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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Administrative Law Court  
Administrative Law Judge, Carolyn C. Matthews

CASE NO.: 2014-002356

Michael Grims # 302385 ----- Appellant

v.

South Carolina Department of Corrections ----- Respondents

RECORD ON APPEAL

Dated: January 14, 2015

Pro Se Litigant,  
Michael Grims # 302385  
430 Colhoun Rd.  
Pelzer, S.C. 29669

Shanika Kenyetta Johnson  
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**RECEIVED**

JAN 20 2015

**SC Court of Appeals**

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Michael Goins, #302385,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0055-AP  
Grievance No.: PCI 1880-13

**ORDER**

This matter is before the South Carolina Administrative Law Court (“ALC”) pursuant to the Notice of Appeal filed January 17, 2014 by Michael Goins (“Appellant”), who is incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant appeals the decision of the SCDC in his Step Two Grievance, in which his conviction for Threatening to Inflict Harm on an Employee and/or Members of the Public (809), SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost six (6) days of good time, therefore a liberty interest is involved. Appellant now appeals, claiming violations of his due process rights.

**STANDARD OF REVIEW**

The ALC’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). The ALC’s appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented.

**LAW/ANALYSIS**

Since a state-created liberty interest is involved, it is necessary to determine if Appellant received due process of the law. Well established precedent determines that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Id. at 369-70, 527 S.E.2d at 750. However, these

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OCT 18 2014

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 requirements, which if established, will ensure procedural due process in inmate disciplinary matters:

- (1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing;
- (2) that factfinders must prepare a written statement of the evidence relied on 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 help illiterate 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.

Id. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

Applying these requirements to the record in this case I find the following:

Appellant was served with notice of the charge on October 4, 2013 and the hearing was held on October 8, 2013. The Disciplinary Report and Hearing Record show reliance on the incident report and testimony of Ms. Johnson. Appellant was given the opportunity to call witnesses and give testimony. Appellant contends that he was not given the opportunity to call witnesses on his behalf. However, there is nothing in the Record to indicate that Appellant made a formal request for witnesses at least twenty-four hours prior to the hearing. Appellant had the assistance of counsel substitute. There is nothing in the record to suggest that Hearing Officer was anything other than neutral or detached. Thus, Appellant's due process rights were protected by the process utilized by SCDC in this case.

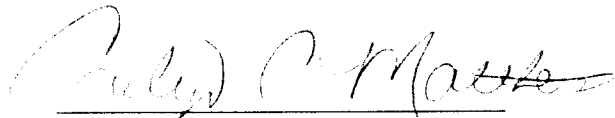
The charging official, Ms. Johnson, reported that as she was walking by Appellant's cell, she observed Appellant standing on the toilet of his cell stroking his penis back and forth. Ms. Johnson told the Appellant to stop, however, Appellant replied, "Bitch, I'll get you with it." As Appellant spoke, he was looking at Ms. Johnson and pointing at his penis. Ms. Johnson stated that she felt threatened by the actions of the Appellant. After hearing all the evidence presented, the Hearing Officer found Appellant guilty based on Ms. Johnson's incident report and testimony. As the Wolff Court acknowledged, the full panoply of due process rights does not apply to prison disciplinary proceedings; there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application. Wolff, 418 U.S. at 556. After a thorough review of the record, there is substantial evidence to uphold the decision of SCDC.

An Administrative Law Judge may not substitute her judgment for that of an agency "as

to the weight of the evidence on questions of fact.” S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. See S.C. Code Ann. § 1-23-380(5) (Supp. 2013); see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case, the substantial evidence in the record supports SCDC’s decision. The Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the Hearing Officer should be affirmed unless the decision is arbitrary, capricious, or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

Therefore, for the foregoing reasons, the decision of the SCDC is **AFFIRMED**.  
**AND IT IS SO ORDERED.**

  
**CAROLYN C. MATTHEWS**  
Administrative Law Judge

October 16, 2014  
Columbia, South Carolina

CONFIDENTIAL ORDER

This document contains confidential information and is intended for the use of the party(ies) or their attorney(s) only. It is not to be disseminated to any other person, and its contents are not to be used in any legal proceeding in the United States or elsewhere without the prior written consent of the party(ies) or their attorney(s).

