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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge, S. Phillip Lenski

ALC Case No. 14-ALJ-04-0927-AP

Appellate Case No. 2015-001761

RECEIVED

JAN 04 2016

SC Court of Appeals

John Alexander, 194748

v.

Appellant,

South Carolina Department of Corrections

Respondent.

RECORD ON APPEAL

Christina Catoe Bigelow
4444 Broad River Road
Columbia SC 29210 Counsel for Respondent

John Alexander
Department of Corrections
386 Redemption Way
McCormick, SC 29899

WVIT BOON
CEOVF WVIT

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WVIT 500W
CEWT WVIT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: John Alexander
SCDC NUMBER: 194748
INSTITUTION: McCormick
HOUSING UNIT: F4 193
WORK ASSIGNMENT: Law Library SEP 11 2014

Office Use Only
Grievance No. MCC10516-14
Code: General
Policy _____
Disc. Hear. 903, #12, 9-08-14
Class. _____
Date Received 09-11-14
IGC Initials PT

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) ISSUE: That
Glidewell knowingly denied and deprived me of clearly established rights under the Confrontation Clause and Due Process Clause of the 6th and 14th Amend. CA. Specifically, on (2) separate occasions, Ms. Glidewell had Lt. McCurry cause me from the hearing. Subsequently, Ms. Glidewell found me guilty alleging that Dr. McCree and a lab analyst testified that the 6 prescribed medications I was taking did not distort or have a cross-reactivity on the drug test. The most basic guarantee of the Confrontation Clause and Due Process Clause affords me the right to hear and confront / refute all evidence used to convict me. Ms. Glidewell disregarded and ignored both of my rights.

ACTION REQUESTED: Because Ms. Glidewell violated my federal and state constitutional rights to hear, confront and defend against supposedly culpatory testimonial evidence used to convict me, my conviction and sentence must be rendered annul and void.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

N/A see SCDC Policy and Procedure GA-01.12

John Alexander 9/10/14
Grievant Signature Date

ACTION TAKEN BY IGC:

Reviewed case and considered reasons for appeal. There was substantial compliance with institutional standards and procedures. The decision of the DHO was based on substantial evidence and under the circumstances, the sanctions imposed were proportionate to the rule violation. Therefore, I am recommending that the conviction be upheld. See Warden's Decision.

[Signature] 09-15-14
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.

N/A
Grievant Signature Date

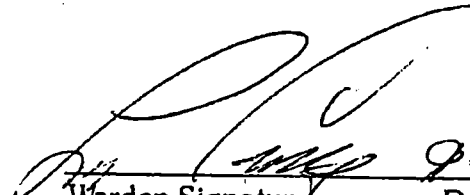
WARDEN'S DECISION AND REASON:

I/M John Alexander, 194748
MCCI 0516-14

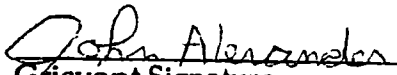
I/M Alexander:

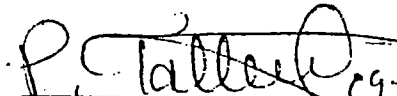
You have appealed the results of your 09/08/14 Major Disciplinary Hearing where you were found guilty on the charge of 903, Trafficking, Use and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, case #12 Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretation of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The sentence imposed was not excessive but proportionate to the rule violation. Dr. McCree, stated none of the medications that you were on at the time of your test would have reacted with the drug test. You tested positive on the primary test, the confirmation and the external drug test. Your appeal is denied.

If you are not satisfied with my decision, you may appeal to the appropriate responsible official within, (5) days of receipt, via the Institutional Grievance Coordinator.


Warden Signature 9-15-14
Date

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


Grievant Signature 9/15/14
Date


IGC Signature 09-15-14
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.

Due 09-20-14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

SEP 17 2014

STEP 2
RECEIVED

Office Use Only
Grievance No. MYCE-051644
Code: General _____
Policy _____
Disc. Hear. 903, #12, 9-8-14
Class. _____
Date Received 09-17-14
IGC Initials PT

INMATE NAME: John Alexander
SCDC NUMBER: 194748 SEP 19 2014
INSTITUTION: McCormick
HOUSING UNIT: F4A 193
WORK ASSIGNMENT: Law Library

INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Emphatically, the Action taken By The IGC nor the Warden's Decision addressed the issue raised on Appeal. But rather echos the Disciplinary Hearing Officer's Conclusion. Concisely, the Appellant asked, and still asks; during his disciplinary hearing, was he denied and depr ved of his constitutional Federal and State right to hear, confront and defend against the "alleged" testimonial evidence submitted by Dr. McCree and a lab technician under the Confrontation Clause and Due Process Clause of the 6th and 14th Amendment of the U.S. Consti tution? Note: Appellant has been denied John Alexander 9/15/14 the right to hear his disciplinary recording. Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including Prescription Drugs, or Inhalants (903), case #12 on September 8, 2014, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanctions imposed, which included the loss of -60- 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] 9/30/14
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)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-)
GRIEVANCE NO.: _____)

Notice is hereby given that John Alexander, 194748 does hereby appeal the final decision of the South Carolina Department of Corrections dated 9/30/14 and received on 10/8/14, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

