

IV. STATEMENT OF CLAIM - continued.

State of South Carolina  
County of Richland

In The SC Court of Appeals  
Appeal No. 2016 - 000086

William Pipkin, 228810,  
Plaintiff,

vs.

Pipkin's Record on Appeal

S.C. Dept. of Corrections,  
Respondent.

- |  |       |
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William Pipkin, 228810

Kershaw CI / 0A31

4848 Goldmine Hwy.

Kershaw, S.C 29067

**RECEIVED**

FEB 25 2016

SC Court of Appeals

Christina C. Bigelow, Deputy

General Counsel, SCDJ, 4444

Broad River Rd., Columbia

South Carolina 29221

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD**

Case#: 57 Inmate Name: Pipkin, William SCDC#: 228810

Living Area: SMU37 Job: N/A Custody: N/a

Offense Date: 01/30/15 Offense Time: 10:10 AM Institution: Kershaw

**Offense Description:**

**807 - Striking an Employee**

Charging Officer/Employee: J. McKay (C-Card) Title: Sgt.

**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:**

- |   |   |
|---|---|
| <input type="checkbox"/> I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING | <u>CS Armstrong</u>   |
| <input type="checkbox"/> I DO NOT WANT TO BE PRESENT AT MY HEARING  | <input type="checkbox"/> I WAIVE MY RIGHT TO A HEARING                    |
| <input checked="" type="checkbox"/> I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING <u>wp</u>                               | <input type="checkbox"/> SMU/SEGREGATION ONLY                             |
| <input type="checkbox"/> I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING  | <input checked="" type="checkbox"/> I WANT A COUNSEL SUBSTITUTE <u>wp</u> |
|   | <input type="checkbox"/> I DO NOT WANT A COUNSEL SUBSTITUTE               |

Date & Time Notified: 2/15/15 7:39 AM By (Print): J. Benge  
Inmate Signature: William Pipkin SCDC#: 228810 Date: 2/15/15

**HEARING INFORMATION:**

Hearing Date: <u>2/18/15</u>	Hearing Time: <u>10:55 AM</u>	Tape:	Side:	Start:	End:
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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

Unable to conduct hearing 2/11/15 due to accused not being given copy of 19-29a prior to hearing.  
AKH: 19-29a supporting document 4-19-67

OFFENSE CODES	<u>807</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</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: 19-29a supporting doc statement at hearing

HEARING LENGTH: 9 (MINUTES)

**SANCTIONS:**

Loss of Privileges (Days)	Reprimand:	Loss of Good Time (days): <u>6</u>
* Property (Days)	Extra Duty:	Restitution: \$ <u>    </u>
* Canteen (Days) <u>150+25=175</u>	Visit Suspension Thru <u>150+25=175</u>	
* Other <u>phone</u> (Days) <u>150+25=175</u>	Cell Restriction (Days):	
* Disciplinary Detention (Days): <u>15-20 pd = 25</u>		

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: This is the accused 1st charge of this nature

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS 20

DATE INMATE PLACED IN PHD 1/30/15

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: William Pipkin DATE: 2/18/15

HEARING OFFICER (PRINT NAME) E. J. Buttrick

APPROVED/REVERSE/MODIFY [Signature] REASON     

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

\*(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

Page \_\_\_ of \_\_\_

013003

Institution/Center: <u>Kershaw C.I.</u>		Date of Report: <u>30 January 2015</u>	
Reporting Official (Full Name): <u>John McKay #048073</u>		Time of Report: <u>12:45 pm approx</u>	
Employee ID #: <u>048073</u>		Date of Incident: <u>30 January 2015</u>	
Location of Incident: <u>Manolia A Room #63</u>		Time of Incident: <u>10:10am approx.</u>	
Inmate(s)/Resident: <u>SCDC#</u>	Age	Sex	Race
Employee(s)/Witnesses Involved:			
1. <u>William Pipkin #228810</u>	<u>M</u>	<u>B</u>	
2. <u>S.M. 87</u>			
3.			
4.			
5.			

On the above date and approximate time: I Sgt John McKay #048073 held my hand out and asked for inmate Pipkin william #228810 id card he refused grabbed my hand and pushed it out to the side and said "Don't touch me, get your hand off me." Sgt Melissa Williams then grabbed him by his right arm attempted a straight arm bar take down inmate then became combative and started resisting Sgt Williams so I then grabbed his left arm and assisted with a straight armbar take down and placing him in restraints. No other force was needed. I identified him by his side id card and I am charging him with 807 Striking an Employee.

Signature: <u>J McKay</u>	Title: <u>Sgt</u>
Evidence:	
Disposition of Evidence:	

Supervisor's Comments: <u>Forward to the Major's Office</u>
Printed Name: <u>Aubrey Romain</u>
Signature: <u>[Signature]</u> Title: <u>LT.</u> Date/Time: <u>1:52a 1-30-15</u>
Major/Responsible Authority: <u>Refer to DHO for 807</u>
Printed Name: <u>T.S. [Signature]</u>
Signature: <u>T.S. [Signature]</u> Title: <u>Capt</u> Date: <u>2-7-15</u>

STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown
This incident is DRUG related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown
Responsible Authority Action Taken <input type="checkbox"/> Informal Resolution <input type="checkbox"/> Administrative Resolution <input checked="" type="checkbox"/> Refer to Disciplinary Hearing



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

October 19, 2015

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate William Pipkin, #228810, vs. SCDC  
Docket No. 15-ALJ-04-0426-AP

Dear Judge Shirley C. Robinson:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance KRCI 220-15, 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, appearing to read "Cheron Hess", is written over a faint, larger version of the same signature.

Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate William Pipkin, #228810  
File

7

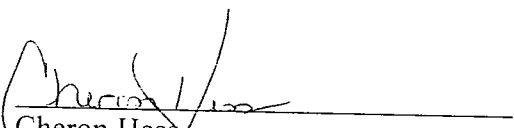
5

## 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 William Pipkin  
Inmate Number: 228810  
Kershaw Correctional Institution  
Dorm-Room-Bunk: OA-0023-B

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

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**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE  
DOCKET No.: 15-ALJ-04-0426-AP    GRIEVANCE No.: KRCI 220-15  
INMATE NAME: William Pipkin    SCDC No.: 228810  
INSTITUTION: Kershaw Correctional Institution  
DATE: February 18, 2015  
CHARGE: 807 – Striking an Employee**

DHO: The purpose of this hearing is to treat the matter before us with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in your removal. State your name and SCDC number for the record.

I/M: William Pipkin, 228810.

DHO: You are appearing before the Kershaw Disciplinary Hearing being recorded at 10:55 a.m. on 2/18/15. I'm DHO Bittinger. You are being represented by Counsel Substitute Armstrong.

Mr. Armstrong, are you and the Accused ready to proceed?

C/S: Yes sir.

DHO: I will now read into the record Case 57: William Pipkin, 228810; Offense Date: 1/30/15 at 10:10 a.m.; Institution: Kershaw; Offense Description: 807 - Striking an Employee; Charging Employee is Sergeant McKay; Narrative: On the Above Date and Approximate Time: I, Sergeant John McKay, 048073, held my hand out and asked for Inmate Pipkin, William, 228810, ID card. He refused, grabbed my hand and pushed it to the side and said don't touch me, get your hand off me. Sergeant Melissa Williams then grabbed him by his right arm, attempted to a straight arm bar takedown. Inmate then became combative and started resisting Sergeant Williams so I then grabbed his left arm and assisted with a straight arm bar takedown and placed the inmate in restraints. No other force was needed. I identified him by his SCDC ID Card and am charging him with 807 - Striking an Employee. (background conversation). I have a 19-29-a Supporting Document also from Sergeant Williams. 1/30/15 at approximately 10:10 a.m., on the

**DHO: Disciplinary Hearing Officer (Mr. Edward Bittinger)**

**I/M: Inmate (William Pipkin)**

**C/S: Counsel Substitute (Mr. Armstrong)**

**OFC: Charging Official/Accuser (Sergeant McKay)**

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Above Date and Approximate Time: Sergeant John McKay, 048073, and myself, Sergeant Melissa Williams was getting property out of Room 64 when Inmate William Pipkin, 228810, from 63 began to yell you ain't nuthin' but a snitch to Inmate Raji Gillard, 107089. I, Sergeant Williams, stepped out to the tier and directed Inmate Pipkin to his cell. He continued to yell he's a snitch. Sergeant McKay directed him to give up his ID Card with his right hand out. Inmate Pipkin grabbed Sergeant McKay's right hand and pushed him, stating get your hands off me. At this time I, Sergeant Williams, attempted a straight arm bar takedown, as Inmate Pipkin became combative. He was placed on the floor as directives to stop was given. Inmate was directed to give up his arm. Sergeant John McKay assisted to restrain Inmate Pipkin as I applied the cuffs. Inmate Pipkin was then escorted to Holding Cell in the Restrictive Housing Unit. If you plead guilty or are found guilty of this charge, you will not earn good time for January 2015. You may also lose visiting, canteen, phone and property privileges, pay restitution, disciplinary detention and loss of good time. Did you sign and receive a copy of these charges on 2/5/15, 7:39 p.m. from Sergeant Borgersrode?

I/M: I only signed (inaudible).

DHO: You got a copy of the 19-29a on 2/11/15 from me?

I/M: Yeah...yes.

DHO: Alright. You indicated you wanted your Accuser present and Sergeant McKay is on the speaker phone. On the charge of 807, how do you plead?

I/M: Not guilty.

DHO: We will now receive evidence on behalf of the Accused. Mr. Armstrong, do you have any witnesses or documentary evidence to present?

C/S: Sir, allow him please to make a statement in reference to what occurred and I have some questions for Officer Sergeant McKay.

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DHO: Go ahead.

I/M: Alright, on the day of the incident...on the day that the incident happened is that, yeah, I called him a snitch because I don't like snitches, ya know what I'm sayin'? And he didn't ask me for my ID period. He came up to me...he came up to me snatched my ID off my shirt and it fall on the floor and (inaudible - 04:45) pushed me, I tried to catch the door, but my hand had went out. I didn't realize that I had touched him, ya know what I'm sayin'? (Inaudible) my head on the floor. He's talkin' about how I touched him. He ain't talkin' about grabbin' and (inaudible). He said I touched him. (Inaudible) tellin' everybody else, talkin' about I touched him, but he ain't sayin' nuthin' about grabbing him.

DHO: Anything else?

I/M: No, that's it (inaudible).

DHO: We will now receive evidence to support the charges against the Accused. Disciplinary Report 57, which was read at the beginning of the hearing, will be considered as evidence against you. Sergeant McKay, is the Report you wrote true and correct?

OFC: Yes sir.

DHO: Would you like to make any additional statement at this time?

OFC: No sir.

DHO: Your Incident Report indicated you put your hand out and directed him to give you his ID Card. He states you reached up and snatched the ID card off his collar and then dropped the card. You wanna go over how the flow went?

OFC: Absolutely, (inaudible - 06:03 very poor speaker phone audio)

DHO: I can't understand what you're sayin', sir.

OFC: (Inaudible) came around. I never (inaudible)

DHO: Alright. Mr. Armstrong, you have some questions?

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C/S: What you're sayin' is that you never touched him at all until the incident escalated?

OFC: Yes, until it escalated.

C/S: Okay, you never took the ID off his collar? You stating that, sir?

OFC: That's correct.

DHO: No sir you're not sayin' that or no sir you didn't take his ID off his collar?

OFC: No sir, I didn't take his ID off his collar.

DHO: Okay. I just wanted to clear that up.

C/S: Did he actually touch you, sir? Do you think he was trying to harm you? Incidental touch, or what he trying to harm you, sir?

OFC: He was trying to (inaudible - 07:07)

DHO: I didn't hear you, sir.

OFC: Okay, he (inaudible).

DHO: Okay.

C/S: Okay.

DHO: Next question.

I/M: (Inaudible).

DHO: Do you have any other questions you want Counsel to ask?

