

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Darden

APR 24 2015
SC Court of Appeals

Case No. 2015-000060

Derrick Antron Young, #273562

Appellant

-VS-

South Carolina Department of Corrections

Respondent

FINAL BRIEF OF APPELLANT

Derrick Antron Young, #273562
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Appellant, Pro se

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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court (ALC) err in its order, where the ALC held that the Appellant's argument that counsel substitute failed to obtain Officer Morgan's supporting report prior to hearing violated Appellant's due process rights was without merits?
2. Did the ALC err in its order where the ALC held that a review of the hearing transcript demonstrates that the Appellant did in fact testify and that the Appellant was afforded the constitutional minimal due process as required by *Wolff*; therefore the Appellant's argument that he was not allowed to make a statement at his disciplinary hearing was without merit?
3. Did the ALC err in its order where the ALC held that the Appellant did not allege or establish that this case was of sufficient complexity to necessitate assistance in presenting his case and that the department was not constitutionally required to afford counsel substitute to assist the Appellant in his defense and that the department complied with the minimal due process required by *Wolff* and that the Appellant was entitled to no more?
4. Did the ALC err in its order where the ALC held that there is substantial evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice?
5. Did the ALC err in its order where the ALC held that there is nothing in the record to suggest that the hearing officer was otherwise than neutral or detached?

STATEMENT OF CASE

On March 26, 2013, a Lieutenant J. Robertson and Officer N. Morgan brought allegations against the Appellant Derrick A. Young, an prisoner within the South Carolina Department of Corrections (referred to as SCDC herein here to forth), for threatening to inflict harm on/assaulting an employee and/or members of the public. (Lieutenant J. Robertson referred to as Lt. Robertson/accuser or accusing officer and Officer N. Morgan referred to as Ofc. N. Morgan/assisting officer herein here to forth, are employed as officer's [correctional officers] within SCDC.) The Appellant was placed in segregation, referred to as segregation, special management unit (smu), or pre-hearing detention (phd), here to forth the Appellant was placed in segregation as a result of the above said allegations the same day.

The supervisor referred the allegations to the disciplinary hearing officer. The Appellant was officially charged with the institutional disciplinary offense on April 3, 2013. The Appellant was served a written notice of the charges on April 12, 2013. The Appellant's hearing was held on April 16, 2013. The Appellant pled not guilty and was found guilty by the disciplinary hearing officer based on the officer's reports.

The Appellant initiated a disciplinary appeal to the warden on April 20, 2013. The appeal denied by the warden on May 9, 2013. The Appellant received the warden's decision on May 16, 2013. The Appellant further his appeal to the appropriate responsible official on May 18, 2013. The appeal was denied on September 10, 2013, the decision was rendered as the final decision and returned to the Appellant September 19, 2013.

The Appellant initiated an appeal within the Administrative Law Court on October 18, 2013. The case was assigned to an Administrative Law Judge on November 13, 2013. The Appellant was granted a 90 day extension to file his brief with the ALC.

The Appellant filed his original brief on April 21, 2014. SCDC filed their brief on May 13, 2014. The Appellant filed a reply brief on May 23, 2014. The Appellant then filed a belated separate statement of facts on June 3, 2014. On December 3, 2014, the Honorable Deborah Brooks Durden rendered her decision in the instant case against the Appellant, denying all the claims the Appellant raised on appeal. The Appellant received this decision December 11, 2014. The Appellant filed a notice of appeal January 13, 2015, with the South Carolina Court of Appeals. The Appellant was granted an extension to file his initial brief by March 11, 2015.

ARGUMENTS

1. The ALC erred in its order, where the ALL held that the Appellant's argument that counsel substitute failed to obtain Dfc. Morgan's supporting report prior to hearing was without merit (R. p. 2, line 27-29). During the hearing the Appellant clearly stated that he never received a copy of Dfc. Morgan's report (R. p. 41, line 6-7). The statement made by the Appellant clearly establishes that the Appellant made

a claim that he never received a copy of Ofc. Morgan's report prior to the disciplinary hearing. Where the ALC held that in the Appellant's Step 1 grievance he merely mentions the supporting report, (R. p. 2, line 26-27), was clear error on behalf of the ALC. In the Appellant's Step 1 grievance the Appellant made the claim that the recorder (Lt. W. Golden) did not provide him with a copy of the supporting report by Ofc. Morgan upon serving him notice of the disciplinary offense, (R. p. 5, line 20-22). The Appellant also stated that the recorder did not "make mention or indicate" that there existed a supporting report by Ofc. Morgan (R. p. 5, line 31-33). After Appellant's Step 1 grievance was denied the Appellant persisted with his appeal to Step 2. In the Appellant's Step 2 grievance the Appellant persisted that he was not aware of and never received a copy of Ofc. Morgan's supporting report because the recorder failed to provide the Appellant with a copy thereof and that counsel substitute failed to obtain a copy of the said report (R. p. 7, lines 2-17). In the Appellant's original Brief upon appeal before the ALC the Appellant reiterated the above stated argument (R. p. 12, line 16-18-p. 13, line 1-5). The Appellant also submitted a separate statement of facts which was filed with the ALC on June 3, 2014. Within this document the Appellant included a "Request To Staff Member Form," (R. p. 37), in support of his argument in support of his argument in the Appellant's original Brief on appeal before the ALC, (R. p. 12-p. 13 line 1-5). Within this exhibit the Respondent stated "any supporting report/evidence is given to the counsel substitute who is able to show it/read it to you," (R. p. 37). The Respondent clearly indicates that "an inmate [as a disciplinary action defendant] can only have the report from which the charge arose" (R. p. 37). The Appellant hereby asserts that Ofc. Morgan's supporting report was not classified as evidence which an inmate may not possess prior to a disciplinary hearing, this supporting report would not have created an issue of institutional safety or impeded correctional goals, if presented to the Appellant prior to the disciplinary hearing.

The Appellant hereby asserts where the Respondent did not provide, mention or indicate that there existed a supporting report by Ofc. Morgan prior to the disciplinary hearing, and

where the Appellant asked "why he did not receive a copy of Ofc. Morgan's report?" (R. p. 41, line 6-7), the failure of the counsel substitute and the disciplinary hearing officer to address this issue at this point and time, (R. p. 41, line 8-9), in conjunction with the entirety of the above argument supports the Appellant's claim that the Respondent failed to provide and/or allow the Appellant to review this article of evidence. Ofc. Morgan's report is part of the written notice which must be provided to a disciplinary-action defendant.

Part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are in fact. Wolff v. McDonnell, 418 U.S. 539, at 564, 94 S.Ct. 2963, at 2978, (1974) (quoting In re Gault, 387 U.S. 1, 33-34, and n. 54, 87 S.Ct. 1428, 1446-1447, 18 L.Ed. 2d 527, (1967)). We hold that written notice of the charges must be given to the disciplinary-action defendant in order to inform him of the charges and to enable him to marshal the facts and prepare a defense. The Appellant hereby asserts that when the Respondent failed to provide the Appellant with a copy of the supporting report by Ofc. Morgan prior to the hearing; and when the counsel substitute failed to obtain, provide, show or read or discuss the supporting report prior to the hearing, with the Appellant, undermined the function of advance written notice to be given to the disciplinary-action defendant and the Appellant's due process rights in the instant matter before the agency below.

2. ALC erred in its order where the ALC held that a review of the hearing transcript demonstrates that the Appellant did in fact testify, that the Appellant was afforded the constitutional minimal due process as required by Wolff, and Appellant's argument is without merit. During the proceeding before the agency, at the point where the hearing officer permitted the Appellant to make a statement, the hearing officer interrupted and cut Appellant's statement off, preventing the Appellant from making the statement in his defense. (R. p. 40, line 7-15). At this point the

Appellant specifically stated to the hearing officer "I ain't finished Turner," (R. p. 40, line 13), indicating that he had not finished his statement. The hearing officer's actions prevented the Appellant from defending himself. Where the ALC stated in its order "next the Appellant contends that he was not allowed to make a statement at his disciplinary hearing," (R. p. 2, line 30), this is clearly an erroneous interpretation of the Appellant's argument within his brief before the ALC.

Within the Appellant's step 1 grievance (R. p. 4) the Appellant specifically stated "while grievant made attempt to make verbal during the hearing DHO Turner cut him off which is in violation of OP-22.14, Inmate Disciplinary System, § 15.2, (R. p. 5, line 16-18), (above stated policy is institutional/agency policy and guidelines). Within Appellant's step 2 grievance the Appellant specifically stated "As grievant attempted to state in details why he should be relieved of this charge during disciplinary hearing, maintaining that the accuser fabricated allegations against him, DHO R.L. Turner interrupted and cut grievant's statement off..." (R. p. 6, line 3-9).

When properly examined the reviewing court will see that the Appellant did not state "he was not allowed to make a statement at his disciplinary hearing as alleged by the ALC," (R. p. 2, line 30). It was stated during the disciplinary hearing by the Appellant "I ain't finished Turner," implicating that he was not finished making a statement in his defense. (R. p. 40, line 13). The above stated assertions in conjunction with the Appellant's argument within his brief before the ALC on appeal, clearly states that he was "denied due process when the respondent denied him the opportunity to make a statement in his defense to the alleged misconduct." (R. p. 13, line 24-26). The Appellant further elaborated within the dialogue of his argument (R. p. 13 line 27-35-p. 14), as to the deprivation and prejudice which he suffered as a result of such breach of Appellant's rights.

Ordinarily, the right to present evidence is basic to a fair hearing. The inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence.....

Wolfe, 418 U.S. at 566, 94 S.Ct. at 2979.

Where the hearing officer interrupted and cut off the Appellant from making a statement in his defense during the hearing before the agency negates the established principles to a fair hearing and undermines the Appellant's due process rights. For the requirements of due process include notice, an opportunity to be heard in a meaningful way, judicial review. Leventis v. So. C. Dept. of Health & Env't. Control, 340 S.C. at 151, 520 S.E. 2d at 650;

S.C. Const. Article 1 § 22; Stone River Envtl. Protection Assn. v. South Carolina Dept. of Health and Env't. Control, 305 S.C. 90, 406 S.E. 2d 340 (1991).

Where the hearing officer interrupted and cut off the Appellant from making a statement in his defense denied the Appellant an opportunity to be heard in a meaningful way.

3. Where the ALC held that the department was not constitutionally required to afford counsel substitute to assist Appellant in his defense, because the Appellant did not allege or establish that he was illiterate or that the instant case was of sufficient complexity to necessitate assistance in presenting his case was clear error, (R. p. 3, line 8-10), because the Appellant clearly established prior to the hearing before SCDC that he would need counsel substitute due to the complexity of the issues, whereas the Appellant was in segregation, (phd), it was very unlikely the Appellant would have been able to collect and present the evidence necessary for an adequate comprehension of the instant case. As stated, the Appellant clearly established prior to the disciplinary hearing before SCDC that he would need counsel substitute, due to the fact that he was in segregation, (R. p. 8 line [see Inmate Waivers section]), and it was very unlikely the Appellant would have been able to collect and present the evidence necessary for an adequate comprehension of the instant case.

The Record on Appeal reflects that the Appellant established that the instant case was of sufficient complexity, due to the fact the Appellant was in pre-hearing detention, (R. p. 44, line: see Notice of Placement in PHD Form), to necessitate assistance in regards to collecting evidence and presenting evidence necessary for an adequate comprehension of the instant case, as implicated below prior to the hearing before SCDC by the Appellant, (R. p. 8 line: see Inmate Waivers section). Where the Appellant established this much below prior to the hearing before SCDC, the

Appellant based his argument within his brief on appeal, (R. p. 15, p. 16, - p. 17, line 1-10), that the Respondent denied the Appellant proper due process where counsel substitute failed to properly cross examine witnesses, before the ALC, on the fact that the Appellant pre-established below prior to the hearing before SCDC, that he would need counsel substitute, (R. p. 8, line: see Inmate Waivers section), due to the fact that he was placed and held in segregation, (R. p. 44, line: see Placement In PHD Form), prior to the hearing and would not have been able to collect and present the evidence necessary for an adequate comprehension of the instant case.

