4th 2012 and both hearings were held together on Feb. 14th 2012, MR. Bradford A. Rawlinson, States; (Note both attorneys give different reasons on why Appellant witnesses were denied).

"It is clear from the record that further testimony from security personnel would have been repetitive to that of Officers Hunt and Curt. It is also clear that the Disciplinary Hearing Officer gave Appellant ample opportunity to present evidence on his behalf and afforded Appellant Due Process as discussed in *Wolff v. McDonnell* 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974)." *Wolff v. McDonnell*

MR. Florian states "they denied Appellant's witnesses due to security reasons." MR. Rawlinson, states "they denied Appellant's witnesses due to repetitive testimony." There was only one hearing and one D.H.O (MRS. Sellers). They have not provided a statement from the D.H.O stating why she denied Appellant's witnesses. So the Judge erred in not ruling in Appellant's favor because MR. Florian and MR. Rawlinson are not being truthful, they have violated Petitioner's constitutional right mandated by *Wolff* and now they are exaggerating to cover it up.

Argument #2

This court fail to make a ruling on his second argument. At the hearing the D.H.O. never presented any evidence that the alleged marijuana tested positive for THC. Also they never showed a picture of the marijuana, and the alleged picture of the phone and charges was not clear. This is a violation of policy OP-22.14 Section 15.1 which states "At the start of the hearing the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involves a controlled substance, i.e. illegal drugs such as marijuana, the hearing officer must have available a copy of SCDC form 1999 "Controlled Substance Testing and Disposition Form." that establishes the exact type of illegal drug found in the possession of the inmate."

For the above reasons Appellate ask that this court review his issues in full and rule in his favor.

Dated: June 18th 2015

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Judge Deborah Brooks Duerden, Judge of ALC

ALC Case Numbers: 12-ALJ-04-0546-AP 2
12-ALJ-04-0547-AP
Appellate Case No: 2013-000852 & 2013-000864

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South Carolina Department of Corrections - - - - - Respondent

Certificate of Service

I hereby certify that I have served the Respondent's a copy of Appellant's Hearing or Rehearing of Case By The Court of Appeals En Banc Motion by depositing a copy of same in the United States Mail, postage prepaid, on June 18th, 2015 addressed to the Respondent's as follows:

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JUN 24 2015

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