

The State of South Carolina  
In the Court of Appeals

Appeal from Administrative Law Court  
Administrative Law Judge Carolyn C. Matthews  
Richland Co. SC.

Case No. 11-ALS-04-00397-AP

Timothy E. Heminger #286667 . . . Appellant  
v.  
South Carolina Dept of Corrections . . . Respondent

Record on Appeal

Timothy E. Heminger #286667  
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Dennettsville SC 29512  
~~Attorney~~  
Pro Se Appellant

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RECEIVED

JUL 1-9 2012

SC Court of Appeals

SDC

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**SC Court of Appeals**

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**FILED**

JAN 27 2012

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Timotheus Hemingway, #286667,  
  
Appellant,  
  
vs.  
  
South Carolina Department of Corrections,  
  
Respondent.

Docket No. 11-ALJ-04-00397-AP

**ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Appellant appeals the decision of SCDC in his Step 2 Grievance in which his conviction of Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public (809) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost ninety days of good time earned. Appellant appeals on the grounds that he was not afforded due process because there was insufficient evidence in the record to support the conviction and the Disciplinary Hearing Officer failed to provide an adequate written record of the evidence relied upon. The Appellant appeals alleging that the Respondent did not adhere to time limits as required by its own policy.

**STANDARD OF REVIEW**

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). The Court'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 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 Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. 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 Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz, 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 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.

Al-Shabazz, 527 S.E.2d at 751 citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

Applying those requirements to the record in this case we find the following:

Appellant was served with notice of the charge on December 2, 2010 and the hearing was held on December 8, 2010 and continued on December 13, 2010. The Disciplinary Report and Hearing Record show reliance on testimony from Officer Glover. It is this indication on the Disciplinary Report and Hearing Record which constitutes the written record of evidence relied upon. The Disciplinary Report and Hearing Record show that the reason for the action taken was it was the Appellant's third offense of 809 since the revision of the policy. At the hearing Inmate requested his accuser be present and she was present in the hearing via telephone. Appellant was ineligible for assistance by Counsel Substitute. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

In this case, Officer Glover reported that as she was conducting a formal count. As she entered the room, Appellant walked up towards the door and made threatening statements towards her. Appellant admitted that he was disrespectful but that he did not

intent to threaten Officer Glover.

An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1- 23-380(6) (Supp. 2010). 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 § 1-23-380(6) (Supp. 2010); See also Marietta Garage, Inc. v. South Carolina Dep't of Public 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. It is thus clear that Inmate has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Lastly, a prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met. Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4<sup>th</sup> Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5<sup>th</sup> Cir. 1996)).

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 this appeal is hereby **DISMISSED WITH PREJUDICE.**

**AND IT IS SO ORDERED.**

**CAROLYN C. MATTHEWS**  
S.C. Administrative Law Court

January 27, 2012  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that she, undersigned this this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 27 day of January 2012  
By: Roger P. Sings  
Judicial Law Clerk

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE  
DOCKET No.: 397 GRIEVANCE No.: ECI 15-11  
INMATE NAME: Timotheus Hemingway, SODC #286667  
INSTITUTION: Evans Correctional Institution  
DATE: December 8 & 13, 2010  
CHARGE: 809 Threatening to Inflict Harm on an Employee**

DHO: The purpose of this hearing is to treat the matter before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in removal. State your name & # for the record.

I/M: Timotheus Hemingway, #286667.

DHO: You're appearing before the Evans CI disciplinary hearing being recorded on 12/8/10 approximately 11:30 a.m. I'm Mrs. Sellers. I/M Hemingway is representing himself. Are you ready to proceed?

I/M: Yes.

DHO: I'll read report #11-10-208 dated 11/20/10 approximately 6:25 a.m., written by Ofc. Glover, location Santee B-wing. It reads as I, Ofc. Glover was conducting standing formal count. When entering room 121, I/M Hemingway, #286667 said, you are a hateful bitch & I want you to come across me the wrong way, I want you to do something to me & I swear to god, while standing at the door looking at me. I'm charging him with 809 Threatening to Inflict Harm on or Assaulting an Employee. How do you plead?

I/M: Not guilty.

DHO: Do you've any witnesses, evidence or a statement?