I/M: I wanted to say he didn't ask for my ID, he snatched it...

DHO: You already stated that, sir...

I/M: (Inaudible).

DHO: No other statement you wanna make?

I/M: No.

DHO: No? Mr. Armstrong?

C/S: No sir.

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DHO: Anything else, Sergeant McKay?

OFC: No sir. That's it.

DHO: I have heard the charges and provided an opportunity for the Accused to make a statement, present evidence, call witnesses on their behalf. I have considered the evidence and witnesses against the Accused. I will now recess this hearing to arrive at a decision.

(Recess)

DHO: Restate your name and SCDC number for the record.

I/M: William Pipkin, 228810.

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DHO: I found you guilty of the charge brought against you. The evidence I relied upon was the Sergeant's report and the supporting document from Sergeant Williams, as well as Sergeant McKay's verbal statements in here. Sir, even if you didn't grab him, which I got two sergeants that say you did, even if you just touched 'em, that still falls under this disciplinary charge. It includes unauthorized touching and any touching of an SCDC employee by an inmate is unauthorized. Your sanctions will be: 150 days loss of canteen, phone, and visitation; 45 days of disciplinary detention, minus 20 days for PHD credit, leaves 25 days; 6 days loss of good time. You were given this sanction because it is the first charge of this nature that you've been convicted of. You will receive a copy of the Hearing Record. You have five days to appeal my decision as to guilt and punishment imposed using a Grievance Form with the Grievance Coordinator who can assist you if you need help. Do you want a Grievance Form?

I/M: I 'spect.

DHO: That concludes this hearing.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

William Pipkin, 228810, )  
 )  
Appellant, )  
 )  
-vs- )  
 )  
South Carolina Department of Corrections, )  
 )  
Respondent )  
\_\_\_\_\_ )

**CERTIFICATION**  
Docket No.: 15-ALJ-04-0426-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.

*Sandra Lee Avery*


\_\_\_\_\_  
Sandra Lee Avery  
Transcriptionist  
Reporters Transcription Center

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT


William Pipkin, 228810, )  
Appellant, )  
-vs- )  
South Carolina Department of Corrections, )  
Respondent )

CERTIFIED TRANSCRIPT  
Docket No.: 15-ALJ-04-0426-AP

This is to certify that I am the Disciplinary Hearing Officer who presided at the administrative disciplinary hearing in this matter. I have reviewed the attached transcript of the audio recording of this hearing and hereby certify the transcript as true, accurate, complete and constitutes the entire record of the proceedings.

  
Disciplinary Hearing Officer  
South Carolina Department of Corrections

SWORN TO before me this  
11<sup>th</sup> day of September, 15.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 12/5/2024

IV. STATEMENT OF CLAIM - continued.

State of South Carolina County of Richland	In The S.C. Administrative Law Court Case # 15CO426, Judge Robinson
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William Pipkin, 228810, Appellant, vs. State of South Carolina, Respondent.	
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Pipkin's Original Brief With  
Declarations In Support

Statement of the Issues on Appeal:

Issue # 1: After Pipkin witnessed Sgt. McKay spraying inmate McFadden when McFadden called McKay to come get psychotic inmate Gillard, who stopped taking his anti-psychotic medications, did Pipkin willfully assaulted McKay when McKay reached for Pipkin's ID without giving any directives after McKay observed Gillard also assaulting Pipkin - McKay who has infact been suspended (6) months earlier for using excessive force by slamming SMU/lock-down inmates' head in cell flap and using gas on this inmate locked behind cell door in fall of 2014?

Issue # 2: Whether counsel substitute and DHO denied Pipkin's right to present witnesses' statement where no investigation of witnesses who observed McKay's actions against Pipkin after Gillard assaulted Pipkin,

(See Ferola vs. Byars, 2015 WL 893083, at p. 8 (D.S.C. 2015) (Summary Judgment denied in part where Plaintiff was threaten in front of officer, but no corrective action was taken.)

in violation of Pipkin's procedural due process rights to some evidence and to call witnesses under the 14<sup>th</sup> Amendment of the U.S. Constitution?

**Statement of the Case:**

On 2/5/2015, appellant Pipkin was charged with striking an Employee, disciplinary offense code 807 while confined in SMU. Because accusing Ofc. /Sgt. McKay's incident report was not served prior to the hearing on 2/11/2015 (for reasons not mentioned here), Pipkin's case was continued until 2/18/2015.

After finding Pipkin guilty, the DHO took (6) days good-time credits, suspended canteen, phone and visitation for (175) days. Pipkin filed a Step One Grievance on 2/25/2015 which was denied on 4/9/2015.

Pipkin filed a Step Two Grievance on 4/13/2015. This appeal, which is S.C. Dept. of Corrections final decision, was denied 7/9/2015 and was received by Pipkin on 7/17/2015.

This appeal follows.

**Argument For Issue # 1:**

The following facts were not presented by counsel substitute, Mr. Armstrong: JIM Rast Gillard, #107089 - who stopped taking his anti-psychotic medications, and therefore, was transferred from Waterlee and placed in McFadden's cell # 64, a cell next door to Pipkin's cell #63.

On 1/30/2015, Pipkin heard a brief struggle and a call for help coming from inmate McFadden, #199135, stating "Come get this man!" Sgt. McKay appeared and instructed McFadden, while the cell door was still locked, to release Gillard and McFadden replied "This man hit me." When the wing officer, who was in the restroom or not on the wing, opened the door, McKay sprayed McFadden without any directives after

entering cell # 64 rather than help McFadden restrain psychotic I/M Gillard. (See attached Declaration of Bernard McFadden dated 9/25/2015, Attachment E.)

**Declaration of William Pipkin :**

1) After psychotic inmate Gillard was released from medical and upon returning back to his cell 64 where Sgt. Williams was packing McFadden's property while Sgt. McKay stood at the cell door, I stated to psychotic I/M Gillard that he was wrong for doing his roommate McFadden that way.

