

APPENDIX IN PETITION FOR A
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THE STATE OF SOUTH CAROLINA
IN THE COURT APPEALS

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

RALPH KING ANDERSON, III, CHIEF ADMINISTRATIVE
LAW JUDGE

LOWER COURT CASE NO. 2014-ALJ-040664-AP
APPELLATE CASE NO. 2015-000957

George Cleveland, III,
S.C.D.C., No. 357770,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS, (S.C.D.C.),

RESPONDENT,

APPENDIX

PRO SE Pet. George Cleveland, III #357770
MACDOUGALL CORRECTIONAL INST.
1516 GILLIARD ROAD
RIDGEVILLE, S.C. 29472

Atty. for Resp. DANIEL JOHN CROOKS, III, ESQUIRE
S.C.D.C.
OFFICE OF GENERAL COUNSEL
P.O. BOX 21787
COLUMBIA, S.C. 29221-1787

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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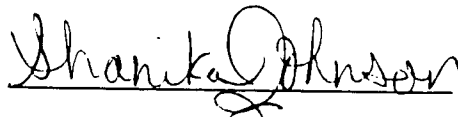
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|---|---|------------------------------------|
| George Cleveland, #357770, |) | Docket No.: 14-ALJ-04-0664-AP |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | RESPONDENT'S MOTION TO |
| |) | ENLARGE TIME TO FILE RECORD |
| South Carolina Department of Corrections, |) | Honorable Ralph King Anderson, III |
| |) | |
| Respondent. |) | |
| |) | |

Respondent, by and through the undersigned attorney, respectfully requests additional time to investigate Appellant's claim. Respondent needs additional time to thoroughly review Appellant's grievance and compile all of the necessary documents surrounding the circumstances. Specifically, Respondent needs to transcribe the tape from Appellant's disciplinary hearing and have the hearing officer review the transcript. Therefore, Respondent respectfully requests an additional thirty (30) days, from the date of the Order granting such relief, to file its Record in the above-captioned case.

Respectfully Submitted,

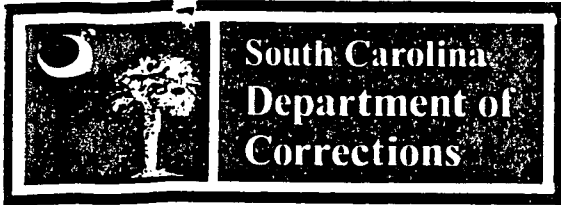
SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS



Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

October 27, 2014
Columbia, South Carolina



page 4

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

October 27, 2014

The Honorable Ralph K. Anderson, III
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate George Cleveland, #357770 vs. SCDC
Docket No. 14-ALJ-04-0664-AP

Dear Judge Anderson:

Find enclosed an original and one copy of the *Respondent's Motion To Enlarge Time To File Record* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

E. Dee Dee Bowers
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate George Cleveland, #357770
File

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George Cleveland, #357770,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 14-ALJ-04-0664-AP

**ORDER ON MOTION TO
ENLARGE TIME TO FILE RECORD**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) on a Motion to Enlarge Time to File Record (Motion) filed by the South Carolina Department of Corrections (Department or DOC) on October 27, 2014. The Department requests an additional thirty (30) days to transcribe the tape from the disciplinary hearing and for the hearing officer to review the transcript. Appellant has not filed an objection to the Motion.

IT IS ORDERED that the South Carolina Department of Corrections has thirty (30) days from the date of this Order, or December 15, 2014, to file the Records on Appeal.

IT IS FURTHER ORDERED that Appellant shall have until January 5, 2015 to file his brief.

IT IS FURTHER ORDERED that Respondent shall have until January 26, 2015 to file its brief.

IT IS FURTHER ORDERED that Appellant shall have until February 5, 2015 to file a reply brief.

AND IT IS SO ORDERED.

Ralph King Anderson, III

Ralph King Anderson, III
Chief Administrative Law Judge

November 14, 2014
Columbia, South Carolina

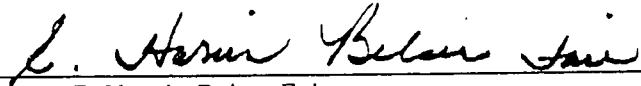
FILED

November 14, 2014

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

November 14, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

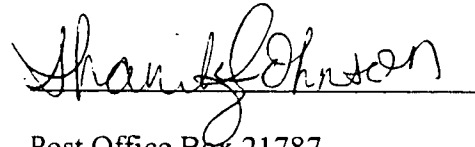
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|---|---|------------------------------------|
| George Cleveland, #357770, |) | Docket No.: 14-ALJ-04-0664-AP |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | RESPONDENT'S MOTION TO |
| |) | ENLARGE TIME TO FILE RECORD |
| South Carolina Department of Corrections, |) | Honorable Ralph King Anderson, III |
| |) | |
| Respondent. |) | |
| |) | |

Respondent, by and through the undersigned attorney, respectfully requests additional time to investigate Appellant's claim. Respondent needs additional time to thoroughly review Appellant's grievance and compile all of the necessary documents surrounding the circumstances. Specifically, Respondent needs to transcribe the tape from Appellant's disciplinary hearing and have the hearing officer review the transcript. Therefore, Respondent respectfully requests an additional twenty (20) days, from the date of the Order granting such relief, to file its Record in the above-captioned case.

Respectfully Submitted,

SHANIKA JOHNSON
Deputy General Counsel

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS



Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508


December 16, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

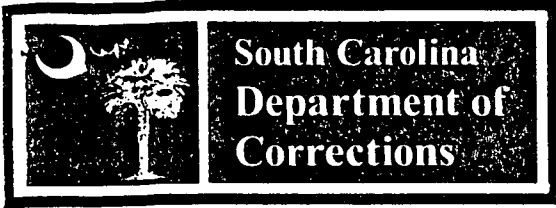
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|---|---|-------------------------------|
| George Cleveland, #357770, |) | |
| |) | |
| Appellant, |) | Certificate of Service |
| |) | |
| vs. |) | Docket# 14-ALJ-04-0664-AP |
| |) | |
| South Carolina Department of Corrections, |) | |
| |) | |
| Respondent. |) | |

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate George Cleveland, #357770
Evans Correctional Institution


 E. Dee Dee Bowers
 Administrative Assistant
 Office of General Counsel
 South Carolina Department of Corrections
 4444 Broad River Road
 P.O. Box 21787
 Columbia, South Carolina 29221-1787
 (803) 896-3922

December 16, 2014



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

December 16, 2014

The Honorable Ralph K. Anderson, III
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate George Cleveland, #357770 vs. SCDC
Docket No. 14-ALJ-04-0664-AP

Dear Judge Anderson:

Find enclosed an original and one copy of the *Respondent's Motion To Enlarge Time To File Record* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

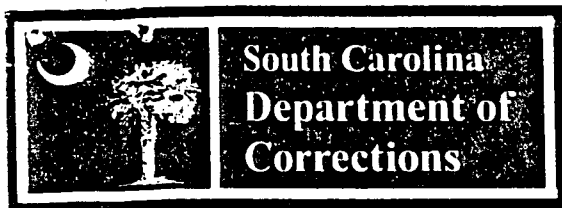
If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

E. Dee Dee Bowers
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate George Cleveland, #357770
File



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

December 19, 2014

The Honorable Ralph King Anderson, III
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

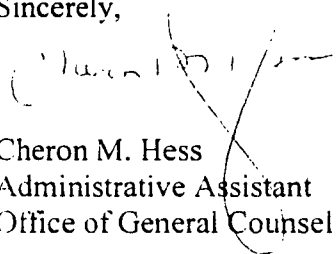
Reference: Inmate George Cleveland, III., #357770, vs. SCDC
Docket No. 14-ALJ-04-0664-AP

Dear Judge Ralph King Anderson, III:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance ECI 210-14, Disciplinary Report and Hearing Record, Incident Report, and Disciplinary Transcript, as well as other supporting documents in the above referenced case.