I/M: I've a statement. I am before the DHO on 809 charge. I do admit that I'm guilty of

**DHO-Disciplinary Hearing Officer  
OFC-Accuser  
OFC-Accuser  
I/M-Inmate**

disrespect of staff & for this I take full responsibility. As for threatening, this I can't say I'm guilty on the account that I didn't have any intention of relaying a threatening message to Ofc. Glover nor did I use what's in the narrative that I was going to give her some problems (inaudible) give me some problems.

DHO: Did you make the statement to her?

I/M: No.

DHO: Tell me what you did say.

I/M: I said, you're a hateful so & so, I admit that.

DHO: You didn't elaborate?

I/M: No.

DHO: You didn't say if she came across you the wrong way, I want you to do something to me & I swear to God, while standing at the doorway, you said swear to God (inaudible)? You're saying you didn't say that?

I/M: No.

DHO: Is there a reason why when you 1<sup>st</sup> came in that you made a decision for me not to contact Glover?

I/M: No, I didn't.....

DHO: At this time I'll recess to contact Glover.

DHO: The purpose of this hearing is to treat the matter before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in removal. State your name & # for the record.

I/M: Timotheus Hemingway, #286667.

DHO: You're appearing before the Evans CI disciplinary hearing being recorded on 12/13/10 approximately 3:15 p.m. I'm Mrs. Sellers. I/M Hemingway is representing himself. Are you ready to proceed?

I/M: Yes.

DHO: I'll note the case originally started on 12/8/10 at 11:30 a.m., tape 304 side A204-245. Today's 12/13 using tape 305 side A245. I've the accuser on the phone, Ofc. Glover. I'll read report by Glover dated 11/20/10 approximately 6:25 a.m., report #11-10-208, location Santee B-wing. It reads as I, Ofc. Glover was conducting standing formal count. When entering room 121, I/M Hemingway, #286667 said, you are a hateful bitch & I want you to come across me the wrong way, I want you to do something to me & I swear to god, while standing at the door looking at me. I'm charging him with 809 Threatening to Inflict Harm on or Assaulting an Employee. You were served the offense on 12/2 at 11:15 by Ofc. Davis. I've a statement by you which says, I am before the DHO on 809 charge. I do admit that I'm guilty of disrespect of staff & for this I take full responsibility. As for threatening of this I can't say I'm guilty on the account that I didn't have any intention of relaying a threatening message nor did I use the word in the narrative. You want to make a statement?

I/M: No, I'll let that paperwork stick.

DHO: When initially served you asked for your accuser. Then when we initially started the case on 12/8 you didn't, but I've Glover on the phone. Is your report true?

OFC: Yes.

DHO: Any additional statement?

OFC: No, (inaudible) at the time.

DHO: At what point did you feel threatened by the I/M?

OFC: The way he walked up to the door. It's walking when you say something to somebody opposed to just you know he was just getting up out his bed. He took the steps toward the door & (inaudible).

DHO: Questions for me to ask Glover?

I/M: No.

DHO: At this time I'm going to recess this hearing to arrive at a decision.

DHO: Re-state your name & # for the record.

I/M: Timotheus Hemingway, #286667.

DHO: I/M Hemingway, I find you guilty of 809 based on the written & verbal testimony of Glover. Your sanctions are  $180 + 180 = 360$  days loss of privileges to include canteen, phone, contact visit suspension, 180 days disciplinary detention & 90 days loss of good time. This is due to it being your 3<sup>rd</sup> offense of 809 since the revision of policy. You'll receive a copy of the hearing record explaining the results & the appeals process. You've the right to appeal my decision by filing SCDC form 10-5 with the Grievance Coordinator. You may get the assistance of the Grievance Coordinator in completing the grievance form if you're unable to read or write. You're dismissed & this hearing is concluded.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

12/14

11-10-208

Institution / Center: <u>Evans</u>	
Date of Report: <u>11/20/10</u>	Time of Report: <u>7:30 AM</u>
Reporting Official: <u>D/C Doney</u>	Date of Incident: <u>11/20/10</u>
Location of Incident: <u>Santee Building</u>	Time of Incident: <u>6:25 AM (Approx)</u>
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. <u>Nemineyway Timotheus 286667 B/M</u>	1. <u>4A 204 Building 12.9</u>
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I D/C Doney was conducting standing formal count when entering room 204 of Nemineyway Timotheus SCDC, 286667 said "you are a hateful bitch, and I want you to come across me the wrong way; I want you to do something to me and I speak to God." While standing at the door looking at me? I am charging D/M Nemineyway with 809 threatening to inflict or assaulting an employee.