2) That psychotic Gillard ran-up on me in an assaultive manner, as if he was going to hit me. (See Attachments A and B, Grievances One and Two, # KRCI-0390-15, alleging that Gillard acted as if he was going to hit me.) Sgt. McKay got between us, pushed Gillard back into cell #64 and reached or grabbed at me without first giving a directive (See Attachment C, McKay's incident report stating he reached or held out his hand first, before asking for my ID card, dated 1/30/2015.)

3) In response to McKay's grabbing at me, I simply pushed McKay's hand away in a defensive manner because I didn't know McKay's purpose or McKay's intent after observing McKay's non-corrective action after McKay observed Gillard second assault.

4) That I also direct the Court's attention to McKay's scheme to conceal the aggressive psychotic I/M Gillard's actions, very likely motivated to impede any defense McFadden might bring. (See Attachment C, McKay's incident dated 1/30/2015, fraudulently omitted information as to why he wanted my ID.)

5) And that I told counsel substitute about Gillard and McKay's actions prior to hearing while in SMU, but Mr. Armstrong never interviewed the witnesses as alleged in my two Grievances (See Attachments A and B.) Nor did the DHO Bittinger document the reasons for excluding these witnesses on SCDC form 19-69 dated 2/18/2015, denying my right to some evidence and to call witnesses under the U.S. Constitution's 14<sup>th</sup> Amendments. (See Attachment D, SCDC form 19-69 not documenting any witnesses, particularly any mental health officials who could have shed light on whether Gillard's assaultive behavior stems from him not taking his medications; to protect Gillard's right to privacy; no particular medication or diagnosis needed to be disclosed - only whether the unknown mental health condition would have caused Gillard's alleged assaultive behavior?)

6) I, William Pipkin, #228810, declare under penalty of perjury that these statements are true and correct this 21<sup>st</sup> day of ~~October~~ October, 2015, that I have read this document, and that no one has threatened me in any manner in connection with this statement.

William Pipkin  
 William Pipkin, #228810  
 Appellant, Pro se

Appellant Pipkin submits Sgt. McKay knew of psychotic Gillard's aggressive behavior from the fact that McFadden yelled to McKay, that which was heard by everyone in the cells next door and below, that Gillard hit him prior to Gillard assaulting Appellant Pipkin in McKay's presence. (See Attachment E, McFadden's Declaration dated 9/25/2015, stating he could have testified for Appellant Pipkin, but DHO Bittinger and Mr. Armstrong had conspired to conceal Gillard's aggressive conduct.)

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However, after observing the assault, Sgt. McKay only pushed Gillard back into cell 64 and then approached and reached at Pipkin in an aggressive manner, while doing nothing to Gillard for the assault.

Our U.S. Supreme Court stated in Farmer vs. Brannan, 511 U.S. 825, 831, 114 S.Ct. 1970, 1976 (U.S. Wks. 1994) (that... the failure of prison officials to protect inmate assaults violates the 8<sup>th</sup> Amendment... if prison officials were "reckless in a criminal sense," meaning that if they had "actual knowledge" of a potential danger...).

Also, Appellant Pipkins submits that his simple pushing McKay's hand away after McKay aggressively reached for him without first giving a directive should be considered self-defense and not a willful assault. See U.S. vs. Gore, 592 F.3d. 489, 493 (W.Va. 4<sup>th</sup> Cir. 2010) (holding that self-defense is available in limited circumstances to inmates...). See also Wilson vs. Jones, 430 F.3d. 1113, 1123-24 (10<sup>th</sup> Cir. 2005) (due process violation because no evidence of inmate's knowledge of or intent to commit infraction).

Appellant Pipkin also submits that B.Hinger and Armstrong knew McKay possibly used excessive force from the fact that McKay was just suspended around August of 2014 when McKay allegedly, excessively used gas on an inmate locked behind closed cell door after slamming the inmate's hand in the food flap. See McCoy vs. McCall, 2013 WL 5467327 (D.S.C. 2013) (denying Defendants' motion for summary judgment where a genuine issue of fact exists as to how many times Plaintiff was gassed and where there's no explanation of how Defendants were threatened through Plaintiff's cell door. Id. at p. 4).

Therefore, this court should find that Pipkin's due process right was

violated where there's no evidence that Popkin willfully pushed McKay's hand away thereafter observing McKay's non-corrective action of Gillard's assaultive behavior, in violation of Popkin's 14th Amendment right under the U.S. Constitution.

**Argument For Issue # 2:**

Appellant Popkin submits that while he was lock-down in SMU and while being educationally challenged which prevented him from effectively arguing at the DHO hearing that mental health officials could confirm that I/M Gillard's mental health condition caused Gillard to be aggressive, counsel substitute, Mr. Armstrong, did not advance such request for these type witnesses nor did he advance any such arguments (Hear tape or see transcript.) Nor did Mr. Armstrong attempt to interview any I/M witnesses who observed Popkin being assaulted by Gillard in the presence of Sgt. McKay, or at least I/M Bernard McFadden. **Note: The DHO didn't document any witnesses on SCDC form 19-69** because Mr. Armstrong didn't request any while McFadden also remained locked in SMU along-with Appellant Popkin. (See Attachment D, SCDC form 19-69 showing DHO Bittinger never documented any information concerning these witnesses on the very same date, 2/11/2015, when McFadden told them about psychotic I/M Gillard's assaultive conduct.)

That, according to I/M McFadden, both Bittinger and Armstrong were informed of Gillard's assaultive behavior; they were also told about all witnesses who over-heard Gillard's statements during the struggle and that he was simply defending himself in light of State vs. Williams, 459 S.E.2d 579, 580 (S.C. App. 1995) (Citing State

vs. Schroeder, 199 Neb. 822, 261 N.W.2d 759 (1978) (Stating a prisoner confined in a cell has no duty to retreat before using force to defend himself). However, as mentioned above, Armstrong never requested and Bittinger silently denied all witnesses when writing he was unable to conduct Pipkin's hearing on 2/11/2015, as Bittinger has noted on SCDC form 19-69. (See Attachment D.)

