

RECEIVED

OCT 22 2012

S.C. Supreme Court

Appendix

TURBEVILLE CORRECTIONAL INSTITUTION
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 00106 Inmate Name: LISENBY, BILLY SCDC#: 200273
Living Area: SMU 152 Job: LOCKED-UP Custody: ST2
approx.
Offense Date: 03/30/09 Offense Time: 7:00 AM/PM Institution: SELCO A

Offense Description:

801 ASSAULT AND/OR BATTERY OF AN SCDC EMPLOYEE OR OTHER GOVERNMENT EMPLOYEE, VOLUNTEER OR CONTRACT EMPLOYEE WITH MEANS/AND/OR INTENT TO KILL OR INJURE: The willful hitting striking or unauthorized touching of and SCDC Employee with or without a weapon or other throwing of any substance at or an SCDC employee who is exercising legitimate authority over an inmate when such hitting, when Charging Officer striking, throwing, or unauthorized touching cause bodily injury.
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.

N. MILLER CPL

INMATE WAIVERS:

- ☐ I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
☐ I DO NOT WANT TO BE PRESENT AT MY HEARING
☒ I DO WANT MY ACCUSER PRESENT AT THE HEARING
☐ I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
☐ I WAIVE MY RIGHT TO A HEARING
SMU/SEGREGATION ONLY
☐ I WANT A COUNSEL SUBSTITUTE
☒ I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 04/08/09 2:23 AM/PM By (Print): DFC. BROWN
Inmate Signature: [Signature] SCDC#: 200273 Date: 4/8/09

HEARING INFORMATION:

Hearing Date: 4/10/09 Hearing Time: 1:43 am/pm Tape: #159 Side: A Start: 462 End: 534

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

OFFENSE CODES	<u>801</u>			
INMATE PLEA (G, NG, None)	<u>N.G.</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: Officer's report, charges based on the offense
HEARING LENGTH: 11 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): 120
* Property (Days) 150 + 720 = 900 Extra Duty: _____ Restitution: \$ TBD
* Canteen (Days) 150 + 720 = 900 Visit Suspension Thru 180 + 720 = 900
* Other (Days) 150 + 720 = 900 Cell Restriction (Days): _____
* Disciplinary Detention (Days): 300 + 720 + 150 = 900

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: This is the 1st
2nd charge of this nature

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

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 4-10-09

HEARING OFFICER (PRINT NAME): [Signature]

APPROVED/REVERSE/MODIFY [Signature] REASON _____
Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record

Canary - Inmate (Service of Disciplinary Report)

Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)

Pink - Central Record

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Billy Lee Lisenby JR; "Malik Al-Shabazz" #200273)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

NOTICE OF APPEAL

Docket No. 00-ALJ-04-____-AP

100 142-09

C106 801 4/16/09 OD 3/30/09

Notice is hereby given that Billy Lee Lisenby JR; AKA "Malik Al-Shabazz" does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-10-2009 and received on 7-21-09, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 11-23-380(A)(6)): Appellant was found guilty of 301 Assault and OR battery of an SCDC Employee or other Government Employee, Volunteer, OR Contract Employee with Means and/or Intent to Kill or Injure. This was my first offense of this charge and I should've been sentenced to 360 days segregation time. Instead they used a 1999 striking an SCDC employee to make it my 2nd offense and gave me 720 days. If an inmate is released from prison and given over (3) three years his record cannot be used against him. I was given almost (6) six years from Nov. 17, 02 until May of 03. See OP-22-14 the SCDC Disciplinary policy states at 16.4 "Inmates released from the Dept. of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rules violation." It plainly states "if the inmate comes back within (3) three years. In order to be found guilty of 301 the employee must be injured. The DHO never showed the officer was injured and the incident report doesn't say it, and I was charged with assault, and no medical bills were presented. Even more I have a mental class of MI-3 out Patient Mental Health and Med Class: 3 Med Prob/Parole Restriction. Policy states on 3.3 of the Disciplinary Policy "If the inmate has a mental health issue noted in his/her Medclass screen or is acting in such a manner that indicates a mental health

See page 2

Billy Lee Lisenby JR,
Appellant's Name

Billy Lee Lisenby JR
Signed

PO Box 2039
Mailing Address

7-22-09
Dated:

Ridgeland Court Inst.