This 16th day of October  
BY Carolyn C. Matthews  
Administrative Law Judge

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

Due: 11-12-13

NOV 12 2013

INMATE NAME: Michael Goin  
SCDC NUMBER: 302385  
INSTITUTION: Perry  
HOUSING UNIT: D-X-20  
WORK ASSIGNMENT: NA

Office Use Only  
Grievance No. PC1-1880-13  
Code: General  
Policy \_\_\_\_\_  
Disc. Hear.   
Class \_\_\_\_\_  
Date Received NOV 12 2013  
IGC Initials GA

NOV 12 2013

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): 12-19-13 #103, 809, 10-08-13 HD  
I'm appealing the warden's decision and reason because without "substantial evidence" being produced at the hearing, there is no way the charge should stick. Security personnel escort medical personnel, grievance coordinators, mailroom staff, etc. around the yard for security purposes. For this very same reason is why security staff are suppose to be there. Ofc. Wilson was escorting IGC Johnson around this day and he didn't hear or see none of this conduct?? I was supposedly on my toilet (standing up), penis out masturbating and threatened this lady but the security didn't see or hear any of it? Either I'm a bad man this chick is lying or this security guy was ~~stupid~~ not doing his job. And I supposedly did this twice but she can't describe me in the slightest way besides I'm black and a male. Michael Goin 11/12/13  
There is no substantial evidence.  
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 (809) on October 8, 2013, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -6- 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] 12/23/13  
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 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

11-3-14

7X-20

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Michael Groins OCT 09 2013  
SCDC NUMBER: 302385  
INSTITUTION: Perry C. I.  
HOUSING UNIT: D-X-20 OCT 10 2013  
WORK ASSIGNMENT: N/A

Office Use Only  
Grievance No. PCT-1880-13  
Code: General  
Policy \_\_\_\_\_  
Disc. Hear.   
Class. \_\_\_\_\_  
Date Received OCT 10 2013  
IGC Initials CS

#103, 809, 10-08-13

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I'm appealing  
DHO Turner's decision under the "substantial evidence" standard.  
IGC Johnson wrote me up for 809 "threatening to inflict" case #  
103. I went to DHO today. IGC Johnson could not even descri-  
be me besides saying I'm a "Black male". She stated that I've  
masterbated on her twice back to back but she still couldn't descr-  
ibe me. IGC Johnson also stated that she saw me standing on my  
toilet masturbating but the angle of the toilet in my <sup>cell</sup> would make it  
impossible. She did not even state on the incident report nor in the  
hearing when asked what cell I was in during this incident. There is  
not enough substantial evidence to convict me of this charge.

~~ACTION REQUESTED: I'm requesting that the conviction be~~  
~~reversed and vacated and all sanctions imposed be lifted.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:  
N/A

Michael Groins 10/12/13  
Grievant Signature Date

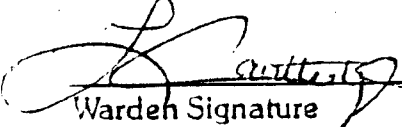
ACTION TAKEN BY IGC:  
See Warden's Response

IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

**WARDEN'S DECISION AND REASON:**

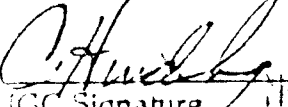
Inmate Goins, Michael 302385

In regards to **PCI-1880-13, 809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public, HD 10/08/13**. All relative information has been reviewed to include documentation and disciplinary recording. I found no discrepancies that would warrant a reversal of this charge. You were convicted on the basis of the testimony of and incident report written by Ms. Johnson stating that you pointed at your penis and said to her "Bitch, I'll get you with it". Threats of this nature are taken very serious at PCI and will not be tolerated. Based on this information, your grievance is **denied** and the conviction is upheld. If you do not agree with my decision, see Step 5.