That the Appellant was denied and deprived of Due Process and Equal Protection of Law. As well as denied and deprived guaranteed Federal and State constitutional rights under the Confrontation Clause of the 6th and 14th Amendments of the United State Constitution as well as Article 1 Section 3 of the South Carolina Constitution. In general, the Respondents conducted a Disciplinary Hearing which the Appellant was prohibited and forbidden to: (1) attend and participate; (2) hear the (See attachment)

John Alexander
Appellant's Name

John Alexander
Signed

386 Redemption Way
Mailing Address

16 October 2014
Dated

McCormick, SC 29899
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, J. A. (your name), on the 16 day of Oct., 2014, in McCormick (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Office of General Counsel

Address: 4444 Broad River Road

City, State, Zip Code: Columbia, SC 29221

Print your name: John Alexander
(See reverse side for instructions)

Sign your name: John Alexander

6.

alleged evidence used to convict and sentence him;
and (3) confront and refute such evidence, if any.

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STATEMENT OF ISSUES ON APPEAL

1. That the Appellant was denied and deprived of Due Process and Equal Protection of the Law. As well as denied and deprived of the Federal and South Carolina Constitutional right under the Confrontation Clause of the Sixth and Fourteenth Amendments of the United States Constitution and, Article One Section Three of the South Carolina Constitution.

STATEMENT OF THE CASE

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

This Appeal is as follows:

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Indisputable, the Due Process and Equal Protection Clause strongly condemns putting a man to trial and convicting him in his absence unless he absences himself or deliberately forfeit his right to presence. See Fourteenth Amend.; S.C. Const. Art 1 Sec. 3. Likewise, the Confrontation Clause is dead set against trying, convicting and sentencing any person without first affording him the right to hear, refute and confront any evidence or witness used to determine his guilty or innocence. See Fifth and Fourteenth Amend.; Moore v. Moore, 376 S.C. 467 S.E.2d 743 (2008); Constitutional Key 3879

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

15.

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

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

CONCLUSION

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

SERVICE OF BRIEF

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

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

Respectfully Submitted
John Alexander

Sworn and Subscribed

this 1st day of Dec., 2014

Franklin

Notary Public For South Carolina

My Commission Expires 12-16-2019

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

vii -
R11,1 NWT
Cm 3 P4A
PC

Page 1 of 1

Institution/Center: <u>MCC-7</u>				Date of Report: <u>8-18-14</u>
Reporting Official (Full Name): <u>LT. M. C. Currey</u>				Time of Report: <u>10:45 am</u>
Employee ID #: <u>022308</u>				Date of Incident: <u>8-18-14</u>
Location of Incident: <u>Visitor Room</u>				Time of Incident: <u>0850 am</u>
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:
1. <u>194748 Alexander, John</u>				
2.				
3.				
4.				
5.				

Employee(s)/Witnesses Involved:

- 1.
- 2.
- 3.
- 4.
- 5.

On the above date and approximate time: John Alexander #194748 was randomly selected for a drug test and failed both the primary and confirmation test for THC. This is A/M Alexander first positive and his urine specimen was sent to the lab.

Signature: LT. M. C. Currey Title: LT.

Evidence: Drug Test Form

Disposition of Evidence:

Supervisor's Comments: 903

Printed Name: Marshall Title: LT Date/Time: 8-18-14 10:50 am

Signature: [Signature]

Major/Responsible Authority: 903

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

Printed Name: F. Mursion Title: LT Date/Time: 9:05 AM

Signature: [Signature]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 12 Inmate Name: Alexander, John SCDC#: 194748
Living Area: F4A 193 Job: N/A Custody: MIB
Offense Date: 08/18/14 Offense Time: 8:50 AM/PM Institution: McCormick
Offense Description: 903 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs including Prescription Drugs or Inhalants

Charging Officer/Employee: K. McClurry Title: LT
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 WANT MY ACCUSER PRESENT AT THE HEARING

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

Date & Time Notified: 09/05/14 2:34 AM/PM By (Print): Cpl L. Kelly
Inmate Signature: [Signature] SCDC#: 194748 Date: 09/05/14

HEARING INFORMATION:

Hearing Date: 9/8/14 Hearing Time: 11:14 am/pm Tape: _____ 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

OFFENSE CODES	<u>903</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>NG</u>			

IF GUILTY, EVIDENCE PRESENTED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER - EXPLAIN IN DETAIL. (B) test results
lab results state that I spoke with my mother at the lab the state that I would reach with these tests & that it went to external lab that would have led to external lab that would have led to external lab that would have led

HEARING LENGTH: 45 (MINUTES)

SACTIONS:

Loss of Privileges (Days)

- * Property (Days) 360 + 90
- * Canteen (Days) 360 + 90
- * Other None (Days) 360 + 90
- * Disciplinary Detention (Days): 90

Reprimand: _____
Extra Duty: _____
Visit Suspension Thru: 1/1 Restitution: \$ _____
Cell Restriction (Days): 360 + 90 Loss of Good Time (days): _____

