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The State Of South Carolina
In The Court Of Appeal

RECEIVED

APPEAL FROM ADMINISTRATIVE LAW COURT
Administrative Law Judge, Deborah Brook Durden

MAR 11 2016

SC Court of Appeals

Case No # 15-ALJ-04-0396-IJ

Gabriel Randolph #248729 Appellant

VS

South Carolina Department Of Correction Respondent

INITIAL BRIEF OF APPELLANT

COURT OF APPEAL Case No# 2016-000345

March, 7, 2016

Pro Se, Gabriel Randolph #248729
Perry Correction Inst. CX18
430. Oaklawn Rd.
Pelzer, SC. 29669

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STATEMENT OF THE ISSUES ON APPEAL

- I. Appellant Was Not Afforded All Constitutionally Required Due Process.
- II. Respondent's Final Agency Decision Was Not Support By Substantial Evidence.

STATEMENT OF CASE

This matter come before this honorable court pursuant to the appeal of Gabriel Randolph "appellant" an prisoner incarcerated with the South Carolina Department Of Correction="SCDC". Appellant was illegal convicted of exhibitionism and public masturbation, offense 854 under SCDC Policy OP-22.14, Inmate Disciplinary System following a disciplinary hearing. Appellant. lost 90 day good time credit="GTC" due to the disciplinary conviction and 20 day GTC when convicted by policy OP.22-14 Ap_____).

Appellant filed a Step One Grievance on March 24, 2015, challenging his disciplinary conviction. This grievance was investigated and denied Ap_____). Appellant file a Step Two Grievance on June 11, 2015, which was also denied Ap_____). Appellant file a Notice Of Appeal in Administrative Law Court (ALC), pursuant to Al-Shabazz vs State supra Ap_____).

The ALC affirmed SCDC's final decision, finding the disciplinary hearing when it was incomperted with due process, and the ALC also ruled appellant's disciplinary conviction was not support by sufficient evidence Ap_____).

Appellant seeks review of ALC's decision. For the reason that follow, Appellant respectfully requests that the ALC's decision be REVERSED.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of SC. Supreme Court in Al-Shabazz vs State 527 SE2d 742 (SC. 2000). ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interest typically involving: (1) case in which an inmate contends that prison official have erroneously calculated his/her sentence, sentence-related credit or custody status; and (2) cases in which inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. When reviewing the SCDC's decision in prisoner grievance matters, the ALC sit an appellate capacity. Al-Shabazz vs State 527 SE2d at 756. Consequently the review in these case is limited to the record presented. SC. Code Ann § 24-13-210.

SC. 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 reviewing tribunal 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 of 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 and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Please review SC. Code Ann § 1-23-380 (5) Lake vs Reeder Constr. Co 498 SE2d 650 (SC. 1998).

ARGUMENT AND CITATION OF AUTHORITY

I, Appellant Was Not Afforded All Constitutionally Required Due Process.

Prison disciplinary cases are not criminal trial in federal or state courts. Instead, they are administrative hearing in an institutional setting. Therefore Due Process in prison disciplinary hearing is substantially less than would be required in a criminal trial before court. Due Process require the following in-prison

disciplinary cases.

By Wolff vs McDonnell, 418 US 539 (1974), the requirement enumerated in Wolff vs McDonnell supra, were not full complied with in this case. The Disciplinary Report and Hearing Record demonstrate that appellant had notice of the charge on 3/18/15 (Ap). The record also reveals there was proper disclosure of evidence due of fact that the Incident Report 19-29d (Form) was read at the disciplinary hearing (Ap). Furthermore appellant was afforded an opportunity to be heard on 3/24/15 (Ap). There was a neutral and detached hearing body at the hearing an disciplinary hearing officer = "DHO" (Ap).

There was not ample evidence to support appellant's disciplinary conviction. Mental Health Counselor M Harris report relied on Officer/Ofc Fubio for identified a prisoner. Ofc Fubio did not inform Mental Health Counsel M. Harris of the identity of a inmate. Based upon M. Harris report and testimony the disciplinary conviction was not supported by the evidenced.

Because appellant's disciplinary conviction incomperted with due process requirement. Appellant respectfully request the decision of the ALC's be Reversed.

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will disturb the finding of an administrative agency if those finding are supported by substantial evidence on record as a whole. Pearson vs JPS Converter & Indus Corp - 489 SE 2d 219 (SC. 1997) Substantial evidence is evidence which considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached justify its action.

All credible evidence presented at appellant's hearing indicates appellant was not guilty of this disciplinary offense. The record conclusively establishes that the substantial evidence on the whole record. Mental Health Counselor, M. Harris relied on Ofc. Fubio to identify inmate and give the name and SCDC number to identify the inmate, which Ofc. Fubio did not do.

Appellant has show that the disciplinary hearing Officer/DHO decision is clearly erroneous, or arbitrary or capricious or an abuse

of discretion. Porter vs S.C. Public Serv. Comm'n 507 SE2d 328 (SC.1998).
Consequently SCDC's decision must be REVERSED.

CONCLUSION

WHEREFORE, for all the reason stated above, this Court should REVERSE
the SCDC's decision in this case.

Respectfully submitted By Pro Se

Gabriel Randolph #248729
Perry Correction Inst. CX18
430. Oaklawn Rd
Pelzer, SC. 29669

Pelzer, SC.
March, 7, 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GABRIEL RANDLOPH #248729,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

NOTICE OF APPEAL

DOCKET NO. -ALJ-04- -
GRIEVANCE NO.: PCI-297-15

Notice is hereby given that GABRIEL RANDLOPH does hereby appeal the final decision of the South Carolina Department of Corrections dated 7/2/15 and received on 7/17/15, 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)):

Appellant is appealing the decision of SCDC = SC. Dept of Correction = Resp-
-ondent when respondent violated appellant due process. Respondent
would not address the all appellant issues, so that appellant can
have a fair appeal.

