State OF South Carolina

In The Court Of Appeals

Appeal From Administrative Law Court

The Honorable S. Phillip Lenski, Presiding Judge

Case No.: 2015-001674.

Jamie Leamon, #244584 Appellant,

V.

South Carolina Department of Corrections Respondent.

Initial Brief Of Appellant

Jamie Leamon, #244584

Evans C.I./F-4-B/126

610 Highway West

Bennettsville, SC 29512

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Argument(s)

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Cases

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Thompson v. Hawk, 978 F. Supp. 1421, 1424 (D. Kan. 1997).

Hunter v. State, 316 S.C. 105, 447 S.E. 2d 203 (1994),

Simpson v. State, 329 S.C. 43, 495 S.E. 2d 429 (1998),

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Scrugg v. Jordan, 485 F. 3d 934, 941 (7th cir. 2007),

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Piggie v. cotton, 344 F. 3d at 678 (citing, Brady v. Maryland, 83 S.Ct. 1194)

Other Authorities

Department's Policy / Procedures OP-22.14, Section 15 and 15.1,

Department's Policy / Procedures OP-22.14, section 898 (2007)

Department Policy / Procedures OP-22.14, Section 898 (2012-13)

Department Policy / Procedures GA-01.12, Sections 7 and 7.1

"U.S. Constitution"

Fourteenth Amendment

Eighth Amendment

Sandin V. Conner,

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S.C. Dep't of corrections Policy/ Procedures

(2007) OP-22.14, Section (898)

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Statue(s)

S.C. Code Ann. § 1-23-610 (B), § 1-23-380 (A)(1), § 1-23-310(2);

S.C. Code Ann. § 24-13-210

Statement OF The ISSue(s) On Appeal

1. Did The Administrative Law Judge Err By Denying Appellant's Appeal Because Appellant Received No Loss Of Good Time?

2. Did The Administrative Law Judge Err By Stating The Appellant Did Not Allege A Deprivation Of A State-created Liberty Interest?

Statement OF The Case

This matter comes before the South Carolina Court Of Appeals (SC Ct. App.) pursuant to the appeal of Jamie Leamon, an inmate incarcerated With the South Carolina Department of Corrections (SCDC or Department).

BackGround

The Appellant filed a Step 1 on July 15, 2014, Stating that he was filing a "policy grievance," claiming that a recent change in Department policy regarding Possession of a Cell Phone or other Type of - Communication Device (898) SCDC OP-22.14, Inmate Disciplinary System, Was unconstitutional. The Warden denied the grievance, and advised the Appellant that Department policy could not be changed at that level. Policies are neither developed nor changed by the institution. Policy revision can only be done at the headquarters level. (E.g. See, Step-1 grievance, Warden's decision). The Appellant filed a Step-2 grievance on August 6, 2014, and was denied on March 16, 2015,...

... the Appellant filed a Notice of Appeal, contending that the policy was unconstitutional. The Appellant received Two-Thousand, six-hundred and Eighty days (3,680 days), loss of good time.

On June 26, 2015, the Department filed a Motion to Dismiss that appeal. On July 6, 2015, the Appellant filed a Reply, stating he would stipulate to his disciplinary conviction of october 23, 2007, in exchange for his illegally seized good time of 3,680 days, cause Respondent alledged in the order requesting the Administrative Law Judge to dismiss Appellant's appeal cause the Appellant had not been prejudice due to a State-created-liberty interest.

Discussion / Argument(s)

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in "Al-Shabazz V. State", 338 S.C. 354, 527 S.E. 2d 742 (2000) accord; S.C. code Ann§§ 1-23-610 (B) (Supp. 1999); 1-23-380(A)(1); See also...