  
Warden Signature 10/13  
Date

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

Michael Goins NOV 07 2013  
Grievant Signature Date

  
IGC Signature NOV 07 2013  
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of a alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official (PCI-1880-13, 809) within 15 days of the Warden's decision. If you are dissatisfied with the decision of the IGC, you may appeal to the appropriate responsible official (PCI-1880-13, 809) within 15 days of the IGC's decision.

9T:30

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 103 Inmate Name: GOINS, MICHAEL SCDC#: 302385

Living Area: DX20 Job: LOCK-UP Custody: DD3

Offense Date: 9/18/13 Offense Time: 2:20 AM/PM Institution: PCI

Offense Description: **309: Threatening to Inflict Harm or Assaulting an Employee and/or Members of the Public:** Certification, 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: C. Johnson Title: IGC

**INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.**

**INMATE WAIVERS:** 10.8

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

**SM/SEGREGATION ONLY**

I WANT A COUNSEL SUBSTITUTE Kollock

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 10/4/13 9:25 AM/PM By (Print): L. W. Golden

Inmate Signature: Michael Goins SCDC#: 302385 Date: 10/4/13

**HEARING INFORMATION:**

Hearing Date: <u>10/8/13</u>	Hearing Time: <u>11:50 am/pm</u>	Tapel:	Side:	Start:	End:
------------------------------	----------------------------------	--------	-------	--------	------

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

(1) (2) (3) (4) (5) (6) order CH, Mental Health statement present!

(1) I did object that a question that was not asked by the officer / incident will not be asked.

OFFENSE CODES	<u>309</u>				
INMATE PLEA (G, NG, None)	<u>NG</u>				
FINDINGS (G, NG, DS)	<u>G</u>				

IF 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) (C) testimony of C. Johnson that he reported incident

HEARING LENGTH: 15 (MINUTES) for testimony

**SANCTIONS:**

Loss of Privileges (Days): \_\_\_\_\_ Reprimand: \_\_\_\_\_ Loss of Good Time (days): 60

• Property (Days): \_\_\_\_\_ Extra Duty: \_\_\_\_\_ Restitution \$: \_\_\_\_\_

• Confinement (Days): 30 (DD-150) Visit Suspension Term: 30 (DD-150)

• Other (Days): 15 (DD-150) Cell Restriction (Days): \_\_\_\_\_

• Disciplinary Retention (Days): 15

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED: 1st 309 charge

CREDIT FOR PHED TIME SERVED? YES (NO) IF YES, DAYS \_\_\_\_\_

DATE INMATE PLACED IN PHD: \_\_\_\_\_

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Michael Goins DATE: 10/8/13

HEARING OFFICER (PRINT NAME): R. Johnson

APPROVED REFERENCE NUMBER: \_\_\_\_\_ REASONS: \_\_\_\_\_

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Michael Goins, #302385,	)	Docket No.: 14-ALJ-04-0055-AP
	)	
Appellant,	)	RESPONDENT’S BRIEF
	)	
v.	)	Honorable Carolyn C. Matthews
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
<hr style="width:40%; margin-left:0;"/>	)	

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (“ALC”) pursuant to the appeal of Michael Goins (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on October 8, 2013, challenging his disciplinary conviction for Threatening to Inflict Harm on an Employee and/or Members of the Public, 809, under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on November 12, 2013. This grievance was also investigated and denied. Appellant now appeals, claiming his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests the disciplinary conviction be upheld.

**STANDARD OF REVIEW**

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

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

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

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<sup>1</sup> 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

### APPELLANT WAS AFFORDED DUE PROCESS

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

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

These requirements were complied with in this appeal. The Disciplinary Report and Hearing Record shows Appellant had notice of the charges (Threatening to Inflict Harm on an Employee and/or Members of the Public), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on October 8, 2013), a neutral and detached hearing body (hearing officer), and a written statement of findings (Major Disciplinary Report and Hearing Record).

There was ample evidentiary support for the disciplinary conviction. Ms. Johnson, the Inmate Grievance Coordinator, reported that as she was walking by Appellant's cell, she observed him standing on the toilet in his cell stroking his penis back and forth. After Ms. Johnson gave Appellant a directive to stop masturbating, Appellant replied, "Bitch, I'll get you with it!" At this time, Appellant was looking at Ms. Johnson and pointing at his penis.