Judge Anderson don't like the appellant and should not be ruling over
my case.

Mr. Gabriel Randolph #248729
Appellant's Name
Perry CI- Q3- A-110
430. Oaklawn Rd
Mailing Address
Pelzer, SC. 29669
City, State, Zip Code

Mr. Gabriel Randolph
Signed
July 27, 2015
Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Gabriel Randolph (your name), on the 27 day of July, 2015, in Pelzer SC (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: SC. Administrative Law Court / SC. Dept. Of Correction
Clerk Office Suite 224 / Office of General Counsel
Address: 1205. Pendleton Street / P.O. Box 21787
Columbia, SC. 29201 / Columbia, SC. 29921
City, State, Zip Code: _____

Print your name Sign your name
(See reverse side for instructions)

By Mr. Gabriel Randolph

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
15C0396	248729	GABRIEL	RANDOLPH	PCI 297-15	DOC	7/27/2015	8/13/2015	DURDEN

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

FILED

AUG 13 2015

ADMIN. LAW COURT

~~15C0396~~
15-017-14-396-AP

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gabriel Randolph, #248729,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-ALJ-04-0396-IJ

ORDER OF DISMISSAL

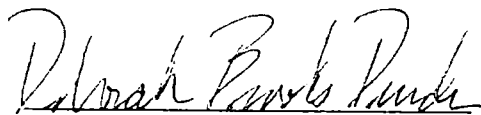
This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate filed a Notice of Appeal alleging his due process was violated. The Notice of Appeal does not contain a copy of a final decision of SCDC which is the subject of the appeal as required by ALC Rule 59(C).

By failing to obtain a final decision from SCDC, Inmate has failed to exhaust his administrative remedies and has thus failed to meet the requirements of the Administrative Procedures Act for review by this Court: "A party who has **exhausted all administrative remedies available within the agency** and who is aggrieved by a **final decision** in a contested case is entitled to judicial review pursuant to this article and Article I, § 1-23-380, S.C. Code of Laws, Annotated." (Emphasis supplied).

Thus, this matter is not properly before this Court. Therefore,

IT IS ORDERED that this appeal be and hereby is **DISMISSED, WITH PREJUDICE.**



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 2, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

This 2nd day of September 2015

by: [Signature]
ADMINISTRATIVE LAW CLERK

FILED

SEP 02 2015

SC ADMIN. LAW COURT

South Carolina Administrative Law Court

Gabriel Randolph # 248729
Appellants

Docket # 15-ALJ-04-396-AP

vs
South Carolina Department
of Correction, Respondent

Motion For Correction Of Final Decision And
Appellant Exhausted Remedies Available.

Appellant have exhausted his administrative remedies, review attached
Step Two Grievance PCI-297-15. Appellant is indigent prisoner and not want
his appeal to be wasted and the matter can be quickly corrected.

To granted procedure of this appeal to be continued.

September 12, 2015

By. Mr Gabriel Randolph # 248729
Perry CJ- Q3-A-110
430. Oaklawn. Rd
Pelzer, SC. 29669

Certificate Of Service

I, Gabriel Randolph hereby certify that copy of the foregoing, Motion For Corre-
-tion Of Final Decision And Appellant Exhausted Remedies Available, was put into US.
Mail prepaid and postage to the below address on date September 12, 2015.

SC. Administrative Law Court
SC. Admin. Judge Durden
1205. Pendleton, Street
Columbia, SC. 29201

*

SC. Dept Of Correction
Office Of General Counsel
P.O. Box. 21797
Columbia, SC 29221

By. Mr Gabriel Randolph

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GABRIEL RANDLOPH #248729,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

NOTICE OF APPEAL

DOCKET NO. ALJ-04-
GRIEVANCE NO.: PCI-297-15

Notice is hereby given that GABRIEL RANDLOPH does hereby appeal the final decision of the South Carolina Department of Corrections dated 7/2/15 and received on 7/17/15, 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)):

Appellant is appealing the decision of SCDC = SC. Dept of Correction = Resp-
-ondent when respondent violated appellant due process. Respondent
would not address the all appellant issues, so that appellant can
have a fair appeal.

Judge Anderson don't like the appellant and should not be ruling over
my case.

Mr. Gabriel Randolph #248729
Appellant's Name
Perry Ct - Q3 - A-11D
430. Oaklawn Rd
Mailing Address
Pelzer, SC. 29669
City, State, Zip Code

Mr. Gabriel Randolph
Signed
July 27, 2015
Dated

FILED
JUL 27 2015
ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I hereby certify that I, Gabriel Randolph (your name), on the 15 day of July, 2015, in Pelzer SC (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: SC. Administrative Law Court / SC. Dept. Of Correction
Clerk Office Suite 224 / Office of General Counsel
Address: 1205. Pendleton Street / P.O. Box 21787
Columbia, SC. 29201 / Columbia, SC. 29921

City, State, Zip Code: _____

By Mr Gabriel Randolph

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gabriel Randolph, #248729,

Docket No. 15-ALJ-04-0396-IJ

Appellant,

vs.

ORDER TO REINSTATE

South Carolina Department of Corrections,

Respondent.

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


On July 27, 2015, Inmate filed a Notice of Appeal alleging his due process was violated. The Notice of Appeal did not contain a copy of a final decision of SCDC which is the subject of the appeal as required by ALC Rule 59(C), therefore, it appeared that this matter was not properly before this Court. On September 2, 2015, this Court dismissed his appeal for failing to obtain a final decision from SCDC,

On September 10, 2015, Inmate filed a Motion for Correction of Final Decision stating that he has exhausted his administrative remedies and requested that this Court reinstate this appeal. Inmate included his Step 2 decision with the motion, which shows that he received it on July 17, 2015, as he previously stated on his Notice of Appeal. Therefore,

IT IS ORDERED that this case be reinstated as of the date of this Order.