Ridgeland, SC 29936
City, State, Zip Code

Telephone Number

1.

Concern that a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29A. (This change amended by Change Memo #2, dated June 1, 2003). In these instances a memo from the mental health care professional must be included as an attachment to SCDC form 19-29A "Incident Report," attesting to the inmate's mental status and accountability for his/her actions. Refer to SCDC Policy/Procedure HS-19.01, "Placement of Inmates in Mental Health Observation and Evaluation Status that have a mental health issue and it deals with an assaultive nature." The mental health care professional should have been notified. Also Otto Brown took part in the investigation of this case. Policy states 13. "Restrictions on personnel participating in the hearing: Neither the Hearing officer nor the counsel substitute may be an employee who participated in the investigation of the charges. MRS. Brown denied me the right to put this on record. The hearing officer violated 17.3 of the Discipline policy because she did not follow policy/procedures, and the sentence imposed was not proportionate to the violation. This is my first offense of BUI and I should be been sentenced to 360 days.

Respectfully Submitted,

Bijf.

Due 5/17/09
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Billy Lee Lisenby JR, AKA "Malik Al-Shabazz"SCDC NUMBER: #200273

APR 17 2009

INSTITUTION: TurbevilleHOUSING UNIT: ASU 152WORK ASSIGNMENT: N/A

Office Use Only

Grievance No TCI-0442-09

Code: General

Policy

Disc. Hear. 801-C106-4/16/09

Class.

Date Received 4/17/09IGC Initials 92

STATE GRIEVANCE (include documentation and date of incident; if SCDC Policy indicate which policy)

On 3-30-09 I was charged with 801 Assault and/or Battery of an SCDC employee, by CPL N. Miller. I received notice of the charges by OFC. Brown on 4-8-09. A DHO hearing was held in front of Angela K. Brown on 4-16-09 in which I pled not guilty and was found guilty. DHO Brown gave me 720 days Disciplinary Detention Days and stated "This is the 1st 2nd Charge of this nature." This is not true. I have never been charged with 801 Assault and Battery. In 1999 I was convicted of Striking an SCDC Employee 807 which is a total different charge. But I was released from prison on 11-17-02, and I came back in May of 2008. On 2-22-14 the SCDC Disciplinary policy plainly states at 16.9 "Inmates released from the Department of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. Max-out, parole, probation, etc." I was gone almost six (6) years a charge from 1999 cannot be used. Even more I have a mental class of MI-3 out Patient Mental Health and Med Class: 3 Med Prob/Work Restriction. Policy states on 1.3 of the Disciplinary Policy "If the inmate has a mental health issue noted in his/her medical record or is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the mental health care professional must be included as an attachment to SCDC form 19-29A "Incident Report," attesting to the inmate's mental status and accountability for his/her actions. Refer to SCDC Policy/Procedure HS-19.01, "Placement of Inmates in Mental Health Observation and Evaluation State I have a mental health issue and it deals with an assaultive nature. The mental health care professionals should have been notified. Also DHO Brown took

ACTION REQUESTED: Part in the investigation of this case. Policy states 13. "Restrictions on personnel participating in the hearing: Neither the Hearing officer nor the counsel substitute may be an employee who participated in the investigation of the charges. MRS. BROWN denies me the right to put this on record. The hearing officer violated 19.3 of the Disciplinary policy because she did not follow policy/procedures, and the sentence imposed was not proportionate to the violation. This is my first offense of 801.