That offense is defined as follows.

“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. Any unauthorized body contact of an employee or member of the public which creates serious alarm, but does not result in bodily injury.”

SCDC Policy OP-22.14 (809) Inmate Disciplinary System.

Appellant’s actions amounted to a verbal threat as he clearly indicated he would “get” Ms. Johnson with his penis while his penis was exposed. It is reasonable to conclude Appellant was referring to rape/sexual assault. Ms. Johnson added that she felt threatened by Appellant’s words and actions. After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based upon Ms. Johnson’s report and testimony. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) (“The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.”)<sup>2</sup>

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

**RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED  
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the “substantial evidence on the whole record” supports SCDC’s final agency decision. The hearing officer found Appellant

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<sup>2</sup> 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).


guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

**CONCLUSION**

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

SHANIKA JOHNSON  
Staff Attorney

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

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

September 26, 2014  
Columbia, SC

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE  
DOCKET No.: 14-ALJ-04-0055-AP      GRIEVANCE No.: PCI 1880-13  
INMATE NAME: Michael Goins      SCDC No.: 302385  
INSTITUTION: Perry Correctional Institution  
DATE: October 8, 2013  
CHARGE: 809-Threatening to Inflict Harm on/Assaulting an Employee and/or Members  
of the Public**

DHO: State your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, the purpose behind this hearing is to treat the matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so would result in removal. Do you understand?

I/M: Yes sir.

DHO: Uh, you're appearing before this Disciplinary Hearing which is being held at, uh, Perry Correctional Institution; approximately 11:50 a.m. on 10-8-13. I am Mr. Turner, Disciplinary Hearing Officer. Uh, Inmate Goins is being represented by Counsel Substitute Kollock. Counsel Substitute Kollock, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: Uh, it should be noted for the record that Inmate Goins is a mental health patient. I do have a Mental Health Statement present stating the accused was able to understand the nature and quality of the act committed. Uh, Inmate Goins, I have before me Case Number 103. It reads: Michael Goins, 302385; inmate charged with 809-Threatening to Inflict Harm on or Assaulting an Employee or Member of the Public; uh, which is defined as, communications, verbal or written, by an inmate to an individual that he or she intends to injure that person or

**DHO: Disciplinary Hearing Officer**

**I/M: Inmate**

**C/S: Counsel Substitute**

**AFC: Accuser**

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 Official in this case is IGC C. Johnson. We do have Ms. Johnson present by speaker phone at the request of the accused. Ms. Johnson, would you verify your presence by stating your name and rank.

OFC: Yes.

DHO: ...or, name and position, excuse me.

OFC: My name is Ms. Johnson. I'm an IGC here at Perry.

DHO: Uh, in support of the charge against the accused, the following Incident Report: Perry Correctional Institution; Date of the Report: 9-18-13; uh, Reporting Official: uh, Ms. Johnson, IGC; Time of the Report: approximately 3:05 p.m.; Employee ID Number is 052821; Date of the Incident: 9-18-13; Location of the Incident: B Dorm of SMU Y-Wing; Time of the Incident: approximately 2:20 p.m.; Inmate in Question: Michael Goins, uh, 302385; On the Above Date and Approximate Time: I was walking towards the Control Room when I saw Inmate, uh, Goins standing on the toilet of his cell stroking his penis back and forth. I gave the inmate a directive, "Cut it out", and he continued. I pointed at him and said "I wrote you up for this last week". Inmate Goins said, "Bitch! I'll get you with it!" pointing at me while...excuse me, looking at me while pointing at his pen...penis. Uh, this was a verbal threat of rape due to the statement, which was in a threatening tone and threatening look on the inmate's face. I felt threatened by the inmate. Uh, Officer Wilson came over to his cell door and spoke to inmate. I noted inmates CDC Number and the time, uh, regarding the incident for my Incident Report. At the time, Inmate Goins was wearing only boxers with his penis, uh, pulled, uh, through the flap of the

boxers. End of the report. Signature is that of IGC Ms. Johnson. Inmate Goins, if you plead guilty to the charge, or if you happen to be found guilty of the offense, you would not be eligible to earn good time for the month of September in this case. Do you understand?