In Nix vs. Exatt, 850 F.Supp. 455, 458 (D.S.C. 1994) (Summary judgment for Defendant was denied in part where prison officials failed to provide sufficiently competent representation for prisoner at disciplinary hearing while prisoner was held in administrative detention.) See also Edwards vs. Balisok, 520 U.S. 641, \_\_\_, 117 S.Ct. 1584, 1588 (U.S. Wash. 1997) (Exclusion of all witnesses' testimony in defense of prisoner at disciplinary hearing that results in deprivation of good-time credit is an obvious procedural defect, and courts reinstate good-time credits, absent a new hearing, when it is established.)

Therefore, this court should find that Pipkin's right was violated where at least one witness (JM Bernard McFadden, 199135) here has not been documented on SCDC form 19-69, and where Pipkin was locked-down when counsel substitute Mr. Armstrong did not attempt to argue Gillard's mental state or called medical or mental health officials to explain the reason for Gillard's assaultive behavior that could have been established without disclosing any particular ailments Gillard may have suffered, a violation of Pipkin's procedural due process right within the meaning of Walt vs. McDermott.

**Conclusion :**

Therefore, Appellant Pipkin prays that this court will order the Respondents to restore the (6) days good-time lost.

**Declaration of William Pipkin:**

I, William Pipkin, 995810, declare under penalty of perjury this 02<sup>nd</sup> day of October 2015, that as stated on above pages 3 and 4, the foregoing facts are true and correct. William Pipkin  
William Pipkin # 995810

Further Declared, Sayth Met.

Sworn And Subscribed Before Me  
This 2 day of Oct 2015

Cathrine O. Ormrod  
Notary Public For South Carolina

My commission expires: \_\_\_\_\_

My Commission Expires December 22, 2016

IV. STATEMENT OF CLAIM - continued.

State of South Carolina  
County of Richland

In The Administrative Law Court  
Case # 15CO426, Judge Robinson

William Pipkin, 225810,  
Appellant,

vs.

Declaration of Bernard McFadden

S.C. Dept. of Corrections,  
Respondent.

- 1) Psychotic I/M Rasi Gillard was placed in my cell after not taking his medications when transferred from Wateree C.I.
- 2) On 1/30/2015, after turning on the light in cell #64 and while combing my hair, Gillard jumped-up, sat on his bunk and looked at me as if he wanted to eat me alive. When I asked whether he was alright, he stood-up and said I was disrespecting him and then hit me on the right side of my face with his fist.
- 3) We fought until I got him down on his bunk. While holding him down on his bunk, I yelled for help. McKay arrived at the locked cell door and ordered me to release Gillard while Gillard was still struggling to get loose. I looked McKay in his face while holding Gillard and told him several times, "this man hit me". Other inmates including the appellant William Pipkin, over-heard me telling Sgt. McKay this loud and clear several times.
- 4) When someone unlocked the door, McKay sprayed me directly in the eyes immediately after he entered the cell.
- 5) That I told counsel substitute, Mr. Armstrong, all these facts and witnesses prior to my hearing on 2/11/2015, but pursuant to a plot,

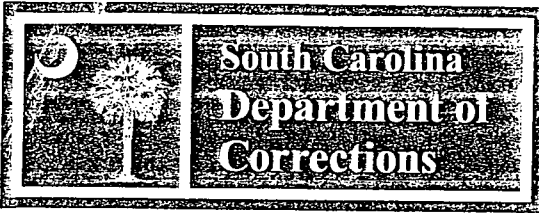
the DHO Bittinger and Mr. Armstrong fraudulently stated the witnesses refused, when intact, these very same requested witnesses signed statements upon my release from SMCU, stating they were never interviewed by Mr. Armstrong and are still willing to give statements in this court. (See Attachments A, B and C - Declarations of Pipkin, Bradshaw and <sup>Brz</sup>Gunter.)

6) That I, Bernard McFadden, 199135, do hereby declare under penalty of perjury this 25<sup>th</sup> day of September 2015, that the foregoing statements are true and correct. B. J. McFadden  
Bernard McFadden, 199135

Further Affiant, Sayth Not.

Sworn And Subscribed Before Me  
This 25<sup>th</sup> day of September 2015  
Catherine A. Curran

Notary Public For South Carolina  
My Commission expires : My Commission Expires December 22, 2016



23

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

December 1, 2015

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate William Pipkin, #228810, vs. SCDC  
Docket No. 15-ALJ-04-0426-AP

Dear Judge Robinson:

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,

Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate William Pipkin, #228810  
File

23

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

William Pipkin, # 228810,	)	Docket No.: 15-ALJ-04-0426-AP
	)	<u>Grievance No.: KRCI 0220-15</u>
Appellant,	)	
	)	<i>Hon. Shirley C. Robinson</i>
v.	)	
	)	
South Carolina Department of Corrections,	)	<b>RESPONDENT'S BRIEF</b>
	)	
Respondent.	)	
_____	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court pursuant to the appeal of William Pipkin (Appellant), an inmate incarcerated within the South Carolina Department of Corrections. Appellant is appealing his February 18, 2015 conviction for offense number 807, striking an employee. Appellant lost six days of good time credit as a result of his conviction. On February 25, 2015, Appellant submitted a Step 1 grievance seeking reversal. The Step 1 grievance was denied on April 9, 2015. On April 13, 2015, Appellant submitted a Step 2 grievance. The Step 2 grievance was denied on July 9, 2015, and this appeal followed.

On or about October 2, 2015, Appellant submitted a document captioned "Pipkin's Original Brief with Declarations in Support." In this Brief, Appellant argued (1) that he did not willfully assault the officer considering the circumstances surrounding the incident; and (2) that counsel substitute and the disciplinary hearing officer denied his right to present witnesses where his requested witnesses were not called at the hearing and the disciplinary hearing officer did not document

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the reasons for excluding these witnesses. Appellant stated he was seeking restoration of his six days of good time credit.

### 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) above, 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 APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM THE DENIAL OF APPELLANT’S GRIEVANCE.**

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) advance written notice of the charges and disclosure of the evidence against defendant;
- b) opportunity to call witnesses and present documentary evidence if doing so will not jeopardize institutional safety or correctional goals;
- c) no right to confront and cross-examine adverse witnesses;
- d) a neutral and detached hearing body;
- e) the aid of a counsel substitute where inmate is illiterate or in a complex case (not an attorney);
- f) a written statement by the factfinder as to the evidence relied upon.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the present case.