Please file the originals and return a clocked-in copy of the cover letter to me in the enclosed self-addressed envelope.

Sincerely,


Cheron M. Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate George Cleveland, III., #357770
File

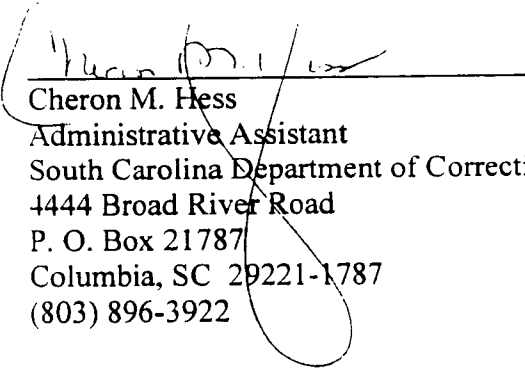
Signed for these documents at the
mail-room on December 29, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate George Cleveland, III., #357770
Evans Correctional Institution

Columbia, South Carolina
December 19, 2014


Cheron M. Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

312

02-14-073

2/14/17

Page 1 of 1

| | | | | | |
|--|--------|-----|-----|---------------------------|---------------------------------|
| Institution/Center: ECI | | | | Date of Report: 2-8-14 | |
| Reporting Official (Full Name): Rose, Graves | | | | Time of Report: 6:45 pm | |
| Employee ID #: Q30100 | | | | Date of Incident: 2-8-14 | |
| Location of Incident: B. Building Holding Cell | | | | Time of Incident: 9:40 AM | |
| Inmate(s)/Resident | SCDC# | Age | Sex | Race | Employee(s)/Witnesses Involved: |
| 1. Michael Taylor | 354614 | | | BM | 1. Ofc K. Williams |
| 2. George Cleveland | 357770 | | | BM | 2. Sgt B. Heyward |
| 3. | | | | | 3. |
| 4. SC 217 | | UNE | | 115 | 4. |
| 5. | | | | | 5. |

On the above date and approximate time: Lt. Rose Graves was informed that I/M Michael Taylor #354614 was escorted to medical due to an altercation in Charaker C-wing. After interviewing I/M Taylor, he stated that his roommate I/M George Cleveland #357770 grabbed him by his neck and slammed his head into the corner of the door. I/M Cleveland admitted to pushing I/M Taylor into the door. The above inmates stated that they were in a verbal altercation because the cell was not being cleaned correctly.

The above inmates will be charged with (810) striking I/M with or without a weapon.

Signature: R. Graves Title: Lt

Evidence: pictures

Disposition of Evidence:

Supervisor's Comments: Refer to Maj West for further investigation

Printed Name: J. Edge

Signature: J. Edge Title: Capt Date/Time: 2-9-14 Approx 7:30pm

Major Responsible Authority: Base on I/M Cleveland's own false confession, he is in violation of 810.

Printed Name: C. West

Signature: C. West Title: Major Date: 2/9/14

STG Related - Refer to STG Committee

() Yes () No () Unknown

This incident is DRUG related

() Yes () No () Unknown

Responsible Authority Action Taken

() Informal Resolution

() Administrative Resolution

(X) Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION AND INMATE RECORD

PRE-HEARING DETENTION PLACEMENT/EXTENSION

PHD EXTENSION

Inmate Name _____ SCDC # _____

Date: ___/___/___

Reason for Extension:

Length of Extension: (up to 10 days only) _____

Requesting Official: _____ Title: _____

Approved/Disapproved: _____ Date: ___/___/___
Warden/Duty Warden

NOTICE OF PLACEMENT IN PHD

Inmate Name: George Cleveland SCDC#: 357770 Custody: MI

Reason for Placement in PHD: Current Escape Risk Maintain the Integrity of an Investigation
 Protective Concerns Inmate is a threat to the physical safety of other inmates or staff
 Inmate's presence in the population would create a threat to the safety, security, and/or order of the institution

By J. Edge
Warden, Associate Warden, Major Captain

Date 2, 8, 14 Time: 6:00 AM/PM

I certify that I was given a copy of this notice within 72 hours of my placement in PHD. I also certify that this notice is clear and readable and that I will appear before the Institutional Classification Committee within seven (7) calendar days of my placement in PHD.

Inmate/Witness Signature: [Signature]

Date 2, 8, 14 Time: 6:06 AM/PM

Serving Officer/
Witness Signature: Cpl A Brown

Date 2, 8, 14 Time: 6:10 AM/PM

Page 1 Of 1 Date 2/24/14 Case# _____

VOLUNTARY STATEMENT

I/M TAYLOR HAD BEEN HARASSING I/M CLEVELAND,
HE WAS PUSHING CLEVELAND TRYING TO GET FIGHT
HE TOLD TAYLOR TO LEAVE HIM ALONE, TAYLOR
PUSHED CLEVELAND IN THE ROOM AND WOULD NOT
LET HIM COME OUT.
GEORGE TOLD LT. SIMMONS HE WANTED TO GET
MOVED PRIOR TO THIS INCIDENT.

THE WRONG INMATE WAS LOCKED-UP.

Signature of person giving voluntary statement

JOE QUICK # 118997

Witness:

Witness:

Page 1 Of 1 Date 2/24/14 Case # _____

VOLUNTARY STATEMENT

SINCE GEORGE MOVED INTO C-WING HIS ROOMMATE HAS BEEN PICKING HIM TO FIGHT. GEORGE TOLD ME EVERY NIGHT THAT HE DID NOT WANT TO FIGHT. THE DAY OF THE FIGHT GEORGE'S ROOMMATE WOULD NOT LET HIM OUT OF ROOM. HE FORCED GEORGE TO FIGHT HIM. YOU HAVE THE WRONG MAN LOCKED UP.

Multiple horizontal lines for writing the rest of the statement.