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st failed drug test

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS: _____

DATE INMATE PLACED IN PHD: _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 9/8/14

HEARING OFFICER (PRINT NAME): [Signature] Warden REASON: _____

APPROVED/REVERSE/MODIFY: _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.
White - Institutional Record
Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)
Canary - Inmate (Service of Disciplinary Report)
Pink - Central Record
Financial Accounting
*(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)
SCDC 19-69 (Rev., May 2007)

OFFICE OF INSPECTOR GENERAL
RANDOM AND TARGET INMATE DRUG TESTING
28 DAY LIST

R4113290

(PLEASE PRINT)

INSTITUTION: MCC-7

SCDC#: 194748

INMATE NAME: Alexander, John

INMATE HOUSING UNIT: F-4-193

BED: _____

ASSIGNMENT: _____

TEST DATE: 8-18-14

MILITARY TIME: 0800

HAS THERE BEEN A PREVIOUS POSITIVE EXTERNAL TEST? YES: _____ NO: _____

(CIRCLE APPROPRIATE RESPONSE)

PRIMARY TEST RESULT: Pos POSITIVE NEGATIVE REFUSED NOT TESTED

TYPE OF DRUG: (CIRCLE)

THC: <u>Pos</u>	<u>POSITIVE</u>	NEGATIVE	REFUSED	NOT TESTED
COCAINE: <u>Me</u>	POSITIVE	<u>NEGATIVE</u>	REFUSED	NOT TESTED
MORPHINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
AMPHETAMINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	<u>NOT TESTED</u>
BARBITURATE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
BENZODIAZEPINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
METHAMPHETAMINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED

TESTER: Z.T. McCurry
(PRINTED NAME)

Z.T. McCurry
(SIGNATURE)

EMPLOYEE OBSERVING SAMPLE COLLECTION: (if applicable) _____

(CIRCLE APPROPRIATE RESPONSE)

CONFIRMATION TEST RESULT: Pos POSITIVE NEGATIVE REFUSED NOT TESTED

TYPE OF DRUG: (CIRCLE)

THC: <u>Pos</u>	<u>POSITIVE</u>	NEGATIVE	REFUSED	NOT TESTED
COCAINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
OPIATE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
AMPHETAMINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	<u>NOT TESTED</u>
BARBITURATE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
BENZODIAZEPINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED
METHAMPHETAMINE: <u>NT</u>	POSITIVE	NEGATIVE	REFUSED	NOT TESTED

TESTER: Z.T. McCurry
(PRINTED NAME)

Z.T. McCurry
(SIGNATURE)

EMPLOYEE OBSERVING SAMPLE COLLECTION: (if applicable) _____

21.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE**

DOCKET No.: 14-ALJ-04-0927-AP GRIEVANCE No.: MCCI 516-14

INMATE NAME: John Alexander SCDC No.: 194748

INSTITUTION: McCormick Correctional Institution

DATE: September 8, 2014

**CHARGE: 903 - The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or
Unauthorized Drugs, Including Prescription Drugs, or Inhalants**

DHO: The purpose of 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 your removal. Do you understand?

I/M: Yes ma'am.

DHO: State your name and SCDC Number —

I/M: John Alexander —

DHO: — for the Record please?

I/M: — John Alexander, 194748.

DHO: Inmate Alexander, you're appearing before the McCormick Correctional Institution Disciplinary Hearing being conducted on September 8, 2014, at approximately 11:16 a.m. I'm DHO Glidewell. Inmate Alexander is not being represented by Counsel Substitute in this matter, He did not qualify. Inmate Alexander, are you ready to proceed?

I/M: Yes.

DHO: Reading in the Disciplinary Report, this is Case Number 12 on Inmate John Alexander, SCDC Number 194748; Offense Date of August 18, 2014; Offense Time approximately at 8:50 a.m. at McCormick; the Offense Description is a 903 - The Trafficking, Use, and Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants; Charging Official is Lieutenant K. McCurry. Under the Inmate Waivers the Inmate did want his

DHO: Disciplinary Hearing Officer (Mrs. Glidewell)

I/M: Inmate (John Alexander)

OFC: Charging Official/Accuser (Lieutenant McCurry)

Accuser present at the Hearing. Lieutenant McCurry is here in the Hearing Room. Lieutenant McCurry, would you please verify your rank and last name for the Record?

OFC: Lieutenant McCurry.

DHO: Thank you. Date and Time Notified was September 5, 2014 at approximately 2:34 p.m. by Corporal L. Key. Supporting documentation in this Case is an Incident Report, which reads as follows: On the above Date and Approximate Time: Inmate John Alexander, 194748, was randomly selected for a drug test and failed by the primary and confirmation test for THC. This was Inmate Alexander's 1st positive, and his urine specimen was sent to the lab. And that's signed off and by Lieutenant McCurry. It is signed off on by his Supervisor and Graded by the Major Responsible Authority all within the appropriate timeframes. I do have a copy of the Random and Target Inmate Drug Testing Form indicating the positive result for THC on both primary and confirmation tests and I have the documentation where the specimen was sent to the lab. Inmate Alexander, if you were to plead guilty or if you were to be found guilty in this Case you would not be eligible to earn good time for the month of August. Additionally, you could lose canteen, telephone, visitation privileges, disciplinary detention could be imposed or restitution could be required and/or additional loss of good time. Do you understand all of that?