First, it is undisputed that Appellant had adequate notice of the charge. Second, at the hearing, Appellant heard the evidence supporting the charge. The hearing officer read Sergeant McKay's incident report and Sergeant McKay confirmed the facts contained in the report were true and accurate. Third, Appellant had the opportunity to be heard at his disciplinary hearing. Appellant was free to—and in fact did—speak on his own behalf. Appellant complains on appeal that he was denied the opportunity to call witnesses; however, this complaint is totally unpreserved for review because Appellant did not, at any time, express this concern to the disciplinary hearing officer at the time of the hearing. (See Disciplinary Hearing Transcript, p. 1-5). See generally Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector.") (citation omitted).

Fourth, a neutral and detached hearing body was available in the form of a disciplinary hearing conducted by a neutral hearing officer, DHO Bittinger. Fifth, Appellant received the aid of a counsel substitute, Mr. Armstrong. Sixth, Appellant was provided a written statement of findings in the form of the hearing transcript and a copy of the final hearing report. DHO Bittinger also provided Appellant with information on how he could appeal his disciplinary conviction.

It is clear from the record on appeal that, as a matter of law, SCDC afforded Appellant the due process to which he was constitutionally entitled at his disciplinary hearing. To the extent that Appellant argues to the contrary in his brief, Appellant has failed to adduce evidence to support that SCDC violated his due process rights. Therefore, this Court should affirm SCDC's denial of Appellant's grievance.

**II. BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE CHARGE AND CONVICTION FOR FAILING TO OBEY A DIRECT ORDER, THE COURT SHOULD AFFIRM SCDC'S DENIAL OF APPELLANT'S GRIEVANCE.**

The evidence presented at the hearing and relied upon by DHO Bittinger satisfies the "substantial evidence" standard of proof and was sufficient to uphold Appellant's conviction.

DHO Bittinger weighed the evidence based on the facts and testimony presented at the hearing. Appellant has failed to show this Court that his substantial rights have been prejudiced or that DHO Bittinger'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 decision.

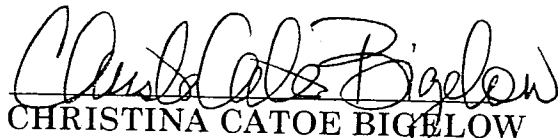
CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:



**CHRISTINA CATOE BIGELOW**  
Deputy General Counsel  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-8508

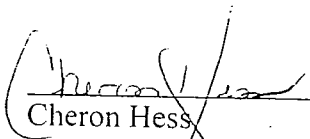
December 1, 2015  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

William Pipkin, #228810,	)	
	)	
Appellant,	)	
	)	<b>Certificate of Service</b>
vs.	)	
	)	Docket# 15-ALJ-04-0426-AP
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

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

Inmate William Pipkin  
Inmate Number: 228810  
Kershaw Correctional Institution  
Dorm-Room-Bunk: OA-0023-B

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

December 1, 2015

IV. STATEMENT OF CLAIM - continued.

State of South Carolina County of Richland	In The S.C. Administrative Law Court Docket No. 15-ALJ-04-0436-AP Hon. Shirley C. Robinson
William Pipkin, #228810, Appellant,	Pipkin's Reply To Respondent's Brief Received 12/04/2015 With McFadden's 9/25/2015 Declaration In Support
vs.	
S.C. Dept. Of Corrections, Respondent.	

Reply # 1:

Where Respondant states in the Brief at page 5 that, "Appellant Pipkin complains on appeal that he was denied the opportunity to call witnesses; however, this complaint is totally unpreserved for review because Appellant did not, at any time, express this concern to the disciplinary hearing officer at the time of the hearing.", Pipkin directs this Court's attention to his procedural due process right to effective assistance of counsel substitute or the duty of Mr Armstrong to call witnesses pursuant to Wolf vs. McDonnell and Nix vs. Ervatt, as cited on page 7 of 8 in Pipkin's Brief.

Additionally, Pipkin argues that he was and is educationally challenged to understand the importance of these witnesses before DHD Bittinger at his hearing on 2/18/2015. That, in fact, Bittinger and Armstrong were aware of these witnesses when conducting McFadden's 2/11/2015 hearing, but still chosed not to question any of them at either of these hearings. (See McFadden's 9/25/2015 Declaration at paragraph 5 therewith Pipkin's Brief, stating McFadden informed DHD Bittinger and Armstrong

prior to and on 2/11/2015 at his hearing, but there was a plot to deny the witnesses to retaliate against McFadden as argued in Pipkin's Brief.

Therefore, this Court should reject this argument of Respondents based on these factors: 1) Pipkin has a due process right for counsel substitute to call witnesses; 2) Pipkin was and is educationally challenged. If he had a duty to investigate these witnesses; and 3) Bittinger and Armstrong knew of these witnesses on 2/18/2015 from McFadden's 2/11/2015 hearing.

### Reply # 2:

Where Respondent states in the Brief at page 6 that, "Because substantial evidence existed to support the charge and conviction for failing to obey a direct order, the Court should affirm SCOC's denial of Appellant's grievance.", Pipkin directs the Court's attention to the fact that when McKay got his ID, McKay did not use it to process a charge for disobeying a direct order; this fact supports a conclusion that Pipkin did in fact comply with the order and went to his cell, further corroborated by the fact that Pipkin testified at his hearing that, "I tried to catch the door, but my hand went out." (See Disciplinary Transcript at p. 3.)

In McKay and Williams' efforts to conceal the assault on Pipkin by Gillard, they are now acting as though Pipkin disobeyed a direct order. Respondent's argument here creates 1) question of fact: As argued in Pipkin's Brief in Issue # 1, where McKay reached before asking for Pipkin's ID, why is there no separate disciplinary charge for which McKay wanted the ID card in the first place; Pipkin was only charged with striking an officer. What was force needed for?