Edward McEneaney

Signature of person giving voluntary statement

Witness: [Signature]
Witness: _____

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 01 Inmate Name: Cleveland, George SCDC#: 357770
Wing Area: 5c-217-MA131 Job: unemployed Custody: _____
Hearing Date: 02/08/14 Offense Time: 9:40 AM/PM Institution: Evans
Offense Description:

810 - Striking an inmate with or without a weapon

Charging Officer/Employer: R. Graves Title: Lt.
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:
 I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
 I DO NOT WANT TO BE PRESENT AT MY HEARING
 I DO WANT MY ACCUSER PRESENT AT THE HEARING
 I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
 I WAIVE MY RIGHT TO A HEARING
 I WAIVE MY RIGHT TO A HEARING
SMU/SEGREGATION ONLY
 I WANT A COUNSEL SUBSTITUTE
 I DO NOT WANT A COUNSEL SUBSTITUTE
CS Hudson

Date & Time Notified: 02/13/2014 3:02 AM/PM By (Print): DEC Lewis Date: 02/13/2014
Inmate Signature: [Signature] SCDC#: 357770

HEARING INFORMATION:

| | | | | | |
|------------------------------|----------------------------------|-------------|-------------|--------------|------------|
| Hearing Date: <u>2/26/14</u> | Hearing Time: <u>12:10 am/pm</u> | Tape: _____ | Side: _____ | Start: _____ | End: _____ |
|------------------------------|----------------------------------|-------------|-------------|--------------|------------|

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING.
1: 19-29u supporting document 2 pics of injury to victim and 3 written statements from other inmates & 19-67 3 accident from victim

| | | | | |
|---------------------------|------------|--|--|--|
| OFFENSE CODES | <u>810</u> | | | |
| INMATE PLEA (G, NG, None) | <u>NG</u> | | | |
| FINDINGS (G, NG, DS) | <u>G</u> | | | |

ADMISSION OF GUILT, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: _____

HEARING LENGTH: 19 (MINUTES)

PENALTIES:
Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 60
Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
Canteen (Days) 30+101=281 Visit Suspension Thru 80+101=281
Other: none (Days) 180+101=281 Cell Restriction (Days): _____
Disciplinary Detention (Days): 120-19 and = 101

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: This is the inmates 1st charge of this nature

CREDIT FOR PHD TIME SERVED: (YES/NO) IF YES, DAYS 19

DATE INMATE PLACED IN PHD 2/3/14

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 2/26/14
HEARING OFFICER (PRINT NAME) E. Buttinger

APPROVED/REVERSE/MODIFY: [Signature] REASON: _____
Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.
White - Institutional Record
Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)
Canary - Inmate (Service of Disciplinary Report)
Pink - Central Record
Note: when there is restitution, a copy of this form should be forwarded to Financial Accounting.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: George Cleveland
SCDC NUMBER: 357770
INSTITUTION: EVANS Correctional
HOUSING UNIT: S.M.U. (131)
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. EC 0210-14
Code: General _____
Policy _____
Disc. Hear. SECRET
Class. 10/10/14
Date Received 3/1/14
IGC Initials _____
417-14

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I'm appealing the decision by the (DHO) on Feb 26 2014 on the following grounds. 1) L.T. Graves incident report incorrectly placed me and In Taylor in the B building holding cell when the incident took place in the room 217. 2) In Taylor admitted in his written statement that he was fighting, but he never got charged. 3) Three inmates wrote statements on my behalf stating they seen both of us in the room fighting. 4) I was not provided copies of the photos, copy of the BID policy, so I could properly prepare in advance of the DHO hearing. 5) My charge should be reduced to fighting as both I and In Taylor were mutually engaged in a fight. 6) I was placed in situ on a PHD on 2/3/14 but did not go in front of the Institutional Classification Committee which I could

ACTION REQUESTED: See 7) my sanctions are excessive and do not correlate with the correct charge of fighting.

Reduce my BID charge to A fighting / Level 1 charge. Also charge my roommate In Taylor with fighting. Reduce my loss of privilege.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I had a D.H.O. hearing on Feb 26, 2014 that found me guilty. This Grievance Step 1 follows.

Note: I cannot provide copies because I do not have access to a copier. My request for copies was not answered in days.
Grievant Signature: _____ Date: 2-26-14
ACTION TAKEN BY IGC: not weeks which would make my grievance at

IGC reviewed disciplinary hearing record and relevant Agency Policies. There were no technical/procedural errors noted in the handling of this case.

Forwarded to Warden Egelton for a response.

IGC Signature: A. C. W. Date: 3/6/14

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

Grievant Signature _____ Date _____

WARDEN'S DECISION AND REASON:

Inmate Cleveland:

This is in response to grievance ECI 0210-14

I have reviewed your grievance and the facts. The points you raised do not substantiate any errors in the disciplinary hearing procedures and do not warrant a reversal. I find no technicalities, misinterpretations of evidence, or disproportionate sentencing in which you may appeal. You were convicted of Striking An Inmate With/Without A Weapon (810) case # 01 Hearing Date 02/18/14 based upon credible evidence. The sanctions imposed were well within the guidelines for the offense and your grievance is denied.

If you wish to pursue this matter, please contact your grievance coordinator for the appropriate forms. You have five (5) days from receipt of my response to submit a Step 2-grievance form.

[Signature] 5-7-14
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

[Signature] 3/7/14
Grievant Signature Date

[Signature] 3/7/14
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

page 20
J.P. 1
DUE March 14

INMATE NAME: George Cleveland MAR 12 2014
 SCDC NUMBER: 357770
 INSTITUTION: EVANS CI INMATE GRIEVANCE RECEIVED
 HOUSING UNIT: M A-0131 MAR 1 2014
 WORK ASSIGNMENT: _____ BY: QB

Office Use Only
 Grievance No. EL 210-14
 Code: General _____
 Policy _____
 Disc. Hear. 810 L&K I
 Class. PD 2/24/14
 Date Received 3/10/14
 IGC Initials AB

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

1) Warden Eagleston Erred when ruling he did not see any errors to the Incident Report where L.T. Graves incorrectly placed the incident in the holding cell when the incident happened in Cherokee C-217 (see incident report). 2) My ex-romak In Taylor Admitted in his written statement that we had a physical altercation, but I was the only inmate charged. Warden erred for overlooking this fact. 3) The D.H.O. did not provide me with photos, the 810 policy or all other relevant evidence prior to the hearing so I could properly prepare. 4) I was placed in PHD on Feb 28, 2014 but did not go in front of DHO until 2/26/14 which exceeded the 7 day rule on the bottom of the

Grievant Signature _____ Date 3/07/14

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Sticking an Inmate with/without a Weapon (810), case #1 on February 26, 2014, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanctions imposed, which included the loss of -60- days accrued good time, were appropriate for the rules violation. 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.

Gregory [Signature] 7/31/14
 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.

 Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 14-ALJ-04-0664-AP GRIEVANCE No.: ECI 210-14
INMATE NAME: George Cleveland SCDC No.: 357770
INSTITUTION: Evans Correctional Institution
DATE: February 26, 2014
CHARGE: 810 - Striking an Inmate With or Without a Weapon**

DHO: The purpose of this hearing is to treat the matter before us with fundamental fairness to arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in your removal. State your name and SCDC Number for the record.

I/M: Uh, George Cleveland, III, SCDC Number 357770.