I/M: Yes.

DHO: As to the Charge of 903, how do you plead?

I/M: Not guilty.

DHO: All right, now is your chance to tell me why you feel you're not guilty.

I/M: Uh, I'm going to, I did some research and I didn't quite understand, um, was this uh, an Evidentiary Hearing or was this a Credibility Hearing? 'Cause I — I didn't — I —

DHO: This is a — this is an Administrative Hearing, with regards to your Charge of failing this drug test.

I/M: Okay, and I see on the evidence he — he got a drug test form.

DHO: Um-hmm.

I/M: Is that uh, signed by Lieutenant McCurry himself, or is that — has that — is that the one comes from the lab?

DHO: No, this is — the drug testing form that he attached was signed by him. And that's the one I just noted in the —

I/M: Right.

DHO: — case you'd had a primary result on both the tests.

I/M: So basically, it — it — this is like a — for here — or here when it uh, my word against his word then, right? 'Cause the evidence — the attached will tests that were —

DHO: I will te — I will check the lab results —

I/M: Okay.

DHO: — during deliberations, but, no it's not just your word against his, he's got the test evidence on here. Do you have anything else?

I/M: Yes, I do. Uh, can I ask Lieutenant McCurry a question?

DHO: You can through me.

I/M: Okay, all right. Well the first thing is I wanted to know is — there a specific procedure — SCDC Policy Procedure that he must follow concerning this test.

DHO: Lieutenant McCurry, you're a trained, uh, Drug Testing Officer; is that correct?

OFC: Yes ma'am.

DHO: And were proper procedures followed with regards to this test, both primary and the confirmation test, and then the — the subsequent, uh, submission to the lab?

OFC: Yes ma'am.

DHO: All right.

I/M: So these — these was followed by SCDC Policy, that's — that's the question I was asking.

DHO: This is — this is — what he's been trained to do. He is a Trained Drug Testing Officer, and he has followed the proper — the proper procedures with regards to those tests.

I/M: Okay, thank you. Uh, my next question is then, uh, I was taking six different prescription medications on that day that we had this drug test. Uh, I would like to know what was in — did — did he find out the — the names of the prescriptions that I was taking that day?

DHO: Lieutenant McCurry, are you retire — required to check and see if he's taking any sort of prescriptions or anything?

OFC: No ma'am.

DHO: All right.

I/M: Okay, under —

DHO: And it did test positive for THC which is marijuana; is that correct?

OFC: Yes ma'am.

DHO: All right.

I/M: Okay, the policy that I researched is GA0.3.3 Inmate Drug Testing/Screening Program, Section 7, and this reporting of results, and this Section 7.2 that specifically states 'In all categories of drug testing, the DTO will consult with the institutional medical department personnel to determine any possible cross reactivity with any prescribed medication the inmate may be taking.' And so that — that — I mean — unless we've got a different policy than the Law Library has —

DHO: Is that applicable to THC?

OFC: Um, the drug testing cups and the drug testing sticks that we use to drug test with, were not — they're taking prescription medication would not interfere.

DHO: Okay, all right.

I/M: Okay — okay so — well — well the Policy states that has to be consulted —

DHO: I'll consider that at deliberations. Do you have anything else in regards to that?

I/M: Yes I do, uh, uh, in other words, so he said he didn't. Well I — I actually went and had, uh, I — I spoke with, uh, Nurse Crimplin (phonetic) and Nurse Culcifer (phonetic) and they said that a — a doctor would actually have to be the one to perform the test (inaudible) a determination of whether or not any of the drugs I was prescribed or taking had a cross-reference or distorted the test. And so, without that information here uh I — I'm without the benefit of — of — of presenting my case and defending myself against this allegation, because I — I wasn't taking any marijuana.

DHO: All right, do you have anything else?

I/M: Uh, let me see... Okay, that goes back to the question of, uh, since — since I don't have the benefit of having my — the — the uh, a doctor make that determination, 'cause I — I don't have — have credibility —

DHO: Again, I'll consider that at deliberations. You don't need to keep revisiting that same statement.

I/M: Okay, well — well, that's my defense and — and it's according to SCD poli — DC Policy that it's mandatory that he follow these procedures, and it's obvious that he didn't follow them.

DHO: Anything else.

I/M: That's all.

DHO: All right, the Disciplinary Report which was read at the beginning of the Hearing will be considered as evidence against you. I've heard the Charges and provided you the opportunities to make any statements, present any evidence, call any witnesses on your own behalf and I'm

now prepared to take a short recess to deliberate this Hearing. Restate your name and SCDC Number for the record please?

I/M: John Alexander, 194748.