IT IS ALSO ORDERED that the Record shall be due seventy (70) days from the date of this order. Appellant's brief shall be due twenty days from the date the Record is filed. Respondent shall have twenty days from the date Appellant's brief is filed to submit a brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 22, 2015
Columbia, South Carolina

FILED

SEP 22 2015

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

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

on 22nd day of September 2015

by R. S. C.

Administrative Law Clerk



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

October 19, 2015

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Gabriel Randolph, #248729, vs. SCDC
Docket No. 15-ALJ-04-0396-AP

Dear Judge Deborah Brooks Durden:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance PCI 297-15, Disciplinary Report and Hearing Record, Incident Report, and Disciplinary Transcript, as well as other supporting documents in the above referenced case.

Please file the originals and return a clocked-in copy of the cover letter to me in the enclosed self-addressed envelope.

Sincerely,

A handwritten signature in black ink that reads "Cheron Hess". The signature is written in a cursive style with a long, sweeping tail on the letter "s".

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures


cc: Inmate Gabriel Randolph, #248729
File

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Gabriel Randolph
Inmate Number: 248729
Perry Correctional Institution
Dorm-Room-Bunk: Q3A-0110-T

Columbia, South Carolina
October 19, 2015


Cheron Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

#250

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

#39

3/10/15 (3/20)

Page 1 of 1

Institution/Center: <u>Perry CI</u>	
Date of Report: <u>3/3/15</u>	Time of Report: <u>approx 12:00pm</u>
Reporting Official: <u>M. Harris, CCIV</u>	Date of Incident: <u>3/2/15</u>
Location of Incident: <u>Q3A</u>	Time of Incident: <u>approx 1:20pm</u>
Inmate(s)/Resident: <u>SCDC# Age Race Sex</u>	Employee(s) Involved:
1. <u>Gabriel Randolph 248729</u>	1. <u>M. Harris, CCC</u>
2.	2. <u>Officer Fubio</u>
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I, M. Harris, was in Q3A standing at the officer's podium when I observed an inmate masturbating in the window of the door to cell #111. I asked officer Fubio to go to the door to address the situation. When the officer came back to the podium, he informed me that the inmate was identified as Gabriel Randolph #248729. I asked him if he was sure, and he said he was. EDR

Signature: [Handwritten Signature] CCIV

Evidence:

Witness(es):

Supervisor's Comments: 854 - masturbation

Signature: [Handwritten Signature] Title: SLC Date/Time: 3-3-15 1:47

Major/Responsible Authority:

854 - Exhibition and Public Masturbation
Copy forwarded to mental health

Signature: [Handwritten Signature] Title: Cap Date: 3/3/15

STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Action Taken
 Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

MH

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

GT: 515

Case#: 250 Inmate Name: RANDOLPH, GABRIEL SCDC#: 248729
Living Area: Q3A111 Job: WARD KEEPER Custody: MI3
Offense Date: 3/2/15 Offense Time: 1:20 AM/PM Institution: PCI

Offense Description:

65A: Exhibitionism and Public Nudity: (A) Intentional exposure of private parts or other intimate body parts to a child under 16 years of age; (B) Intentional exposure of private parts or other intimate body parts to any person other than a spouse or partner; (C) Intentional exposure of private parts or other intimate body parts to a child under 16 years of age or to any person other than a spouse or partner; (D) Intentional exposure of private parts or other intimate body parts to a child under 16 years of age or to any person other than a spouse or partner.

Charging Officer/Employee: M. HARRIS Title: CCCU

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

I WANT A COUNSEL SUBSTITUTE Robinson

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 3/18/15 8:27 AM/PM By (Print): L Pollman

Inmate Signature: M. Gabriel Randolph SCDC#: 248729 Date: 3/18/15

HEARING INFORMATION:

Hearing Date: <u>3/24/15</u>	Hearing Time: <u>11:40 am/pm</u>	Type:	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.

1) I was assigned C/S, MH statement present!

OFFENSE CODES	<u>854</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>6</u>			

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: (B) Officer's report, (C) Testimony of CCCU Harris, (D) Other - I was not present at the hearing. I was not present at the hearing. I was not present at the hearing.

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 60
 • Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 • Canteen (Days) 225 (10x100) Visit Suspension Thru 225 (10x100)
 • Other 225 (10x100) Cell Restriction (Days): _____
 • Disciplinary Detention (Days): 45

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 4th 854 strip 4/14/14

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

DATE INMATE PLACED IN PHD _____
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: M. Gabriel Randolph DATE: 3/24/15

HEARING OFFICER (PRINT NAME) R. G. Turner
APPROVED/REVERSE/MODIFY R. G. Turner REASON _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FOR:
 White - Institutional Record Canary - Inmate (Service of Disciplinary Report)
 Golden Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record
 M/D: 3/25/15

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Mr. Turner DHO / Counsel Substitute	TITLE:	DATE: March, 18, 2015
INMATE'S NAME: Mr. Gabriel Randolph		SCDC #: 248729
INSTITUTION: Perry CI		LIVING QUARTERS: Q3-A-III
<p>On 3/2/15 I was not masturbating. Officer Fubio, know that the cell light was off.</p> <p>Witness; Officer Fubio did not inform me of a charge 854 or identified as the person who done this act. Officer Fubio as witness; Inmate Francis Simmon # 278288.</p> <p>Case #250</p>		
DISPOSITION BY STAFF MEMBER:		
DATE:	SIGNATURE:	

Inmate Request

Today's Date: 3/19/15 12:22

Name: RANDOLPH, GABRIEL
Booking #: 248729
Permanent #: 248729

Reference #: 15-529431
Date Requested: 03/18/15 22:14
Request Type: Disciplinary
Requested By: Kiosk

Request Details: To the DHO\Counsel Substitute I'm need witness and this my statement .On 3/2/15 I not masturbating.Ofc.Fubio know that the call lighth was off.
Witness;Ofc.Fubio did not inform me of charge 854 or identified as the person who done this act.Ofc.Fubio as witness Inmate Francis Simmon 278288.This is case250

Disposition: Complete
Officer:
Disposition Date: 03/19/15 13:16

Request Responses

Date	Author	Note
03/19/15 13:20	c052342	Request received and noted - your witnesses will be notified.