The Respondent has failed to respond to the Appellant's argument within his brief on appeal, (R. p. 15; p. 16, - p. 17, line 1-10), within their respondent's brief before the ALC. For the ALC to argue for the SCDC is seemingly misplaced and improper. While the Appellant was in segregation from the time the allegations of the underlying incident arose and due to the nature of the underlying allegations the reviewing court will find that the Appellant could not collect and present the evidence necessary for an adequate comprehension of the instant case, Waltz, 418 U.S. at 569, 94 S.Ct. 2982, whereby this would entitle the Appellant grounds to seek adequate substitute aid/help from others in preparing his defense for presentation before SCDC.

During the disciplinary hearing below before SCDC, the Appellant asked counsel substitute "Did you get in contact with my witnesses?" (R. p. 40, line 22). In response the counsel substitute stated "I did talk with Officer Greco. Um, she said she didn't have anything relevant to the case. I did not get in contact with Officer Morgan. I did talk with the, um, Inmate Roosevelt Bryant. Um, he answered no to your questions. He... he said he didn't want to get involved in the incident and all he saw was you being escorted out in handcuffs. (R. p. 41, line 1-5).

Where the ALC held that counsel substitute testified that he initiated contact with each of Inmate's witnesses, is clear error, (R. p. 2, line 18-19). The ALC also held that the record reflects that counsel substitute attempted to contact

all the witnesses is clear error, (R. p. 3, line 12). During the disciplinary hearing the counsel substitute clearly stated that "I did not get in contact with Officer Morgan." (R. p. 41, line 2-3). This statement by counsel substitute is clearly contrary to the ALC's finding in regard to this issue and this statement plainly fails to demonstrate an attempt to contact Ofc. Morgan.

The ALC concluded that the Appellant provided his counsel substitute a list of questions to ask of the witnesses requested, (R. p. 3, line 11), the Appellant concedes that this finding is correct. Yet, the Appellant hereby asserts that the counsel substitute failed to reflect and reveal the questions he asked of the two witnesses whom he did get in contact with, (R. p. 41, line 1-5), more specifically, the Appellant hereby asserts that the counsel substitute failed to reflect and reveal if he questioned Ms. Greco in regards to the specified questions and any answers that she may have furnished specifically to such specified questions. In addition, the Appellant hereby asserts that the counsel substitute failed to reflect and reveal for the record the list of specified questions provided to him by the Appellant which he allegedly asked of Inmate Roosevelt Bryant and due to the fact that Inmate Roosevelt Bryant stated that "he didn't want to get involved in the incident," further prevented the Appellant from introducing extant exculpatory evidence and thereby deprived the Appellant the right to present evidence in his defense. Edwards v. Balisok 520 U.S.

641, 644, 117 S.Ct. 1584, 1587. This is an obvious procedural defect and state and federal courts have reinstated good-time credits (absent a new hearing) when it is established. Balisok 520 U.S. at 647-647 117 S.Ct. at 1588.

See also Kingsley v. Bureau of Prisons, 937 F.2d 26, 27, 31 (C.A. 2 1991);

Dumas v. State, 654 So. 2d 48, 49 (Ala. Crim. App. 1994);

Mahers v. State, 437 N.W. 2d 565, 568-569 (Iowa 1989);

In re Contreras, 199 A.D. 2d 601, 602, 604 N.Y.S. 2d 651, 652 (1993).

In re Reissmiller, 101 Wash. 2d 291, 293-297, 687 P.2d 323, 325, 326 (1984); In re Burton, 80 Wash. App. 573, 585, 910 P.2d 1295, 1304 (1996).

Where the Appellant requested that Inmate Roosevelt Bryant come forth and give testimony on his behalf, the witness declined the opportunity to come forth with evidence, (R. p. 41, line 3-5), stating that "he didn't want to get involved in the incident." The Appellant submitted an belated statement of facts wherein the Appellant had filed a grievance on this underlying incident prior to seeking testimony from Inmate Roosevelt Bryant as proof of differences between the Appellant and Inmate Roosevelt Bryant (R. p. 21, line 1-7 p. 35, line 1-7). The Compulsory Process Clause to the United States Constitution gives any criminal defendant the right to call witnesses in his favor. If any such witness refuses to testify, that witness may be compelled to do so by the court at the request of the defendant. The Appellant hereby asserts that the due process requirements for a prison disciplinary proceeding are in many respects less demanding than those for criminal prosecution, but they are not so lax as to let stand the decision of a hearing officer based on deprivations inducing suppressed evidence of innocence. Wolff, supra at 570-571 94 S.Ct. at 2981-2982.

4. Where the requirements of due process are in question here in the instant case, the evidence utilized by the hearing officer to revoke good time credits are also in questions here in the instant case.

The findings of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by evidence and whether the law has been properly applied to those findings. Implicit findings of fact are not sufficient. Where material facts are in dispute, the administrative body must make specific express findings of fact. United States ex. rel. Vajzauer v. Commissioner of Immigration, 273 U.S. 103, 106, 47 S.Ct. 302, 304. The United States Supreme Court held that requirements of due process are met if some evidence support the decision by the prison disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the

administrative tribunal could be deduced ..."

The Appellant hereby asserts that the findings in regards to the evidence in the instant case are in sufficiently detailed and implicit. In order for the reviewing court to determine whether the findings are supported by substantial evidence, it is only necessary that the Appellant direct the reviewing courts attention to the written statement by the fact-finder as to the evidence relied upon in the instant case (R. p. 8, line: see Findings section and section below for evidence presented) which reflects that the hearing officer utilized the accusing officer's report and the supporting report of Ofc. Morgan.

In continuance, also essential, whether there was some evidence from which the conclusion of the administrative tribunal was drawn, the appellate court must direct its attention to the disciplinary offense and the elements of the offense description, as well as the given circumstances surrounding the incident.

Offense Description: Threatening to Inflict Harm On / Assaulting An Employee and/or Members of the Public: Communication, verbal or written by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life presently or in the future; or one who commits a physical act of a threatening nature and the probable result of such threats or action is to place the individual in fear of bodily injury; or one who causes evacuation of a building; or one who creates serious disruption or alarm. (R. p. 8, line: see Offense Description).

Where the Appellant challenges the evidence utilized by the hearing officer in the instant case, it is necessary that the appellate court have an understanding of the disciplinary offense and the elements thereof, in determining the sufficiency of the evidence and its weight presented, in consideration and reasoning for determination of guilt or innocence in regards to the alleged claimed violation.

The Appellant will now analyze the evidence before the appellate court as to verbal or written communication which constitutes a threat. Upon examining the accusing officer's report, (R. p. 43), the appellate court will see that the accusing officers report lack any allegations of a verbal or written threat. Upon

examination of the assisting officer's report the appellate court will see where the assisting officer stated "as the Inmate Young was being restrained, he began verbally threatening Lieutenant Robertson and lunged at him" (R. p. 42). While the accusing officer's report lacks any alleged verbal threat, the assisting officer's report generally states that the Appellant began verbally threatening Lieutenant Robertson, yet the assisting officer's report fails to articulate any verbal threat which the assisting officer generally alleges the Appellant made to Lt. Robertson.

Due to the fact that the officer's reports are inconsistent to each other, where the accusing officer lacks any alleged verbal threat and the assisting generally states the Appellant began verbally threatening Lt. Robertson, yet fails to articulate a verbal threat creates discrepancies between the two reports, and it can readily be deduced that the evidence is inconclusive as to a verbal threat being made by the Appellant. In addition, the Appellant stated "the truth of the matter is, they fabricated the incident report. I never... I... he fabricated the incident report to begin with, but I never said anything threatening, of a threatening nature," (R. p. 40, line: 8-11). The accusing officer's lack of a verbal threat, the assisting officer's general allegation of a verbal threat, yet failure to articulate specifically what it was that he alleges the Appellant stated, in conjunction with the Appellant's statement at the hearing concludes that there was no verbal threat made by the Appellant.

The Appellant will now analyze the circumstances surrounding the incident and the evidence before the appellate court as to a physical act of a threatening nature and the probable result of such threats or action is to place the individual in fear of bodily injury. Upon examination of the accusing officer's report the appellate court will see where the accusing officer states

"Inmate Young was extremely aggressive at this point, so I had Ofc. Morgan cuff him. Inmate Young then lunged at me." (R. p. 43, line: 9-11). Upon examination of the assisting officer's report the appellate court will see where the assisting officer alleges "As Inmate Young was restrained he began verbally threatening Lt. Robertson and lunged at him." (R. p. 42, line: 2-3). The Appellant claims that the officer fabricated the incident

report. (R. p. 40, line: 8-11). In fact the Appellant gave a totally different account of the events, (R. p. 10, line: 1-5 - p. 11, line: entire page). The Appellant subsequently claimed "an inmate in handcuffs can not place an SDC employee in fear of bodily injury because he can not use his hands, nor eyes and he can not maintain any balance to lunge with his hands cuffed, (R. p. 14, line: 8-11). The Appellant also stated "while Appellant was in handcuffs the Appellant was not a threat nor could he have committed an act to be perceived as a threat or place an individual in fear of bodily injury, because the Appellant was restrained in handcuffs," (R. p. 14, line: 23-27). The Appellant claimed that "where the accuser and Officer Morgan alleges the Appellant lunged at the accuser, the Appellant asserts that he did not and could not have placed anyone in fear of bodily injury or harm for he was restrained in cuffs." (R. p. 25, line: 39-40 - p. 26, line: 1-2).

Where the accusing officer alleges that "Inmate Young was extremely aggressive at this point so I... had Ofc. Morgan cuff him," the Appellant hereby asserts that the accuser fabricated this allegation and certainly fails to articulate how the Appellant was aggressive, the Appellant hereby asserts that the officers failure to demonstrate aggressiveness on part of the Appellant and Appellant's claim of accuser's fabricated allegations negates the accuser's reasoning to handcuff the Appellant. The Appellant hereby asserts that the accuser's failure to demonstrate aggressiveness on part of the Appellant reflects that there existed no imminent threat that would require a need for the accuser to protect himself or place the Appellant in cuffs. There is no evidence in the record that reflects that the Appellant was a threat to the accuser prior to being placed in cuffs.

The Appellant hereby asserts that discrepancies arise, as to the circumstances surrounding him being cuffed. While the accuser states "I... had Ofc. Morgan cuff him," (R. p. 43 line: 10), the assisting officer states "As Inmate Young was restrained he began to verbally threaten Lt. Robertson and lunged at him." (R. p. 42 line: 2-3). The staff attorney arguing for SDC stated "Due to his behavior, the Appellant was cuffed," (R. p. 20, line: 25), as if without incident and

the accuser's version of events reflect no incidence within cutting the Appellant, consistent with the staff attorney's argument. While the assisting officer utilizes the word restrain, (R. p. 42, line: 1-2), in his report it would lead the appellate court to think that Ofc. Morgan had to physically subdue the Appellant, which would be an incorrect interpretation of the incident. For the staff attorney's argument and the accusing officer's report reflects no incident in the Appellant being cut. This is also an inconsistency to be construed in the Appellant's angle that the officer's fabricated the incident reports.

The Appellant would like to point out another inconsistency between the officer's reports. Where the accusing officer alleges "I directed Ofc. Morgan along with myself to place him on the ground due to his behavior," the assisting officer contradicts this, alleging "I Officer Morgan placed Inmate Young on the ground using the minimal amount of force necessary to regain control, (R. p. 43, line: 11-15 - p. 42, line: 3-5). The staff attorney for SCDC argued "It was Officer Morgan that cut the Appellant and placed him on the ground (R. p. 21, line: 2-3).

Such inconsistencies puts the core evidence in question. Where the Appellant claimed the officer's fabricated such allegations to begin with, in conjunction with such inconsistencies weakens the Respondent's evidence.