I/M: Yes sir.

DHO: In addition to this, if I happen to find you guilty of this charge you could lose visitation privileges, canteen privileges, telephone privileges, you could be assigned disciplinary detention, and there could be further loss of good time in the case. Do you understand this?

I/M: Yeah.

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

I/M: Not guilty.

DHO: Your opportunity to tell us why you feel you're not guilty.

I/M: I mean, I ain't do it.

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

C/S: He gave me some questions, but first I did speak with Officer Wilson and he did state that he did not see Inmate Goins masturbating because his back was to the cell. He said he was dealing with another inmate that, um, Ms. Johnson had come to see. He said he did hear Ms., uh, Johnson tell him...tell Inmate Goins to "Cut it out" and that she was gonna write him up and he said when he did go to the cell, he did observe Goins jumpsuit at his waist.

DHO: Do you have anything else?

C/S: Alright. I have some questions. Do you want me to go and ask the questions?

DHO: Um hm.

C/S: Ms. Johnson?

OFC: Yes.

C/S: I have some questions that Inmate Goins wanted me to ask you.

OFC: Okay.

C/S: The first question is, uh, when you first saw Inmate Goins masturbating, where was Officer Wilson?

OFC: He was following...he was behind me. I had just, um, served my last grievance on that wing and I had walked...pushed my cart to walk out. As I was walking out behind the cell, um, I was passing through going towards Control with my cart and he was following behind. I really wasn't keeping an eye on him cause' I had my back to him. I was headed out. So, to his exact position, I couldn't state.

C/S: Okay.

OFC: Just behind me.

C/S: Okay. Was Inmate Goins loud and demanding when he threatened you?

OFC: Um, I wouldn't say...it wasn't yelling. You know. It was clear.

C/S: Um hm. Uh, was Officer Wilson close enough to hear the threats as well?

OFC: Again, t...um, I had...he was...he was behind and had my back to me. Um, he heard me make a statement, um, you know, statements to the inmate and at that point I heard him behind me say, um, "Is he...is he doin'...was he doing that".

C/S: Um hm.

OFC: So, at that point and time I expressed to him that it was an 854 situation and I walked off. I didn't stick around and that's when, um, the officer addressed him. I had escort...I had left the wing and walked away while he was talking to the inmate.

C/S: Do you remember what cell Inmate Goin...Goins was in during the incident?

OFC: Um, off the top of my head, no. I know I was on...I was on Y-Wing and he was closer to, um, Control. He was towards the front of the wing.

C/S: Okay. Were you lookin' at Inmate Goins throughout this whole ordeal?

OFC: When I looked up and saw him, yeah, I...I was looking at him.

C/S: Okay. Uh, was anymore words passed between you and Inmate Goins?

OFC: Say that again.

C/S: Were anymore words passed between you and Inmate Goins?

OFC: No, only what I stated in the Incident Report.

C/S: Okay. Can you describe Inmate Goins for the record?

OFC: He's a black male.

C/S: Okay.

C/S: And that's it.

DHO: Uh, Ms. Johnson, is the content of your report true and correct as it's written?

OFC: Yeah.

DHO: Uh, you've had contact and, uh, dealings with Inmate Goins before. Is that correct?

OFC: The previous week I had written him up for another 854.

DHO: You are positive it was Inmate Goins who performed this act and made the, uh, gestures that are alleged in the report. Is that correct?

OFC: Uh, you....what I wrote in the report, yes sir.

DHO: And you did feel threatened. Is that correct?

OFC: That is correct.