DHO: You are appearing before the Evans Disciplinary Hearing being recorded at 12:10 p.m. on 2/26/14. I'm DHO Bittinger. You are being represented by Counsel Substitute Hutson. Mr. Hutson, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: I now read into the record Case 1, Inmate George Cleveland, SCDC Number 357770; Offense Date: 2/8/14; Offense Time: 9:40 a.m.; Institution: Evans; Offense Description: 810 - Striking an Inmate With or Without a Weapon; Charging Employee is Lieutenant Graves; Narrative, On the Above Date and Approximate Time: I, Lieutenant Graves, was informed that Inmate Michael Taylor, 354614, was escorted to medical due to an altercation in Cherokee C-Wing. After interviewing Inmate Taylor, he stated that he -- that his roommate, Inmate George Cleveland, 357770, grabbed him by his neck and slammed his head into the corner of the door. Inmate Cleveland admitted to pushing Inmate Taylor into the door. The above Inmate stated that they was in a verbal altercation because the cell was not being cleaned correctly. The above Inmate will be charged with 810 - Striking an Inmate With or Without a Weapon. I also have a

DHO: Disciplinary Hearing Officer (Mr. Edward Bittinger)

I/M: Inmate (George Cleveland)

C/S: Counsel Substitute (Mr. Hutson)

OFC: Charging Official/Accuser (Lieutenant R. Graves)

supporting document from Inmate -- oh, excuse me -- Officer Williams; 2/8/14 at approximately 9:40 a.m.; On the Above Date and Approximate Time: I, Officer K. Williams, was approached by Inmate Jukari Jones, 319365, telling me my home boy was cleaning and he slipped and hit his head in the sink of the following Inmate Michael Taylor, 354614, so I called Captain Edge and Sergeant Haywood came down and took Inmate Taylor to medical. All right. As evidence I have a statement from Inmate Taylor: Today, 2/8/14, me and my roommate was having a argument and when I turned to walk off he grabbed me from behind and ran my head into the door case. We then was pulled apart by other inmates. And I have pictures of the injuries to Inmate Taylor, which I am showing, um, Inmate Tay -- uh, excuse me yeah. Inmate -- I'm showing Inmate Cleveland at this time, which is basically amounts to a nasty knot on the right-corner of his forehead, all right? All right. If you plead guilty or found guilty of this charge, you will not earn good time for February 2014. You may also lose visiting, canteen, phone and property privileges, pay restitution, disciplinary detention and loss of good time. Did you sign or receive a copy of these charges on 2/18/14 at 3:02 p.m. from Officer Lewis?

I/M: Uh, I -- I can't confirm it. It was in my pocket over here. It was here when I (inaudible). Thank you. I had a yellow copy right?

C/S: Right here.

I/M: Uh, let's see, yes sir.

DHO: All right. You indicated you wanted your accuser present at that time, but before the hearing started you stated you no longer wanted your accuser present, correct?

I/M: Accuser, meaning uh, --

DHO: Lieutenant Graves.

I/M: -- Lieutenant Graves. Yes sir, that's correct.

DHO: All right, on the Charge of 810, how do you plead?

I/M: Uh, not guilty.

DHO: We will now receive evidence on behalf of the accused. Mr. Hutson, do you have any witnesses or documentary evidence to present?

C/S: Yes sir, I do. Um, I'd like to just, uh, give you a little rundown on how this took place, also of me getting these, um, these statements. Uh, Inmate Cleveland asked that I get, uh -- uh, approximately four inmates. Um, he asked me to just receive, uh -- see if I could get statements from them. I called up four different inmates all at the same time. Uh, I have three statements here. One of the inmates he gave me the name Johnny Walker. I looked on C-Wing to see if there was a Johnny Walker, there's not, but there is a -- a Walker, whose name is Joseph Walker. So I just assumed that might be him. So I called all four of them up at the same time. Well, the three of I got statements from all came into Visitation, all three at the same time. The fourth one didn't show up. They had already pretty much completed their, uh, statements and -- but we're still talking to me about the incident. At that time, the fourth man came in and he's in a wheelchair; he's being pushed. Well, when he came in, I can see at least two of these three gentlemen that wrote the -- these statements when they looked back and saw the guy coming in they kind of froze up and looked at me like they were nervous. Well after the guy came up in the wheelchair, I explained to him the situation and he said, "No, they don't call me Johnny Walker. I'm not Johnny Walker and I don't know nothing about the incident." I said, "Okay, well you can go on back to the dorm." When they went to walk back, the guy that was pushing -- again the -- a younger, uh, -- a younger guy probably in his early 20's -- he keeps looking back over at the guys who's at the table. Well, when he walked out the door, they go on and tell me that -- well one of the -- that older white male that wrote the statement -- I believe McKilving -- he looked at me and he said, "Man, I really don't appreciate the way you brought us up here together to write these statements and then got that guy up here." I asked him, "Why do you say that?"

He said, "Cause we've already been told if anybody comes up there to try to write a statement for Inmate Cleveland to get, um, to try to help him with this charge he said, "then we gonna' get you all." And he said, "That guy that was pushing was one of the guys that said that." So I -- I did do a General Information Report on that but, um, and all three of their reports are saying essentially the same thing that they got the wrong inmate. That it should have been Michael Taylor who should have been the one that was locked up not Cleveland. So would you like me to read these?

DHO: Why is, uh, Taylor the only one with a wound?

C/S: I'm -- I'm just telling you what the inmates told me, sir. I wasn't there, I have no idea how the situation took place.

DHO: What did they say did take place?

C/S: Um, all of them are just telling me how this transpired before the altercation 'cause this happened in -- I'm assuming in their room because they said they didn't witness the incident, but everything leading up to them going into the room they saw. Should I read that so you can understand what I'm saying?

DHO: (Inaudible) I will read them during my deliberation --

C/S: All right.

DHO: -- and consider them as part of my findings, all right? Inmate Cleveland, do you have a statement you want to make on your behalf.

I/M: Yes sir. I just, uh, a little bit -- little bit more clarification. Um, the uh, Inmate Taylor was actually downstairs. Our rooms upstairs. He was downstairs watching TV or something and it was my time to clean the room, so I was in there cleaning the room. And I had went downstairs uh, uh, -- I'm sorry. I gave you -- I gave, uh, gave you guys a wrong name of the Walker dude. It was a -- I guess it was another dude and he was -- the dude I was -- going --

went to his room to get some chemicals from was -- is actually the Head Dorm Keeper. He got a life sentence or something that's how I believe he killed two women but anyway. Um, I went to his room to get some spray, and acid bleach and some other stuff and -- so I went back up stairs and I started cleaning the toilet and that's when I heard an Inmate Taylor -- can I use profanity -- can I quote him or ?

DHO: Yeah.