. . . S.C. Code Ann. § 1-23-310(2) (Supp. 1999)

While the substantive content of the petition must sufficiently explain the basis of the inmate's challenge, the court, as in PCR proceedings, has the discretion to construe a pleading in the appropriate manner. See, Gibson v. State, 339 S.C. at 41, 495 S.E. 2d at 438 (habeas corpus petition may be construed as a PCR application); Hunter v. State, 316 S.C. 105, 447 S.E. 2d 203 (1994) (same), abrogated on other grounds by Simpson v. State, 339 S.C. 43, 495 S.E. 2d 439 (1998). An informal format or improperly titled petition ordinarily should not form the basis for summary dismissal.

An aggrieved party may obtain appellant review of any final judgement of the circuit court in the manner prescribed for civil cases. S.C. Code Ann. § 1-23-390 (1986). The party must properly serve a notice of appeal within thirty days after receipt of written notice of entry of the order or judgement. Rule 203(b)(5), SCACR.

See S.C. Code Ann. § 24-13-210 (Supp. 1999) (Good-Time Credits).

The Respondent alleged in the order of Dismissal that Appellant's loss of (3,680) days of good-time credits does not implicate a State created liberty interest (E.g. See orders for dismissal).

Facts

Appellant in this present case was charged and convicted of a major disciplinary hearing before a prison justice committee at Broad River Correctional Facility. A JC Brown was the hearing officer, at that time, (October 23, 2007).

There were many inmates at various prisons throughout State of South Carolina who were charged with a Department Rules violation. Particularly, the 2007, 898 Possession and/or audio/visual of a cell phone or communi-cation device, in violation of the "Departments"...

. . . Policy/ procedures OP-22.14, Section 14 and 14.1 (formerly sections 15 and 15.1);

Where no videos or recordings of any type were presented as evidence against inmates whom were charged and convicted of 898 in the year of 2007. Majority of the inmates loss ample amounts of good-time credits (pursuant to S.C. code Ann. § 24-13-210 (Supp. 1999) (good-time credits), and the "Department's" 2007 policy was made upon unlawful procedures.

The (2007) 898 Possession and/or audio/visual of a cellphone or communication Device was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; Appellant's finding of guilty was arbitrary or capricious or characterized by abuse of discretion or clearly an unwarranted exercise of discretion (S.C. code Ann. § 1-23-380 (1)(2)(3)(4)(5)(a), (c), (e), (F).

Thus, the "Department's" disciplinary hearing officer (JC Brown) in 2007 failed to implement the Due Process safeguards as the same relates to the hearing phase of the disciplinary process in reference of Appellant's Jamie Leamon's (Oct. 23, 2007) 898 disciplinary conviction as follows:

1. Misconduct Report
2. Notice
3. "Evidence"
4. Confidential Informants
5. Disposition of Evidence

Appellant Leamon was charged on or about October 8th, 2007[1] and many other inmates without any evidence or a picture of the evidence being submitted at the inmates disciplinary hearings. (E.g. cell phones and/or Audio/Visual of same).

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1. Please note that Appellant reopened this case via filing a policy grievance pursuant to Dept policy 6A-01.12, Sections 7, and 7.1 "Inmate Grievance System."

Simply put, the disciplinary hearing officers throughout the "Department" were misapplying the 2007 (898) cellphone or any Communication Device Audio/Visual element, at that time. The element(s) could only be proved via a video and/or recording.

Appellant Leamon, contends the (2007) (898) audio/visual was unconstitutional from the inception of said element(s) cause there was no cameras installed inside of the living areas for inmates who were being confined at Broad River Correctional Institution.

Additionally, there was no cellphone produced at Appellant's October 23, 2007, disciplinary hearing nor a photo of a cellphone as mandated by Respondent's own policy and procedures (OP-22.14 Sections 14 and 14.1) (Formerly, Sections 15 and 15.1) (Emphasis Added)

Hence, Since a State-Created liberty interest is involved; it is necessary to determine if the Appellant received Due Process. It is Well Settled that the "Department" must meet certain minimum Constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. See "Wolf V. McDonnell," 418 U.S. 539 (1974), accord; "Al-Shabazz V. State," 338 S.C. 354, 527 S.E. 2d 742, (527 S.E. 2d at 750).

