Billy Lee Lisenby JR; #200273
Ridgeland C.I
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South Carolina Supreme Court
P.O. Box 11330
Columbia S.C. 29211

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Billy

The State of South Carolina

In The Supreme Court

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S.C. Supreme Court

Appeal From Administrative Law Court

Judge Deborah Brooks Durden, Judge ALC

ALC Case Numbers: 12-ALJ-04-0546-AP
12-ALJ-04-0547-AP

Appellate Case No. 2013-000822 2013-000864

Billy Lee Lisenby JR; #200213 ..... Appellant

V.

South Carolina Department of Corrections ..... Respondent

Petition For A Writ of Certiorari

Dated: Nov. 18th 2015

Billy Lee Lisenby

Billy Lee Lisenby, JR; #200213

Ridgeland C.I

P.O. Box 2039

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Attorney For Respondent

Christopher D. Florian

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Index

Certificate of Counsel

Counsel for Petitioner certifies that the Petition For Rehearing was made and finally ruled on by the Court of Appeals.

Questions Presented

1. Did the Court of Appeals ERR in not ruling in Petitioner's favor when he was denied his Right to call witnesses, and no written nor verbal reasons was given on why the denial was necessary?

2. Did the Court of Appeals ERR in not ruling in Petitioner's favor when they presented no evidence of the marijuana, no Controlled Substance Testing Disposition Form was presented, and the picture they presented for the phones and charges, is not visible, and you cannot tell what it is?

Statement of The Case

The Petitioner was found guilty of Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs (903) and Possession of Any Cell Phone or other type of Communication Device (893) on February 14th 2012. He then appealed to S.C.D.C's grievance system Step 1, and Step 2 and both were denied. There after he appealed to the Administrative Law Court and on March 22, 2013 Judge Deborah Brooks Dreden, Judge of The ALC Affirmed each conviction, and the Court of Appeals did the same. Petitioner now appeals to the South Carolina Supreme Court.

Argument #1

The Administrative Law Judge erred in not ruling in Appellant's favor when Respondent was denied his Right to call witnesses. Appellant contends that The Honorable Judge Deborah Brooks Durden didn't understand the case as a whole. She states in her order "One member of the three-person search team had already testified and Inmate did not provide any explanation tending to indicate that the testimony of officers Moore and Lee would not be cumulative." OFficer Hunt is a member of Kershaw Corr. Inst. Contraband Staff. The three members of the Agency Search Team was Lee, Moore, and Coit, and neither was allowed to testify. In fact C/o Hunt didn't know the names of the officers from the agency search team. See page 8 where OFC Hunt states as follows:

"Uh, the Search Team was around me, but I couldn't tell you a name of anyone."

OFC Hunt did not find the contraband it was the Agency Search Team who found the contraband Ms. Moore, Coit and Lee. The D.H.O stated:

"Okay. That's part of the Agency Search Team. Okay, they won't be contacted."

The D.H.O never gave a reason for denying the (3) Witnesses. The ALC stated "It was within the hearing officer's discretion to limit cumulative testimony. This means the D.H.O was only making assumptions, because the D.H.O nor the counsel substitute question these witnesses. Appellant contends that the members of the Agency Search team Lee, and Moore would've testified that he didn't claim ownership. How could the D.H.O determine that the testimony would've been cumulative and the witnesses have yet to testify.

S.C.D.C is violating inmates they send in the Agency Search Team From headquarters in Columbia to search institutions for contraband. These officers have no I.D.'s, name cards or anything. If they find Contraband they don't write it up, they let the institutional contraband officer write it up, such as C/o Hunt. UnFortunatly, Appellant has served alot of time, and he Knows the members of the Agency Search Team. So he provided their names C/o Lee and Moore. He Knew C/o Coit because he has a baby by his daughter. S.C.D.C is now refusing to call the Agency Search Team as witnesses. The D.H.O asked C/o Hunt on Page 7 "DHO: Okay. Was anyone else present when Inmate Lisnby stated that these items belonged to him?. He lied on Page 8 when he stated "OFC: Uh, the Search Team was around me, but I couldn't tell you a name of anyone." He just stated he didn't know his employees names. That's not credible because he Knows the truth would've came out that Appellant didn't claim ownership. The D.H.O was prepared to call another witness, but she refused to call the Agency Search Team as a witness.

Prior to the hearing Appellant sent the D.H.O and Counsel Substitute a S.C.D.C Form 19-11 Request to Staff Member asking that C/o Coit, C/o Moore, and C/o Lee be called as his witnesses. They never contacted nor question the witnesses prior to the hearing. This is a violation of OP 22.14 Section 15.3 which states;

" The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses, is Repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing officer, the Hearing Officer must write his/her reasons for this denial on the SCDC Form 19-69 " Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information".

None of this was done, and the reason for denying his witnesses were not on SCDC Form 1969. If his witnesses couldn't have been present the D.H.O could've gotten them on speaker phone. See OP 22.14 Section 15.5 which states in part:

" Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witnesses must be recorded."

Wolff v. McDonnell, 94 Sct 2963 (1974) supports the fact that Appellant has a Constitutional right to have his witnesses called in his behalf. Accordingly once the SCDC established the administrative framework set Forth in policy, SCDC personnel are bound to follow it.

U.S. v. Morgan 193 F.3d 252 @ 266-67

U.S. exrel Accardi v. Shaughnessy, 74 S.Ct 499 (1954)

" An agency of the government must scrupulously observe rules, regulations, or procedures which it has established.. When it fails to do so, its action cannot stand and courts will strike it down."

U.S. v. Heffner, 420 F.2d 809 (4th Cir. 1969)

The D.H.O obtained a statement from C/o Coit, but refused to obtain statements from C/o Moore and C/o Lee, which would've been in Appellant's favor.