DHO: Thank you kindly for your help. With that understanding, the information that will be used to support the charge against you will be: the Incident Report, previously read into the

record; testimony of your accuser during the hearing. I have proved...provided you the opportunity to make a statement, present evidence, call witnesses on your behalf and I am prepared now to recess this hearing and arrive at a decision. You'll step across, I'll be with you shortly. Restate your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, I have found you guilty of the offense that was brought against you today. The information used to arrive at this decision is: the Incident Report, previously read into the record; the testimony of Ms. Johnson that her report was true and correct as written, that she did feel threatened. Sanctions that have been imposed: 180 days disciplinary detention; 360 days canteen; 360 days telephone; 360 days visitation; 6 days loss of good time. You do have the right to appeal the sanctions portion of the charge and the determination of guilt. The manner in which you do so, is you file an SCDC Form 10-5. That is a Step One Grievance Form with the Grievance Coordinator. If you're gonna appeal this case, it must be done within five (5) days. That's five (5) days from the time I hand you your copy of the Hearing Report here today. Also remember, if you need any help with the appeal, the Grievance Coordinator helps you with the process. Do you understand the appeal rights?

I/M: Yeah.

DHO: That concludes this hearing.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

9-18-13 - #320

#103

Page 1 of 1

9/25/13 (0/15)

Institution/Center: PCI				Date of Report: 9/18/13	
Reporting Official (Full Name): MS. JOHNSON, IGC				Time of Report: APPROX. 3:05 PM	
Employee ID #: 052821				Date of Incident: 9/18/13	
Location of Incident: B-DORM OF SMU Y-WING				Time of Incident: APPROX. 2:20 PM	
Inmate(s)/Resident:	SCDC#	Age	Sex	Race	Employee(s)/Witnesses Involved:
1. GOINS, MICHAEL	#302385		M	B	1.
2.					2.
3.					3.
4.					4.
5.					5.
<p><b>On the above date and approximate time:</b> I was walking toward the control room when I saw Inmate Goins standing on the toilet of his cell stroking his penis back &amp; forth. I gave the inmate a directive, "Cut it out" &amp; he continued. I pointed at him &amp; said "I wrote you up for this last week". Inmate Goins said "Bitch - I'll get you with it!" looking at me while pointing at his penis. This was a verbal threat of rape due to his statement which was in a threatening tone &amp; the threatening look on the inmate's face. I FELT THREATENED BY INMATE. Ofc. Wilson came over to his cell door and spoke to the inmate. I noted the inmates SCDC # &amp; the time regarding the incident for my incident report. (At the time, Inmate Goins was wearing only boxers with his penis pulled through the flap of the boxers.) *EOR*</p>					
Signature: Ms. Johnson				Title: IGC	
Evidence: N/A					
Disposition of Evidence: N/A					

Supervisor's Comments: 809, 854

Printed Name:

Signature: [Signature] Title: Lt Date/Time: 9/19/13

Major/Responsible Authority:

809 - Treating as Father

Printed Name:

Signature: [Signature] Title: [Signature] Date: 9/19/13

STG Related - Refer to STG Committee

( ) Yes ( / ) No ( ) Unknown

This incident is DRUG related

( ) Yes ( / ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( / ) Refer to Disciplinary Hearing

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY MENTAL HEALTH STATEMENT  
INSTITUTION: PCT**

Inmate: Michael GOMS SCDC #: 302385  
was charged with the following offense: 809 Threatening  
to inflict  
on 9/18/13 (date) at 2:20 PM (time). Based on SCDC  
19-14 "Incident Report" dated at 9/18/13 at 3:05 PM (time).  
by Reporting Official: Ms - Johnson  
(Print Name)

Mental Health was asked to provide a statement regarding the inmate's mental status at the time the offense occurred. An assessment will be conducted within three business days after receiving the Incident Report. This assessment will serve a period of 15 working days should the inmate receive additional charges.