However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end the Supreme Court has enunciated the following five requirements which, if established, will insure procedural due process in inmate disciplinary matters:

(1) that advance written notice of the charge be given to the inmate at least twenty-fours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied upon and reasons for the disciplinary action; (3) that...

. . . the inmate should be allowed to call witnesses and present documentary evidence; (4) that counsel substitute . . . should be allowed to represent illiterate inmates or inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees must be impartial. Al-Shabazz, 537 S.E. 2d at 751, citing, Wolf V. McDonnell, 418 U.S. 539, 563-73, 94 S.Ct. 2963, 2978-83 (1974).

Subsequently, some courts have held that the "Brady rule," which requires the disclosure of material exculpatory evidence in criminal prosecutions, also applies to prison disciplinary proceedings. See Piggie V. Cotton, 344 F.3d at 678 (citing Brady V. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); Thompson V. Hawk, 978 F. Supp. 1431, 1434 (D. Kan. 1997).

Therefore, Videotapes are a type of document, and courts have held that disciplinary bodies must review relevant videotapes, and prisoners must be shown Videotapes that are used as evidence against them....

. . . See Howard V. U.S. Bureau of Prisons, 487 F.3d 808, 813-15 (7th Cir. 2007) (where plaintiff alleged that a videotape existed and would exculpate him, failure to review it denied due process); Piggie V. Cotton, 344 F.3d 674, 678-79 (7th Cir. 2003) ("We have never approved of a blanket policy of keeping confidential security camera videotapes for safety reasons . . .; where it is not apparent whether the tape is exculpatory or not, "minimal due process" requires that the district court review the tape in camera.); Phelps V. Tucker, 370 F. Supp. 2d 792, 797 (N. D. Ind. 2005)(refusal to review videotape denied due process notwithstanding officials claim that it was not very clear); Mayers V. Anderson, 93 F. Supp. 2d 969, 965-68 (N. D. Ind. 2000) (failure to review a requested videotape without a stated reason denied due process).

Hence, the disciplinary officer (J C Brown) violated number two (2) above; cause Mr. Brown failed to state the evidence that he (Mr. Brown) relied upon to reach his factual finding that Appellant Leamon, was in fact; actually guilty; at that time.

As previously mentioned herein, Several courts have held that the pratice of simply adopting the report of staff members with no further explination denies due process. Citing, Scrugg v. Jordan, 485 F.3d 934, 941 (7th Cir. 1981); Quoting, Chavis v. Rowe, 643 F.2d 1281, 1287 (7th Cir. 1981)" Without a detailed Statement of the disciplinary committee's findings and conclusions; a reviewing court (or agency) cannot determine whether the finding of guilt was based on substantial evidence or whether it was sufficiently, arbitrary.

Thus, Appellant Leamon has been prejudiced cause the Administrative Law Court's finding(s) are in violation of Appellant's Fourteenth (14th) Amendment to the United States Constitution and Eighth Amendment. The hearing officer (JC Brown) also violated the "Department's" policy/ procedures OP-22.14, Sections 15 and 15.1 where Appellant was found guilty on or about October 23, 2007, in violation of South Carolina Code Ann. § 1-23-380 (5) ,(a), (c),(d), (e), and(f)...

... (a) in violation of constitutional or statutory provisions;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

History: 1979 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

Wherefore, South Carolina Administrative Law Court (ALC) may summarily dismiss an inmate appeal that involves only the loss of the opprotunity to earn Sentence-related credits; however, a matter is reviewable by the ALC where an inmate's appeal also implicates a State-created liberty or property interest, such as the loss of accrued Sentence-related credits. See Howard V. S.C. Dep't of Corr., 399 S.C. 618, 733 S.E. 2d 211, 2012 Lexis 184 (S.C. 2012).

Hence, Appellant hereby Contends that he loss (2,680) days of accrued good-time credits due to Respondent's unconstitutional Departmental policy OP-22.14, Section (898) (2007). Respondent convicted Appellant of 898 in 2007; under the elements of audio/visual; however, as of (2012-13) Appellant discovered that the audio/visual elements had been deleted from the Department's policy/procedures and filed a policy grievance in regards of the unconstitutionality of the 2007 (898) Possession audio/visual of a cellphone or communication device...

