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REQUEST

RECEIVED

OHO F. Bachman  
T. Terrell Bryan  
LCI

2/18/16  
254638  
EB62

FEB 29 2016  
SC Court of Appeals

Per your 2/16/16 response to my 2/15/16 RTSM you said that my witness must send a statement to you thru the Kiosk. AS YOU KNOW we are on lock down, & can not access the Kiosk. Per policy OP-22.14§8.2.4, please tell c/s to get a statement from my witnesses. BOTH WITNESSES.

I request that BOTH WITNESSES be physically present

CC: ON FILE

RECEIVED DHO

FEB 19 2016

F. BACHMAN

Kiosk 16-023357

JM Bryan

Your witness will not be present they can submit a written statement to either you, your Counsel Substitute or myself. If you can send a request on paper due to lock down they can as well.

2/19/16

Bachman  
DHO

Shm Cozy

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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T. Terrell Bryan, #254638,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

FEB 29 2016  
Docket No. 10-ALJ-04-0353-AP

Grievance SC Court of Appeals

ORDER OF REMAND

This is an appeal by an Inmate incarcerated in the South Carolina Department of Corrections (SCDC). Inmate was charged with and convicted of Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14 Inmate Disciplinary System. Inmate was sanctioned with the loss of thirty days good time credits so a liberty interest is involved.

Inmate testified in his October 2, 2009 hearing that he wanted his witnesses present. The Record shows that on September 23, 2009 he submitted a written request to DHO Turner requesting of counselor, Lt. Martin, that cell #4 and #3 be present at the hearing. Also, the Transcript shows that Inmate, upon reading a statement from one of the witnesses that he wanted present, was interrupted by Disciplinary Hearing Officer (DHO) James Blackwell, and was not allowed to continue reading the statement.<sup>2</sup> Lastly, Counsel Substitute, Thompson, upon reading a list of questions, was not allowed to continue reading the list. DHO Blackwell interrupted Thompson and stated that the questions were already on the 19-29 (Incident Report) and that the questions were not relevant to the case. The Record shows that the questions on the list that Thompson intended to read at the hearing are relevant to the case.<sup>3</sup>

<sup>3</sup> 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 have considerable discretion in determining whether to permit an inmate's witness to testify. Zaczek v. Hutto, 642 F.2d 74, 76-7 (4<sup>th</sup> Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, Segarra v. McDade, 706 F.2d 1301 (4<sup>th</sup> Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4<sup>th</sup> Cir. 1982)(en

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bane): Brown v. Frey, 889 F.2d 159 (8<sup>th</sup> Cir. 1989). However, prison officials must provide a reason for their refusal to call a witness, and that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 1-05 S. Ct. 2192, 85 L.Ed.2d 553 (1985). The burden of persuasion regarding the existence and sufficiency of these institutional concerns rests with prison officials, rather than the prisoner. Smith v. Massachusetts Dep't. of Corrections, 936 F.2d 1390 (1<sup>st</sup> Cir. 1991).

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 this case, the hearing officer gave no explanation for refusing to allow the witnesses to appear and SCDC offered none in its brief.

**THEREFORE, IT IS ORDERED** that the Order appealed from is **REVERSED** and the matter **REMANDED** for a new hearing in which the witnesses requested by Inmate are present or their absence is justified by a reason that is logically related to institutional safety or correctional goals.

**AND IT IS SO ORDERED.**

  
DEBORAH BROOKS DURDÉN  
Administrative Law Judge

September 3, 2010  
Columbia, South Carolina

3rd  
September 2010  
Robin E. Coleman