DHO: Inmate Alexander, I did find you guilty of the Offense of 903 based on the Officer's Report, the test results and the lab reports came back positive for THC as well. I spoke with Dr. McRee here at the Institution who is the doctor for McCormick Correctional Institution. He states that none of the medications that you were on would react with these tests, and that it went to the external lab they do a — um, they would cross-reference for the drugs that you were on — or the prescriptions that you were on, and that their test is much more sensitive. In that this was your 1st failed drug test and given the fact — I'm sorry — and the nature of the Offense, sanctions are: 90 days disciplinary detention; And 360 days property, canteen, telephone and visitation suspension; Also a 60 day loss of good time. You do have the right to, uh, appeal my decision as it relates to guilt or sanctions, and the way that you do that is to file the 10-5 Step One Grievance Form with the Grievance Coordinators and you have five days from today's date to file your appeal. Do you understand your appeals process?

I/M: Yes.

DHO: All right that concludes this Hearing.

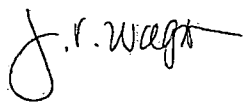
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

John Alexander, #194748,)
)
Appellant,)
)
-vs-)
)
South Carolina Department of Corrections,)
)
Respondent)
_____)

CERTIFICATION
Docket No.: 14-ALJ-04-0927-AP

This is to certify that the following transcript of the recording of this administrative disciplinary hearing is a true, accurate and complete transcript of the proceedings and testimony hereby transcribed.

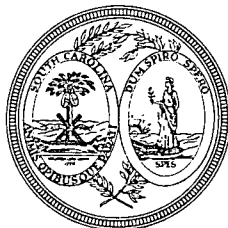
I do further certify that I was not present at the administrative disciplinary hearing that has been transcribed.



Jan-Rachelle Wagner
Transcriptionist
Reporters Transcription Center

STATE OF SOUTH CAROLINA
Administrative Law Court

S. Phillip Lenski
Administrative Law Judge



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

January 12, 2005

John Alexander, 194748
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899

Re: John Alexander, 194748 v. South Carolina Department of Corrections;
Docket No. 14-ALJ-04-0927-AP

Dear Mr. Alexander,

Judge Lenski is in receipt of your letter requesting subpoenas, pursuant to ALC Rule 22, in the above referenced case. Unfortunately, your case falls under the special appeals rules, ALC Rules 51-66. Under the special appeals rules, and the general appeals rules, there is no provision for the issuance of subpoenas as all evidence should have been presented and considered at the Appellant's hearing. I'm sorry I could not be of more help.

Sincerely,

Leah E. Garland
Judicial Law Clerk to the Honorable S. Phillip Lenski
Enclosure

31.

while Respondent claimed to have obtained inculpatory evidence which Justifies convicting and sentencing Appellant. The Respondent has denied and deprived the Appellant prior to, during or, after the Disciplinary Hearing the right to see, hear or confront the alleged evidence.

Wherefore, Appellant respectfully requests this Honorable Court specifically and concisely opine on the legality or illegality of the Respondent's conduct requiring and demanding the Appellant to absent himself from his Disciplinary Hearing so that, in essence, Respondent could try him in his absence despite him being present, able and willing to fully participate and defend himself at the hearing.

Dated 1/15/15.

Respectfully Submitted,
John Alexander

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander,)
Appellant,)
v.)
South Carolina Department)
of Corrections,)
Respondent.)

Docket No. 14C0927
Grievance No. MCCI 516-14

AFFIDAVIT OF SERVICE

The Appellant, John Alexander, certifies that a complete copy of a Motion For Finding of Fact and Conclusion of Law was sent United States Postal Service prepaid to the Office of General Counsel, Mr. Cheron M. Hess, Administrative Assistance, 4444 Broad River Road, P.O. Box 21787, Columbia, S.C. 29221.

Dated 1/15/15.

Respectfully Submitted,
John Alexander

Sworn and Subscribed
this 15 day of January, 20 15
[Signature]
Notary Public For South Carolina
My Commission Expires 12-16-2019

34.
Specifically, Appellant need this evidence in furtherance of this legal case such as the preparation, perfecting an filing a Reply Brief.

Wherefore, Appellant respectfully requests the evidence sought in this Motion For Discovery.

Dated 1/13/15 .

Respectfully Submitted,
John Alexander

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

John Alexander, 194748,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0927-AP

**ORDER DENYING MOTION FOR
DISCOVERY**

This matter comes before the court on a Motion for Discovery filed by the Appellant on January 13, 2015. The Appellant requests the production of several items of discovery from the South Carolina Department of Corrections ("Department"). Because the Appellant sent the request in motion form, it appears that he would like the court to compel the Department to respond to his discovery requests.

Appeals from inmate grievances within the South Carolina Correctional System are handled pursuant to ALC Rules 51-66. Pursuant to ALC Rule 59, once a Notice of Appeal has been filed by an inmate, the Department is responsible for filing a Record After Final Decision within forty-five days of the Notice. The Record After Final Decision consists of:

- A. All pleadings, motions, intermediate rulings and depositions filed;
- B. All evidence received or considered;
- C. A statement of matters judicially noticed;
- D. All proffers of proof of excluded evidence;
- E. The final order or decision which is subject to administrative review;
- F. Any transcript taken of the testimony during the proceedings.