I/M: Okay. Um, I heard Inmate Taylor -- because my -- I had -- and the door was opened, uh, and I heard him say, "Don't give that pussy-ass Nigger anything" and something else I couldn't hear the rest. So I just politely told him, I say "If you got something to say why don't you say it to me? Don't say it on a (inaudible) where everybody could here." So he got up out of his chair off the bench, rushed upstairs, pushed me in the room, um, and I told him I didn't want to fight. I don't -- I'm not a fighter. I want to stay disciplinary free. He -- he proceeded to close the door and suc -- was successful. I opened it back because there was people -- like four or five inmates watching and I wanted some witnesses. And he proceeded to walk towards the bed, take off his jacket, take -- put his radio on the bed and say "This is prison. We fight." Quote. So as he was coming back towards me -- I was trying to get out -- he then closed the door again on me, and that's when I had to defend myself. I did grab his neck as I admitted to Lieutenant Graves and I slammed his head up against the, um, the edge of the door to protect myself because it was either him grabbing me or me grabbing him and I had to defend myself. My safety was in jeopardy. So we both were fighting. We were fighting for about a minute or so before two inmates came in the room and broke us up. So this Striking Charge I'm not real sure where that came from when he was striking me too. And actually Lieutenant Graves would have just did a little bit more of an investigation, uh, I got -- I -- I had a -- a visual scar on my left, uh, back shoulder blade. That's healed up now and my spine has been sore for ever since I've been up here because when

he grabbed me, he pushed me back into the uh, to the uh, box where the uh, ladders were. So we were mutually fighting. Then after -- after we stopped fighting, I walked out of the room, tending my own business, he came down and he was walking down the steps and said "You pussy-ass Nigger snuck me" and I walked away. I tried to avoid a confrontation the first time and I tried to avoid a confrontation the second -- the second time, and that's when I heard Inmate Jones say quote "This is not over." And what I took from that is they were going to jump me or they were going to do something to me, because I -- I just -- I guess it was like a um, Mohammed Ali fight you know? Two people fighting, one person got the visible wounds and he got the visible wounds because I wasn't about to let him grab me. I (inaudible) or what he had. This is my first time in prison and it's a nonviolent uh, sentence I have and I -- and I was quiet I was in a room by myself, and I kept to myself. So he had initiated this by coming there you know and -- and trying to trick -- trap me in that room. And -- and I told them inmates, I told uh, the -- a couple of the witnesses (inaudible) Inmate Quick and Inmate, uh, McElveen that if something happened to me this is the story uh, that I needed you all to tell, 'cause I mean I -- I could be -- I could have been killed. So basically that Striking Charge, I mean I was fighting -- I mean. Unfortunately, defending yourself in prison can get you a Charge too. If I hadn't defend myself I could have been a body bag and my family could have been -- you know -- buried me.

DHO: Does that conclude your statement?

I/M: Yes sir.

DHO: We will now receive evidence to support the charges against the accused Disciplinary Report 1, which is read at the beginning of the hearing, will be considered as evidence against you, along with the two pictures of the, uh, alleged victim. I have heard the charges and provided an opportunity for the accused to make a statement, present evidence, call witnesses on

their behalf. I have considered the evidence and witnesses against the accused. I will now recess this hearing to arrive at a decision. Restate your name and SCDC Number for the record.

I/M: George Cleveland, III, SCDC Number 357770.

DHO: Inmate Cleveland, I found you guilty of the Charge brought against you today. The evidence I relied upon was the Lieutenant's Report stating that you admitted to pushing the inmate into the door, the, uh, supporting Incident Report from Officer Williams, and your own statement in here admitting to doing it. There's absolutely no evidence presented, uh, proving that there was a fight instead of a, uh, one inmate hurting another inmate, all right? You yourself stated you told the -- at least one of the inmates that wrote a statement what to write. That's not his statement. He's writing what you told him to write. That's not the same as him telling his version of the incident for you. Your sanctions are: 180 days loss of canteen, phone and visitation; 180 days disciplinary detention, minus 19 days for PHD credit, which leaves 101 left; 60 days loss of good time. You are given this sanction because it is the first charge of this nature that you have been convicted of. You will receive a copy of this hearing. You have five days to appeal my decision as to guilt and punishment imposed, using a Grievance Form with the Grievance Coordinator who can assist you if you need help. Do you want a Grievance Form?

I/M: Absolutely.

DHO: If you want to listen to a recording of this hearing you have three days to do so through the Major's Office. Do you want a Staff Request for that purpose?

I/M: I need a transcript. Can I get a transcript?

DHO: No. Do you want a Staff Request for --

I/M: No, that's not what I really want.

DHO: That concludes that -- this hearing.

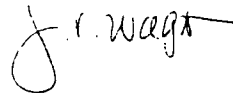
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

George Cleveland, #357770,)
)
Appellant,)
)
-vs-)
)
South Carolina Department of Corrections,)
)
Respondent)
_____)

CERTIFICATION
Docket No.: 14-ALJ-04-0664-AP

This is to certify that the following transcript of the recording of this administrative disciplinary hearing is a true, accurate and complete transcript of the proceedings and testimony hereby transcribed.

I do further certify that I was not present at the administrative disciplinary hearing that has been transcribed.



Jan-Rachelle Wagner
Transcriptionist
Reporters Transcription Center

December 23, 2014

PAGE 29

As requested
12/29/14

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
1205 Pendleton Street, Suite # 224
COLUMBIA, SC 29201

Re: Docket no: 14-ALJ-04-0664-AP,
George Cleveland III v. S.C.D.C.

Dear Clerk,

Attached to this letter is my motion to strike and response to the Respondent's motion for extra time along with an Certificate of service.

Can you please file, mail me back ~~the~~ clocked stamped copies, and forward to Judge Anderson for his consideration?

With kind regards
George Cleveland III

George Cleveland III 85770, F4A258
Evans Collection Int'l Inst
610 Hwy 9 West
Bennettville, SC 29512

FILED

DEC 29 2014

cc: file

cc: [unclear]

[unclear]

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George Cleveland, III #357770,
Appellant,
v.
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS, (S.C.D.C.),
Respondents.

Docket no:
14-ALJ-04-0664
AP

APPELLANT'S MOTI.
TO STRIKE AND
RESPONSE TO
ENLARGEMENT

HONORABLE RAIPH KING
ANDERSON III

1. George Cleveland III proceeding pro se and appellant in the above captioned case responds to the Respondents second motion to enlarge time to file record and my motion to STRIKE my filings by the Respondents, Dismiss my striking an Inmate without a weapon, and order S.C.D.C. to credit me sixty (60) days of good-time credits that were taken by D.H.O. at my disciplinary hearing, but first, I must take the court back in time for a little case-background.

CASE BACKGROUND:

2. On November 27, 2014 Respondent **FILED** by and through Attorney Mrs. Shanika

Johnson filed a "motion to Enlarge time to file Record" in the Court because of the following: Respondent needs additional time to thoroughly review Appellant's grievance and compile all of the necessary documents surrounding the circumstances specifically Respondent needs to transcribe the tape from Appellant's disciplinary hearing officer's Review the transcript therefore; Respondent respectfully requests an additional thirty (30) days, (comma splice) from the date of the order granting such relief to file its record in the above captioned case." Quoting from Respondent's motion filed in this Court on or around Oct 28, 2014.

3. On November 14, 2014, Judge Anderson granted the Respondents' motion and ordered the following: "It is ordered that the South Carolina Department of Corrections has thirty (30) days from the date of this order, or December 15, 2014 to file the Record."

on Appeal." Quoting Judge's Anderson order granting relief to S.C.D.C.

4. S.C.D.C. failed to file the records on appeal on or before December 15, 2014 in violation of the court's order, and waited until the following day to type up their second motion for an enlargement and presumably filed with this court on or around December 17, 2014.
5. Mrs. Johnson files the same exact reasons why the respondent needs more time with the exception of merely twenty (20) days instead of the original thirty (30) days originally requested; see the respondent's motion filed in this court on or around December 17, 2014 which makes the second motion for an enlargement.
6. Respondent has a pattern of requesting duplicative motion to enlarge not just on my appeals, but on many other inmates with the same exact reasoning.