~~Due to the above reasons my case should be overturned~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal Case #106

Billy Lisenby
Grievant Signature

4-16-09
Date

ACTION TAKEN BY IGC:

IGC reviewed grievance, pertinent documentation and conferred with appropriate staff.
See Warden's response.

- ☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

[Signature]
IGC Signature
11/16
Grievant Signature
Date

WARDEN'S DECISION AND REASON:

Inmate Lisenby SCDC 200273:

This is in response to TCI-0442-09. You have appealed the results of your 04/16/09 Disciplinary Hearing where you were found guilty on the charge of 801 Assault and/or Battery of a South Carolina Department of Corrections Employee. 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.

Based on this information, your appeal is without merit and therefore denied. If not satisfied with my response, see Step 5

[Signature]
Warden Signature

5/12/09
Date

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

Billy Lisenby
Grievant Signature

5/13/09
Date

[Signature]
IGC Signature

5/13/09
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Sent CO. 5/29/09 Due Date: 5/17/09

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: Billy Lee Lisenby JR; #Malik Al-ShabazzSCDC NUMBER: #200273 MAY 14 2009INSTITUTION: TurbevilleHOUSING UNIT: ASU 152WORK ASSIGNMENT: N/A

Office Use Only

Grievance No. TCI-0442-09

Code: General

Policy

Disc. Hear. 801-0106-4/16/09

Class.

Date Received 5/15/09IGC Initials DDO 7-10-09

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

DHU BROWN found me guilty of my 2nd offense of 801 Assault and/or Battery of an SCDC employee. This was my first offense. I've never been charged or found guilty of 801. She used a 1999 striking on SCDC Employee which is an 807 to find me guilty of my 2nd offense. She cannot do that there are (2) two different charges. If an inmate is released from prison and gone over (3) three years his record cannot be used against him. See OP-22-14 the SCDC Disciplinary policy plainly states at 16.4 "Inmates released from the Dept. of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rule violation." I was gone almost six years she cannot use my past history. Even more I have mental class of MI-3 not Patient Mental Health. She violated Policy 3.3 of the Disciplinary Policy that a copy of the Incident Report must be forwarded to the mental health staff. I have a mental health issue that deals with an assaultive nature. The mental health care professional should have been notified. The DHU Brown took part in the investigation of this case. She violated 13 of the disciplinary policy "Restrictions on personnel participating in the hearing. She stop me from putting this on record. The hearing officer violated 19.3 of the Disciplinary policy because the DHU did not follow policy/procedures, and the sentence imposed was not proportionate to the violation. This is my first offense of 801, Assault and Battery on a SCDC employee. She gave me 720 days and the max I could get is 360.

Grievant Signature Billy LisenbyDate 5-13-09

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means and/or Intent to Kill or Injure (801) on April 16, 2009, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated October 1, 2007, and the sanction(s) imposed, which included the loss of -120-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 twenty-four (24) 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 [Signature]Date 07/14/2009

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1**

RCI-1221-09

INMATE NAME: Billy Lee Lisenby JR.SCDC NUMBER: #200273INSTITUTION: A.C.I.HOUSING UNIT: SMU-128WORK ASSIGNMENT: N/A

NOV 19 2009

OCT 29 2009

J.O.

Office Use Only

Grievance No. RCI-0917-09Code: General

Policy

Disc. Hear. ✓ (801)

Class.