ALC Rule 58. The ALC Rules on Special Appeals do not contain any provisions for additional discovery beyond what is contained within the Record After Final Decision. In this case, the Record on Appeal is not due until January 5, 2014. Therefore, the Appellant's request for supplementation to the Record is not yet ripe for review. Therefore, the Appellant's Motion for Discovery is hereby **DENIED**.

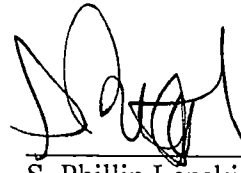
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JAN 29 2015

SC ADMIN. LAW COURT

AND IT IS SO ORDERED.

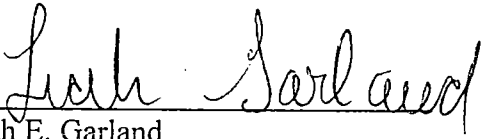
January ^{2a}____, 2015
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland
Law Clerk

January 29, 2015
Columbia, South Carolina

FILED

JAN 29 2015

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

39:

John Alexander,
Appellant,
v.
South Carolina Department
of Corrections.
Respondent.

Docket No. 14C0927
Grievance No. MCCI 516-14
APPELLANT'S 2nd MOTION
FOR DISCOVERY

TO: Honorable S. Phillip Lenski

Pursuant to the provisions of Rule 2. Discovery SCACR and the Fourteenth Amendment USCA, Appellant respectfully requests the below mentioned:

- (a) A copy of all witness statements written, video or audio recorded who offered testimony on the Respondent's behalf during Appellant's disciplinary hearing; and
- (b) All evidence written, video or audio recorded that tends to prove that Respondent provided Appellant due process to hear, see or confront the above requested in (a) prior to, during or after Appellant's disciplinary hearing.

Appellant contends that the 2nd Motion For Discovery is

MOTION FOR DISCOVERY
FILED

ripe for review since the Respondent's Record submitted to this Court on March 11, 2015 failed to include any of the above requested evidence. Additionally, Appellant asserts such evidence is vital to the preparation, perfecting and filing a Reply Brief.

Wherefore, Appellant Respectfully requests this Court Grant this Motion For Discovery.

Dated 3/19/15.

Respectfully Submitted,
John Alexander

FILED

MAR 19 2015

SO ADMIN. LAW COURT

WVIT HOON
TECVT WVIT

AFFIDAVIT OF SERVICE

I, John Alexander, certify that a complete copy of an Appellant's 2nd Motion For Discovery was sent United States Postal Service prepaid to Cheron M. Hess, Administrative Assistant, Office of General Counsel, 4444 Broad River Road, P.O. Box 21787, Columbia, SC 29221.

Dated 3/19/15.

Respectfully Submitted,
John Alexander

Sworn and Subscribed
this 19 day of March, 2015
John Alexander

Notary For South Carolina

My Commission Expires 12/16-2019

FILED

MAR 19 2015

SC ADMIN. LAW COURT

**LEGAL MAIL
MAIL ROOM**

42.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander, 194748,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
)

Docket No. 14-ALJ-04-0927-AP

ORDER DENYING APPELLANT'S
SECOND MOTION FOR
DISCOVERY

This matter comes before the court on a Second¹ Motion for Discovery filed by the Appellant on March 19, 2015. In his second motion which was filed after the South Carolina Department of Corrections (Department) filed the record, the Appellant requests the production of several items of discovery from the Department pursuant to "Rule 2. Discovery SCACR"² and the Fourteenth Amendment, and also makes an overly broad, unduly burdensome, vague request essentially for all evidence that establishes that the Appellant was provided due process before, during and after his disciplinary hearing. Because the Appellant sent the request in motion form, it appears that he would like the court to compel the Department to respond to his discovery requests.

As stated in the court order denying the Appellant's first motion, appeals from inmate grievances within the South Carolina Correctional System are handled pursuant to ALC Rules 51-66. Pursuant to ALC Rule 59, once a Notice of Appeal has been filed by an inmate, the Department is responsible for filing a Record After Final Decision within forty-five days of the Notice. ~~The Record After Final Decision consists of:~~

¹ The Appellant filed his first Motion for Discovery on January 13, 2015 which was denied by the court by order filed on January 29, 2015 as the Record on Appeal had not yet been filed.

² The court notes that there is no such rule cited by the Appellant and even if there were, the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules do not apply in this case. Rule 21 of the ALC Rules does provide for discovery but only in contested cases and if permitted by the court. This case falls under "Special Appeals" pursuant to the South Carolina Administrative Law Court Rules.

FILED

MAR 25 2015

SC ADMIN. LAW COURT

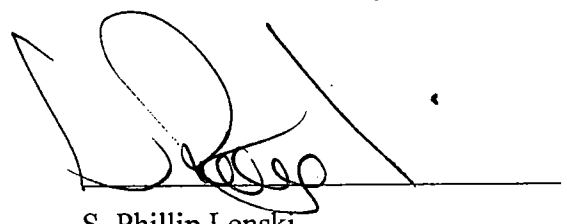
- A. All pleadings, motions, intermediate rulings and depositions filed;
- B. All evidence received or considered;
- C. A statement of matters judicially noticed;
- D. All proffers of proof of excluded evidence;
- E. The final order or decision which is subject to administrative review;
- F. Any transcript taken of the testimony during the proceedings.