1/m F. Simmons # 278288
Q 3A105

9:00 am Fri. to make a
witness statement.

LP spoke to Fubio on ~~Fri.~~ ^{Thurs} 3/11
& sent a witness notification
the same day.

Perry Correctional Institution

Voluntary Statement in respect of Disciplinary Charge

I, Francis Simmons, SCDC # 278288

Volunteer the following information of my own free will:

On 3-2-15 I and Inmate Rowloff was playing Chess
at one of the Tables at Q3A Side from lunch until
12:00 P.M. line and so I am a witness of inmate
Rowloff not master bating on Counselor Harrish and
After P.M. line I noticed that Inmate Rowloff was playing
Basket Ball until 3:00 count on Back Bee

Signed.....Francis Simmons..... Date 3-23-15

Witnessed by.....[Signature]..... Date 3/23/2015

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Mr. Gabriel Randolph</u> SCDC NUMBER: <u>248729</u> INSTITUTION: <u>Perry Correction Inst.</u> HOUSING UNIT: <u>Q3-A-111</u> <u>MAR 25 2015</u> WORK ASSIGNMENT: <u>Doc M</u>	<p align="center">OFFICE USE ONLY</p> Grievance No. <u>PCL-1297-15</u> Code: <u>General</u> Policy _____ Disc. Hear: <u>3/24/15</u> Class: <u>250, 834</u> PREA _____ Date Received: <u>3/25/15</u> IGC Initials: <u>JP</u>
---	---

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) Disciplinary Appeal Case 250. Grievant is appealing the DHO decision base on fact that Ofc. Fubio stated that he did not give accuser M. Harris the grievant information. Accuser M Harris lied and Incident Report stated that she got the inmate information by Ofc Fubio, but at DHO hearing Ofc Fubio stated that he did not give Accuser M Harris NO information. By review the disciplinary hearing tape Ofc Fubio say twice/two time. I did not give accuser M. Harris name.

DHO sanction violate policy OP-22.14 DHO over sanction grievant on good time credit, telephone, visitation, canteen, The policy do not allow DHO to take that much on sanction.

Mr. Gabriel Randolph 3/24/15
 Grievant Signature Date
 March 24, 2015

ACTION REQUESTED: That grievant case 250 be overturn and sanctions restored.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

— See reverse side for wardens decision. —


IGC Signature Date

WARDEN'S DECISION AND REASON:

Inmate Randolph #248729;

This is in response to PCI-0297-15. You have appealed the results of your 3/24/15 Disciplinary Hearing where you were found guilty on the charge of 854 Exhibitionism and Public Masturbation, case #250. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence with nothing being found to contradict the accusers written report or testimony. Based on this information, your appeal is without merit and therefore denied.

If not satisfied with my response, see Step 5 below.


Warden Signature 5/29/15
Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

Mo Habel Randolph 3/10/15
Grievant Signature Date

J. Powe 6/10/15
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Due: 6/15/15
INMATE GRIEVANCE FORM

STEP 2

INMATE GRIEVANCE
INMATE NAME: Mr. Gabriel Randolph
SCDC NUMBER: 248729
INSTITUTION: Perry CI ✓ JUN 2 2015
HOUSING UNIT: Q3-A-110
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. PCI 0297-15
Code: General
Policy
Disc. Hear. case # 250
Class. 854 3/24/15
Date Received 6/15/15
IGC Initials JP

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Grievant issues was not addressed by Warden or IGC, please review the step one Grievance PCI-0297-15. This charge must be remove from my record.

Mr. Gabriel Randolph 6/11/15
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction(s) of Exhibitionism and Public Masturbation (854), case #250, level 2 offense, on March 24, 2015, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanction(s) 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] 7/2/15
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.

Mr. Gabriel Randolph 7/17/15
Grievant Signature Date

[Signature] 7/17/15
IGC Signature Date

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY MENTAL HEALTH STATEMENT

INSTITUTION: Perry

Inmate: Gabriel Randolph SCDC#: 248729

was assessed by Mental Health Counselor A. Gordon, CCCIV on 3/4/15 for a
(Print Name) (Date)

violation of the rules and regulations of the SCDC based on #854 SCDC 19-29

"Incident Report" 3/2/15 at 1:20 pm
(Date of Incident/Date of Discovery) (Time of Incident)

by Reporting Official M. Harris, CCCIV
(Print Name)

Mental Health was asked to provide a statement regarding the inmate's mental status at the approximate time the charge of the offense occurred. An assessment is conducted within three business days after receiving the Incident Report.

A clinical correctional counselor has reviewed the following information: (Please initial each)

- medication compliance
- historical data and recent encounters and notes
- interview and assessment

After a completion of the above items listed and based upon an evaluation of inmates consistent history it is determined to the best of the clinical correctional counselor's opinion that:

- A. Offender has a mental illness which likely contributed to their inability to control his/her behavior. (Definition - Guilty but not accountable); {Follow MH Procedure}
- B. Offender suffers from a mental illness which may have contributed to behaviors. (Definition - Guilty with mitigating circumstances due to the offender lacking the capacity to understand the act committed). (See attachment for requested consideration of modified sanctions) {Follow MH Procedure} Request consideration of modified sanctions for the following reasons:

C. Although classified as Mentally III, was able to understand the nature and quality of the act committed.

If you require additional information, please contact me using the information below:

Counselor: [Signature], CCCIV at extension: 1164

Regional Manager: _____ Date: _____
(Signature required by Regional manager only if A or B indicated)

Psychologist: _____ Date: _____
(Signature required by psychologist only if A or B indicated)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 15-ALJ-04-0396-AP GRIEVANCE No.: PCI 297-15
INMATE NAME: Gabriel Randolph SCDC No.: 248729
INSTITUTION: Perry Correctional Institution
DATE: 03/24/2015
CHARGE: 854 – Exhibitionism and Public Masturbation**

DHO: State your name and SCDC number, please.