7. I submit, the problem is not with the Respondent "thoroughly reviewing my" grievance and can transcribe the disciplinary hearing of on or around ~~February~~ February 20, 2014, along with all other evidence, but with back-logged appeals where there is an almost 100% conviction rate at hearings. There is no supporting evidence attached hereto, but a quick scan of S.C.D.C. appeals by this court will provide credence to my assertion.

8. The Respondents have not made a good-faith effort to file documents on time for example my other case pending in this court docket w/14-ALT-04-0771-AP assigned to Judge Matthews. Also was filed late by the Respondents with an motion to dismiss instead of a reply brief.

9. Judge Matthews ordered the Respondents twenty (20) days to

Any reply briefs AFTER I Filed my Appellant Brief on or before December 05, 2014. See Judge Matthew order Filed October 23, 2014, Docket No: 14-ALJ-04-0771-AP.

10. ON November 24, 2014, my Brief was Filed in this Court.
11. ON OR around December 13, 2014 Mrs Crooks Filed with this Court A motion to Dismiss An unrelated Appeal Dated December 17, 2014 WHICH AGAIN WAS late by two (2) Days.
12. These missed deadlines cannot go un-noticed Any longer because S.C.D.C. must too follow Rules of the Court; accordingly, sanctions should be imposed upon S.C.D.C. by this Court if the disregard of the Rules of the Court continues.

CONCLUSION:


13. Due to the reckless disregard by the Respondents regarding the Court ordered Dead-line where Judge Anderson imposed a December 15, 2014 Deadline to file the Records on Appeal by failing to follow the Court's mandate which has resulted in multiple delays, the Court should order S.C.D.C. to dismiss my striking An inmate with-out a weapon charge And further order S.C.D.C. to deduct sixty (60) days of good-time credits that were taken from me during D.H.O. finding me guilty. S.C.D.C. is not immune from following Court orders but did not even file its motion for extra time until the court ordered deadline had passed. The motion and cover letter are both dated December 17, 2014, which is passed the December 15, 2014 Deadline ordered by this Court, thus dismissal is the correct course of action in this case under Rule 62 of the Special Rules of

the Administrative Law Court.

PRAVER FOR RELIEF:

14. Wherefore; deny the respondents' motion for extra-time.
15. order S.C.D.C. to deduct sixty (60) days of good-time credit that was taken following my guilty verdict in D.H.O. from my max-out date.
16. order S.C.D.C. to dismiss the striking an inmate conviction from their electronic and paper records.
17. Any other relief this court deems proper and just.

Respectfully Submitted,


 George Cleveland III 35770, F4A258
 EVANS CORRECTIONAL INSTITUTION
 610 Hwy 9 West
 Bennettsville, S.C. 29512

Dated: December 23, 2014.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George Cleveland, III #357770,
Appellant,

Docket no

14-ALJ-04-06

AP

South Carolina Department
of Corrections, (S.C.D.C.)
Respondent.

APPELLANT'S
CERTIFICATE of
SERVICE

HONORABLE RALPH KING ANDERSON II

- George Cleveland, III proceeding pro se. certifies that he has on this date mailed by united states mail the Appellant motion to strike and response to enlargement on the date and address below:

S.C.D.C.
Office of General Counsel
P.O. Box 21787
Columbia, S.C. 29221-1787

Respectfully Submitted
George Cleveland, III
George Cleveland, III #357770

Dated: December 23, 2014

FILED

DEC 24 2014

December 30, 2014

SOUTH CAROLINA ADMINISTRATIVE LAW
COURT

The Honorable Ralph King

ANDERSON III

1205 Pendleton Street; suite #224

COLUMBIA, S.C. 29201

Re: George Cleveland, III #35770

S.C.D.C.; Docket no: 14-ALJ-04-

0664-AP; motion to compel

1. Dear Judge Anderson, I'm writing on legal lined paper because I cannot seem to receive plain-white legal paper from the business finance employee MRS. HOOKS here at EVANS.
2. I have sent her multiple email request over the last couple of months respectfully asking for a legal packet for pending legal deadlines
3. The legal packet includes 100 sheets of plain white

PAPER, AND 10 LEGAL-MAIL ONLY envelopes for a fee that is applied to my prison account.

4. The middle of November 2014, Mrs. Hooks responded stating she would have my legal packet ready for me at her "next issuance".
5. This "next issuance" as Mrs. Hooks refers to it ~~is~~ happened for some inmates, but not me.
6. I wrote her again early in December 2014, but she has yet to respond, so I emailed Warden Willie Eagleton on or around December 20, 2014. He has yet to respond.
7. This deprivation of legal-paper has caused me to not be able to file a motion to compel regarding the above captioned case.

because S.C.D.C. has not provided me with the entire Record on Appeal in this case.

8. The S.C.D.C. has left out of the Record of Appeal Inmate's Michael Taylor hand-written statement of February 08, 2014 that was partially read on tape by the D.H.O. that is located on page-2 at the top on the transcripts filed on or around December 19, 2014 by S.C.D.C. and also the photos taken by Captain Edge or Lt. Rose Graves on February 08, 2014 were also left out of the Record filed by S.C.D.C. despite the photos being a part of the Record and shown to me at my hearing see transcript page-2 near the middle

9. It seems a little puzzling to me how S.C.D.C. can somehow provide most of

the Record of Appeal 3 days AFTER they filed A motion for extra time to prepare the transcript Among other things.

10. This motion was in violation of this Court's ordered deadline of December 15, 2014 which was the second extension in this case for the same exact reason, but AFTER and only AFTER I filed A motion with this Court on or around December 17, 2014 requesting the Court other things order S.C.D.C. to dismiss my striking without A weapon charge, and thus apply the 60-days of good-time credit that was taken related to this appeal, and finally S.C.D.C. violated this Court's order.

11. Bottom line, S.C.D.C. has not provided the entire record of appeal and I do not have the legal paper.

to even Access this court with motions and Brief filings; therefore S.C.D.C. is depriving me of Accessing the Courts in violation of the United States Constitution.

12. wherefore; order S.C.D.C. to explain why I cannot receive the proper legal material to Access the Courts.

13. Order S.C.D.C. to provide Inmate Michael Taylor's statement of February 08, 2014 who was the inmate I got into A fight with.

14. Any other Relief this court seems just and proper.

Respectfully Submitted,

S/ ~~George Cleveland III~~

George Cleveland, III 35770, F4125

EVANS CORRECTIONAL INST

610 Hwy 9 west

Bennettsville, S.C. 29512

cc: file

S.C.D.C. office of General Counsel

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

| | | |
|---|---|--------------------------------------|
| George Cleveland, #357770, |) | Docket No.: 14-ALJ-04-0664-AP |
| |) | [<u>Grievance No.: ECI 210-14</u> |
| Appellant, |) | |
| |) | <i>Hon. Ralph King Anderson, III</i> |
| v. |) | |
| |) | |
| South Carolina Department of Corrections, |) | RESPONDENT'S BRIEF |
| |) | |
| Respondent. |) | |
| |) | |

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of George Cleveland (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant is appealing his February 26, 2014 conviction for offense 810, “Striking an Inmate With or Without a Weapon.” The appeal of this disciplinary conviction was done through grievance # ECI 210-14.