... policy.

Appellant contends there was never audio/visual produced at his october 23, 2007, disciplinary hearing as was required by former "Department" policy/procedures OP-22.14, Section 15 and 15.1 (currently OP-22.14, sections 14 and 14.1) Presentation of Evidence at the hearing.

OP-22.14 Sections 14 and 14.1 (Formerly: 15, and 15.1(2007)) States: At the start of the hearing, the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the item(s) of contraband, a sample of the contraband, or a picture of the item should be produced at the hearing.

However, in the year of 2007, inmates like Appellant, were being found guilty at Broad River Correctional Facility of (898) Possession ...

... audio/visual of a cellphone or communication device without any video or tape recording(s) presented at inmates disciplinary hearings. The Respondent's are in violation of the Department's own policy/procedures where the elements of audio/visual were unconstitutional because those elements were made upon unlawful procedure. citing; S.C. code Ann. § 1-23-380 (5)(a),(c),(d),(e), and (f).

The Respondent stated in the order/Motion to Dismiss that Appellant's case should have been dismissed cause Appellant's loss of (2,680) days of accrued good-time credits does not implicate a state-created liberty interest. The (ALJ) concurred (S. Phillip Lenski) and Dismissed Appellant's (ALC) appeal with prejudice via ORDER dated July 17, 2015.

Hence, Appellant's case was classified as a "major" disciplinary proceeding in which he faced the potential loss of sentence-related credits. An inmate has no protected liberty interest in a "minor" discipli-

... nary proceeding in which he does not face the potential loss of sentence-related credits, but only lesser penalties such as extra duty, loss of television privileges, or cell restriction. See, Wolf, 418 U.S. at 571 n. 19, 94 S.Ct. at 2983 n. 19, 41 L.Ed. 2d at 960 n. 19 ("We do not suggest, however, that the procedures required by today's decision for the deprivation of good-time would also be required for the imposition of lesser penalties such as the loss of privileges"). Nevertheless, we encourage Department to continue to provide all inmates a fair hearing under guidelines such as those established in its existing policies.

Appellant contends the Respondent has Violated Department's policy/procedure OP-22.14, section 14 and 14.1 (Formerly, 15 and 15.1 (2007)); cause Respondent(s) convicted Appellant of (898) in the year of (2007), under the elements of audio/visual and however; removed those same elements on or about (2012-2013) because those elements were in violation of the South Carolina Constition and/or made upon ...

... unlawful procedure. Citing, S.C. Code Ann. §1-23-380 A(5)(a),(c),(d),(e) and (f).

Conclusion

Appellant contends for the reason(s) stated that this court grant this petition by reinstating Appellant's (6,280) days of sentence-related credits (Good-Time) days that were unconstitutionally taken a way by the Department via the unconstitutional 2007 (898) Possession of a cellphone or other communication device (audio/visual), policy / procedures.

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In The Court of Appeals

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Proof Of Service

I certify that I have served the Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, on August 12, 2015, addressed to South Carolina Court of Appeals, clerk Jenny A. Kitchings, P.O. Box 11629, Columbia, S.C. 29211, and Honorable S. Phillip Lenski, 1205 Pendleton St., Columbia, South Carolina Administrative Law Court...

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S/ Jamie Leamon
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Sworn To Before Me This
8th Day of August, 2015
Notary Public For S.C.
My Commission Expires 2/24

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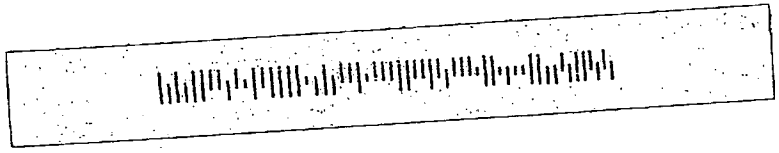

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