Exhibit A (TH)

Signature: D/C Doney

Evidence:

Witness(es): OFC B. SLOWRON

Supervisor's Comments:

REFER TO DHO

Signature: T. O'Connell Title: Captain Date/Time: 11/20/10 8:30 PM

Major / Responsible Authority:

809

Signature: D. Chomso Title: AW Date: 11/20/10

STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
This Incident is DRUG related <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
EVANS CI Inmate <del>Action Taken</del> <input type="checkbox"/> Informal Resolution <input type="checkbox"/> Administrative Resolution <input checked="" type="checkbox"/> Refer to Disciplinary Hearing

(9)

12/14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD

12.9

Case#: 23 Inmate Name: Timotheus Hemingway SCDC#: 286667

Living Area: 4A XXX 264 Job: Building Custody: \_\_\_\_\_

Offense Date: 11/20/10 Offense Time: 6:25 AM Institution: Evans

Offense Description: (809) Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public: Communication, verbal or written, by an inmate to an individual that he/she intends to injure that person or commit a violent or unlawful act dangerous to human life presently or in the future. Any inmate that causes serious alarm, and/or unauthorized touching but does not cause bodily injury.

Charging Officer/Employee: Glover Title: Ofc.

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:**

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 NOT WANT MY ACCUSER PRESENT AT THE HEARING AS

I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

I WAIVE MY RIGHT TO A HEARING

**SMU/SEGREGATION ONLY**

I WANT A COUNSEL SUBSTITUTE

I DO NOT WANT A COUNSEL SUBSTITUTE

**T.E.H.**

Date & Time Notified: 12/2/10 11:16 AM By (Print): Ofc. Jc. Davis

Inmate Signature: T. Hemingway SCDC#: 286667 Date: 12/2/10

HEARING INFORMATION:

12-13-10	Cont	Cont	Cont	Cont	Cont
Hearing Date: <u>12/8/10</u>		Hearing Time: <u>11:30 am</u>	Tape: <u>305</u>	Side: <u>A</u>	Start: <u>204</u> End: <u>245</u>

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

Message left on 12-8-10 @ 11:35 am. Glover called @ 2:40 pm  
" " " " 12-13-10 @ 11:35 am. Glover called @ 2:00 pm

OFFENSE CODES	809				
INMATE PLEA (G, NG, None)	NG				
FINDINGS (G, NG, DS)	G				

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: Written verbal testi-  
mony of Glover.

HEARING LENGTH: 13 (MINUTES)

**SANCTIONS:**

Loss of Privileges (Days) \_\_\_\_\_ Reprimand: \_\_\_\_\_ Loss of Good Time (days): 90

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

\* Canteen (Days) 180+180=360 Visit Suspension Thru 1/1 180+180=360

\* Other (Days) phone 180+180=360 Cell Restriction (Days): \_\_\_\_\_

\* Disciplinary Detention (Days): 180

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 3rd offense of 809 since  
the revision of policy.

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS \_\_\_\_\_ DH.

DATE INMATE PLACED IN PHD 1/1

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: \_\_\_\_\_ DATE: 12-13-10

HEARING OFFICER (PRINT NAME) A. Sellers

APPROVED REVERSE/MODIFY [Signature] REASON \_\_\_\_\_

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record Canary - Inmate (Service of Disciplinary Report)  
Golden Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

\*(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

**EVANS** Inmate Grievance Coordinator

Exhibit B (TH)

[Signature]

(10)

Disciplinary Appeal

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1

INMATE NAME: Timothius Hemingway  
SCDC NUMBER: 286667  
INSTITUTION: Fraus CI  
HOUSING UNIT: Sonu  
WORK ASSIGNMENT: N/A

Office Use Only  
Grievance No. FC7-0015-11  
Code: General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc. Hear. SCU Case # 23  
HS 1/13/11  
Class. \_\_\_\_\_  
Date Received 1/4/11  
IGC Initials AB  
2-3-11

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

DW 12-13-2010 I was convicted by DWJ (ECJ) of threatening to inflict harm on SCDC employee. I am appealing this conviction on the facts that (1) I am not guilty (2) The officers narrative does not support a conviction of the above said charge. Det. Glover stated that I said that I wish she would do something to me. . . . It does not state that I said I was going to cause any present or future bodily harm. I for one was behind a cell door and did not nor was I a threat to anyone. Policy state of 22.14 that I must make a verbal or written statement that I intend to cause bodily harm in the present or future. of which, det. Glover narrative does not support therefore I am not guilty.