Therefore, this Court should reject any consideration of a disobey-

It's undisputed in McKay's testimony that Pipkin was in his room; coupled with the fact that McKay nor Williams charged Pipkin with Refusing to Obey a Direct Order, SCOC offense code 825.

ing a direct order evidence, for Pipkin was not charged with such an offense because there was no such offense when McKay obtained Pipkin's ID, as where Pipkin has never been charged with striking an officer after serving more than 60 years in prison.

Declaration of Bernard McFadden, 199135:

I, Bernard McFadden, 199135, do hereby declare under penalty of perjury that I did inform Bittinger and Armstrong about all these witnesses prior to and at my 2/11/2015 hearing, namely the mental health witnesses that could have confirmed Gillard wasn't taking his medication, and other inmate witnesses who could confirm hearing Gillard's assaultive and aggressive behavior this 06<sup>th</sup> day of December 2015, as shown in SEDC's own documents.

S/ Bernard McFadden  
Bernard McFadden, 199135

Sworn And Subscribed Before Me  
This 8<sup>th</sup> day of December 2015  
Christine A. Orrison  
Notary Public For South Carolina

My commission expires: \_\_\_\_\_

Respectfully Submitted,  
S/ Kershaw CI  
Kershaw CI / 0123  
4848 Goldmine Hwy.  
Kershaw, South Carolina

Date: 12/10/2015

29067

Proof of Mailing

Case #: 15-ALJ-04-0426-AP

The undersigned hereby certifies that a true copy of the attached matter has been forwarded to the person(s) listed below by depositing a properly-addressed-stamped envelope in the U.S. mail this 10<sup>th</sup> day of December 2015; such matter being: Pipkin's Reply To Respondent's Brief Received 12/04/2015 With McFadden's 9/25/2015 Declaration In Support.

1) Christina C. Bigelow,  
Deputy General Counsel, SC  
Dept. of Corrections, 4444  
Broad River Rd, Columbia  
S.C. 29221, and

2) Hon. Shirley C. Robinson  
S.C. Administrative Law  
Court, Edgar XI Brown Bld.  
Suite 204, 1205 Pendleton  
Stn, Columbia, SC, 29201

Sworn And Subscribed Before me

This 10<sup>th</sup> day of December 2015

Christine A. Amador

Notary Public For South Carolina

William Pipkin

William Pipkin, 228810

My commission expires: My Commission Expires December 22, 2016



36  
NIKKI R. HALEY, Governor  
BRYAN P. STIRLING, Director

December 22, 2015

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

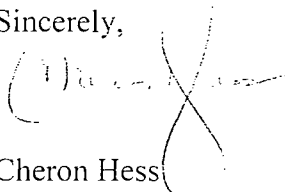
Reference: Inmate William Pipkin, #228810, vs. SCDC  
Docket No. 15-ALJ-04-0426-AP

Dear Judge Robinson:

Find enclosed an original and one copy of the *Respondent's Opposition to Appellant's Reply* 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,

  
Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

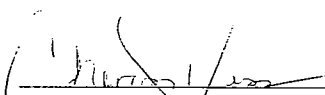
cc: Inmate William Pipkin, #228810  
File

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

William Pipkin, #228810,	)	
	)	
Appellant,	)	
	)	<b>Certificate of Service</b>
vs.	)	
	)	Docket# 15-ALJ-04-0426-AP
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	

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

Inmate William Pipkin, #228810  
Inmate Number: 228810  
Kershaw Correctional Institution  
Dorm-Room-Bunk: OA-0023-B

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

December 22, 2015

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

William Pipkin, # 228810,	)	Docket No.: 15-ALJ-04-0426-AP
	)	<u>Grievance No.: KRCI 0220-15</u>
Appellant,	)	
	)	<i>Hon. Shirley C. Robinson</i>
v.	)	
	)	
South Carolina Department of Corrections,	)	<b>OPPOSITION TO</b>
	)	<b>APPELLANT'S REPLY</b>
Respondent.	)	
_____	)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court pursuant to the appeal of William Pipkin (Appellant), an inmate incarcerated within the South Carolina Department of Corrections. Appellant is appealing his February 18, 2015 conviction for offense number 807, striking an employee. This case was assigned on August 13, 2015. On or about October 2, 2015, Appellant submitted a document captioned "Pipkin's Original Brief with Declarations in Support." On October 19, 2015, Respondent submitted the Record, and thereafter submitted its Brief on December 1, 2015. Any Reply to Respondent's Brief would have been due on or before December 11, 2015 (120 days after the assignment of the case). See Rule 60 (A), Administrative Law Court Rules.

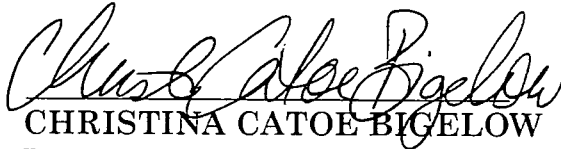
Thereafter, Appellant submitted a three-page document captioned "Pipkin's Reply to Respondent's Brief Received 12/04/2015 With McFadden's 9/25/2015 Declaration in Support." The copy received by Respondent was not accompanied by a Proof of Service. Although it appears the document was signed by Appellant on December 10, 2015, the attached envelope reflects that the document was not

delivered to the Kershaw Correctional Institution Mailroom until December 14, 2015, three days past the due date for Appellant's Reply.

Because it appears that Appellant's Reply to Respondent's Brief was not timely or properly submitted, Respondent respectfully requests that this Court disregard the Reply and the arguments made therein. Respondent also requests, for the reasons set forth in Respondent's Brief, that this Court affirm SCDC's final agency decision in this matter.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:   
CHRISTINA CATOE BIGELOW

Deputy General Counsel  
S.C. Department of Corrections  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-8508

December 22, 2015  
Columbia, South Carolina

**FILED**

DEC 17 2015 40

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

William Pipkin, 228810, )  
 )  
 Appellant, )  
 vs. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )  
 )  
 )

Docket No.: 15-ALJ-04-0426-AP  
Grievance No.: KRCI 220-15

**ORDER**

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed August 7, 2015, by William Pipkin (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“the Department”). Appellant appeals the Department’s decision convicting him of Striking an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public. As a result of the conviction, Appellant received sanctions that included the loss of six (6) days of accrued good time. In this appeal, Appellant asserts there was insufficient evidence to convict him and that Counsel Substitute failed to adequately perform his duties. Specifically, Appellant contends Counsel Substitute did not interview witnesses who observed the incident and failed to argue an officer’s conduct contributed to the altercation.