On March 3, 2014 Appellant filed a Step 1 grievance seeking reversal of his February 26, 2014 conviction on the basis of insufficient evidence. On March 7, 2014, Warden Eagleton denied the Step 1 grievance. Thereafter, on March 10, 2014, Appellant filed a Step 2 grievance alleging, again, insufficiency of the evidence. On July 30, 2014, SCDC denied the Step 2 grievance, and this appeal followed.

STANDARD OF REVIEW

The ALC’s jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court

clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. See *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. See *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, "an

Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law." *Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.); see S.C. Code Ann. § 1-23-380(5)(e); see also *Marietta Garage, Inc. v. S.C. Dep't. of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep't. of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, the supreme court "underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a 'hands off' approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA." *Matthews v. S.C. Dep't of Corr.*, *supra*, page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that "[c]ourts

traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters"); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

ARGUMENTS

I. **BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE 810 CHARGE AND CONVICTION, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.**

The evidence presented at the hearing and relied upon by DHO Bittinger satisfies the "substantial evidence" standard of proof to uphold Appellant's conviction. Here are the salient facts brought forth at the disciplinary hearing:

1. Appellant was involved in an altercation with another inmate, Taylor.
2. Appellant admitted grabbing inmate Taylor by the neck and slamming his head into the corner of the door.
3. This was documented in an incident report, photographs of inmate Taylor's injuries and witness statements detailing that a fight did take place.

DHO Bittinger weighed the evidence based on the facts and testimony presented at the hearing. Appellant has failed to show to the Court that his substantial rights have been prejudiced or that DHO Bittinger's decision was clearly erroneous, arbitrary, or affected by a legal error. *Cf. Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, *A.L.J.*). Therefore, because Appellant's conviction was supported by substantial evidence, SCDC respectfully requests the Court affirm SCDC's final agency action.

II. BECAUSE APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than in a trial before a court. Due process, as the United States Supreme Court noted in *Wolff v. McDonnell*, requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

Here, Appellant has notice of the charges and opportunity to be heard, aid of counsel substitute (Mr. Hudson), an opportunity to challenge the evidence and face his accuser, the presence of a neutral and detached hearing officer (DHO Bittinger), and a written statement of the findings so that Appellant could make an appeal. There is nothing in the record to indicate that Appellant's due process rights were violated. Accordingly, the Departments' final agency action should be affirmed.

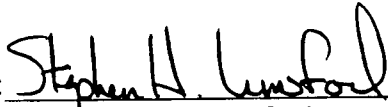
CONCLUSION

SCDC afforded Appellant all of the due process safeguards to which he was entitled. Moreover, DHO Bittinger relied on substantial evidence when making his decision to find Appellant guilty of the 810 offense. Thus, SCDC respectfully requests

that this Court affirm SCDC's final agency action.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
Stephen H. Lunsford
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1940


Columbia, South Carolina
January 15, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|-------------------------------|
| George Cleveland, #357770, |) | |
| |) | |
| Appellant, |) | |
| |) | Certificate of Service |
| vs. |) | |
| |) | Docket# 14-ALJ-04-0664-AP |
| South Carolina Department of Corrections, |) | |
| |) | |
| Respondent. |) | |

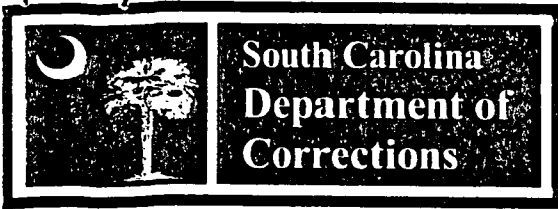
I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate George Cleveland, #357770
Evans Correctional Institution



E. Dee Dee Bowers
 Administrative Assistant
 Office of General Counsel
 South Carolina Department of Corrections
 4444 Broad River Road
 P.O. Box 21787
 Columbia, South Carolina 29221-1787
 (803) 896-3922

January 16, 2015



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

January 16, 2015

The Honorable Ralph K. Anderson, III
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate George Cleveland, #357770 vs. SCDC
Docket No. 14-ALJ-04-0664-AP

Dear Judge Anderson:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Dee Dee Bowers", is written over a white background.

E. Dee Dee Bowers
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate George Cleveland, #357770
File

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George Cleveland, III, #357770,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 14-ALJ-04-0664-AP

ORDER OF DISMISSAL

FILED

February 27, 2015

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by George Cleveland, III (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals his February 26, 2014 disciplinary conviction for Offense 810, "Striking an Inmate With or Without a Weapon" (Offense 810) under SCDC Policy OP-22.14.

On February 8, 2014, Appellant was charged with Offense 810 following an altercation with another inmate. A Disciplinary Hearing Officer (DHO) held a hearing on the charge on February 26, 2014. Appellant was represented by counsel substitute and chose not to have his accuser present at the hearing. At the end of the hearing, the DHO found Appellant guilty of the charge and issued several sanctions, including the loss of 60 days of good time.

On February 26, 2014, Appellant filed a Step 1 Grievance regarding his conviction for Offense 810. After the warden denied the conviction, Appellant filed a Step 2 Grievance on March 7, 2014. Appellant filed a Notice of Appeal on August 27, 2014, and the Notice of Assignment was filed September 11, 2014.

On October 20, 2014, Appellant filed an "Affidavit in Support of An Enlargement," requesting an extension until December 5, 2014 to file his Initial Brief. On October 27, 2014, the Department filed a Motion to Enlarge Time to File Record, requesting an extension of thirty days from the date of the Order granting such relief. On November 14, 2014, the Court granted the Department's motion, which not only gave the Department until December 15, 2014 to file the Record on Appeal but also gave Appellant until January 5, 2015 to file his brief, which was more time than Appellant was originally seeking to file his brief. On December 16, 2014, the Department filed a second Motion to Enlarge Time to File Record, requesting an additional

twenty days to file the Record on Appeal. However, three days later, on December 19, 2014, before the Court could rule on this motion, the Department filed the Record on Appeal. On December 29, 2014, Appellant filed a "Motion to Strike and Response to Enlargement," arguing that the Department's filings should be stricken, because it filed both its second Motion to Enlarge Time to File Record and the Record on Appeal after the December 15, 2014 deadline to file to Record on Appeal set by the Court. On December 31, Appellant filed a "Motion to Compel."¹ On January 16, 2015, the Department filed its brief. On February 2, 2015, Appellant filed a Response to Respondent's Brief.

At the outset, I agree with Appellant that the Department did not file its second Motion to Enlarge Time to File Record and the Record on Appeal by the December 15, 2014 deadline set by the Court. The Court **may** resolve the appeal adversely against the Department. ALC Rule 62 allows an Administrative Law Judge to "resolve [an] appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits" However, in this instance, I do not find that dismissal is warranted because Appellant has not demonstrated any prejudice he suffered as a result of the Department's four-day delay in filing of the Record on Appeal. I therefore deny Appellant's "Motion to Strike and Response to Enlargement."