ACTION REQUESTED: I REQUEST that charge of threatening to inflict harm on employee BE dismissed AND all good time ~~and~~ BE reinstated. I ASK that this case BE reviewed AND all rules AND policy BE applied.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I WAS BEFORE DWJ SELLERS & PLEAD NOT GUILTY

DEC 23 2010  
Grievant Signature \_\_\_\_\_ Date

ACTION TAKEN BY IGC:

1. IGC reviewed disciplinary hearing record and relevant agency policies. I have reviewed the tape recording of this hearing. There was no technical/procedural errors noted in the handling of this case.
2. Forwarded to Warden Eagelton for a response.

A. Graw 1/13/11  
IGC Signature \_\_\_\_\_ Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.



**WARDEN'S DECISION AND REASON:**

Inmate Hemingway:

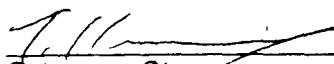
This is in response to grievance #ECI 15-11


I have reviewed your grievance and the facts. The points you raised do not substantiate any errors in the disciplinary hearing procedures and do not warrant a reversal. I find no technicalities, misinterpretations of evidence, or disproportionate sentencing in which you may appeal. You were convicted of 809 Threatening to Inflict Harm based upon credible evidence. The sanctions imposed were well within the guidelines for the offense and your grievance is denied.

If you wish to pursue this matter, please contact your grievance coordinator for the appropriate forms. You have five (5) days from receipt of my response to submit a Step 2 grievance form.

 1-20-11  
Warden Signature Date

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

 1/25/11  
Grievant Signature Date

 1/25/11  
IGC Signature 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 an 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 within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 2

Step 1 of 2  
D. Egan

INMATE NAME: Timothewes Herminobles  
SCDC NUMBER: 286667 INMATE GRIEVANCE  
INSTITUTION: Evans C.I.  
HOUSING UNIT: MB # 119  
WORK ASSIGNMENT: N/A

0397 Office Use Only  
Grievance No. EC 15-11  
Code: General  
Policy  
Disc. Hear. 809 CAP # 23  
Class. AD 12/13/09  
Date Received 1/27/11  
IGC Initials JB  
1-8-11

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):  
Inmate Reason for appeal is his dissatisfaction in the negligence of or in the preponderance of the credible evidence (OP 22.14 -14.1 standard of guilt).  
It is not viewing ~~viewing~~ the evidence in light, and ~~and~~ the misinterpretation of evidence in light of etc. statement + the specific guidelines in Substantives  
The charge of 809 Threatening to inflict harm as mandated by OP 22.14-809,  
It is the DHO's duty to make their decision of guilt based on the evidence presented by etc. written statement  
Timothewes 1-26-11  
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 (8.09) on December 13, 2010, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of -90- 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 twenty-four (24) 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] 01/13/2011  
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)

5 (12)

EXhibit C

It is the duty of the IGC and warden reviewing Committee of appeals to consider whether the decision of the Hearing officer was based on substantial evidence (OP 22.14-17.3 Appeals) The evidence is clear in o/c. Glover's written statement that inmate did not say or do anything that corresponds with the charge of 809. The charge of 809 specifically states that "... Communications, verbal or written by and inmate that he intends to insure that person presently or in the future..." (OP 22.14 809 level of offenses) o/c. Glover written statement states inmate called her a "Hole full Bitch" and that inmate stated that "HE wish "she" would do something to him" This statement does not show that inmate said or communicated any type of threat verbally or written.