After researching the incident and the inmate's mental health functioning, it has been determined that the inmate:

1. Lacked the capacity to appreciate the wrongfulness of their actions at the time for the following reason(s):

2. Although classified as Mentally ill, was able to understand the nature and quality of their committed

If you require additional information, please contact me using the information below:

Officer: Ray McSwain Extension: 1155

Questions for Officer Eric Johnson

- 1.) When you first saw I/M Coins masturbating where was cfc. Wilson?
- 2.) Was I/M Coins loud and demanding when he threatened you?
- 3.) Was cfc. Wilson close enough to hear the threat also?
- 4.) ~~Did you notify cfc. Wilson or Lt. Wessinger that I/M Coins had threatened you? If so, which one. Not a report~~
- 5.) When you first noticed I/M Coins on his toilet masturbating where exactly ~~was~~ were you standing in the hallway? ~~Like by what cell or area?~~
- 6.) Do you remember what cell I/M Coins was in during the incident?
- 7.) As stated on your incident report, you noticed I/M Coins on his toilet masturbating. You told him to cut it out. He kept going and you pointed at him and said "I wrote you up for this last week" and he was still masturbating this whole time then said to you the threat while pointing at his penis with a threatening tone and facial expression. Were you looking at I/M Coins through this whole ordeal?
- 8.) Were any more words passed between you & I/M Coins?
- 9.) Can you describe I/M Coins for the record?
- 10.) ~~When I/M Coins pointed to his penis was he still masturbating?~~
- 11.) ~~While you were noting I/M Coins' information did he speak to you or did you speak to him? If so, what was said.~~  
~~Not a report~~

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER**

<b>TO: NAME:</b> Ofc. Wilson	<b>TITLE:</b> Officer of B-1 shift	<b>DATE:</b> January 15, 2014
<b>INMATE'S NAME:</b> Michael Gains	<b>SCDC #:</b> 302385	
<b>INSTITUTION:</b> Perry, C.I.	<b>LIVING QUARTERS:</b> B-4-12	

Ofc. Wilson,

On 9-18-13 you were escorting IGL Johnson while she served grievances. During this date and time IGL Johnson charged me with a 854 & 809. I called you as an witness on my behalf to my hearing to testify to what you heard and saw. My counsel substitute only simply said in my hearing that she spoke to you and you said "you didn't see or hear anything." This request is to get some elaboration on what "you didn't hear or see anything" means specifically. The DHO took that statement as you didn't witness any of this. That could not be true because you were "right there" the whole time and your testimony is very essential to my case. Please elaborate what "you didn't hear or see anything" means.

Thank You!

**DISPOSITION BY STAFF MEMBER:** At the time of the Incident I Ofc. Wilson didn't see anything that would make I/m Gains appear to be engaged in a lunge act. Also I didn't hear anything that he might of said. And I was standing right there facing I/m Gains.

<b>DATE:</b> 1/15/14	<b>SIGNATURE:</b> [Signature]
-------------------------	----------------------------------

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Michael Goins, #302385,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0056-AP  
Grievance No.: PCI 1839-13

**ORDER OF REMAND**

This matter is before the South Carolina Administrative Law Court (“ALC”) pursuant to the Notice of Appeal filed January 17, 2014 by Michael Goins (“Appellant”), who is incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant appeals the decision of the SCDC in his Step Two Grievance, in which his conviction for Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost nine (9) days of good time, therefore a liberty interest is involved. Appellant now appeals, claiming violations of his due process rights and lack of evidence to support the conviction.

**STANDARD OF REVIEW**

The ALC’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). The ALC’s appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented.

**LAW/ANALYSIS**

Since a state-created liberty interest is involved, it is necessary to determine if Appellant received due process of the law. Well established precedent determines that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an

**FILED**  
OCT 10 2014

inmate is disciplined for serious misconduct. Id. at 369-70, 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 requirements, which if established, will ensure procedural due process in inmate disciplinary matters:

- (1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing;
- (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action;
- (3) that inmate should be allowed to call witnesses and present documentary evidence;
- (4) that counsel substitute...should be allowed to help illiterate 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.