I/M: Gabriel Randolph, 248729

DHO: One more time, I'm sorry.

I/M: Gabriel Randolph, 248729.

DHO: Inmate Randolph, 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. Do you understand?

I/M: Yes sir.

DHO: You are appearing before this Disciplinary Hearing which is taking place at Perry Correctional Institution at approximately 11:34 AM on 03/24/2015. I am Mr. Turner, Disciplinary Hearing Officer. Inmate Randolph is being represented by Counsel Substitute Robinson. Counsel Substitute Robinson, are you and the accused ready to proceed?

C/S: Yes.

DHO: Noted for the record that Inmate Randolph is a mental health patient. I do have Mental Health Statements present on all charges against the Accused indicating that the Accused was able to understand the nature and quality of the action for which he is being charged. Inmate Randolph, I have before me the Case Number 250 that reads: Gabriel Randolph, 248729, Inmate charged with 854 – Exhibitionism and Public Masturbation, which is defined as engaging in acts of indecent and/or unnecessary exposure of genitals or other part of body parts to staff member

DHO: Disciplinary Hearing Officer (Mr. Richard Turner)

I/M: Inmate (Gabriel Randolph)

C/S: Counsel Substitute (Robinson)

OFC: Charging Official/Accuser (Ms. Harris, CCC4)

OFC2: (Officer Fubio)

or other person or engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting or in the view of a staff member or other person. The Charging Official in this case is Clinical Correctional Counselor IV, M. Harris. We do have Ms. Harris present in the Hearing Room at the request of the Accused. Ms. Harris, would you verify your presence by stating your name and position with SCDC?

OFC: Ms. Harris, CCC, IV.

DHO: Thank you. In support of the charge against, the following Incident Report: Perry Correctional Institution; Date of the Report: 03/03/2015 at approximately 12 PM; Reporting Official: M. Harris, Clinical Correctional Counselor IV; Date of the Incident: 03/02/2015; Location of the Incident: Q3A; Time of the Incident: Approximately 1:20 PM; Inmate in Question: Gabriel Randolph, 248729; Employees Involved: M. Harris, Clinical Correctional Counselor and Officer Fubio; On the Above Date and Approximate Time:

?: Hello?_____

OFC2: (Inaudible) - 2:20)

DHO: Fubio, you still there?

OFC2: Hey. Hello?

DHO: Officer Fubio, you still there?

OFC2: I'm here you, go ahead.

DHO: Alright.

OFC2: I can't hear about every 10th word. I just found, these phones are junk. I'm good. I'm good.

DHO: Alright.

OFC2: Hello?

Formatted: Tab stops: 0.5", Left + 1", Left + 2.79", Left

DHO: Inmate Harris was in Q3A standing at the Officer's Podium when I observed Inmate masturbating in the window of the door to Cell 111. I asked Officer Fubio to go to the door to address the situation, but when the officer came back to the podium he informed me that the Inmate was identified as Gabriel Randolph, 248729. I asked him if he was sure and he said he was. End of the report. Signature is that of Clinical Correctional Counselor Harris. Inmate Randolph, if you plead guilty to this charge or if you happen to be found guilty of the offense you will not be eligible to earn Good Time for the month of March in this case. Do you understand?

I/M: Yes sir.

DHO: In addition to this, if I happen to find you guilty of this charge, you can lose Visitation privileges, Canteen privileges, Telephone privileges, could be assigned Disciplinary Detention and there could be further Loss of Good Time in this case. Do you understand this?

I/M: Yes sir.

DHO: To the offense of 854 – Exhibitionism or Public Masturbation, how you plead?

I/M: Not guilty.

DHO: This is your opportunity to tell us why you feel you're not guilty.

I/M: This identification, um, Officer Fubio never came to, um, to explain about masturbating or anything like that on the date of the incident. That's all I can say.

DHO: Counselor, do you have anything on behalf of the Accused?

C/S: A witness, uh, statement, um, for the Inmate and I have some questions for Officer Fubio. Which would you like?

DHO: Get everything on behalf of the Accused on the record first.

C/S: Okay. Witness Statement: Um, Francis Simmons, a CDC Number 278288. I volunteer the following information on my own free will on 3...on 03/02/2015, I and Inmate Randolph were playing chess at one of the tables at Q3A Side from lunch until 12...12 o'clock pill line and so I am a witness of Inmate Randolph not masturbating on Counselor Harris and after pill line I noticed the Inmate Randolph was playing basketball until 3 o'clock count. On back that signed by Francis Simmons, 03/02/2015.

DHO: Anything else?

C/S: I've got three questions for Officer Fubio.

DHO: Officer Fubio?

OFC2: Yes sir, go ahead.

DHO: Questions from the Counsel Substitute.

C/S: Officer Fubio? Did you tell Ms. Harris the Inmate's name?

OFC2: No, I did not. I do not recall doing that. I do not recall.

C/S: Officer Fubio?

OFC2: Yes sir?

C/S: Where were you at the time when inmate, um, Ms. Harris asked you for assistance?

OFC2: Was standing right beside her and she said that the guy 111 was jacking off. So I went down to 111: and I walked down there, and he was fully clothed. I saw no genitals, I saw no penis. I says whatever you doing, knock it off. He said I'm not doing anything, CO, and that was the end of it. I came up and like I said, I never saw anything, and about ten minutes later he was, you know, stand on the Rock just doing nothing and that's...that's the end of what I saw.

DHO: Officer Fubio, who was the inmate that you confronted in that cell?

OFC2: It was Mr. Gabriel.

DHO: Randolph, Gabriel Randolph, correct?

OFC2: Yes.

DHO: So there is no misidentification is that correct?

