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## STATEMENT OF ISSUES ON APPEAL

1. That the Appellant was denied and deprived of Due Process and Equal Protection of the Law. As well as denied and deprived of the 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 of the South Carolina Constitution.

## STATEMENT OF THE CASE

On September 30, 2014 Appellant permitted limited access to a Disciplinary Hearing and partially allowed to participate was found guilty of The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or inhalants. On September 10, 2014 Appellant filed a timely Step 1 Appeal. Also, during September 15, 2014 Appellant submitted a timely Step 2 Appeal. Finally, within the time requirements, Appellant submitted his Notice of Appeal before this South Carolina Administrative Law Court.

This Appeal is as follows:

## ARGUMENT

On August 18, 2014 Appellant was selected to take a drug test. At the conclusion, Lt. McCurry informed the Appellant that THC was found in his urine sample. As a result, a Disciplinary Hearing was held on August 8, 2014 for Trafficking, Use and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs.

In chief, Appellant challenged and argued (the accuser conceded) that, prior to initiating the Incident Report, Form 19-29 A, Lt. McCurry failed under GA-03.03, "Inmate Drug Testing/Screening Program Section 7. Reporting Of Results: 7.2 to consult with institutional medical department personnel to determine any possible cross-reactivity with the Six (6) prescribed medications the Appellant was taking." Consequently, Ms. Glidewell, Disciplinary Hearing Officer, immediately demanded that the Appellant excuse himself from his hearing where clearly a mandatory SCDC Policy and Procedure had failed to be executed.

Further, upon being allowed back into the hearing, Ms. Glidewell requested from the Appellant the names of the Six medications he was taking.\*

\*[Ms. Glidewell held a telephone to one ear and "appeared" to be repeating Appellant's medications to some one on the other end.]

After the Appellant was allowed back into his Disciplinary Hearing, Ms. Glidewell required from the Appellant the names of the Six medications he was taking. After citing only three, Ms. Glidewell again demanded that Appellant excuse himself from his hearing. Upon being allowed a second time back into his disciplinary hearing; Ms. Glidewell simply stated: "Dr. McRee said your medications did not affect your test and "some one" from the lab confirmed the test." "I find you guilty and sentence you 360 + 90 days loss of property, canteen, visiting privileges, 90 days Disciplinary Detention as well as 60 days Loss of Good Time.

In a timely manner, Appellant submitted a Request To Staff Member upon Major Musier requesting to hear Dr. McRee and the person from lab's statements on the Disciplinary Hearing Recorder in connection with SCDC Policy and Procedure GA-01.12 Section 13.2 The Appellant was not allowed to hear the taped recording of his Disciplinary Hearing. Subsequently, the Appellant initiated the Step 1 Appeal. Contending

1. that his Due Process and Equal Protection rights had been denied and deprived where the Respondent intentionally, willfully refuse to allow him to (1) hear; (2) confront; or (3) refute the witnesses testifying against during his hearing or;

2. To hear the alleged testimonial evidence after the hearing on the taped recording.

At present, the Appellant is lacking the basic due process of knowing, in fact, that some one from a lab or Dr. McRee made statements at all.

The Action Taken By IGC, the Warden's Decision And Reason as well as the Step 2 Appeal's Official's Decision And Reason never addressed the Issues Appellant put on Appeal. But rather, echoed Ms. Glidewell's finding. As such, the Respondents condoned:

First, Lt. McCurry's blatant disregard of clearly established SCDC Policy and Procedure GA-03.03 Section 7. Reporting of Results 7.2 ;

Second, Ms. Glidewell's deliberate and wanton abuse of discretion and authority of a Disciplinary Hearing Officer to assume the responsibility and role of the accusing officer by seeking additional evidence to justify a guilty verdict; and

Third, precluding the Appellant from the Discovery Process of ascertain the sole evidence i.e. testimony from Dr. McRee and some one from a laboratory which were the basis for the guilty verdict.

Indisputable, the Due Process and Equal Protection Clause strongly condemns putting a man to trial and convicting him in his absence unless he absences himself or deliberately forfeit his right to presence. See Fourteenth Amend.; S.C. Const. Art 1 Sec. 3.

Likewise, the Confrontation Clause is dead set against trying, convicting and sentencing any person without first affording him the right to hear, refute and confront any evidence or witness used to determine his guilty or innocence. See Fifth and Fourteenth Amend.; Moore v. Moore, 376 S.C. 467 S.E.2d 743 (2008); Constitutional Key 3879

In the instant case, "where the Appellant's rights were affected, it was incumbent upon the Respondents to follow their own Policies and Procedures." Morton v. Ruiz, 94 S.Ct. 1055 (1974); also see Smith v. Ozmint, 2007 WL 858749. Herein, the Respondent grossly ignored, denied and deprived the Appellant of the most basic of due process or confrontation rights where they superseded SCDC Policy and Procedure, federal and state laws. Particularly, the constitution and Administrative Procedures were adopted to provide, *inter alia*, that all constitutional guarantees and Administrative Policies affecting Appellant's rights and obligations be promulgated pursuant to certain procedures so as to avoid the inherently arbitrary nature of determinations. See S. Rep. No. 752, 79th

Cong., 1st Sess, 12-13; H. R. Rep. No. 1980, 79th Cong.,  
2nd Sess., 21-23 (1946).

To the contrary, the Respondent reasoning of the due process and confrontation clause permits them to put the Appellate on Notice of an institutional charge in spite of a gross disregard of well established SCDC Policy and Procedure was neglected to obtain the charge; allow the Disciplinary Hearing Officer to remanufacture evidence that did not exist at the beset of the hearing; deny and deprive the Appellant the right to see, hear, refute and confront such alleged evidence; and thereafter, convict and sentence the Appellant based on that alleged evidence is wholly unsupported under the Fifth and Fourteenth Amendment of the United States Constitution. And subsequent South Carolina Constitution Article 1 Section 3. That is not true and never should be true.

## CONCLUSION

For Wisdom, Justice and Equality this Honorable Administrative Law Court can and should so Order the Responsible Official's Decision And Reason Reversed. The Disciplinary Hearing Officer's confiscation of 60 days Good Time, 360 plus 90 day loss of Property, Canteen, Visitation privileges, etc. Ruled null and void.

## SERVICE OF BRIEF

The Appellant, John Alexander, certify that a complete copy of Initial Brief was sent United State Postal Service prepaid to the Office of General Counsel at the South Carolina Department of Corrections, 4444 Broad River Road, Columbia, South Carolina 29221.

Appellant further certifies that all parties required by Rule have been served this 1 day of December 1, 2014.

Respectfully Submitted  
John Alexander

Sworn and Subscribed

this 01 day of Dec, 2014

Franklin

Notary Public For South Carolina

My Commission Expires 12-16-2019