Because a state-created liberty interest is involved in this case, it is necessary to determine if Appellant received the due process to which he was entitled. A prison official’s failure to follow the prison’s own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met. Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4th Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)). Therefore, the only issue is whether the Department met the minimum constitutional requirements for procedural due process in this matter where an inmate was disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). Minimum due process requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the South Carolina Supreme Court has enunciated the following five requirements which, if established, will ensure procedural due process in inmate disciplinary matters:

- (1) that advance written notice of the charge be given to the inmate at least twenty-

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four hours before the hearing; (2) that fact finders 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; (4) that counsel substitute . . . 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, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

Further, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Consequently, the review in inmate grievance cases is limited to the record presented. An Administrative Law Judge may not substitute their 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).

In this matter, Appellant argues he was wrongly convicted of Striking an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public because there was insufficient evidence to convict him and Counsel Substitute failed to adequately perform his duties. Specifically, Appellant contends Counsel Substitute did not interview witnesses who observed the incident and failed to argue an officer's conduct contributed to the altercation. Applying the five due process requirements to the Record in this case, the Court finds the following:

Appellant was given notice of the charge on February 5, 2015, and the disciplinary hearing in the matter took place on February 18, 2015, more than twenty-four hours later. The Record reveals Appellant was represented by Counsel Substitute at the disciplinary hearing. Appellant and his accuser testified at the hearing. The Disciplinary Report and Hearing Record shows the Hearing Officer's determination of Appellant's guilt was based upon the Incident Report, a form 19-29-a supporting document, and statements made at the hearing. The sanctions imposed were based upon the Hearing Officer's finding that this was Appellant's first offense of this nature. Finally, there is nothing in the Record indicating the hearing officer was otherwise than neutral or detached. Thus, Appellant has been afforded the minimum due process required in prison disciplinary proceedings under Wolff. 418 U.S. at 563-72.

Where an inmate has received the minimal due process required in an inmate disciplinary matter, no further inquiry is needed and the decision of the hearing officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the Record before me now. In the case at hand, the Court will not substitute its judgment for that of the agency because there is substantial evidence to support the conviction

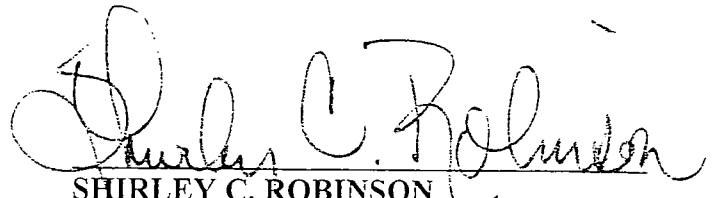
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which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

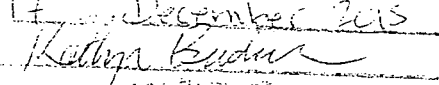
Based upon the foregoing, the decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
 Administrative Law Judge

December 17<sup>th</sup> 2015  
 Columbia, South Carolina

STATE OF SOUTH CAROLINA  
 DEPARTMENT OF SOCIAL SERVICES  
 1600 BROADWAY, COLUMBIA, SOUTH CAROLINA 29201  
 TEL: 803.732.7300 FAX: 803.732.7301  
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17 December 2015  


Certificate of Record On Appeal

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

**RECEIVED**

FEB 25 2016

SC Court of Appeals

Respectfully Submitted,  
 S/William Perkins  
 William Ajolch, 228810  
 Kershaw CI / 0131  
 4848 Goldmine Hwy  
 Kershaw, S.C. 29067

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Proof of Mailing

Appeal Case # 2016 - 000086

FEB 25 2016

SC Court of Appeals

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly - addressed - stamped - envelope in the US Mail this 19<sup>th</sup> day of February 2016; such matter being: Pipkin's (9) Page Initial Brief With A Declaration of Bernard McFadden And Pipkin's (43) Page Record On Appeal :

1) Christina Catoe Bigelow  
Attorney, 4444 Broad River  
Road, Columbia, S.C. 29221

and 2) Jenny Abbott Kitchings, Clerk  
S.C. Court of Appeals, P.O.  
Box 11639, Columbia, S.C. 29211

Sworn And Subscribed Before Me

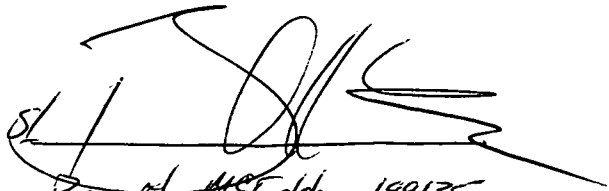
This 19<sup>th</sup> day of February, 2016

Christine A. Carrera

Notary Public For South Carolina

My commission expires: \_\_\_\_\_

My Commission Expires December 22, 2016

  
Bernard McFadden, 199135,  
Witness

William Popple, 228810  
Kershaw CI/OA31  
4848 Goldmine Hwy  
Kershaw, S.C. 29067

02/19/2016

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FEB 25 2016

SC Court of Appeals

Jenny Abbott Kitchings, Clerk  
S.C. Court of Appeals, P.O.  
Box 11629, Columbia, S.C. 29211

RE: Popple vs. SCDC, Appellate No. 2016-000086

Dear Clerk

Enclosed, please find Popple's (9) Page Initial Brief with  
A Declaration of Bernard McFadden and Popple's (43) Page Record  
on Appeal for filing in your office.

Thanking you in advance,

I

am

Sincerely,  
Stephen Williams

\*Deposit for mailing also documented on SCDC Form 10-14 dated 2/19/2016.

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LEGAL