Where the Appellant denies such allegations made by the officers, the Appellant here by asserts that the inconsistencies betwixt the officer's reports, the Appellant's claim of fabrications on behalf of the officers, the accusing officers failure to demonstrate aggressiveness on part of the Appellant prior to being placed in cuffs, in light of the accuser's allegation and the lack of incidence upon placing the Appellant in cuffs, would lead the logical mind to see that it is completely illogical that an individual would wait until he was placed in cuffs to attempt to attack, when prior to being placed in cuffs he had ample opportunity to do so, if he so chose.

5. Where the ALC held that there is nothing in the record to suggest that the hearing officer was otherwise than neutral and detached is clearly erroneous. The Appellant hereby asserts that where the hearing officer interrupted and cut off the Appellant from making a statement in his defense

was partial behavior on behalf of the hearing officer. (See part 2 of Argument.)

CONCLUSION

For the reasons stated above, this Honorable Court should reverse the judgement of the Administrative Law Court and restore Appellant's good-time credits.

April 9, 2015

Respectfully & Humbly Submitted,
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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The Honorable Deborah Brooks Durden

Case No. 2015-000060

Derrick Antron Young, #273562

Appellant

-VS-

South Carolina Department of Corrections

Respondent

PROOF OF SERVICE

I certify that I have served a copy of the appellant's final brief on all parties to the appeal and the appellate court by depositing a copy of it in the United States Mail, postage prepaid on April 9, 2015, addressed to their respective offices.

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Derrick Antron Young, #273562

Appellant

vs.

South Carolina
Department of Corrections

Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Derrick A. Young, #273562,
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 13-ALJ-04-0809-AP
Grievance No. PCI 1018-13

ORDER

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

4 Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for
5 Threatening to Inflict Harm on an Employee and/or Members of the Public (809) SCDC Policy OP-
6 22:14, Inmate Disciplinary System, was affirmed, which resulted in a loss of 48 days good time
7 credit. Inmate appeals on the grounds that there were due process violations because: 1) Counsel
8 Substitute failed to obtain documentary evidence for the hearing; 2) Appellant alleges he was denied
9 the opportunity to make a statement at the hearing; and 3) Appellant argues that his Counsel
10 Substitute failed to properly cross-examine witnesses.

STANDARD OF REVIEW

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

LAW/ANALYSIS

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

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

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

12 Al-Shabazz, 527 S.E.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963,
13 2978-82 (1974).

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

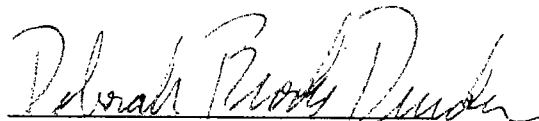
25 Appellant also contends Counsel Substitute failed to obtain Officer Morgan's supplemental
26 report, therefore violating Appellant's due process rights. However, in Appellant's Step 1 Grievance
27 he merely mentions the supplemental report. There is no evidence in the record that Appellant asked
28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

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

1 Finally, Appellant alleges that Counsel Substitute failed to properly cross-examine witnesses.
2 Notably, in Wolff, supra, the U.S. Supreme Court did not require that an inmate must be provided a
3 counsel substitute. Rather, the Court held that: "Where an illiterate inmate is involved, however, or
4 whether the complexity of the issue makes it unlikely that the inmate will be able to collect and
5 present the evidence necessary for an adequate comprehension of the case, he should be free to seek
6 the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help
7 from the staff or from a sufficiently competent inmate designated by the staff." Wolff, 94 S.Ct. at
8 2982. Here, Appellant did not allege or establish that he was illiterate or that this case was of
9 sufficient complexity to necessitate assistance in presenting his case. Therefore, the Department was
10 not constitutionally required to afford counsel substitute to assist the Appellant in his defense.
11 Appellant provided his counsel substitute a list of questions to ask of any witnesses called.
12 Furthermore, the record reflects that counsel substitute attempted to contact all the witnesses and
13 found that Officer Greco stated she had nothing relevant to add to the case and inmate Roosevelt
14 Bryant stated that he did not wish to become involved in Appellant's disciplinary matter. I find the
15 Department complied with the minimal due process required by Wolff, and Appellant is entitled to
16 no more.

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

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



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

December 3, 2014
Columbia, South Carolina

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

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

Office Use Only
Grievance No. PCI 1018-13
Code: General DH
Policy 63
Disc. Hear HD: 4.16.13
Class. _____
Date Received APR 23 2013
IGC Initials g
809

1 STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy):
2 On 4.16.2013, Derrick Young attend disciplinary hearing for (809) Threatening to
3 Inflict Harm on/Assaulting an Employee Case # 63. Residing Hearing Officer-
4 R.L. Turner. Grievant was found guilty; based accusers and supporting report.
5 On 3.26.2013, following such allegations grievant was placed in PHD/SMU.
6 19-29A Form fails to make mention that grievant was placed in SMU following
7 such allegations. Accuser, Supervisor and Major Responsible Authority fails to mention
8 grievant was placed in PHD/SMU throughout 19-29A Form. Likewise, grievant
9 was not reviewed within 72 hours of placement in PHD/SMU. Which is in
10 violation of SMU Policy, OP-22.12, § 1.2 and 1.3. 1.2: However the inmates
11 placement in PHD must be reviewed within 72 hours of initial placement
12 including weekends and holidays §1.3: The Warden/Duty Warden or an approved-

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

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

N/A

Derrick Young 4.20.2013
Grievant Signature Date

ACTION TAKEN BY IGC:

SEE WARDEN'S RESPONSE

Ms. Johnson APR 29 2013
IGC Signature Date

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

N/A
Grievant Signature Date

1. STATE GRIEVANCE [continuance]: designee will fill out
2 SCDC Form 19-67, "Pre Hearing Detention Placement," and get all necessary signature
3 The inmate must be given the opportunity to sign the 19-67 Form; but if s/he will
4 not sign form, two (2) SCDC employees must witness form to show that it was served
5 to the inmate. The inmate must be given a copy of the completed 19-67 Form
6 within 72 hours of placement in PHD. If the copy of the 19-67 that is given to
7 the inmate is not legible, the Hearing Officer will ~~max~~ provide the inmate with a
8 legible copy. (Note: If the placement in PHD was due to a disciplinary infraction the
9 procedures in SCDC policy/procedure OP-22.14 "Inmate Disciplinary System,"
10 will apply as they relate to the disciplinary charge/hearing.) Once inmate is
11 moved to PHD, the SMU supervisor will ensure that information that relates to
12 inmate is entered on SCDC supply S-29 "SMU/PHD Log." By grievant not
13 receiving 19-67 Form, prior to applicable procedures of "OP-22.14" "Inmate Disciplinary
14 System", constitutes violation of policy and grievant's due process rights. When grievant
15 mentioned that he did not receive 19-67 Form during hearing DHO Turner
16 stated it was not his problem." While grievant made attempt to make
17 verbal during hearing DHO Turner cut him off which is in violation of
18 "OP-22.14" "Inmate Disciplinary System," § 15.2. Yet, grievant persists that
19 that accusers allegations in 19-29A Form are fabrications to cover for accusers
20 and involved employees (Ofc. Morgan) conduct towards grievant. Grievant also
21 persist that when recorder (Lt. W. Golden) served 19-69 Form, he did not
22 receive 19-29A supporting report by Ofc. Morgan. This violates "OP-22.14"
23 "Inmate Disciplinary System," § 3.2; 8.2.1; 8.2.6. In retrospect of accusers 19-29,
24 he alleges grievant stated "nothing" in the beginning of narrative of report; he
25 later alleges grievant stated "I Done Fucking Told You What I AM GOING TO DO,
26 I Am Not Going To Wait." Yet prior to this statement accuser has documented that
27 the only statement grievant made was "nothing" and he makes no mention of grievant
28 previously stating that he was not going to wait." This is a clear inconsistency on
29 accusers behalf in fabricating 19-29A Form, which violates subsection
30 "3.2" of "OP-22.14." Upon grievant receiving service of notice of charges
31 grievant did not receive a 19-29A Form, by Ofc. Morgan. Nor did recorder whom
32 served grievant charges, (Lt. W. Golden) make mention or indicate that there
33 was a supporting 19-29A Form by involved employee Morgan, this is in
34 violation of "OP-22.14," § 8.2.1; 8.2.6. (8.2.6): Obtain any documentary
35 evidence that is not already in possession of the accused inmate (documentary evidence
36 relevant to case.) By recorder Lt. W. Golden not providing accused inmate with
37 copy of alleged supporting report; and by Counsel Substitute Norman not
38 making an effort to attain such documentary evidence, violate "OP-22.14"
39 subsections previously stated as well as grievant's due process rights.

010
MAY 24 2013

Due: MAY 21 2013

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED

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

Office Use Only
Grievance No. PCI 1018-13
Code: General DI
Policy _____
Disc Hear HD: 4-16-13
Class. _____
Date Received MAY 24 2013
IGC Initials 809 9-10-13

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

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Threatening to Inflict Harm on an Employee and/or Members of the Public (8.09) on April 16, 2013, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -48- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 9/10/13
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date -6- IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Inmate's Reason For Appeal (state specific dissatisfaction):

11 prevented grievant from properly presenting his case, which is the purpose of
2 subsection 15.4 of OP-22.14. Grievant maintains that he was not aware of or never
3 received a copy of any supporting report by a Ofc. Morgan. Upon service of charges to
4 grievant by (recorder) Lt. W. Erolsen, she provided grievant a copy of a 19-29A Form,
5 "Incident Report" from Lt. J. Robertson, at the top of 19-29A Form "Incident Report",
6 the heading of the "Incident Report" is documented as "Page 1 of 1" which is
7 evidence that there was only one page to this disciplinary report. Yet, during the
8 disciplinary hearing DHO Turner read a "supporting report" by Ofc. Morgan into the
9 record. This in violation of § 10 and 10.1 of OP-22.14. This is also in violation of
10 § 8.2.6. Subsection 10: Recorder; "s/he will be responsible for ensuring all documentation
11 for each case is available"; 10.1 The Recorder will be ~~responsible~~ responsible for
12 the following: . ensure the ~~SLDC~~ SLDC Form 19-69 will be served to the inmate at least
13 24 hours prior to hearing; yet, recorder failed to provide grievant with proper
14 documentation. Subsection 8.2.6 Responsibilities (Counsel Substitute): Obtain any
15 documentary evidence that is not already in the possession of the accused inmate.
16 This disadvantaged grievant in presenting his case, where inmate had called
17 Ofc. Morgan as a witness.

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

29 Where "SMU Policy", OP-22-12, § 1.2; 1.3 dictates inmate will receive an initial
30 review within 72 hours of initial placement in PHD/SMU. And inmate will be served a
31 19-67 "Pre Hearing Detention Placement" Form, signed by all necessary administrative
32 personell, and inmate would be afforded opportunity to sign 19-67 Form. Inmate Young
33 never received such form, this violation of "SMU Policy": OP-22, 14, § 1.2 and 1.3.

MMH

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

411: 48

Case#: 63 Inmate Name: Young, Derrick SCDC#: 273562

Living Area: BX17 Job: LOCK-UP Custody: 3T3

Offense Date: 03/26/13 Offense Time: 6:00 AM/PM Institution: PCI

Offense Description: 809: Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public:
Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future; or one who commits a physical act of a threatening nature, and the probable result of such threats or action is to place the individual in fear of bodily injury; or one who causes evacuation of a building; or one who creates serious disruption or alarm.

Charging Officer/Employee: J. Robertson 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.

referenced section

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

SMU/SEGREGATION ONLY

I WANT A COUNSEL SUBSTITUTE Norman

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 4/12/13 1023 AM/PM By (Print): Lt W. Golden

Inmate Signature: D. Young SCDC#: 273562 Date: 4/12/13

9.2

HEARING INFORMATION:

Hearing Date: <u>4/16/13</u>	Hearing Time: <u>1000 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.

referenced section

OFFENSE CODES	<u>809</u>			
INMATE PLEA (G, NQ, None)	<u>NG</u>			
FINDINGS (G, NQ, DS)	<u>G</u>			

F. GUILTY, 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: (B) (D) Supporting report of (10 Morgan) that he

HEARING LENGTH: _____ (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 48

* Property (Days) _____ Extra Duty: _____ Retitution: \$ _____

* Canteen (Days) 40 360 (over 150) Visit Suspension Thru 360 (over 150)

* Other Telex (Days) 5 300 (over 150) Cell Restriction (Days): _____

* Disciplinary Detention (Days): 300 80

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 3rd 809 charge last order 809 3/13/106.

REDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS _____

DATE INMATE PLACED IN PHD 1/1

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 4/16/13

HEARING OFFICER (PRINT NAME) R. L. Turner

APPROVED REVERSE/MODIFY [Signature] REASON _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record Canary - Inmate (Service of Disciplinary Report)

Golden Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.

M/D: 10/9/23

Hon. Deborah B. Darden
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Ste. 224
Columbia, S.C. 29201

April 18th, 2014

Dear Judge Darden:

If it is possible could you please send me a clocked-dated, stamped copy of the original brief I am sending in to be filed with the court. Sincerely,

Mr. D. Young
Mr. Derrick Young, #273562
Evans Corr. Inst. #SM4-121
610 Hwy. 9 West
Bennettsville, SC 29512

FILED

APR 21 2014

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Derrick Young, #273562
Appellant,

vs.

South Carolina Department
Corrections,
Respondent,

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

APPELLANT'S BRIEF

Honorable Judge Deborah B. Durdan

Statement of Issues On Appeal

- 1) Did Respondent deny Appellant proper Due Process where Counsel Substitute Counsel Substitute failed to "Obtain documentary evidence that is not already in possess of the accused inmate," prior to the disciplinary hearing?
- 2) Did Respondent deny Appellant proper Due Process when Respondent deprived Appellant of opportunity to present documentary evidence?
- 3) Did Respondent deny Appellant proper Due Process when Respondent denied Appellant the opportunity to make a statement in his defense to the alleged misconduct?
- 4) Did Respondent deny Appellant proper Due Process where Counsel Substitute failed to properly cross examine witnesses?
- 5) Did Respondent deprive Appellant of a state created liberty interest without proper Due Process by imposing a loss of (48) days of accrued good time?

FILED

APR 21 2014

Statement of Case

SC ADMIN. LAW COURT

1 On March 26th 2013 the Appellant Derrick Young was escorted to his
2 assigned job within Perry Correctional Institution, by a Lieutenant Cashwell at
3 approximately 5:45 AM. (Appellants assigned job was then, food service
4 [kitchen worker] in the Special Management Unit (SMU) at Perry Correctional -
5 Institution.) Upon arriving at work, Appellant began to perform

1 duties and prepare the breakfast meal, along with co-kitchen worker,
2 Roosevelt Bryant, when myself and Bryant began to disagree and argue
3 about how to properly and efficiently perform kitchen tasks. Bryant then
4 told Appellant, "don't touch anything else, as a matter of fact I don't need your
5 help." Appellant then stated "Man, I'll tell you what, you're right, you can
6 do this yourself, cause you ain't about to be talking to me like I'm a child."
7 Appellant, then walked over to the coat rack and began putting his
8 jacket on.

9 As Appellant was putting on jacket, while still inside SMU kitchen, an
10 officer (now known as Lieutenant Robertson) approached Appellant, walking
11 halfway up lobby hallway asking, "Did you just come in?" Appellant replied
12 "Yes, I did, I need to talk to the kitchen supervisor, can you call me an
13 escort when you get time, so I can go down to the main kitchen and
14 and talk to the supervisor, cause me and this man (referring to Bryant)
15 keep arguing and we can't continue to work around each other
16 like that, it might lead to something else.

17 Lieutenant Robertson then stated "the only place you going is to
18 work in that kitchen or the other side of this door to lock up."
19 Appellant then stated "Well, you might as well put me in lock-up,
20 cause I refuse to work with this man and he is disrespectful
21 towards me."

22 Lieutenant Robertson then walked to the control booth, stating
23 "Ms. Greco, give me a pair of cuffs." Lieutenant Robertson then called
24 Ofc. Morgan and directed him to put Appellant in handcuffs. After
25 Ofc. Morgan placed Appellant in handcuffs, Ofc. Morgan stood with Appellant
26 in the lobby waiting for further instructions from Lieutenant Robertson,
27 whom was at the SMU control booth asking Ms. Greco "did she have a
28 room for Appellant?" Lieutenant Robertson then stated "going to
29 tell me what you will and what you will not do, you don't tell me
30 nothing, matter of fact, just shut the fuck up." Appellant then stated
31 Appellant replied "You shut the fuck up."

32 Lieutenant Robertson then stated to Ofc. Morgan "take him down
33 Morgan," directing Ofc. Morgan to take Appellant down by any means
34 necessary. Appellant was then picked up off of floor and escorted to
35 X-wing shower of SMU 9-D-dorm.

Argument

1) Respondent denied Appellant proper Due Process when Counsel Substitute failed to "Obtain documentary evidence that was not already in possession of the accused inmate, prior to the disciplinary hearing."

4 On the date of 4-3-2013, the Appellant was charged with "809-Threatening-570 Inflict Harm On An SCDL Employee (an institutional disciplinary infraction).

6 On 4-12-2013 a Lieutenant W. Golden served "notice of disciplinary charge" 7 on Appellant. Upon serving notice upon Appellant, Appellant was provided with 8 a copy of "19-29 A Form, Incident Report," by accuser J. Robertson and 19-69 9 Form." On the date of 4-16-2013, Appellant attended a disciplinary hearing 10 for the charge. In support of the charge against Appellant was previously 11 mentioned "Incident Report" by the accuser (J. Robertson), included in the 12 Employee Involved Section": Lieutenant Robertson and Officer Morgan. (See 13 pg. 2 of transcript). Additionally, in support of the charge against Appellant, 14 Disciplinary Hearing Officer (DHO) presented and read into the record a 15 Supporting Incident Report, "by Officer Morgan. (See pg. 3 of transcript).

16 The Respondent denied Appellant proper Due Process when Counsel Substitute 17 failed to obtain and/or present Appellant with "Supporting Incident Report," by 18 Ofc. Morgan. (See pg. 5 of transcript).

19 Part of the function of notice is to give the charged party a chance to marshal 20 the facts in his defense and clarify to what the charges are, in fact.

21 See In re Gault 387 U.S. 1, 33-34, and n. 54, 87 S.Ct. 1428, 1446-1447, 18 L.Ed. 2d 527 (1967)

22 Neither of the functions was performed, when Lieutenant W. Golden failed 23 to provide Appellant with "Supporting Incident Report,"; and, when Counsel 24 Substitute failed to obtain and/or present Appellant with the "Supporting- 25 Incident Report," prior to hearing. This denial of due process left Appellant 26 unable to prepare a viable defense to Ofc. Morgan's version of allegations 27 in "Supporting Incident Report."

28 Counsel Substitute has the following responsibilities in preparing for the 29 hearing: OP-22.14, § 8.2.1: Read the SCDL Form 19-29A, Form and 19-69 to the accused 30 inmate and make sure the inmate understands the charges; § 8.2.6: Obtain any 31 documentary evidence relevant to the case that is not already in possession 32 of the accused inmate. The Supreme Court has enunciated the following 33 five requirements: (1) that advance written notice be given to the 34 accused inmate at least 24 hours before the hearing. . . . Al-Shabazz, 35 527 S.E.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 36 2978-82 (1974).

1 While Lieutenant C. Golden did not provide Appellant with a copy of the
2 "Supporting Incident Report," by Officer Morgan, Counsel Substitute had the
3 responsibility of securing the report by Officer Morgan in preparing for the
4 hearing, so that the Appellant could properly assess the alleged misconduct
5 in preparing for the hearing. Failure to do so amounts to denial of Due Process.

6 2) Respondent denied Appellant proper Due Process when Respondent deprived
7 Appellant of opportunity to present documentary evidence.

8 Respondent denied Appellant proper Due Process when Respondent
9 deprived Appellant the opportunity to present documentary evidence,
10 where the Appellant made an attempt to point out that accuser (J. Robertson)
11 did not specify, nor articulate a verbal threat, that was made by Appellant
12 to accuser, (review transcript pgs. 2-3 of transcript; and review accuser's
13 (J. Robertson), 19-29A Form, Incident Report), DHO interrupted and cut
14 Appellant off, (see pg. 3 of transcript), depriving Appellant the opportunity
15 to point out that accuser (J. Robertson), fails to state a verbal threat
16 that was alleged to be made by Appellant, this amounts to insufficient
17 evidence of a verbal threat, as well as denial of due process.

18 Ordinarily, the right to present evidence is basic to a fair hearing,
19 Wolff v. Mr. Donnell 418 U.S. 539 94 S.Ct. 2963, 272977-80, 41 L.Ed. 2d 935.

20 Where DHO deprived Appellant of this basic right amounts to denial
21 of Due Process and prejudiced Appellant, because Appellant did not
22 have the opportunity to point out lacking or absence of any verbal
23 threat allegedly made by Appellant. (See pg. 4 of transcript).

24 3) Respondent denied Appellant proper Due Process when Respondent denied
25 Appellant the opportunity to make a statement in his defense to the
26 alleged misconduct.

27 The requirements of due process include notice and an opportunity to
28 be heard in a meaningful way, and judicial review. Leventis v. S.C. Dept.
29 of Health and Envtl. Control, 340 S.C. 271, 330 S.E.2d 267 (650).

30 S.C. Const., Article 1, § 22.; Stone River Envtl Protection Assn v. South Carolina
31 Dept. of Health and Envtl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991).

32 (See pg. 4 of transcript). Where DHO denied Appellant the opportunity to
33 make a statement in his defense to the alleged misconduct, this
34 prejudiced Appellant, because Appellant could not present his
35 defense. (See pg. 4 of transcript). On pg. 4 of hearing transcript

1 DHO states: "That's the only thing relevant here, whether or not
2 you threatened him or not and you have claimed you did not threaten
3 him." Appellant attempted to speak and point out in accuser's 19-29A Form,
4 that the accuser (J. Robertson) never articulated a verbal threat.
5 Furthermore, Appellant maintains that the accuser's fabricated the
6 "Incident Reports," while the accuser, J. Robertson and Ofc. Morgan
7 allege the Appellant "lunged at accuser," the Appellant could have
8 pointed out that, an inmate in handcuffs cannot place an SCDC
9 employee in fear of bodily injury, because he cannot use his hands, nor
10 arms, and he cannot maintain any balance to lunge with his hands
11 cut off. Yet, where DHO interrupted and cut Appellant off, Appellant
12 could not make a statement in his defense. This amounted to
13 denial of due process.

14 The elements required to prove the offense for which Appellant
15 was charged would be: an actual verbal threat, or physical act
16 of a threatening nature, and the probable result of such threats
17 or actions is to place the individual in fear of bodily injury.

18 Where the DHO interrupted and cut off Appellant from making
19 a statement in his defense, (see pg. 4 of transcript) (where
20 Appellant stated: "I ain't finished to Turner), this prevented
21 Appellant from making a statement in his defense. Appellant now
22 takes the opportunity to point out that the accuser did not
23 articulate a verbal threat; and while Appellant was in
24 handcuffs, the Appellant was not a threat, nor could he have
25 committed an act to be perceived as a threat or place an
26 individual in fear of bodily injury, because the Appellant was
27 restrained in handcuffs.

28 Appellant was committed to the Department of Corrections (DOC)
29 on 10.10.12. While the accuser alleges the Appellant committed the
30 offense at hand, Appellant has successfully refuted this allegation.
31 Appellant would like to point out that, he has not been accused
32 of such an allegation, of such actions towards SCDC employees, prior
33 to this allegation, nor after he was convicted of this offense. Appellant
34 ask that the court take his disciplinary record into account in
35 considering his appeal. -14-

14) Respondent denied Appellant proper due process where Counsel Substitute failed to properly cross examine witnesses.