It does not state that she heard Inmate would insure her in the present which is evident by no first responders nor ~~no~~ notification of immediate supervisors. It does not state that inmate ~~was~~ stated he would insure her in the future. OP 22.14 14.1 states that DHO will review the evidence and make decision on that evidence. The incident report ~~and~~ failed to show ~~prove~~ evidence showing that inmate communicated verbal or written that he intended to insure o/c. in present or future. DHO is in violation for finding inmate guilty of 809 instead inmate should have been convicted of 836 "disrespect". On the grounds of procedural error OP 22.14 this case must be over turned. It is clearly stated that one of the following factors must occur in order for 809 threatening to inflict harm to be substantiated. In finding of guilt.

A communication" verbal or written indicating that inmate intends to commit harm in present or future. ~~no~~ DHO states that inmate was found guilty based on o/c. Glover's statement. The statement of o/c. Glover was submitted as evidence. How ever the statement made by o/c. Glover does not substantiate a conviction for 809. It is evident that DHO decision of finding inmate guilty is in violation of OP 22.14-14.1 and not based on adequate preponderance of credible evidence. Inmate presented non trivialous evidence thru written statement of o/c. Glover statement failed to show a verbal or written communication of inmate intending to commit harm. Inmate written statement reflected that he made any verbal or written statement that he intended a threat or harm. DHO did not show his preponderance of credible evidence of what it was in that evidence which points to inmate being ~~found~~ guilty of 809. There is no showing that inmate communicated a verbal or written statement that he intended to harm officer. In this case the policy of standard of guilt by preponderance of credible evidence has ~~been~~ been neglected in the deciding of guilt. In violation of written policy OP 22.14-14.1

STEP 2 CONT. ECI 15-11

Reviewing Parties of Appeals At ECI failed to rule this appeal on the insufficient evidence to substantiate the conviction of 809 threatening to inflict harm on employee.

Reviewing Parties failed to correct the misinterpretation of the evidence. As stated above, evidence submitted by charging ~~inmate~~ etc. that was used in convicting ~~inmate~~ inmate does not substantiate a charge for 809. OP 22.14... communication verbal or written that inmate intends to harm that person or threat to harm that person. In etc. Glover written statement, Glover states that inmate called her a hateful bitch and that inmate says she wish she could do something to him is not substantial evidence for conviction.

Review Parties are in violation of op 22.14-11.3 (2nd line) with the misinterpretation of evidence, finding of guilt and violation of several written policy & procedure in convicting inmate of said charge ~~inmate~~ in handling this case, I ask that 809 be overturned and sanctions vacated. Furthermore in convicting inmate of 809 where there is no written or verbal ~~evidence~~ evidence provided stating or showing that inmate communicated such threats is in clear violation of policy OP 22.14 a mere speculation is no substitute for evidence, and an agency decision based on speculation is not supported by substantial evidence (White ex rel. Smith v. APTEL 167 F.3d 969). Inmate presents evidence undisputed by SDC Policy OP 22.14 This evidence totally contradicts the conviction of 809. Where as in order for 809 to be validated inmate must communicate, verbal or written that he intends to injure that person in present or future.

Inmate Timothy Elish Hemingsway 286667 is seeking full reimbursement of loss of good time job replacement & education programs continued.

(Handwritten mark)

(14)

LETTER TO THE JUDGES.

FOR THIS CASE APPELLANT DOES NOT PASS THE NOTICE OF APPEAL TO THE ADMINISTRATIVE LAW COURT. HOWEVER

THE RESPONDENT WAS FORWARDED A COPY BY THE APPELLANT. I REQUEST THAT THE RESPONDENT FORWARD A COPY FOR THE COURTS AND I. I ASK THAT THESE PROCEEDINGS CONTINUE UNTIL RESPONDENTS FORWARDS THE REQUESTED DOCUMENTS

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JUL 19 2012

**SC Court of Appeals**

THE STATE OF South Carolina  
IN THE COURT OF APPEALS

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Appeal from Administrative Law Court  
Administrative Law Judge Cordell C. Matthews

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CASE NO. 11-ALS-04-0397-AP

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Timothy Hemingway #286667 ... Appellant  
vs  
South Carolina Dept of Corrections ... Respondant

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Certificate of Service

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I here by certify that I have served Respondant a  
copy of the Appellant Record on Appeal by depositing  
a copy in the mail room at the Inmate's Institution  
on July 17 2012

Christopher D. Florian  
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SC Court of Appeals