OFC2: No, he was the one in the cell.

DHO: That's right.

OFC2: Yes sir, yes sir.

DHO: And it is possible that he had exposed himself and re-clothed prior to your arriving, is that correct?

OFC2: Oh, he could have, yeah.

DHO: Yes. Do you have anything else that's relevant?

OFC2: Pardon me.

DHO: I got it! Were not in a piecemeal this thing. You should have already given him a question.

I/M: (Inaudible - 6:34)

DHO: That's a statement. That's not a question.

I/M: Question.

DHO: If you got a question for this witness -

C/S: Officer Fubio, did you inform Ms. Harris that the Inmate jacking on her was Mr. Randolph?

OFC2: I don't believe I did. I don't recall that well, but I don't think I told her his name because I didn't really know his name then. I really didn't.

I/M: No further questions sir.

DHO: Okay.

OFC2: I can only hear about every third word you guys –

DHO: Nothing we can do about it sir. I'm sorry. You got the background noise in your dorm and the bad acoustics in the room. Take care. Any questions for the Accuser?

C/S: No sir.

DHO: Ms. Harris, is the content of your report true and correct as written?

OFC: Yes sir.

DHO: And you were informed of the identity of the Inmate by the officer?

XOFC: Officer Fubio and I...I actually had a conversation when he came back up to the podium and he confirmed the identity because we knew he was in the room and he confirmed the identity of the person after he returned to me.

DHO: Do you have anything else is relevant?

OFC: No sir.

DHO: Uh, did you recognize the inmate when you saw this taking place?

OFC: No, I didn't. That's why asked the officer to go to the door and actually physically check.

DHO: Oh. Do you have anything else is relevant?

OFC: No sir.

DHO: Thank you. For better understanding, the information that will be used to support the charge against you will be the Incident Report previously read into the record, the testimony of Ms. Harris and Officer Fubio during this hearing. I have provided you the opportunity to make a statement, present evidence, and call witnesses on your behalf and I am prepared now to recesses hearing and arrive at a decision. If you'll step out, I will be with you shortly.

(Recess)

DHO: Restate your name and SCDC Number please?

I/M: Gabriel Randolph, 248729.

DHO: Inmate Randolph, I have found you guilty of the offense that was brought against you today. The information that was used to arrive at this decision is the Incident Report previously read into the record, the testimony of Clinical Correctional Counselor Harris that her report was true and correct as written, the testimony of Officer Fubio that you were the person who was in Cell 111 when he went to discover, or inquire the situation. The sanctions that have been imposed: 45 days Disciplinary Detention, 225 days Canteen, 225 days Telephone, 225 days Visitation, 60 days Loss of Good Time. You do have the right to appeal the sanctions portion of the charge and the determination of guilt. The manner in which you do so is you file an SCDC Form 10-5. That's a Step One Grievance Form with the Grievance Coordinator. If you are going to appeal the case, it must be done within five days. That is five days from the time I hand you your copy of the Hearing Report here today. Also remember that if you need any assistance with an appeal, the Grievance Coordinator helps you with the process. Do you understand your appeal rights?

I/M: Yes sir.

DHO: That concludes this hearing.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT**

Gabriel Randolph, 248729,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent)
_____)

CERTIFICATION
Docket No.: 15-ALJ-04-0396-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.

Traci Martin

Traci Martin
Transcriptionist
Reporters Transcription Center

State Of South Carolina Administrative Law Court

Gabriel Randolph # 248729
Appellant,
vs
South Carolina Department Of
Correction,
Respondent,

Docket No# 15-ALJ-04-396-AP
Appellant Brief.
Judge Durden.

Statement Of The Case

This matter is before the Administrative Law Court/ALC pursuant to the appeal of Gabriel Randolph an prisoner incarcerated with the South Carolina Department Of Corrections/SCDC/ respondent. Appellant was illegal convicted of violating SCDC Inmate Disciplinary System OP-22.14 section 854, Exhibitionism And Public Masturbation / case 249 / level 2 offense. As a result to this illegal conviction, appellant lost ninety 90# days and twenty 20# days good time credit / GTC when found guilty of charge 854. The appellant file a Step One and Two Grievance # PCI-166-15 was denied by SCDC official on the Step One And Two Grievance and this is reason the appellant is appealing the illegal conviction.

Standard Of Review

The ALC's jurisdiction to hear this matter is derived from the decision of the SC. Supreme Court in Al-Shabazz vs State 527 SE2d 742 (SC.2000). The ALC's appellate jurisdiction in inmate appeal is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence related credit, 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. Also when reviewing the SCDC's official decisions in inmate grievance matter, the ALC sit in an appellate capacity. Al-Shabazz vs State 527 SE2d at 756. (SC.2000) Consequently, the review in these cases is limited to the record presented. As the Court noted, 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 incident of prison life. Sullivan vs SCDC 586 SE2d at 127 (sc.2003) citing Sandin vs Conner 515 US 472 (1995) This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process right.

Argument One

Appellant Was Not Afforded Due Process By The DHO

Prison disciplinary case are not criminal trials in federal or state court; they are administrative hearing in an institutional setting. Therefore due process in prison

disciplinary hearing is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted Wolff vs McDonnell 418 US 539 (1974) and Al-Shabazz vs State 527 SE2d 742 (SC. 2000), requires the following in prison disciplinary cases;

