

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case Action No. 2015-001761

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SEP 18 2015
SC Court of Appeals

John Alexander

v.

Appellant,

The South Carolina Department of Corrections

Respondent

INITIAL BRIEF

COMES THE APPELLANT ABOVE, John Alexander with an Initial Brief in a timely manner. As well as in compliance with all Rules, Statutes and Laws required.

Dated 9/15/15.

John Alexander, Appellant
Department of Corrections
386 Redemption Way
McCormick, SC 29899

MAILED
SEP 18 2015

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STATEMENT OF ISSUES ON APPEAL

1. That the Appellant was denied and deprived of Due Process and Equal Protection of Law. As well as denied and deprived of a federal and South Carolina Constitutional right under the Confrontation Clause of the Sixth and Fourteenth Amendments of the United States Constitution and Article One Section Three S.C. Constitution.

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STATEMENT OF THE CASE

The Appellant appeared before a Disciplinary Hearing for 903- Trafficking, Use, Possession, of Narcotics, Marijuana, or Unauthorized Drugs on September 8, 2015. At the conclusion of the hearing the Appellant was Found guilty. So on 9/10/14 the Appellant initiated a Step One Grievance. And on 9/15/14 the Appellant Filed a Step 2 Grievance. Subsequently, on 10/16/14 Appellant submitted a Notice of Appeal before Administrative Law Court. Later, on 12/1/14 Appellant Filed an Initial Brief. The South Carolina Department of Corrections submitted a Respondent's Brief on 4/20/15.

Ultimately, the Administrative Law Court Denied the appeal. Last, the Appellant Filed a timely Motion To Alter or Amend Judgment. The Motion was denied on 7/28/15.

This Appeal is as follows:

ARGUMENT

The Appellant contends that he was denied and deprived of the right to see, hear or confront the alleged evidence the Disciplinary Hearing Officer stated was her basis to find the Appellant guilty of Trafficking, Use, Possession of Narcotics, Marijuana, or Unauthorized Drugs at a disciplinary hearing held on September 8, 2014.

In chief, the DHO stated: "I find you guilty based on the lab reports came back positive for THC." "I spoke with Dr. McRee here at the institution who is the doctor for McCormick Correctional Institution. He states that none of the medications you were on would react with these tests."

To the contrary, the Disciplinary Hearing Recording, the Step One and Step Two Grievance Appeal File, and the Administrative Law Court Record demonstrates that no evidence exists of Dr. McRee giving a written voluntary statement or verbally testified during the Appellant's disciplinary hearing. Second, the Alere Toxicology Service, Inc. Drug Form clearly establishes that the Respondent never sent "Alere" the Form for completion. And no Lab Accessioner signed the Drug Form certifying that Alere received a specimen bottle containing the Appellant's urine. And that

the Appellant's specimen tested positive for THC. See Exhibit 1.

As such, the entire record substantiates the Appellant's assertion that there is no evidence to support the DHO's basis to find the Appellant guilty. Likewise, the record is absent of any evidence to sustain the Appellant's conviction.

On the other hand, if there is a written statement or audio / video recording of Dr. McRee, the Respondent never produced such evidence to the Appellant before or during the disciplinary hearing. Similarly, if there exists a lab report certifying that a specimen from the Appellant was received and tested positive for THC; the Respondent never produced it to the Appellant before or during the disciplinary hearing.

Consequently, the DHO never obtained the alleged evidence necessary to convict the Appellant of the charge accused. Or, in the alternative, the DHO intentionally and maliciously denied and deprived the Appellant the federal and South Carolina constitutional due process right under the Sixth and Fourteenth Amendments, to confront the alleged testimony of Dr. McRee and lab reports prior to or during the Appellant's disciplinary hearing. State v. Haygood, 2015 WL 4751027 ("Where testimonial evidence is at issue, the 6th Amendment demands what the common

law requires: unavailability and a prior opportunity for cross-examination."); Article I Section 14 S.C. Const.; and State v. Young, 2015 WL 4275973 ("Due process considerations apply to contested cases or 'hearing' which affect an individual's property or liberty interest as contemplated by the federal and state constitution.")

Wherefore, this Court of Appeal can and should find that the Appellant's conviction was obtained lacking sufficient evidence. And that the Appellant's conviction was secured in violation of the Due Process and Confrontation Clause.

CONCLUSION

The Appellant respectfully requests that this Court of Appeals Reverse the Administrative Law Court's Decision. Order that the institutional charge be expunged from Appellant's record. And grant any other relief it deem Just and proper.

Dated 9/15/15.

