

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT **RECEIVED**

Administrative Law Judge John D. McLeod

ALC Case NO. 15-ALS-04-0324-AP
Appellate Case No. 2015-002639

FEB 26 2016
SC Court of Appeals

T. Terrell Bryan, #254638

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

REPLY BRIEF

PRO SE APPELLANT

T. Terrell Bryan
#254638, EBB2, LCE
P.O. Box 205
Ridgeville, SC 29472

ATTORNEY FOR RESPONDENT

Christina Catoe Bigelow
Deputy General Counsel
P.O. Box 21787
Columbia, SC 29221

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TABLE OF AUTHORITIES

CASES

<u>Al-shabazz v. state, 338 S.C. 354, 527 S.E.2d 742 (2000)</u>	<u>1, 2, 3</u>
<u>Furtick v. S.C. Dept. of Corr., 374 S.C. 334, 649 S.E.2d 35 (2007)</u>	<u>4</u>
<u>Lyles v. BMI, Inc., 355 S.E.2d 282 (Ct. App. 1987)</u>	<u>1</u>

STATUTES

WAIVER OF RESPONDENT

A waiver may be express or implied. "An implied waiver results from acts & conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BME, Inc., 355 S.E.2d 282 (Ct. App. 1987).

The Respondent alleges I failed to raise the issue of having my witness being present at the disciplinary hearing, **FOR THE FIRST TIME** in their "Response to Appellant's Reply Brief." Respondent has had **THREE** opportunities to do but tactically choose not to, so they can have the last word, intentionally abandoning or relinquishing of their right.

WHEREFORE, Respondent waived their right twice! & the court should stop Respondent from arguing now.

WAIVER 1.) On step 1 Grievance, see highlighted portion, I stated, "I was denied the presence of my I/M witness." On the reverse side "Warden's Decision & Reason," there is no mention of I having failed to raise the issue of having my witness being present.

WAIVER 2.) On step 2 Grievance, there is no mention of I having failed to raise the issue. In fact, it states, "You were afforded due process rights". Per Al-shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), due process in prison disciplinary cases requires opportunity to call witnesses.

Since a state created liberty interest is involved, it is necessary for this court to determine if I receive the process due to me in being afforded the opportunity to call witnesses.

WHEREFORE, I pray the court hold that my due process rights to call witnesses were violated, & **REVERSE** the conviction.

WAIVER 3.) In their own brief "Respondent's Brief" Respondent never allege I failed to raise the issue.

WHEREFORE, I pray the Respondent is collateral estop from taking a different position, playing fast & loose with the courts.

COUNSEL SUBSTITUTE

Respondent states that I failed to raise the issue of my witness being present to the disciplinary hearing officer. This goes against Respondent's own policy, OP-22.14 "Inmate Disciplinary System", I HAVE REQUESTED ATTORNEY BIGELOW TO PROVIDE THE COURT A COPY. Per OP-22.14 § 8.2 RESPONSIBILITIES (of counsel substitute (c/s)), § 8.2.4 c/s must "[i]nterview relevant witnesses prior to the hearing, & obtain written statements that can be given to the Hearing Officer at the hearing."

THEREFORE, c/s acting as a lawyer must raise the issue of my witness being present & objecting. Not myself, the client. If I have to object as one would at a trial, then c/s must object as a lawyer would at trial. THEREFORE, I did not fail to object, c/s failed to object, breaching her responsibility.

WHEREFORE, I pray the court hold that Respondent has violated my due process rights several times. "(3) that Inmates should be allowed to call witnesses & present documentary evidence; (4) that counsel substitute should be allowed to help ... Inmate ..." Al-Shabazz, supra. & this court REVERSE the conviction.

RIGHT TO CALL WITNESSES

The ALC held that my witness declined to provide a witness statement. THIS IS NOT TRUE. Per the Disciplinary Hearing Transcript, p. 3, L. 14 & 15 "He did ask for a statement from his roommate; however his roommate said he did not have time..."

MOTION FOR COUNSEL

I, T. Terrell Bryan, the pro se Appellant hereby moves for appointment for counsel, & states:

1. This court granted me leave to proceed in this action in forma pauperis status because the underlying appeal involves Appellant's loss of good-time credits, he is entitled to proceed in forma pauperis. See Futick v. S.C. Dept of Corr., 374 S.C. 334, 340, 649 S.E. 2d 35, 38 (2007) (finding the loss of good-time credits implicates a state-created liberty interest).
2. I do not know all the rules for filing briefs & will have my case dismissed because of my ignorance. This would be a violation of due process where this court acknowledge that a state-created liberty interest exists in the present case.
3. WHEREFORE, I pray counsel is appointed to assist me with the rules.

2/18/16

x. T. Terrell Bryan
#254638, EB62, LCI
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STATE OF SOUTH CAROLINA

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Appellant,

South Carolina Department of Corrections, Respondent,

STATEMENT OF RUSSELL LEE SIMS #319755

On the day in questioning I remember speaking to the c/s. I was expecting to see her but our timing could not collect and I explained to her that I had to go with movement and that the window was about to close and I would see her when I return. She understood and told me to go ahead and not miss movement.

End of Statement.

Russell Sims

Russell Lee Sims

STATE OF SOUTH CAROLINA

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T. Terrell Bryan, #254638

Appellant,

v.

South Carolina Department of Corrections, Respondent.

CERTIFICATE OF SERVICE

Undersigned pro se Appellant hereby certifies that on today's date, I mailed a copy of the Appellant's Designation of matter to be in the Record on Appeal, Reply Brief, & statement of Russell Lee Sims #319755 to Respondent, addressed as follows: Christina Catoe Bigelow; Deputy Gen. Counsel; P.O. Box 21787; Columbia, SC 29221-1787.

2/18/16

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V. Claire Allen/Deputy Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211-1629

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Re: T. Terrell Bryan, #254638 v. South Carolina Department of Corrections
Appellate Case No. 2015-002639

Dear Ms. Allen,

Enclosed is my Reply Brief & in compliance with your 1/20/16 letter, I have copied the Respondent's Motion & enclosed is "Appellant's Designation of Matter to be included in the Record on Appeal."

2/18/16

Thank you,
T. Terrell Bryan
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FEB 22 2016

M. J. LIEBER CI

V. Claire Allen / Deputy clerk
S.C. Court of Appeals
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