3 (See pg. 5 of transcript). Respondent denied Appellant proper due
4 process where Counsel Substitute failed to properly cross examine
5 witnesses. Where counsel substitute states that "I did talk to
6 Officer Greco and she stated she did not have anything relevant
7 to the case," is an issue to be considered by the Administrative-
8 Law Court (ALC or Court).

9 While this incident occurred in lobby of SMU II (See Incident Report,
10 Location of Incident Section), Officer Greco was the control booth
11 officer on the date of this incident. Upon entering the SMU II building,
12 an individual enters into the lobby initially. Upon entering the
13 lobby the entrance to the kitchen for SMU II is directly to the
14 left and the control booth to the right.

15 Where Appellant described above, the layout upon entering
16 the SMU II building, again, upon entering the SMU II building
17 one first enters into the lobby of the SMU II building, by way of the
18 front door, and upon entering the lobby, the entrance to the
19 kitchen would be directly to the left, this would be the Appellant's
20 work area, as he was assigned to the food service in the
21 SMU II building at the time of the incident. This would also be
22 the same area that Inmate Roosevelt Bryant worked in at the
23 time.

24 As the accuser stated in the 19-29A Form, Incident Report, that
25 he noticed Inmate Derrick Young..... standing in the lobby while
26 the other kitchen worker was working," as the accuser was
27 able to see the Appellant and Inmate Roosevelt Bryant,
28 Inmate Roosevelt Bryant would be able to see the incident,
29 thereby deeming Inmate Roosevelt Bryant a reliable witness.

30 Where Appellant submitted Inmate Roosevelt Bryant's
31 name as a witness in his favor, Counsel Substitute failed to
32 have Inmate Bryant at the hearing. Although Counsel Substitute
33 did question Inmate Roosevelt Bryant, Counsel Substitute failed
34 to articulate for the record the questions asked of the
35 witness.

1 This prejudiced Appellant because the questions could have been
2 answered in Appellant's favor. Yet, while Counsel Substitute failed
3 to articulate the questions for the record, this amounts to denial
4 of due process.

5 Where Appellant submitted Officer Greco name as a witness,
6 Counsel Substitute failed to have her present during the hearing and/or
7 question her. This prejudiced Appellant. Because according to accusers
8 Incident Report accuser stated: "Inmate Young stated 'A Done-
9 Fucking Told You What I Am Going To Do, I Am Not Going To Wait.'
10 Inmate Young was extremely aggressive at this point. It is an
11 issue for the court to consider, that where the accuser makes
12 the above allegation, "Did the Appellant raise his voice?"
13 If so, then could Officer Greco have heard this statement?"
14 Did Officer Greco hear Appellant raise his voice?

15 Where the Counsel Substitute failed to effectively cross examine
16 Officer Greco amounts to denial of due process and prejudiced
17 Appellant, cause it is not for Officer Greco to determine whether
18 such questions and info are relevant to the case. It is the
19 duty of the Counsel Substitute to ask the questions relevant
20 to the circumstances and the DHO to determine whether the
21 information brought forth thru cross examination is relevant
22 to the Appellant's innocence or guilt.

23 In regards to Officer Morgan, Appellant submitted
24 Officer's Morgan name as a witness in this case. Where Counsel
25 Substitute failed to get in contact with Officer Morgan or call
26 Morgan for questioning at the hearing, this amounts to denial
27 of due process and prejudiced Appellant, because Morgan
28 could have been cross examined about his "supporting report,"
29 against the allegations in the accuser's version of events, to
30 gather information relevant to the case.

31 The type of questions that could have been asked of Ofc. Morgan:
32 Where were you when you were called to put Appellant in
33 handcuffs? Couldn't Lt. Robertson have put the Appellant in
34 handcuffs himself? So why did Lt. Robertson call you to put
35 the Appellant in handcuffs? As Lt. Robertson called you and you
36 were able to hear him and to respond to his call, had

1 Appellant made any statement wouldn't you have been able to
2 hear any statement Appellant allegedly made? Did you hear
3 any statements from Appellant? What did inmate say?

4 Where due process allows for cross examining of witnesses,
5 Al-Shabazz, 529 S.F.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539,
6 363-72, 94 S.Ct. 2963, 2978-82 (1974), the failure of Counsel Substitute
7 to call and effectively cross examine the witnesses amounts to
8 denial of due process and prejudice, because the witnesses could
9 furnish information relevant to the determination of Appellant's
10 innocence, had they been effectively or just questioned at all.

11 5) Respondent deprived Appellant of state-created liberty
12 interest, without due process by imposing a loss of (48) days
13 of accrued good time.

14 Appellant contends that as a result of his conviction of
15 without proper due process, where the Appellant has forfeited
16 (48) days of accrued good time, the Respondent clearly deprived
17 Appellant of a state-created liberty interest, without
18 proper due process, as stated above in sections 1-5. Where
19 the State of South Carolina clearly has a created liberty
20 interest in good time credits, SC Code of Laws Ann., §
21 24-13-210, (Supp. 2006), for the Respondent to deny
22 Appellant due process at his hearing, then forfeit (48) days
23 of accrued good time, amount to deprivation of a state
24 created liberty interest, without proper due process.

Conclusion

25 Based on the foregoing reasons and authorities, Appellant
26 request that conviction of 809 be reversed and dismissed
27 and all sanctions imposed be reversed and restored immediately.

Date: April 10th, 2014

Respectfully Submitted

Derrick Young

Derrick Young, #273562
Evans Corr. Inst. / S M4-121
610 Hwy. 9 West

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Derrick Antron Young, # 273562,)	Docket No.: 13-ALJ-04-0809-AP
)	
Appellant,)	RESPONDENT'S BRIEF
)	
v.)	Honorable Deborah Brooks Durden
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>)	

STATEMENT OF THE CASE

1 This matter is before the Administrative Law Court ("ALC") pursuant to the
2 appeal of Derrick Antron Young ("appellant"), an inmate incarcerated with the South
3 Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on
4 April 20, 2013, challenging his disciplinary conviction for Threatening to Inflict Harm on
5 an Employee and/or member of the Public, 809, under SCDC Policy OP-22.14, Inmate
6 Disciplinary System. This grievance was investigated and denied. Appellant filed a Step
7 Two Grievance on May 18, 2013. This grievance was also investigated and denied.
8 Appellant now appeals, claiming his disciplinary conviction is the result of due process
9 violations. For the reasons that follow, SCDC respectfully requests the disciplinary
10 conviction be upheld.

STANDARD OF REVIEW

11 The ALC's jurisdiction to hear this matter is derived entirely from the decision of
12 the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742
13 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over
14 inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming,

1 as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP
2 (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to cases
3 in which inmates contend prison officials have erroneously calculated their sentences,
4 sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-
5 created liberty interest as punishment in major disciplinary hearings; or cases in which
6 inmates' confinement implicates a state-created liberty interest.¹ See Sullivan at 443, 586
7 S.E.2d at 127.

8 A reviewing court will not disturb findings of an administrative agency if those
9 findings are supported by substantial evidence on record as a whole. Pearson v. JPS
10 Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial
11 evidence" is evidence which, considering the record as a whole, would allow a
12 reasonable mind to reach the same conclusion that administrative agency reached.
13 Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App.
14 1996). The possibility of drawing two inconsistent conclusions from the evidence does
15 not prevent an Administrative Agency's finding from being supported by substantial
16 evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).
17 Administrative agencies are afforded wide latitude in making decisions, as shown in the
18 deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Service
19 Commission of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

¹ As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

ARGUMENT

1 **APPELLANT WAS AFFORDED DUE PROCESS**

2 Prison disciplinary cases are not criminal trials in federal or state courts; they are
3 administrative hearings in an institutional setting. Therefore, Due Process in prison
4 disciplinary hearings is substantially less than in a trial before a court. Due Process, as
5 the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963,
6 2978-2982 (1974), requires the following in prison disciplinary cases:

- 7 a) notice of charges;
- 8 b) disclosure of evidence against defendant (may be limited);
- 9 c) opportunity to be heard;
- 10 d) no right to confront and cross-examine adverse witnesses;
- 11 e) neutral and detached hearing body;
- 12 f) aid of counsel substitute or other substitute aid where inmate is
13 illiterate or complex case (not attorney);
- 14 g) written statement by the fact-finder as to the evidence relied upon.
 (g) call witnesses p. 2979

15 These requirements were complied with in this appeal. The Disciplinary Report
16 and Hearing Record shows Appellant had notice of the charges (Threatening to Inflict
17 Harm on an Employee and/or member of the Public), disclosure of evidence
18 (Disciplinary Offense Report was read), opportunity to be heard (hearing on April 16,
19 2013), a neutral and detached hearing body (hearing officer), and a written statement of
20 findings (Major Disciplinary Report and Hearing Record).

21 There was ample evidentiary support for the disciplinary conviction. Lieutenant
22 Robertson reported that when he arrived at the Special Management Unit II, he observed
23 Appellant standing in the lobby while the other kitchen worker was working. Lieutenant
24 Robertson gave Appellant a directive to sit down on the bench until he could be escorted
25 off the unit. Appellant became aggressive and did not comply. Due to his behavior,
26 Appellant was cuffed. Appellant subsequently lunged at Lieutenant Robertson in such a
27 threatening manner that he had to be placed on the ground until Second Responders could

1 come and assist. Officer Morgan was also present during the incident, and he reported
2 that Appellant both verbally and physically threatened Lieutenant Robertson. It was
3 Officer Morgan that cuffed Appellant and subsequently placed him on the ground.
4 During the hearing, the hearing officer read the definition of the charge which includes
5 communications, verbal or written by an inmate to an individual that he or she intends to
6 injure that person or commit a violent or unlawful act dangerous to human life. After
7 hearing all of the evidence presented, the disciplinary hearing officer found Appellant
8 was guilty based on Lieutenant Robertson's and Officer Morgan's reports. See
9 Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445,
10 455-56 (1985) ("The relevant question is whether there is any evidence in the record that
11 could support the conclusion reached by the disciplinary board.")²

12 Therefore, because the disciplinary hearing complied with due process
13 requirements, SCDC respectfully requests its final agency decision be upheld.

14 **RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED**
15 **BY SUBSTANTIAL EVIDENCE**

16 The record conclusively establishes that the "substantial evidence on the whole
17 record" supports SCDC's final agency decision. The hearing officer found Appellant
18 guilty based on the evidence. Appellant cannot show that the decision of SCDC was
19 clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the
20 substantial evidence on the whole record. See Porter v. Public Service Comm'n, 333
21 S.C. 12, 507 S.E. 2d 328 (1998).

² In Hill, the Court further elaborated, "The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context." Id. (citations omitted).

CONCLUSION

1 Based on the foregoing reasons and legal authorities, SCDC respectfully requests
2 that the final agency decision be affirmed and this matter be dismissed with prejudice.

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: Shanika Johnson
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1943

May 13, 2014
Columbia, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Derrick Antron Young, #273562

Appellant,

v.

South Carolina Department
of Corrections,

Respondent.

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

REPLY BRIEF - FOR
APPELLANT

Honorable Deborah Brooks Durden

STATEMENT OF THE CASE

1 This matter is before the Administrative Law Court (ALC)
2 pursuant to the appeal of appellant, Derrick Antron Young, incarcerated
3 in the South Carolina Department of Corrections (SCDC). On April, 20th,
4 2013, the appellant filed a grievance (Step One), challenging a
5 disciplinary conviction for "Threatening to Inflict Harm on an Employee
6 and/or Member of the Public," (809), under SCDC Policy OP-22.14,
7 Inmate Disciplinary System. This grievance was denied. Appellant
8 then filed a Step Two Grievance on May 18, 2013, this grievance was
9 investigated and denied. The Appellant furthers his appeal,
10 maintaining that the disciplinary conviction was the result of
11 violations of his due process rights. Now comes Appellant
12 with reasons as follows, in continuance to his original brief,
13 to support his appeal.

1) Respondent deprived Appellant of a state-created liberty interest without proper due process, by imposing the loss of (48) days of accrued good time.