Date Received 10/30/09 1-14-10IGC Initials nm

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

On Oct. 5, 2009 a re-hearing was given by The Honorable Carolyn Matthews for The Change of 301 Assault and Battery on an employee. The Honorable Matthews granted my request to have my case overturned for several errors. On 10-26-09 a re-hearing was conducted by DHO Shirley Singleton, and she stated (in quote) that my case was being re-heard because there was no evidence of bodily injury. Nothing like that was in my appeal. (See Step 1 and Step 2 enclosed) I argued that I shouldn't have received 720 days when this was my 1st offense of 301 Assault and Battery, the max I could've received was 360 days. But DHO Angela Brown of Rockville changed me with a 2nd offense using a 1999 Striking an Officer to upgrade my penalty. But I was released from S.C. Department of Corrections in Nov. of 2002, and returned in May of 2003. I was given approx. 6 years. The inmate disciplinary policy plainly states "16.4 Inmates released from the Dept. of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rules violation. Hearing officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. parole, pardon, probation, etc." As I was at the (A.C.) and by policy the 1999 conviction cannot be used against me. DHO Shirley Singleton gave me 720 days again, then took 150 days goodtime, when in the first case I only lost 120 day goodtime, took my visits, canteen, and telephone 130 days after I come off lock-up when on the first hearing it was completed already "a running with my Disciplinary Detention time. In the re-hearing she put plus signs beside everything. I cannot receive a harsh sentence for utilizing my appeals rights, and the court system. Also I have a mental class of MI-3 out Patient Mental Health and Med Class 3 Med Probation Restriction. Section 3.3 of the Disciplinary policy states "If the inmate has a mental health issue noted in his/her medical record or is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the mental health staff. This Referral must be documented on the 19-29 A. (This change amended by Change Memo #1, dated June 1, 2009). In these instances, a memorandum from mental health case →

ACTION REQUESTED:

Appeal

See Attachment
2 and 3

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

Billy Lisenby
Grievant Signature

Oct. 27, 09
Date

ACTION TAKEN BY IGC: unprocessed. Forwarded to Turbee for processing. Incident occurred there. MEX 10/30/09

This grievance is being returned unprocessed as the re-hearing of this disciplinary was heard by DHO Singleton at Ridgeland. per 1-14-10

Grievance re-opened and processed because Disciplinary Hearing was heard at RCI.

M. E. Montague
IGC Signature

1/19/10
Date

- ☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature

Date

SMY-128

WARDEN'S DECISION AND REASON:

LISENBY, BILLY LEE - 200273 - RCI-0917-09

You have appealed the results of your 10/26/09, Case #00106 Disciplinary Hearing Conviction where you were found guilty of 801 Assault and/or Battery of an Employee or other Government Employee. Volunteer, or Contract Employee with Means and/or Intent to Kill or Injure. The issues you stated in your grievance do not warrant a reversal of this conviction. Pertinent documentation has been reviewed. No technical errors, procedural errors or misinterpretation of the evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The willful hitting, striking, or unauthorized touching of an SCDC employee who is exercising legitimate authority over you, when such hitting, striking, throwing, or unauthorized touching causes bodily injury. Based on this information, your appeal is without merit and therefore denied.

Leif Cohen 1/30/2010
Warden Signature Date

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

Billy Lien 1-27-10
Grievant Signature Date

Mr. J. Monfort 1-27-10
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

NOV 19 2009

professional must be included as an attachment to SCDC form 19-29A, "Incident Report," attesting to the inmate's mental status and accountability for his/her actions."

They did document anything on my 19-29A form and it plainly states you must do this. I suffer from intermediate explosive disorder and was not being treated or seen by mental health at the time of the assault. I went from Jan. 09, until May of 09 without seeing a mental health professional. When I did see one they immediately put me on Neurontin a [redacted] medicine used to balance the brain and moods.

None of my appeal issues were addressed in the re-hearing, the re-hearing was solely to harass me, for using my appeal rights.

Nothing in policy states that the Department can have a re-hearing on Step 2 on ALC. Policy only states on section 24.2 Step 1 Grievance: A Warden can request through the Division of Operations that a hearing be reheard at their level if the reasons noted in 24.1 are applicable."

It doesn't speak nowhere about re-hearing at Step 2, on ALC level.

Evenmore the only person who can dismiss a charge is the DHU. The Warden can approve the hearing results, overturn a guilty finding, or reduce the sanction of the hearing. But a rehearing can only be held if the case is dismissed. See section 24.1. Also it plainly states "A request for a disciplinary re-hearing will include written justification by the Warden to the Division of Operations.) This was not done in my case.