- 1) 24 hours advances written notice of charge; Appellant was served with notice of the charge on 3/18/15 and the disciplinary hearing was held on 3/24/15 review SCDC Form 19-69 Disciplinary Report And Hearing Record = DRHR and transcripts
- 2) Written statement by factfinder as to evidence relied upon; DRHR show that illegal conviction was not based upon fact, the report of Mental Health Counsellor = MHC. M. Harris was a contradiction and fabrication in her testimony and report.
- 3) Written statement by factfinders as to reason for disciplinary action taken; 4th 854 since 4/14/14.
- 4) Opportunity to call witnesses and present documentary evidence; Appellant presented documentary evidence witness statement and one other witness Officer Fubio denied of given Mental Health Counsellor M. Harris the appellant information which make contradiction in her report of SCDC Form 19-29 (A) Incident Report.
- 5) Counsel substitute allowed if inmate illiterate, or if case is complex; Appellant was represented by counsel substitute Mr. Robinson.
- 6) Impartial Hearing tribunal; The Disciplinary Hearing Officer = DHO was very argumentative and dismissive when Officer Fubio went against MHC/M. Harris report and testimony, toward appellant. The open hostility displayed by the DHO cannot lead to a fair conclusion that an impartial disciplinary hearing occurred. By Wolff vs McDonnell supra an inmate is guaranteed that the DHO the matter be impartial. The appellant in the present case, was not afforded his due process right, as the DHO was not impartial. Thus DHO fail to provide appellant with procedural due process sufficient to support the disciplinary conviction.

Argument Two

SCDC Official Final Agency Decision Is Not Support By Substantial Evidence.

The transcript and record conclusively establishes that the substantial evidence on the whole record that do not supports SCDC's final agency decision. Review the SCDC Incident Report by MHC/Harris, she refered to Officer Fubio to identified inmate and he did not informed who inmate is. Appellant ask Officer Fubio did he inform MHC Harris of appellant identification and response was "NO" and he did not give MHC/Harris name or SCDC number. This is not substantial evidence when a witness denied what MHC/Harris report in the SCDC Incident Report. Officer Fubio clearly stated that he did not give any identification of a inmate to MHC/Harris. This is contradiction is SCDC Incident Report and testimony of MHC/Harris. Appellant did show that the decision of DHO and SCDC official was

clearly erroneous, arbitrary, capricious and abuse discretion in view of the substantial evidence on the whole record.

Conclusion

Based on the foregoing reason and legal authorities, appellant respectfully requests that SCDC's final agency decision be VACATED and all GTC be return.

October, 26, 2015

By: *Mr. Gabriel Randolph*
MR. GABRIEL RANDOLPH #248729
Perry Correction Inst. Q3-A-110
430. Oaklawn. Rd.
Pelzer, SC. 29669

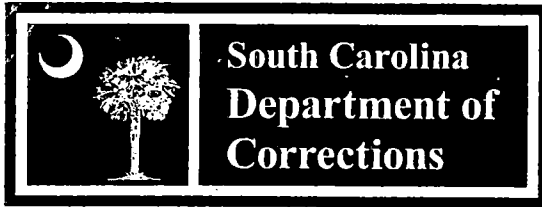
Certificate Of Service

I, Gabriel Randolph hereby certify that a copy of the foregoing Appellant Brief was put into US Mail prepaid and postage to the below address on date of October 26, 2015

SC. Administrative Law Court
sc. Admin. Judge Durden
1205. Pendleton Street
Columbia, SC. 29201

* SC. Dept. Of Correction
Office Of General Counsel
P.O. Box 21787
Columbia, SC. 29221

By *Mr. Gabriel Randolph*



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

December 1, 2015

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Gabriel Randolph, #248729, vs. SCDC
Docket No. 15-ALJ-04-0396-AP

Dear Judge Durden:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheron Hess", is written over a large, stylized loop that extends downwards from the signature.

Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Gabriel Randolph, #248729
File

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Gabriel Randolph, #248729,)	Docket No.: 15-ALJ-04-0396-AP
)	[Grievance No.: PCI 297-15]
Appellant,)	
)	<i>Hon. Deborah Brooks Durden</i>
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT'S BRIEF
)	
Respondent.)	
)	


STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Gabriel Randolph (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant is appealing his March 24, 2015 conviction for offense 854, “Exhibitionism and Public Masturbation”. The appeal of this disciplinary conviction was done through grievance # PCI 297-15.

On March 25, 2015 Appellant filed a Step 1 grievance seeking reversal of his March 24, 2015 conviction on the basis of insufficient evidence and lack of due process. On May 29, 2015, Warden Cartledge denied the Step 1 grievance. Thereafter, on June 12, 2015, Appellant filed a Step 2 grievance alleging, again, insufficient evidence and lack of due process. On July 2, 2015, SCDC denied the Step 2 grievance, and this appeal followed.

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). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court



clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. See *Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. See *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, 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(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, "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." *Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.); see S.C. Code Ann. § 1-23-380(5)(e); see also *Marietta Garage, Inc. v. S.C. Dep't. of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep't. of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the 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. Pub. Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, the supreme court "underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a 'hands off' approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA." *Matthews v. S.C. Dep't of Corr.*, *supra*, page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that "[c]ourts

traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters"); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

ARGUMENTS

I. BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE 854 CHARGE AND CONVICTION, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

The evidence presented at the hearing and relied upon by DHO Turner satisfies the "substantial evidence" standard of proof to uphold Appellant's conviction. Here are the salient facts brought forth at the disciplinary hearing:

1. Charging Official Clinical Correctional Counselor Ms. Harris observed an inmate masturbating in the window of cell 111.
2. Ms. Harris requested an officer, Officer Fubio, to go to cell 111 and identify the inmate who was masturbating in the window.
3. Officer Fubio went to cell 111 and identified Appellant. (Transcript at 4).
4. At the hearing Officer Fubio stated either no or he could not recall if he told Ms. Harris the name of the person in cell 111. (Transcript at 4 ,5)
5. Ms. Harris testified that Officer Fubio had a conversation when he returned and confirmed the identity of the Appellant. (Transcript at 6).
6. Officer Fubio stated that when he arrived at cell 111 Appellant was fully clothed. (Transcript at 4)
7. When questioned by the DHO, Officer Fubio admitted that it was possible Appellant had exposed himself and re-clothed prior to his arrival at the cell. (Transcript at 5).