ARGUMENT

3) Respondent denied Appellant proper due process where Disciplinary Hearing Officer Turner interrupted Appellant and cut off Appellant from speaking in his defense to the disciplinary infraction allegations, thereby denying Appellant the opportunity to present his defense and evidence to support his defense. (Please see pg. 4 of the transcript which was included in the Record on Appeal), and the ALJ will see where the Appellant states to the Disciplinary Hearing Officer Turner: "I ain't finished Turner," directly stating and implicating that the Appellant had not finished his presentation. The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. Art. I, § 22; Stono River Envtl. Protection Ass'n v. South Carolina Dept. of Health and Envtl. Control, 305 S.C. 90, 406 S.E. 2d 340 (1991).

14 Due Process in prison disciplinary cases as the Supreme Court has noted in Wolff v. McDonnell 418 U.S. 539 566 94 S.Ct. 2963 2972-2974 (1974), requires the following: a) notice of charges; b) disclosure of evidence against the accused inmate; c) opportunity to be heard; d) right to be heard; e) neutral and detached hearing body; f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case; (g) written statement by the fact-finder as to the relied upon; f) call witnesses.

21 Where the Respondent has denied the Appellant the opportunity to present his defense and evidence to support his defense, the Respondent has violated the Appellant's due process rights. Ordinarily, the right to present evidence is basic to a fair hearing; Wolff at 2979. Apparently an inmate is also constitutionally entitled to a hearing and an opportunity to speak in his defense; Wolff at 2987.

26 Where Disciplinary Hearing Officer Turner denied Appellant the opportunity to present his defense and evidence to support his defense, the Hearing Officer was not neutral and detached, in capacity, to treat this matter with fundamental fairness and arrive at a just decision, as required in the course of due process as the Supreme Court has noted in Wolff at 2978-2982.

31 Is the Respondent's final agency decision supported by substantial evidence? As the Appellant has noted in his original brief, the

1 and the Appellant has asserted that he never made a verbal threat
2 towards the accuser. In the "Incident Report, (19-29A Form)," the accuser
3 specifies what he alleges the Appellant stated at the time of the alleged
4 incident; the elements of the disciplinary infraction, "Threatening to
5 Inflict Harm on an Employee and/or Members of the Public: Communicated
6 verbal or written by an inmate to an individual that s/he intends to injure
7 that person or commit a violent or unlawful act dangerous to human life,
8 presently or in the future; or one who commits a physical act of a threatenin
9 nature, and the act places the individual in fear of bodily injury," under
10 SCDC Policy OP-22.14, Inmate Disciplinary System. Appellant asserts
11 that what the accuser specifies the Appellant stated in the "Incident-
12 Report" does not constitute a verbal or communicated threat. Appellant
13 ask the ALC to carefully review the "Incident Report."

14 Where SCDC's attorney's argue on page 4 of Respondent's Brief that
15 Officer Morgan was also present during the incident and he reported that Appellant
16 both verbally and physically threatened Lieutenant Robertson, "Appellant asserts
17 that the Incident Report and Supporting Report were fabricated, and that where
18 the accuser specifies what the Appellant stated in the Incident Report, had there
19 been a verbal threat the accuser would have articulated specifically what
20 the Appellant stated. Where Officer Morgan generally states that the "Appellant
21 verbally and physically threatened Lieutenant Robertson," Appellant asserts that
22 just as the accuser did not specify an articulated threatening statement made
23 by the Appellant, because the Appellant never made a threatening statement.
24 This portion of Appellant's argument shall serve to dissolve the notion that a
25 a verbal threat was made.

26 In accuser's "Incident Report" as well as Officer Morgan's "Supporting-
27 Report," that Officer Morgan cuffed the Appellant is an issue agreed upon by the
28 accuser, Officer Morgan, and the Appellant. As to the reasons for which the
29 accuser states he had Officer Morgan cuff the Appellant, disagrees the
30 Appellant. The think it relevant for the ALC to ask, "if the Appellant was
31 allegedly aggressive to the point that the Appellant had to be cuffed, then it
32 would have been necessary to consider, that where the accuser asserts that
33 he had Officer Morgan cuff the Appellant, why would the accuser call
34 Officer Morgan and wait for Morgan to come and cuff Appellant? When, if
35 the Appellant was aggressive as the accuser alleges, the accuser had all
36 reason and authority to do it himself.

37 Appellant asserts that where all parties agree that the Appellant was
-25-38 cuffed the Appellant was confined in restraints and that the Appellant wa:
39 not a threat; and that where the accuser and Officer Morgan alleges the
40 ALC to carefully review the "Incident Report" and the Accusor's Report that he did not and

1 could not have placed anyone in fear of bodily injury or harm for he was
2 restrained in cuffs. This portion of the Appellant's argument serves to dissolve any
3 remaining elements that the Appellant made a threat.

4 As regards to the "Supporting Report" by Officer Morgan, where the shift
5 supervisor made a comment, signed, and dated the report; it was not graded, signed,
6 or dated in the section for the "Major/Responsible Authority," this report is actually
7 unauthorized by that fact. It should not have been allowed as evidence,
8 because it is an unauthorized report.

9 2) Where the Respondent denied the Appellant due process as stated
10 above, the Respondent also deprived the Appellant of a state-created liberty
11 interest, by way of denial of due process. As a result of the Appellant being convicted
12 of the said disciplinary infraction, without due process, the Appellant has forfeited
13 (45) days of good time. This amounts to deprivation of a state-created liberty
14 interest, (see S.C. ANN. § 24-13-210).

Conclusion

15 Based on the foregoing reasons and legal authorities, in conjunction
16 with the Appellant's Original Brief Appellant respectfully requests that
17 his conviction be reversed and all sanctions imposed be reversed and
18 restored immediately.

May 22nd, 2014

Respectfully and Humbly submitted

Derrick Young
Appellant

FILED

MAY 28 2014

SC ADMIN. LAW COURT

Derrick Young, #273562
Evans Corr. Inst. / F.H.A-253
P.O. Box 2951202
Bennettsville, SC 29512

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Derrick Young, #273562
Appellant,

v.

South Carolina Dept. of
Corrections,
Respondent.

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

SEPARATE STATEMENT
OF FACTS

Honorable Judge Deborah B. Burden

1 Now comes the Appellant with request to present belated
2 Separate Statement of Facts. While the Appellant moves to have
3 this motion and exhibits to support this motion, also supportive of
4 Appellant's Statement of Case in Appellant's Original Brief filed with
5 the court on April 21, 2014, Appellant would have the court know that
6 due to his circumstances within the institution, whereas Appellant
7 was on lock-up, that Appellant was unable to include the following
8 exhibits and now request the court to consider the supportive
9 value in considering Appellant's case.

10) Exhibit No. 1: Is a grievance filed by Appellant immediately
11 after this incident occurred on March 26th, 2013. This grievance is
12 totally separate from Appellant's appeal from the agency's decision,
13 finalizing the appeal process at the institutional level. Yet Appellant
14 moves to have this grievance to support his version of the events
15 presented to the court in the Statement of Case in Appellant's
16 Original Brief. This would assist the court with insight into the
17 background of the case.

FILED

JUN 03 2014

SC ADMIN. LAW COURT

Honorable Judge Deborah B. Durden
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Ste 224
Columbia, SC 29201

June 2, 2014

Dear Judge Durden: I am submitting a belated "Separate Statement of Facts" requesting that the motion and Exhibits be considered in deciding the matter at hand, to support the Appellant's Statement of Case and Argument in the Appellant's Original Brief and Reply-Brief. I am sending the Respondents a copy also. I also have enclosed a self-addressed stamped envelope, please send me a clocked-copy of the document and response to inform me whether the document will be considered in support of my issues in my Argument & Statement of Case. Your time is appreciated. Sincerely,

D. Young

Mr. Derrick Young, #273562
Evans Corr. Inst. / F-4-A-253
P.O. Box 2951202
Bennettsville, SC 29512

FILED

JUN 03 2014

SC ADMIN. LAW COURT

1) Exhibit No. 2: Is a Self-Ascribed Affidavit notarized/verified by
2 Perry Correctional Institutions notary and mailed to a regional
3 Magistrate Judge and Sheriff, in an attempt to have action take on
4 behalf of the Appellant, prior to Appellant being charge with an
5 disciplinary infraction. This exhibit further supports and corroborates
6 the Appellant's Statement of Case in his Original Brief and
7 throughout adjudication of the instant case.

8) Exhibit No. 3: Is a retelling of Exhibit No. 1, improperly and
9 unjustly unprocessed and denied. This exhibit reiterates the
10 Appellant's Statement of Case.

11) Exhibit No. 4: Is a "Request To Staff Member," 19-11, SCDC Form,
12 described by the Appellant, seeking to understand why he did
13 not receive a copy of the "Supporting Report," prior to the hearing.
14 This would serve to support section (D) of Argument in Appellant's
15 original brief. Which would be a violation of Appellant's due
16 process rights as noted by the Supreme Court in
17 Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974),
18 disclosure of evidence against an inmate in prison disciplinary
19 cases is a requirement.

20) Exhibit No. 5: Is a correspondence drafted by the Appellant
21 to the Division of Investigations, a department within SCDC,
22 that investigates conduct of the population of inmates, as well as
23 the prison staff. This letter was responded to by
24 Inmate Grievance Branch Chief, Ann Hallman in the negative.
25 This exhibit further corroborates Appellant's Statement of Case
26 in his Original Brief in an attempt to have something done
27 on behalf of Appellant.

PLEASE SEE PREVIOUS PAGES FOR RESOLUTION. **SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Darrick Young
 SCDC NUMBER: 273562
 INSTITUTION: Perry Correctional Inst. APR 02 2013
 HOUSING UNIT: SMU-B-Dorm-X-17
 WORK ASSIGNMENT: N/A

Office Use Only
 Grievance No. FC-0795-1
 Code: General UC-15
 Policy _____
 Disc. Hear. _____
 Class. APR 03 2013
 Date Received _____
 IGC Initials _____

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
 1 On March 26th, 2013, after reporting to work in SMU^s D-Dorm
 2 Kitchen (morning shift) at approximately 6:30 A.M., I, Mr. Derric
 3 Antrop Young, began to start to prepare and complete duties when
 4 myself and then co-worker/fellow inmate Roosevelt Bryant began to argue
 5 and disagree about duties and order which to perform them. Roosevelt-
 6 Bryant then stated "You can just sit down and stay out my way or leave." Reaching my coat
 7 from coat rack in kitchen and putting it on, I was approached by white male
 8 officer (now known to me as Lieutenant Robertson) whom walked directly from
 9 Control Booth half up hallway which leads directly to SMU^s D-Dorm kitchen
 10 stating to me "Did you just come in?" I replied "Yeah, I'm ready to go too,
 11 cause me and this man here can't work together without arguing." Continued

12 ACTION REQUESTED: Grievant request that IGC investigate all individuals mentioned in narrative of grievance. Grievance shall be processed according to SCDC Policy/Procedure GA-01.12, -
 13 in narrative of grievance. Grievance shall be processed according to SCDC Policy/Procedure GA-01.12, -
 14 Inmate Grievance System October 2, 2010 § 3; 7.1; 7.2; 10.5; 15. Reserving any that may apply
 15 in addition to general policies/procedures of GA-01.12, "Inmate Grievance System". Due to
 16 restriction grievant reserves right of applicability of SCDC policy/procedure "Use of Force"
 17 policy. Speak with Major Early concerning informal resolution D. Young

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
 Staff of SMU ~~have claimed to have no R.T.S. forms recently, so grievant had family contact with Major Early~~ 3.7.4.2.2013
 Major Early was contacted and informed of issue via grievant's parents. Major Early informed grievant's family that he would look into issue and speak with officers, as well as grievant, this occurred 4.3.2013. Major has not ~~made contact with grievant as of yet~~ 4.5.2013. Grievant Signature Darrick Young Date 4.1.2013

ACTION TAKEN BY IGC:
 You have failed to state how you attempted to resolve this issue with an **INFORMAL RESOLUTION** through the appropriate staff supervisor(s) prior to filing this grievance. You must make contact either verbally - or - by Request To Staff and **WRITE DOWN:**

1. The Date
2. Supervisor's Name (with Rank/Title - If possible)
3. Their Response

Officers/Staff are not required to contact supervisors for this attempt. I recommend you contact Cpt. Miller via R.T.S. You may re-file on a new grievance form within 5 days. You **must** return a copy of this grievance when re-filing (otherwise it will appear to be a duplicate and denied as such). DUE BY 4/09/13.