Id. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

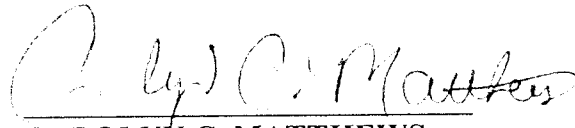
Applying these requirements to the record in this case I find the following:

Appellant was served with notice of the charge on September 23, 2013 and the hearing was held on October 1, 2013. On September 24, 2013, Appellant filled out a Request to Staff Form addressed to Counsel Substitute. Appellant requested two witnesses for his hearing. The first witness was an inmate and the other witness was Officer Desicio. Counsel Substitute did interview both witnesses for Appellant, however neither witness testified at the hearing. For the inmate witness, Counsel Substitute did obtain a written statement pursuant to § 8.2.4, SCDC Policy OP-22.14, Inmate Disciplinary System. However, Counsel Substitute did not obtain a written statement from Officer Desicio. At the hearing, Counsel Substitute only stated Counsel spoke to Officer Desicio, and stated what Officer Desicio told Counsel Substitute. There was no written statement obtained from the Officer Desicio if the Officer was unable to attend the hearing. There is nothing in the Record to determine why Officer Desicio was unable to attend the hearing. Under Wolff, an inmate should be allowed to request witnesses, and under SCDC policy, Counsel Substitute must interview witnesses the inmate wishes to call and if a witness is unavailable for the hearing, obtain a written statement of the witness to present to the Hearing Officer. Here, Appellant requested two witnesses in his Request to Staff Member. Neither witness testified at the hearing. Counsel Substitute did obtain a written statement from the first witness, the inmate. However, Counsel Substitute did not obtain a written statement from Officer Desicio as required by § 8.2.4, SCDC Policy OP-22.14, Inmate Disciplinary System. Therefore, this decision should be reversed and remanded for a rehearing on the matter with Appellant granted the opportunity to have witnesses testify on his behalf, or if the witnesses are

unavailable, for Counsel Substitute to obtain written statements from the witnesses and present those statements to the Hearing Officer at the hearing.

**THEREFORE, IT IS ORDERED** that the Decision appealed from is **REVERSED** and the matter **REMANDED** for a new hearing in which the Appellant is afforded the opportunity to be present and to have his witnesses and accuser present on SCDC's charge of Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14 Inmate Disciplinary System.

**AND IT IS SO ORDERED.**



**CAROLYN C. MATTHEWS**  
Administrative Law Judge

October 16, 2014  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that a true and correct copy of the enclosed document has been served on the undersigned party by first class postage paid in the United States and delivered to the post office on the date indicated.  
This 16<sup>th</sup> day of October  
BY Carolyn C. Matthews  
Administrative Law Judge

The STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Administrative Law Court  
Administrative Law Judge Carolyn C. Matthews

CASE No.: 2014-002385

Michael Goins # 302385 ----- Appellant,

v.

South Carolina Department of Corrections ----- Respondents.

CERTIFICATE OF COUNSEL

The pro se Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: January 14, 2015

Pro Se Litigant,  
Michael Goins # 302385  
430 Coklaw Rd.  
Pelzer, S.C. 29669

**RECEIVED**

JAN 20 2015

**SC Court of Appeals**

The STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
Appeal From Administrative Law Court  
Administrative Law Judge, Carolyn E. Matthews  
CASE No.: 2014-002385

Michael Goins # 302385 ----- Appellant

v.

South Carolina Department of Corrections ----- Respondents

PROOF OF SERVICE

COMES NOW Appellant, Michael Goins # 302385, certify that he did serve the following agencies with the enclosed documents by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following addresses:

- 1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2.) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221-1787

January 14, 20~~14~~15  
Pelzer, South Carolina

s/ Michael Goins  
Michael Goins # 302385  
430 Oaklawn Rd.  
Pelzer, S.C. 29969

SWORN to and subscribed before me  
this 14 day of January, 20~~14~~15.  
Dana C. McMichael (L.S.)  
Notary Public For South Carolina  
My commission expires: 1-23-2023

**RECEIVED**

JAN 20 2015

**SC Court of Appeals**

Mr. Michael Goin # 302385  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

IN RE: Case No. 2014-002350

January 14, 2015

Dear Clerk,

Please find enclosed for your filing Appellant's Record on Appeal.  
With kindest regards,

Respectfully,  
Richard Goin

**RECEIVED**

JAN 20 2015

**SC Court of Appeals**