DHO Turner weighed the evidence based on the facts and testimony presented at the hearing. Appellant has failed to show to the Court that his substantial rights have been

X

prejudiced or that DHO Turners's decision was clearly erroneous, arbitrary, or affected by a legal error. *Cf. Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.). Therefore, because Appellant's conviction was supported by substantial evidence, SCDC respectfully requests the Court affirm SCDC's final agency action.

II. BECAUSE APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

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 United States Supreme Court noted in *Wolff v. McDonnell*, 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.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

Here, Appellant has notice of the charges and opportunity to be heard, an opportunity to challenge the evidence and face his accuser, aide of counsel substitute, the presence of a neutral and detached hearing officer, and a written statement of the findings so that Appellant could make an appeal. There is nothing in the record to indicate that

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Appellant's due process rights were violated. Accordingly, the Departments' final agency action should be affirmed.

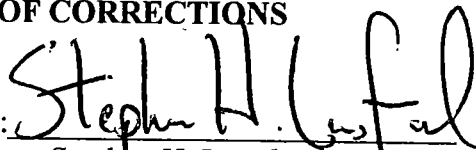
CONCLUSION

SCDC afforded Appellant all of the due process safeguards to which he was entitled. Moreover, DHO Turner relied on substantial evidence when making his decision to find Appellant guilty of the 854 offense. Thus, SCDC respectfully requests that this Court affirm SCDC's final agency action.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



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Columbia, South Carolina
December 1, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gabriel Randolph, #248729,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-ALJ-04-0396-IJ
Grievance No. PCI 0297-15

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Gabriel Randolph (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). On March 24, 2015, Appellant filed a Step 1 Grievance with the Department, which the Department denied. On July 27, 2015, Appellant filed a Notice of Appeal with this Court, containing the Step 1 Grievance. On September 2, 2015, this Court dismissed the appeal for failure to exhaust administrative remedies, because no final Step 2 decision was provided to the Court. On September 10, 2015, Appellant filed a motion to correct the final decision, including a copy of the July 17, 2015 Step 2 decision referenced in his notice of appeal. On September 22, 2015, the Court reinstated the appeal. Thereafter, the record was filed and the parties briefed the case. The Court now affirms the Department's Step 2 decision.

BACKGROUND

On March 3, 2015, an incident report was filed by M. Harris stating that she observed an inmate identified as Appellant masturbating in cell #111 and directed Officer Fubio to address the situation. Appellant was notified of his disciplinary hearing on this matter on March 18, 2015. On March 24, 2014, a hearing was held. Appellant was found guilty by the hearing officer of disciplinary offense 854 Exhibitionism and Public Masturbation, SCDC Policy OP-22.14, "Inmate Disciplinary System." The hearing officer imposed several sanctions, including the loss of 60 days' good time credit, noting in the report that this conviction was Appellant's fourth 854 conviction since April 14, 2014. Following the conviction, Appellant filed a Step 1 and Step 2 grievance with the Department. In denying both grievances, the Department found that Appellant received due process and that his conviction was based on substantial evidence.

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SC ADMIN. LAW COURT

ISSUES ON APPEAL

1. Whether the Appellant was afforded due process at his disciplinary hearing.
2. Whether the Department's decision is supported by substantial evidence on the record.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker, 360 S.C. at 424, 602 S.E.2d at 58 (citation omitted). Such a liberty interest is implicated when an inmate loses sentence-related credits as the result of a disciplinary hearing conviction. See Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750.

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the Court's review in appellate cases is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Appellant first argues that he was not afforded due process. In an inmate disciplinary hearing case, the Court applies the following five factors, enunciated by the Supreme Court, to ensure procedural due process:

- (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 the inmate

should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals; (4) that counsel substitute (a fellow inmate or a prison employee) 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, 338 S.C. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563–72, 94 S.Ct. 2963, 2978–82 (1974)). Appellant does not contest that he received the required notice, that there was a written statement by the factfinder, that he had the opportunity to call witnesses and present evidence, and that he was represented by counsel substitute. Appellant does argue that the hearing officer was biased and displayed open hostility. However, a review of the record, including the transcript of the hearing shows no evidence that the hearing officer was biased. The hearing officer noted Appellant's status as a mental health patient, allowed Appellant to question witnesses and present evidence through his counsel substitute, and explained the evidence introduced and the ruling and sanctions imposed. Because the Court can find no evidence of bias or partiality on the record, the Court must conclude that Appellant was accorded due process.

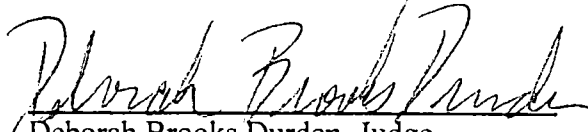
Appellant also argues that the evidence relied upon by the fact-finder was fabricated and contradicted by other witness statements. In an appeal, the Court reviews the record to determine if the Department's decision is supported by substantial evidence. Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached" Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Id., 276 S.C. at 136, 276 S.E.2d at 307. Moreover, because prison officials are in the best position to decide inmate disciplinary matters, the Court takes a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757.

Upon review of the record, the Court finds that there is substantial evidence to support the Department's decision. While there is some conflict between the statements of Harris, Officer Fubio, and Inmate Francis Simmons, reasonable minds could reach the conclusion of the hearing

officer. Harris witnessed Appellant's punishable behavior in cell #111. Although Officer Fubio did not see the behavior, he did testify that Appellant was the inmate in that cell at the time, even if the Officer did not provide the Appellant's identity to Harris. It appears that the hearing officer gave more weight to the testimony of these two employees regarding Appellant's location, than the statement of Simmons. Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. See S.C. Code Ann. § 1-23-380(5) (Supp. 2015); see also Houston v. Deloach & Deloach, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). Thus, the Court concludes that the decision of the Department is supported by substantial evidence on the record.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 9, 2016
Columbia, South Carolina

NOTICE OF SERVICE
I, the undersigned, have 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).
On 9th day of February 2016
By: R. E. Lu
Judicial Law Clerk