Respectfully Submitted
John Alexander



Aleris Toxicology Services, Inc.
 450 Southlake Boulevard
 Richmond, VA 23236
 (804) 378-9130 (800) 977-9130

Exhibit # 1

CLIENT INFORMATION	NAME SCDC- INMATE DRUG TESTING (MS)	6656410/ SPECIMEN I.D. NUMBER
	ADDRESS 4444 BROADRIVER ROAD COLUMBIA, SC 29210	
	PHONE 803-896-2242 ACCOUNT # 9190	 R4113290

DONOR	NAME <u>Alexander, John</u>	VERIFIED BY: <input checked="" type="checkbox"/> PICTURE I.D. <input type="checkbox"/> SUPERVISOR <input type="checkbox"/> OTHER
	SOCIAL SECURITY OR I.D. NUMBER <u>194748</u>	

TESTS	CHECK THE APPROPRIATE PANEL:		
	<input type="checkbox"/> 1. SCREEN 5-GC/MS	<input type="checkbox"/> 4. CONFIRM OPIATES	<input type="checkbox"/> 7.
	<input checked="" type="checkbox"/> 2. CONFIRM: THC	<input type="checkbox"/> 5. CONFIRM: BENZ	<input type="checkbox"/> 8.
	<input type="checkbox"/> 3. CONFIRM: COCAINE	<input type="checkbox"/> 6. CONFIRM:	<input type="checkbox"/> 9.

REASON FOR TESTING	<input type="checkbox"/> 1. PRE-EMPLOYMENT <input checked="" type="checkbox"/> 2. RANDOM <input type="checkbox"/> 3. POST-ACCIDENT <input type="checkbox"/> 4. PERIODIC MEDICAL <input type="checkbox"/> 5. REASONABLE CAUSE <input type="checkbox"/> 6. OTHER (Specify)
---------------------------	---

TEMPERATURE OF THE SPECIMEN	I have read the temperature of the specimen within 4 minutes: Temperature is within range of 32 - 39°C / 90 - 100°F If not, record temperature here: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
------------------------------------	---

AGENT NAME / NUMBER	
----------------------------	--

COMMENTS	
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CHAIN OF CUSTODY

DONOR CONSENT / CERTIFICATION	I certify that I voluntarily consent to the collection and testing of my specimen, that the specimen identified on this form is my own, it is fresh and has not been adulterated in any manner. I certify that I provided my specimen to the collector, that the specimen bottle was sealed in my presence and that the information provided on this form and on the label affixed to the specimen bottle is correct. I further authorize the laboratory to release the results of this testing to my employer, prospective employer, authorized personnel or medical review officer. <u>John Alexander</u> (PRINTED) DONOR'S NAME <u>John Alexander</u> SIGNATURE OF DONOR <u>8/18/14</u> DATE
--------------------------------------	---

COLLECTOR CERTIFICATION	I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification above, and that it bears the same identification number on this form and it has been collected, labeled and sealed in the donor's presence. I hereby release this specimen for transport to the laboratory. <u>LT. McCumy</u> (PRINTED) COLLECTOR'S NAME <u>LT. McCumy</u> SIGNATURE OF COLLECTOR <u>8-18-14</u> DATE
--------------------------------	--

LABORATORY CERTIFICATION FOR LAB USE ONLY	I certify that the specimen bottle received with this form bears the same identification number on this form and was received in a sealed bag with the bottle seal intact. _____ (PRINTED) LAB ACCESSIONER'S NAME _____ SIGNATURE OF ACCESSIONER _____ DATE
--	---



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AFFIDAVIT OF SERVICE

I certify that today this 15 day of September, 2015, served the opposing party, Cheron M. Hess, Administrative Assistant, Office of General Counsel, 4444 Broad River Road, P.O. Box 21787, Columbia, SC 29221. And S. Phillip Lenski, Administrative Law Judge, South Carolina Administrative Law Court, Edga A. Brown Building, Suite 224, 1205 Pendleton Street, Columbia, SC 29201, by depositing same in the United States Postal service, prepaid.

Dated 9/15/15.

John Alexander
Department of Corrections
386 Redemption Way
McCormick, SC 29899

Sworn and Subscribed
this 15 day of Sept, 2015
J. Franklin

Notary Public For South Carolina
My Commission Expires 12-16-2019.

John Alexander, 194748
Department of Corrections
386 Redemption Way
M^cCormick, SC 29899

15 September 2015

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SEP 18 2015

SC Court of Appeals

The State of South Carolina
Court of Appeals of South Carolina
V. Claire Allen, Deputy Clerk
Post Office Box 11629
Columbia, SC 29211

Re: Case No. 2015 - 001761

Dear Ms. Allen:

Enclosed please find a Motion to proceed In Forma Pauperis along with the Proof of Service of the Motion as you requested. Additionally, enclosed is an Initial Brief of the Appellant to be filed in this Court.

Respectfully Submitted
John Alexander

John Alexander, 194748
McCormick Correctional Institute
386 Redemption Way E1A196
McCormick, SC 29899

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SC Court of Appeals

The State of South Carolina
South Carolina Court of Appeals
V. Claire Allen, Deputy Clerk
Post Office Box 11629
Columbia, SC 29211



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SEP 15 2015

MCCI
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THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

MCCORMICK CORRECTIONAL INSTITUTE
S.C. DEPARTMENT OF CORRECTIONS

**LEGAL MAIL
MAIL ROOM**