

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT JAN 19 2016

Administrative Law Judge John D. Mclean SC Court of Appeals

Appellate Case No. 2015-002639

T. Terrell Bryan, #254638 _____ Appellant,

v.

South Carolina Department of Corrections _____ Respondent.

INITIAL BRIEF OF APPELLANT

1/11/16

PRO SE APPELLANT

T. Terrell Bryan
#254638, EB62, LC I
P.O. Box 205
Ridgeville, SC 29472

ATTORNEY FOR RESPONDENT

Stephen H. Lungford
Staff Attorney
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STATEMENT OF THE ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW COURT ERRED IN HOLDING I HAD AN OPPORTUNITY TO CALL WITNESSES WHERE I RAISED IT FIVE TIMES.

STATEMENT OF CASE

This matter comes before this court pursuant to the appeal of myself ("appellant"), appealing my DHO Conviction. I Filed a timely Step 1 & 2. see Step 1 & 2 of Grievance No.: LCI 274-15. Both were denied.

I appealed to the Administrative Law Court (ALC) & was denied. see "order Affirming Decision".

Appellant now seeks review of the ALC's decision.

STANDARD OF REVIEW

S.C. Code Ann. §1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, & substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. §1-23-380 (A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

ARGUMENT & CITATION OF AUTHORITY

I. THE ADMINISTRATIVE LAW COURT ERRED IN HOLDING THAT I HAD AN OPPORTUNITY TO CALL WITNESSES.

Respondent alleged that I failed to raise the issue of having my roommate being present at the disciplinary hearing. This is incorrect! I requested the presence of my I/m witnesses before the hearing. see EXHIBIT #1 - I/m Request ("... I request for my roommate to be present as my witness.") I again asked counsel substitute / Ms. Atchley to interview my witness. see OP-22.14 § 8.1.3. Ms. Atchley told me that DHO/ Ms. Bachman do not allow I/m witnesses to be physically present. Next, I addressed to the DHO/ Ms. Bachman at the hearing before Ms. Bachman turn the tape on. Ms. Bachman will state so. THEN, I said "what about witnesses?" at the hearing but it is "(Inaudible)" see Tr. p. 2, L. 7, of the transcript. The court should listen to the transcript. see also step 1 Grievance No. LCI-0274-15 ("... I was denied the presence of my I/m witness.")

A qualified right to call witnesses in one's behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974).

"Prison officials may choose to explain their decision at the hearing, or they may choose to explain it later... [s]o long as the reasons are logically related to 'institutional safety or correctional goals,' the explanation should meet the due process requirements as outlined in Wolff." Ponte v. Real, 471 U.S. at 497.

In the present case, the Disciplinary Hearing officer (DHO) Ms. Bachman gave no explanation for refusing to allow the witnesses to appear & SCOC offered none in its brief.

I have raised the issue of having my roommate being present at the disciplinary hearing no less than 5 times. The FIRST

time by I/M Request, see EXHIBIT #1. **SECOND**, time to counsel substituted Ms. Atchley. **THIRD**, to OHO/ Ms. Bachman at hearing before recording. **FOURTH**, while recording. Tr.p. 2, L. 7 & a **FIFTH** time on my step 1 Grievance.

CONCLUSION

The ALC erred by holding that I had an opportunity to call witnesses in light of I having raised the issue of having my witnesses being present at the disciplinary hearing 5 times & been denied presence of my witness. I pray this court reverse the ALC's ruling. Thank you.

1/11/16

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this & "Designation of matter to be include in the Record on Appeal," on: Stephen H. Lungford; staff Attorney; 4444 Broad River Rd.; Columbia, SC 29221.

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JAN 19th 2016
SC Court of Appeals

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