ALC Rule 58. The ALC Rules on Special Appeals do not contain any provisions for additional discovery beyond what is contained within the Record After Final Decision which the court believes is sufficient to provide the Appellant with due process of law.

In this case, the Record on Appeal was filed on March 11, 2015. Upon review of the Record on Appeal, the court finds that it complies with ALC Rule 59. The Record on Appeal includes the officer's written incident report or statement, the disciplinary report and hearing record, a transcript of the disciplinary hearing, the laboratory testing results and the warden's decision and reason. It also contains the Appellant's Step One and Step Two Inmate Grievance Forms. Upon review of the transcript, it appears that the Appellant has been provided with all information upon which the Disciplinary Hearing Officer relied in rendering his decision.

Based on the forgoing, the Appellant's Second Motion for Discovery is **DENIED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

March 25, 2015
Columbia, South Carolina

FILED

MAR 25 2015

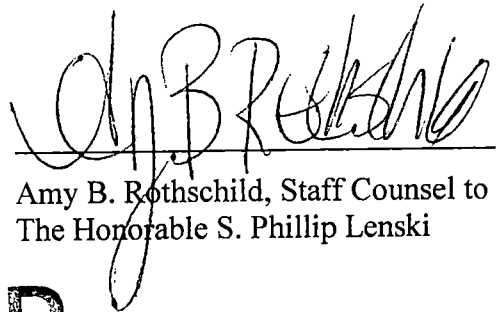
SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, Amy B. Rothschild, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s) as follows:

John Alexander, #194748
McCormick Correctional Institution-SCDC
386 Redemption Way
McCormick, SC 29899
APPELLANT, PRO SE

Shanika Johnson, Esquire
Office of General Counsel
S.C. Dept. of Corrections
4444 Broad River Road
Columbia, SC 29221
ATTORNEYS FOR RESPONDENT



Amy B. Rothschild, Staff Counsel to
The Honorable S. Phillip Lenski

March 25, 2015
Columbia, South Carolina

FILED

MAR 25 2015

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

John Alexander, #194748,)	Docket No.: 14-ALJ-04-0927-AP
)	
Appellant,)	RESPONDENT’S BRIEF
)	
v.)	Honorable S. Phillip Lenski
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC”) pursuant to the appeal of John Alexander (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant filed a Step One Grievance on September 10, 2014 challenging his disciplinary conviction for The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants (903), under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on September 15, 2014. 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

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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.¹ 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).

¹ 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 charge (The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on September 8, 2014), 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. Corporal Key reported that on September 5, 2014, Appellant was randomly selected for a drug test, and Appellant tested positive for THC. The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants is defined within the disciplinary policy.

The actual or constructive trafficking, use or possession of drugs of any description (except those prescribed by an authorized physician and within authorized amounts, expiration date, e.g. barbiturates, narcotics, medicines, marijuana and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03.03, "Inmate Drug Testing/Screening Program." This rules violation encompasses the "hoarding" of prescribed medication by any inmate(s), or inmates who having accepted their medication, then failed to ingest the medication at the time they are issued it at the pill call. Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which when inhaled, creates an altered state of physical or mental activity. Sight and smell identification may be used to identify any drug where no available scientific tests have been created and/or confirmed credible.

SCDC Policy OP-22.14 (903) Inmate Disciplinary System.

The facts provide that Appellant was given an initial test and a follow-up test for THC. The results of both tests was that Appellant's urine contained THC, a level III controlled substance associated with marijuana. Appellant was neither prescribed nor authorized to take the drug. Therefore, Appellant violated policy when he tested positive for THC.

During the hearing, Appellant argued that his prescribed medication could have affected the results of the test. However, the DHO confirmed with a physician at Appellant's institution that Appellant's medication would not affect the results of the test.

After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based upon the officer's report and the test/lab results. 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.”)²

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

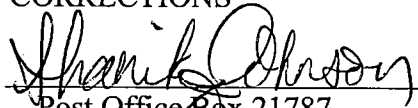
The record conclusively establishes that the “substantial evidence on the whole record” supports SCDC’s final agency decision. The hearing officer found Appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse 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
Deputy General Counsel

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: 
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

April 20, 2015

² 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).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander,
Appellant,

vs.

Docket No. 14C0927
Grievance No. MCCI 516-14

MOTION TO ALTER OR
AMEND JUDGMENT
(Rule 59(e), SCACR)

South Carolina Department
of Corrections,
Respondent.

TO: Honorable S. Phillip Lenski

COMES the above Appellant, John Alexander, with a Motion To Alter or Amend Judgment (Rule 59(e), SCACR) this Court's Order received July 21, 2015 Affirming the decision of the Department. And will show:

First, this Court erroneously decided that the Hearing Officer's failure to follow the prison's own policies, procedures or regulations applied through the 6th and 14th Amendment and Art. 1 Sec. 3 S.C. Const. does not constitute a violation of due process. Pursuant to SCDC Policy ADM 11.17 Employee Conduct, no SCDC employee may act independent of the SCDC Policy and Procedure and not be held liable civilly or criminally.