Judge Dueden used the case Ponte v. Real, 471 U.S. at 497 to state "Prison officials may choose to explain their decision at the hearing, or they may choose to explain it later." Please note " I Dissent to this, " Meaning he disagrees, at least one Judge disagreed with this.

Judge Durden further states that the D.HO now states the testimony would've been cumulative. In Christopher Florian's Respondent's Brief he states as his only defense as follows:

> "Appellant claims he was denied the right to examine members of the Agency Search Team at the disciplinary hearing. The Agency Search Team conducts institutional searches as directed by the Director, Division of Security. Each institution assigns an employee to serve in the capacity of an accusing official to ensure the Agency Search Team members can perform their sole duty of conducting searches. With the volume of searches performed, and the volume of contraband found during these searches, the Agency Search Team would become ineffective if they were required to participate in inmate disciplinary hearings. As the WOLFF Court acknowledged, the full panoply of due process right 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."

This brief was dated Oct. 2, 2012 and no where does it speak on cumulative testimony. Under no circumstance can it be justified to deny appellant's request for witnesses without giving a reason. The right to call witnesses is a basic to a fair hearing. WOLFF and Bartholomew v. Watson 665 F.2d at 918. Appellant was deprived of that due process guaranteed by the fourteenth Amendment to the United States Constitution because no reasons whatsoever were advanced by Respondents in court as to why Appellant was not allowed to call the [redacted] Requested witnesses at the hearing.

As the record will show that Christopher Florian made the return on Respondent's [redacted] brief on Oct. 2, 2012 for the 903 - Use, Possession of Narcotics, Marijuana. Bradford A. Rawlinson prepared the Respondent's Brief on September 28, 2012 for the charge of 898 - Possession of Any Communication Device. Both charges occurred on Feb. 4th 2012 and both hearings were held together on Feb. 14th 2012. MR. Bradford A. Rawlinson states:

> "It is clear from the record that further testimony from security personnel would have been repetitive to that of Officers Hunt and Colt. It is also clear that the Disciplinary Hearing Officer gave Appellant ample opportunity to present evidence on his behalf and afforded Appellant Due Process as discussed in WOLFF v. McDonnell, 418 U.S. 539, 566, 94 S.Ct 2963, 2978-2982 (1974)."

MR. Florian states " they denied Appellant's witnesses due to security reasons." MR. Rawlinson, states "they denied Appellant's witnesses due to repetitive testimony." There was only one hearing and one D.H.O (MRS. Sellers). They have not provided a statement from the D.H.O stating why she denied Appellant's witnesses. So the Judge erred in not ruling in Appellant's favor because MR. Florian and MR. Rawlinson are not being truthful, they have violated Petitioner's constitutional Right mandated by WOLFF and now they are exaggerating to cover it up.

In the initial brief and Final Brief from the Respondent in case 12-ALJ-04-0547-AP. Although it has been consolidated with case 12-ALJ-04-0546 they only addressed case 12-ALJ-04-0547-AP. Again Appellant argues in Christopher Florian's Respondent's Brief at the ALC dated Oct. 2, 2012 he never argued that "It is clear from the record appellant's requested witnesses would have given testimony that was repetitive to the evidence that had already been presented." But the ALJ Ruled this was her reason for ruling against the Appellant. Here again the Respondents are arguing that they didn't allow Appellant to call the officers from the Agency Search Team because their statements would be "Repetitive." The Respondent have argued this in the initial brief and Final brief.

This was not a defense in the lower courts or in the Step 1 or Step 2 grievance, it cannot become a defense now.

For all the above reasons the Appellant is entitled to relief.

Argument #2

The ALC erred in not ruling in Appellant's favor because at the hearing they presented no evidence of marijuana, and the picture they presented for the phones and charger, is not visible, and you cannot tell what it is.

At the hearing the D.H.O never presented any evidence that the alleged marijuana tested positive for THC. Also they never showed a picture of the marijuana, and the alleged picture of the phone and charger was not clear. This is a violation of policy OP-22.14 Section 15.1 which 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 involves a controlled substance, i.e., illegal drugs such as marijuana, the Hearing officer must have available a copy of SCDC Form 1979 "Controlled Substance Testing and Disposition Form," that establishes the exact type of illegal drug found in the possession of the inmate."

The DHO did not have the SCDC Form 19-79 available.

Accordingly once the SCDC established the administrative framework Set Forth in Policy, S.C.D.C personnel are bound to follow it.

U.S. v. Morgan 193 F.3d 252 @ 266-67

U.S. exrel Accardi v. Shaughnessy, 74 S.C.t 499 (1954)

"An agency of the government must scrupulously observe rules, Regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down". U.S. v. Heffner, 420 F.2d 809 (4th Cir. 1969)

Conclusion

For the reasons stated, petitioner asks this Court to grant the petition for a Writ of Certiorari.

Dated: Nov. 18th 2015

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The State of South Carolina
In The Supreme Court

Appeal From Administrative Law Court
Judge Deborah Brooks Durden, Judge ALC
ALC Case Numbers: 12-ALJ-04-0546-AP
12-ALJ-04-0547-AP

Appellate Case NO: 2013-000852 2013-000864

Billy Lee Lisenby JR; #200213 ..... Appellant

V.

South Carolina Department of Corrections ..... Respondent

Certificate of Service

I hereby certify that I have served the Respondents a copy of Petitioners/Appellantes Petition For A Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid, on Nov. 18th 2015 addressed to the Respondents as follows:

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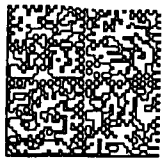

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