Ms. Johnson APR 04 2013
 IGC Signature Date

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

1 STATE GRIEVANCE [CONTINUANCE]: and disagreeing
2 about working. I need to talk to the Food Service Supervisor.
3 Lieutenant Robertson then stated "You ain't going nowhere, but to work
4 in that kitchen." I then stated, "Man, I'm not about to continue to
5 keep trying to work with some body I can't agree with and argue
6 with all the time about this kitchen." Lieutenant Robertson stated
7 "We will see about that." And began walking towards the control
8 booth stating "Ms. Greco give me a pair of handcuffs."
9 "Corporal Morgan put these handcuffs on him." A black, male
10 officer (now known to me as Corporal Morgan) approached me
11 stating "Put your hands behind your back." Complying with
12 directive I was placed in handcuffs by Corporal Morgan.
13 Standing at control booths entrance Lieutenant Robertson stated
14 "Going to tell me what he gonna do, now I'm telling you, your going to be
15 on the other side of this sliding door in SMU, just shut the fuck up."
16 Provoked by officer Lieutenant Robertsons unprofessionalism I
17 stated in return "You shut the fuck up." Lieutenant Robertson then
18 gave Corporal Morgan an order stating "Take him down Morgan."
19 Corporal Morgan then clipped me up with his leg and threw me to
20 the ground, landing on my left side, Corporal Morgan then knelt
21 down and turned me facedown onto my stomach and put his knee
22 in my back. I was lying facedown head turned to my right side. I
23 was punched in my face knocking my glasses off of my face. I was
24 punched in the face maybe four or five more times. Some one then
25 grabbed my head slamming my face down on the floor stating "what you
26 got to say now?" Whom I recognized as Lieutenant Robertson. I heard
27 somebody enter the SMU as I was lying there on the floor of the
28 lobby. I heard Lieutenant Robertson state "He already cuffed just-
29 get the some leg restraints." Leg restraints was placed on my legs.
30 I was picked up off the lobby floor and escorted to
31 X-wing shower (left shower when entering X-wing). He rained in
32 X-wing shower for some time prior to being visit by a nurse-
33 Wagner. Was later escorted to SMU's B-Dorm. faced in shower
34 (left hand shower upon entering X-wing), remained in shower
35 some time prior to being placed in X-wings shower of B-Dorm.
36 Officers Lieutenant Robertson violated grievants constitutional
37 rights (U.S. Constitution 8th Amendment); Corporal Morgan initiated
38 constitutional violations (U.S. Constitution 8th Amendment) by taking orders
39 from Lieutenant Robertson. Constitutional rights of Institutionalized Person
40 shall not be violated even under surveillance. Civil Rights of

Exhibit # 141
142

... shall apply to
... shall

7-5.
Derrick Young
Perry Corr. Inst. / M.U. B. Dorm X-17
McLure Street
Greenville SC 29601

Dear Magistrate Garrison:

1 My name is Derrick Young. I'm currently incarcerated at
2 Perry Corr. Inst. I would like to report details of an
3 Assault & Battery that was committed by two correctional officers
4 against myself. I would like to file charges against these
5 two officers mentioned in attached affidavit. I would like
6 to submit to polygraph testing also requiring the two
7 correctional officers be submitted for polygraph testing.
8 Any efforts to contact me, please see mailing address below.
9 I will be looking forward to your response as to the
10 handling of this issue. Could you please forward
11 additional affidavit to Deputy. Your time and effort
12 is greatly appreciated.

Derrick Young #273562
Perry Corr. Inst. / M.U. B. Dorm X-17
430 Oaklawn Rd.
Greenville SC 29669

Exhibit #2

Deputy Sheriff Steve Loftis
Greenville County Law Enforcement Ctr. / Police Dept.
McLee Street
Greenville SC 29601

4-5-2013

Dear Deputy Loftis:

1 My name is Derrick Young. I'm currently incarcerated at
2 Perry Corr. Inst. I would like to report details of
3 Assault & Battery that was committed by two correctional
4 officers against me. I would like to file charges against these
5 two correctional officers mentioned in attached and
6 notarized Affidavit. I would like to submit myself to
7 polygraph also requiring officers submit for polygraph
8 testing. Any efforts to contact me, please see mailing
9 address below. I will be looking forward to your
10 response as to handling of this issue.

Derrick Young, #273562
Perry Corr. Inst. / S.M.U. B. Dorm X-17
430 Caklawn Rd.
Pelzer SC 29667

Exhibit #2

Deputy Sheriff
Steve Loftis

-33- In March 26th, 2013 Lt. Derrick Young was escorted
2 by a Lieutenant Cashwell to SMU. As I reported to work
3 in SMU's D. Dean Kitchen, I began to prepare for work
4 when myself and fellow inmate/co-worker Roosevelt Bryant
5 began arguing about duties and order in which to perform
6 them. Roosevelt Bryant then stated "You can just sit down
7 and stay out my way or leave." I then reached my coat
8 from the coat rack, putting it on.

9 A Lieutenant Robertson then walked half way up
10 hall way from SMU's Control Booth to SMU's Kitchen
11 stating "Did you just come in?" I replied "Yeah, I'm
12 ready to go too, I need to talk to the Kitchen
13 Supervisor, me and this man can't work together."
14 Lt. Robertson then stated "You ain't going nowhere, it
15 only place you going is to work in that kitchen."
16 I then stated "I'm ~~not~~ not about to continue to
17 keep trying to work with somebody I have to
18 argue with and have disagreements with." Lt. Robertson
19 then walked off to control booth stating "Ms. Tyreco
20 give me a pair of handcuffs." Morgan put these
21 handcuffs on him." A black male correctional officer
22 stating "Put your hands behind your back." Complying
23 with directive I was placed in handcuffs.

24 Lt. Robertson was standing at entrance of control
25 booth while stating "Gonna tell me what he gonna do
26 now you gonna be on the other side of this sliding
27 door in 15 M.V. talking bout what you gonna do, man
28 shut your shut the fuck up." Provoked by officers
29 unprofessionalism, I then stated "You shut the fuck
30 up." Lt. Robertson then stated "Take him down Morgan."
31 Morgan then placed me down with his leg, I heard

1 me to the ground, landing on my left side,
2 Corporal Morgan knelt down over me turning me on
3 my stomach. My face was turned to my right side.
4 I then felt someone punch me in my face knocking
5 my glasses ~~to~~ off of my face. I was then punched
6 five more times. Someone then grabbed my head
7 picking it up and slamming it back to the floor, stating
8 "what do you got to say now?" Whom I recognized to
9 Lt. Robertson. I then heard someone enter front
10 door of JMU as I was pinned against lobby floor.
11 Lt. Robertson then stated "We got him cuffed, just get
12 some leg restraints." Leg irons were then placed on my
13 legs. I was picked up off of lobby floor by
14 Lt. Robertson and Corporal Morgan and escorted to
15 B. Dorn's X-wing (left hand shower of entering X-wing).
16 Some time later I was seen by a nurse. I was then
17 escorted to B. Dorn, housed in cell #17 of X-wing.

Derrick Young

Subscribed to or Affirmed before me
this 10th day of April, 2011
P. Williams
Notary

Exhibit #2

4-20-2020

My Commission Expires

1513

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Derrick Young
 SCDC NUMBER: 273562
 INSTITUTION: Perry Corr. Inst.
 HOUSING UNIT: SMU B Dorm X 17
 WORK ASSIGNMENT: NA

~~REFILE~~

Office Use Only
 Grievance No. PCI 3627
 Code: General UC-1
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received APR 11 2013
 IGC Initials _____

APR 10 2013 PB

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

1 After reporting to work in SMU B Dorm Kitchen (morning shift) at
 2 approximately 6:30 A.M., I, Mr. Derrick Antrun Young began to prepare
 3 for work when myself and fellow inmate/co-worker Roosevelt Bryant
 4 began to argue and disagree about work duties and order to perform
 5 Roosevelt Bryant then stated "You can just sit down and stay out of my way or leave
 6 Reaching my coat from coat rack and putting it on, I was approached by 3rd
 7 male officer (now known to me as Lieutenant Robertson) whom I walked directly from
 8 control booth half up hall way which leads directly to SMU B Dorm Kitchen
 9 stating "Did you just complain?" I replied "Yeah, I'm ready to go too, cause me and
 10 man here can't work together without arguing - [Continuance Attached]

11 ACTION REQUESTED: Grievant request IGC investigate individuals mentioned in
 12 narrative of grievance. Grievance shall be processed according to "GA-01.12, Inmate
 13 Grievance System," October 1, 2010, § 3; 7.1; 7.2; 10.5; 15. Reserving any section(s) that
 14 may apply. Due to restriction grievant reserves right of applicability of SCDC Pol.
 15 "Use of Force Policy. Speak with Major Early to confirm internal resolution.

16 SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
 17 Major Early was contacted and informed of incident by grievant's family
 18 on 4.3.2013. Major Early informed grievant's family that he would look
 19 into issue. And speak with officers as well as grievant. Grievant has no
 20 heard anything from Major Early by date of signature below. SMU staff
 21 claim to have no "Request To Staff" forms, so
 22 grievant's family contacted Major Early.

Derrick Young 4.8.2013
 Grievant Signature Date

23 ACTION TAKEN BY IGC:

24 Per GA-01.12 Inmate Grievance System, a grievance will be considered abandoned if the inmate
 25 refuses to follow through with the IGC's recommendations within five (5) days after the return of the
 26 inmate's unprocessed grievance. Therefore, this grievance is being returned closed/unprocessed due
 27 to your failure to follow through with the instructions of the IGC and failure to refile with corrections
 28 by 4/09/12.

Ms. Johnson APR 15 2013
 IGC Signature Date

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

Exhibit #3 -35-

1. WITNESS GRIEVANCE [CONTINUANCE]: and I was

2 working. I need to talk to the Food Service Supervisor. Lieutenant Robertson then
3 stated "You ain't going nowhere out to work in that kitchen." I then stated
4 "Man, I'm not about to continue to keep trying to work with some body I
5 can't agree with and argue with all the time about this kitchen." Lieutenant -
6 Robertson then stated "We will see about that." And began walking towards
7 the control booth stating "Ms. Greco give me a pair of hand cuffs."
8 Corporal Morgan put these hand cuffs on him. "A black, male, officer
9 (now known to me as Corporal Morgan) approached me stating "Put your
10 hands behind your back." Complying with directive I was placed in
11 hand cuffs by Corporal Morgan. Standing at Control Booth's entrance Lieutenant Roberts
12 stated "Going to tell me what he gonna do, now I'm telling you, your going to be on the oth
13 side of this sliding door in SMU, just shut the fuck up." Provoked by officers unprofessio
14 nality I stated in return "You shut the fuck up." Lieutenant Robertson then gave Corporal Mo
15 rgan order stating "Take him down Morgan." Corporal Morgan slipped me up with his le
16 ft and threw me to the floor, landing on my left side, Corporal Morgan knelt down over
17 me turning me on to my stomach and put his knee in my back. I was lying facedown
18 head turned to my right side. I was punched in my face knocking my
19 glasses off my face, then followed by four or five more punches. Some one
20 then grabbed my head slamming my face down to the floor stating "What you
21 got to say now?" When I recognized as Lieutenant Robertson. I heard
22 some one enter the SMU as it was perped against lobby floor. Lieutenant -
23 Robertson then stated "He already cuffed, just get me some leg restraints."
24 I was picked up off of lobby floor and escorted to SMU's (D. Don's) X-
25 shower (left shower upon entering X-wing). Remained in shower around 2 1/2 hour
26 before I was seen by nurse. Eventually I was later escorted to
27 SMU's B. Don. Placed in left hand shower upon entering X-wing prior to being
28 placed in cell #17 around 2:40 P.M. Officers violated grievant's
29 constitutional rights by throwing me to floor and punching me in my face
30 Constitution rights of institutionalized persons shall not be violated even
31 under a monument. Civil Rights of Institutionalized Persons Act 42 U.S.C should apply
32 United States Constitution Eighth Amendment should apply. SLOC Policy/Procedure
3 "Use of Force" Policy should be reserved for accountability.

NORTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

RECEIVED

TO: NAME: <i>Ms. W. Golden</i>	TITLE: <i>Lieutenant (Recorder)</i>	DATE: <i>6-9-2013</i>	<i>JUN 12 2013</i>
INMATE'S NAME: <i>Mr. Derrick Young</i>		SCDC#: <i>273562</i>	DISCIPLINARY:
INSTITUTION: <i>Ferry Correctional Inst.</i>		LIVING QUARTERS: <i>S.M.I. Box 17</i>	

1 Lt. Golden, I spoke to you on 6-6-2013,
 2 you instructed me to write you a request to a staff
 3 member form. The matter at hand was the "incident
 4 reports" that was served to me on 4-12-2013, for the
 5 charge of "809: Threatening to Inflict Harm", by
 6 charging officer Lt. J. Robertson. At the time you served
 7 me the charge the only ~~incident~~ incident report you
 8 had to serve me was from Lt. J. Robertson.
 9 On 6-6-2013, you said "the only paperwork
 10 you serve is what they give you to serve. At the
 11 disciplinary hearing on 4-16-2013, a supporting incident
 12 report was entered into the record (by an Ofc. Morgan
 13 I'm wondering why I did not receive this report,
 14 apparently you did not have one either, please help me
 15 understand this issue. Thank You, D. Young

DISPOSITION BY STAFF MEMBER:
 16 Mr. Young, I am answering on behalf of Lt. Golden
 17a I provide her with the papers to serve - this can only have
 18 the Report from which the charge arose. Any supporting
 19 evidence is given to counsel substitute who is able
 20 to show it / read it to you. You are entitled to at least
 21 hear about ~~the~~ all the evidence against you - the only
 22 evidence you can't see or hear is restricted material, but

DATE: <i>6/12/13</i>	SIGNATURE: <i>Counsel Substitute does have the</i> <i>Palmer</i>
-------------------------	---

Exhibit #4-37-

6-16-2013

South Carolina Dept. Corr.
Dept. of Investigations
P.O. Box 21787
Columbia, SC 29221-1787

RECEIVED

JUN 20 2013

INMATE GRIEVANCE

RE: Investigative Memorandum, dated
May 31, 2013.

1 Division of Investigations, I received the memo
2 addressed to me, which made reference to a complaint from
3 SLED Senior Agent, J. Kindley, on behalf of Judge Garrison.
4 I signed and dated the memo, in agreement with the memo.

5 At the bottom of the memo, the last sentence, says that
6 "I should go through the proper channels within SLED for action on
my complaints, such as staff requests and grievances." I want to
inform you all that I had pursued grievances in an attempt to
resolve my issues thru SLED, yet my grievances was improperly
handled and processed, excuse me, unprocessed. Please see
grievances which I have attached, I also sent a copy of these
grievances to Judge Garrison. I GL Johnson alleges she
returned my grievance to me unprocessed because I failed to
attempt an informal resolution.

7 Yet, per GA 11.12, Inmate Grievance System, sections 13.2
8 and 15, any "Grievances alleging criminal activity" will be immediately
referred to Chief/Designee, Inmate Grievance Branch for possible
investigation by the Division of Investigations. Although policy
has been revised, my grievance was filed on 4-1-2013, and
changes and amendments were not effectuated until April 30,
2013, upon policy change memorandum being issued to
general population here at Perry Correctional Instit-
tion

1 I am requesting that my grievance be reconsidered
2 to be processed according to policy/procedures prior to
3 policy change memorandum dated April 30, 2013,
4 for my grievance was filed April 1, 2013, (see attached
5 grievances to verify). Your time and effort is appreciated
6 I will be looking forward to your response.

7
8 Mr. Derrick Young.
Mr. Derrick Young

9 Mr. Derrick Young, #273562; Perry Corr. Inst./
10 S.M.U. B.X. 17
11 430 Oaklawn Rd.
12 Pelzer, SC 29669

13 Your grievances PCI-0778-13 and PCI-0862-13
14 were unprocessed appropriately and
15 will not be re-opened. You need to
16 refer to GA-01.12 for the proper
17 procedure on filing grievances

7.22.2013 Ann Hallman

cc: Inmate

ANN HALLMAN
INMATE GRIEVANCE
BRANCH CHIEF

1 disciplinary detention, and there could be further loss of good time in the case. Do you
2 understand this?

3 I/M: Um hm.

4 DHO: To the offense of 809-Threatening to Inflict Harm on or Assaulting an Employee or
5 Members of the Public, how do you plead?

6 I/M: Not guilty.

7 DHO: This is your opportunity to tell us why you feel you're not guilty.

8 I/M: Um, the truth of the matter is, they fabricated the Incident Report. I never...I never
9 actually threaten him. You can see through Lieutenant Robertson. I never...I...he fabricated
10 the Incident Report to begin with, but I never said anything threatening...of a threatening
11 nature.

12 DHO: Counsel, do you have anything on behalf of the accused?

13 I/M: Uh, I ain't...I ain't finished, Turner.

14 DHO: Well sir, that's the only thing that's relevant here. Whether or not you threatened him
15 or not and you have claimed that you did not threaten him.

16 I/M: I never received a...a 19-67 S...SMU PHD Form.

17 DHO: That's not an issue for me, sir. That may be a grievable issue, but that's a separate
18 issue all together. It doesn't effect what I do in this hearing one way or the other.

19 I/M: I...I also...what about...what about my witnesses?

20 DHO: I have no witness for you, sir. You've got a Counsel Substitute rep...representing
21 you. That's why I went to him.

22 I/M: Did you get in contact with the witness? What's...

1 C/S: Once you go...you gonna let me f...start? Um, I did talk with Officer Greco. Um,
2 she said she didn't have anything relevant to the case. I did not get in contact with Officer
3 Morgan. I did talk with the, um, Inmate Roosevelt Bryant. Um, he answered no to your
4 questions. He...he said he didn't want to get involved in the incident and all he saw was you
5 being escorted out in handcuffs.

6 I/M: Uh, how come I never received a...a copy of Officer Morgan report. I never received
7 a copy of that.

8 DHO: Do you have anything else, Counsel?

9 C/S: No sir.

10 DHO: With that understanding, the information that will be used to support the charge
11 against you is: the Incident Report, previously read into the record; uh, the Supporting Report
12 of Officer Morgan. Uh, I have provided you the opportunity to make a statement, present
13 evidence, call witnesses on your behalf and I am prepared now to recess this hearing and
14 arrive at a decision. If you'll step acrossed, I'll be with you shortly. Restate your name and
15 SCDC Number, please.

16 I/M: Derrick Young, 273562.

17 DHO: Inmate Young, I have found you guilty of the offense that was brought against you
18 today. The information that was used to arrive at this decision is: the Incident Report,
19 previously read into the record; the Supporting Report of C/O Morgan. Sanctions that have
20 been imposed: 180 days disciplinary detention; 360 days canteen; 360 days telephone; 360
21 days visitation; 48 days loss of good time. You do have the right to appeal the sanctions
22 portion of the charge and the determination of guilt. The manner in which you do so, is you
23 file an SCDC Form 10-5. That is a Step 1 Grievance Form with the Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution/Center: <i>Prison Correctional Institution</i>					
Date of Report: <i>March 26, 2013</i>			Time of Report: <i>11:00 AM Approximately</i>		
Reporting Official: <i>Officer John Chapman #051903</i>			Date of Incident: <i>March 26, 2013</i>		
Location of Incident: <i>Sub B</i>			Time of Incident: <i>6:00 AM Approximately</i>		
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. <i>Derick Young</i>	<i>273562</i>	<i>N/A</i>	<i>B</i>	<i>M</i>	1. <i>Officer Chapman</i>
2.					2. <i>Officer Robertson</i>
3.					3. <i>Officer Boatwright</i>
4.					4.
5.					5.

1 On the above date and approximate time: *Officer John Chapman #051903 was called to*
 2 *Restrain inmate Young, Derick #273562 by Lt. Robertson. As inmate Young was restrained*
 3 *he began verbally threatening Lt. Robertson and lunged at him. Officer Chapman*
 4 *placed inmate Young on the ground using minimum amount of force necessary to*
 5 *gain control. Lt. Robertson assisted and notified Second Responders. Officer*
 6 *Boatwright responded and Lt. Officer Chapman, Lt. Robertson, and Officer Boatwright*
 7 *escorted inmate to X-wing. Sheriff's force Wagner assessed inmate Young.*

Signature: *Officer John Chapman #051903*

Evidence:

Witness(es):

Supervisor's Comments: *R.I.C. to DH*

Signature: _____ Title: *CPT* Date/Time: *3-26-13*

Major / Responsible Authority: *616 p.m.*

Signature: _____ Title: _____

STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Action Taken

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

-43-

Page 1 of 1.....

#UB = 4/3/13 (4/23/13)

Institution/Center: 3-26-13		Time of Report: 4:58 PM	
Date of Report: 3-26-13		Date of Incident: 3-26-13	
Reporting Official: LT Robertson		Time of Incident: 6:00 AM	
Location of Incident: SMU II Lobby		Employee(s) Involved:	
Inmate(s)/Resident:	SCDC#	Age	Race Sex
1. Young Derrick # 273562 B/M			
2.			
3.			
4.			
5.			

1 On the above date and approximate time: I LT Robertson arrived in SMU II
 2 and noticed inmate young Derrick # 273562 who was
 3 just brought up by LT Caswell standing in the lobby
 4 while the other kitchen worker was working. Inmate young
 5 was ask by myself what he was doing and he stated nothing
 6 I then directed him to sit on the bench and wait till someone was
 7 available to escort him down to the yard. Inmate young stated "I
 8 done nothing" told you what I am going to do. I am not
 9 going to wait. Inmate young was extremely aggressive at this
 10 point so I LT Robertson had officer Morgan cuff him. Inmate
 11 young then injured at me. I directed officer Morgan
 12 along with myself to place him on the ground. Due
 13 to his threatening behavior, second responders notified
 14 and arrived. Nurse Wagner evaluated.

Signature:

Evidence:

Witness(es):

Supervisor's Comments: Refer to DHO

Signature: Title: Capt Date/Time: 3/26/13

Major/Responsible Authority: 615 p -
309- THREATENING CONDUCT

Signature: Title: Date: 4/3/13

STG Related - Refer to STG Committee
() Yes (<input checked="" type="radio"/>) No () Unknown
This Incident is DRUG related
() Yes (<input checked="" type="radio"/>) No () Unknown

Action Taken
() Informal Resolution
() Administrative Resolution
(<input checked="" type="checkbox"/>) 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: Young, Derrick SCDC#: 273568 Custody: ST

- 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

SI C. Whalen
Warden, Associate Warden, Major, Captain

Date 3/26/13 Time: 11:25 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: _____

Date 3/26/13 Time: 12:16 AM/PM

Serving Officer/
Witness Signature: _____

Date 3/26/13 Time: 12:16 AM/PM

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 24 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Darden

SC Court of Appeals

Case No. 2015-000060

Derrick Antron Young, #273562

Appellant

v.

South Carolina Department of Corrections

Respondent

PROOF OF SERVICE

I certify that I have served the record of appeal on all parties to the appeal and the appellate court by depositing a copy in the United States Mail, postage prepaid on April 9, 2015, addressed to their respective offices.

Derrick Young
Derrick Antron Young, #273562
P.O. Box 2951202
Bennettsville, S.C. 29512
Appellant, Pro se