SCDC
Court

51.

See SCRPC; 1983 Complaint; and 8th Amendment.

Second, this Court erroneously determined that the Respondent met constitutional minimum when denying and depriving the Petitioner the right to see, hear, confront, or dispute the "alleged" testing results or lab reports from an outside laboratory. Or, the "alleged" testimony of Dr. McRee used to convict the Appellant. See 6th and 14th Amend; Art 1 Sec. 3 S.C. Const.; and SCDC Policy OP-22.14 Sec. 14.5 ("The Counsel Substitute, or "inmate," if no counsel substitute is appointed, may 'question all evidence and witnesses' who appear at the hearing.") *Art. 1 Sec. 14 S.C. Const.

This Court misapplied Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4th Cir. 1996) (citing Myers v. Klevenhagen, 97 F.3d (5th Cir. 1996)). Neither of those cases addresses Petitioner's due process Issue On Appeal. As such, no law supports this Court's ruling

* The Respondent failed to include in their Record on Appeal an audio taped recording or typed transcription testimony of Dr. McRee. Also, the Record do not include a Drug Form from any "outside laboratory" indicating the Petitioner tested Positive for THC.

Third, this Court erroneously concluded "the Petitioner's urine sample was sent to a drug testing laboratory for further confirmation. The entire Record, including

(Transcript at 3) merely contains "allegations" that a sample from the Petitioner was sent to an outside laboratory. To the contrary, the Drug Testing Form's chain of custody indisputably prove the opposite. No evidence in the Record supports this Court's decision.

Fourth, this Court erroneously found that the Hearing Officer was neutral. Under SCDC Policy OP-22.14 Sec. 9 the hearing officer failed to adhere to the established due process guidelines as they relate to the hearing phase of the disciplinary process. Specifically:

(1) The Hearing Officer Failed to dismiss the charge where the DTO disregarded SCDC Policy GA-03.03 Sec. 7.2 to "consult with medical staff (prior to reporting results) to determine if any medications Petitioner was ingesting had a reaction to the drug test."

(2) SCDC Policy GA-03.03 Sec. 5.5⁶ requires SCDC to send a urine sample to an outside laboratory for testing when an inmate test positive for the first time. All evidence provided to this Court by both the Respondent and Petitioner clearly proves no chain of custody extends beyond "SCDC." And no evidence suggests otherwise.

(3) The Hearing Officer denied and deprived the Petitioner an opportunity to see, hear, confront, or

53.

refute (during the hearing) any alleged testimony by Dr. McRee. Or, any alleged testing results or lab reports documents. That's because no such evidence ever existed.

Five, this Court erroneously concluded the Respondent is permitted to rely solely on the charging officer's report to convict the Petitioner. On the contrary, under SCDC Policy OP-22.14 Sec. 14.7:

"If the accused inmate presents non-frivolous evidence which if true, would contradict the facts alleged in the staff member's report, the hearing Officer "must under Sec. 14.7.2 (examine additional documentary evidence beyond investigation reports and/or written statements by the charging employee.)"; or Sec 14.7.3 (question other witnesses.)"

The Record is silent with respect to any witnesses being examined. Also, the Drug Testing Form (non-frivolous evidence) barred the hearing officer from relying solely on the charging officer's report because it is void of any chain of custody indicating an outside laboratory ever tested a urine sample from the Petitioner.

Conclusively, the Record in this case establishes that this Court erroneously sustained the Department's final

54.

decision based totally on the Respondent's mere allegation that evidence exists, without more. This Court do not have a shred of evidence substantiating any outside laboratory tested a sample from Petitioner. Nor any evidence of Dr. McRee testifying during Petitioner's disciplinary hearing.

Wherefore, pursuant to Statute Section 1-23-380 (6)(a) (c) and (e) this Court can and should reverse its decision where clearly the Petitioner's substantial rights under the due process and confrontation clause have been violated and prejudiced.

Dated 7/28/15.

Respectfully Submitted,
John Alexander

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander,)
Appellant,)
vs.)
South Carolina Department)
of Corrections,)
Respondent.)

Docket No. 14C0927

AFFIDAVIT OF SERVICE

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JAN 04 2016

SC Court of Appeals

The Appellant, John Alexander, certify that a copy of a Motion To Alter or Amend Judgment (Rule 59(e), SCACR) was sent United States Postal Services, prepaid, to Mr. Cheron M. Hess, Administrative Assistant, 4444 Broad River Road, Post Office Box 21787, Columbia, SC 29221.

Dated 7/28/15.

Respectfully Submitted
John Alexander

Sworn and Subscribed
this 28 day of July, 20 15
J. Franklin

Notary Public For South Carolina
My Commission Expires 12-16-2019

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEALS FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge, S. Phillip Lenski

ALC Case No. 14-ALJ-04-0927-AP

Appellate Case No. 2015-001761

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SC Court of Appeals

John Alexander,

Appellant,

South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF COUNSEL

I certify that the Record On Appeal contains all material proposed to be included by the Appellant and not any other material.

Dated 12/29/15.

John Alexander

Department of Corrections
 386 Redemption Way
 McCormick, SC 29899