The Court's November 14, 2014 Order gave Appellant until January 5, 2015 to file his brief, and despite the Department's four-day delay in filing the Record on Appeal, Appellant managed to file a 7-page "Motion to Strike and Response to Enlargement" on December 29, 2014 and a 6-page "Motion to Compel" on December 31, 2014, both after the Record on Appeal was filed and well before Appellant's deadline for filing his Initial Brief. Appellant even filed an 11-page "Response to Respondent's Brief" on February 2, 2015. Notwithstanding the fact that Appellant clearly had the time and ability to draft an Initial Brief and file it, Appellant never did. In the first paragraph of his "Response to Respondent's Brief," Appellant even acknowledged that he had not filed his "original brief."

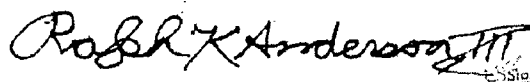
¹ In his "Motion to Compel," Appellant requested a legal packet from the Department and the inclusion in the Record on Appeal of a hand-written statement from an inmate that was allegedly read in part by the DHO and some photos that had purportedly been shown to him at the hearing. First, Appellant has cited to no authority allowing this Court to consider a motion to compel discovery at the appellate level. Second, Appellant had an opportunity at the hearing to seek to introduce documents or photographs into evidence. Therefore, Appellant's motion is denied. Moreover, Appellant's filing of this motion, as will be discussed *infra*, did not absolve Appellant of his responsibility to file his brief, pursuant to Rule 63 of the Rules of Procedure for the ALC (ALC Rules).

Appellant seems to suggest in his response, that he failed to file his "original brief" because "the court had not ruled on [his] pending motion compelling discovery among other things." However, ALC Rule 63 provides that "[t]he filing of a motion does not toll any time limits imposed by these Rules[,]" including the deadline in ALC Rule 60(A) for filing an appellant's brief. Thus, Appellant still had a responsibility to file his Initial Brief. Had Appellant filed his brief up to four days after it was due, the Court, under the facts of this case, would have excused his delay in filing his brief; but Appellant instead has not filed his Initial Brief as of the date of this Order or filed a timely motion requesting additional time to file his brief. According to ALC Rule 62, "on its own motion, an Administrative Law Judge may dismiss an appeal . . . for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section" Because Appellant failed to file his Initial Brief, and has not notified the ALC of any extenuating circumstances regarding his failure to so file, I conclude *sua sponte* that this matter should be dismissed, pursuant to ALC Rule 62.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

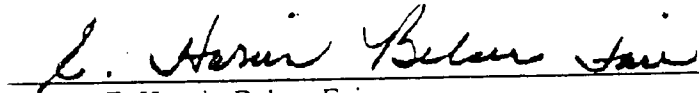


Ralph King Anderson, III
Chief Administrative Law Judge

February 27, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

February 27, 2015
Columbia, South Carolina

RECEIVED

JUL 13 2015

SC Court of Appeals

The South Carolina Court of Appeals

George Cleveland, III, #357770, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-000957

ORDER

Appellant has filed a motion to allow a late filing of his notice of appeal. After a careful consideration, the motion is denied and this appeal is dismissed because Appellant failed to timely serve the notice of appeal. *See* Rule 203(b)(6), SCACR (providing a notice of appeal from the administrative law court must be served within thirty days after receipt of the decision); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended"); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) (explaining the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice of intent to appeal must be served).

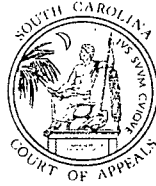
 AJ
FOR THE COURT

Columbia, South Carolina

cc:
George Cleveland, 357770
Daniel John Crooks, III, Esquire

FILED

5/19/15



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 04, 2015

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: George Cleveland v. SCDC (3)
Lower Court Case No. 2014ALJ040664AP
Appellate Case No. 2015-000957

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jana E. Shealy".

CLERK

Enclosure

cc: George Cleveland, 357770
Daniel John Crooks, III, Esquire

PAGE 1 OF 2
July 07, 2015

The South CAROLINA COURT OF APPEALS
JENNY ABBOTT KITCHINGS, CLERK
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED

JUL 13 2015

Re: PETITION FOR A WRIT OF CERTIORARI
FILING; Appellate CASE NO. 2015-000957

SC Court of Appeals

1. DEAR MRS. KITCHINGS,
Attached to this letter is the following:

PETITION FOR A WRIT OF CERTIORARI
PETITIONER'S SUPPORTING AFFIDAVIT
PETITIONER'S APPENDIX
PETITION TO PROCEED IN FORMA PAUPERIS

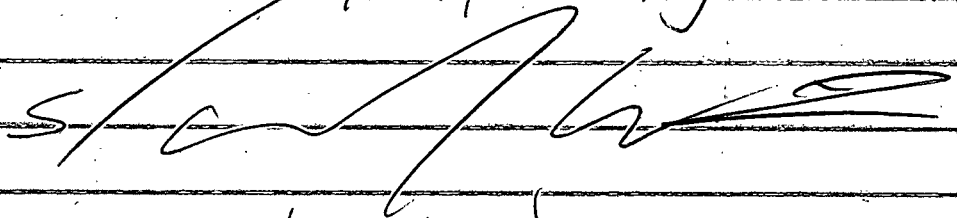
2. CAN YOU PLEASE FILE, AND KINDLY STAMP THE EXTRA COPIES IN THE STAMP SELF-ADDRESSED ENVELOPE BACK TO ME FOR MY RECORD?

3. FINALLY, I RAN OUT OF WHITE LEGAL PAPER TO INCLUDE THE PROOF OF SERVICE.

PAGE 2 OF 2

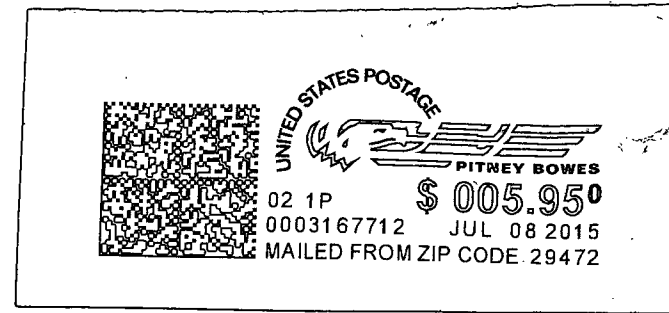
4: Please be advised that I will
MAIL the PROOF of service out
in the JULY 09, 2015 MAIL, THAT
will show I served the SC DC
AND Notified the A.L.C.

Respectfully Submitted



George Cleveland, III, #357770
MACDOUGALL CORRECTIONAL INST
1516 GILLIARD ROAD
Ridgeville, SC 29512

George Cleveland, III, #357770, M2-CSA
MACDOUGALL CORRECTIONAL INSTITUTION
1516 GILLIARD ROAD
RIDGEVILLE, S.C. 29512



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JUL 08 2015

MacDougall Corr. Inst.
Mailroom

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JUL 13 2015

Legal-Mail
SC Court of Appeals

The South COURT COURT OF APPEALS
JENNY ABOtt KITCHINGS, CLERK
P.O. Box 11629
COLUMBIA, S.C. 29211