In my re-hearing I request (U) ten witnesses by way of inmate request to Staff in section 8.2.3, and 8.2.4. I personally gave the names to my counsel substitute and she didn't obtain a statement from not one. By me being transferred from Tuckerville C.I. I needed her to get statements or have the DHU put them on speaker phone. When I advised the DHU of this she brushed it off. I stated this on the record. DHU Singletton felt to document why I couldn't call my witnesses. This is a violation of Due Process. Because section 15.3 states "The inmate may call witnesses unless the hearing officer decides that the testimony of such witnesses is Repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the hearing officer, the hearing officer must write his/her reasons for this denial on the SCDC form 19-69, "Disciplinary Report and Hearing Record," in 18.1 states "SCDC form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The Record will include the following information:

13.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion."

This was not done.

"24.3 Time limits: A re-hearing [redacted] must occur within 21 calendar days from the date that the rehearing is ordered and signed by the Division of Operations."

The re-hearing was ordered on Oct. 5, 09 and my hearing was on Oct. 26, 09 that's 21 days. It's says within not in 21 days. My charge she be overturned due to this error alone. They used additional evidence at my hearing. They cannot do this because my case was not overturned due to insufficient evidence. See 24.4 Evidence: Any evidence presented at the initial hearing may be presented at the re-hearing; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence, [redacted] must be presented and considered at the rehearing in order to find the inmate guilty.

Attachment(2) of 3

NOV 19 2009

I had already served my 180 days for my visits, canteen, and phone, because DHO Brown didn't give me 130 plus, but DHO Singleton did. My privileges should be re-instated, but she gave me a more harsh sentence.

24.5.2 Suppenti then it states "Sanctions imposed as a result of the initial hearing may again be assessed; however, the inmate will be given credit for penalties already served."

My case should be overturned and all sanctions lifted.

Another re-hearing would only prejudice and harass me.

Because the Dept. has had five chances to correct this.

Date: Oct. 27, 09

Billy Lij R

Attachment (3) of 3

Due 1-31-10

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Billy Lee Lisenby JR. **RECEIVED**
 SCDC NUMBER: #200273
 INSTITUTION: A.C.I. FEB 03 2010
 HOUSING UNIT: ASU128 INMATE GRIEVANCE
 WORK ASSIGNMENT: N/A

0508 Office Use Only
 Grievance No. RCL-0917-09
 Code: General _____
 Policy _____
 Disc. Hear. ✓ (801)
 Class. _____
 Date Received 1/28/10
 IGC Initials AM
 ✓ IGA - ABH 4.21.2010

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

My original case was overturned because I was charged and convicted of my 2nd offense of Assault and battery, when it was my 1st offense. The max I could've received was 360 days, but they gave me 720 days. Also they didn't forward my Incident Report to the Mental Health Staff, they denied my witnesses. Nothing in policy states a re-hearing can be heard at the Step 2 ~~last~~ ALC. A re-hearing must be held within 21 days, and my was held the 21st day. Also they used additional evidence to convict me again. They cannot use new evidence because my case was not overturned due to insufficient evidence. Please review my Step 1 carefully. Because policy is quoted in there.

Billy Lisenby
 Grievant Signature

Jan. 28th 2010
 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means and/or Intent to Kill or Injure (801), Level 1 offense, case #106, on October 26, 2009 under SCDC Policy OP-22.14, Inmate Disciplinary System, dated October 1, 2007, and the sanction(s) imposed, which included the loss of -150- 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 twenty-four (24) 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. You were convicted based upon the preponderance of the evidence/testimony presented at your hearing.

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.

DeVita 4/30/2010
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

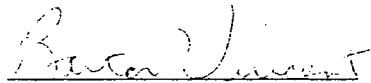
Billy Lisenby, #200273	)	
Appellant,	)	Docket No.: 09-ALJ-04-00682-AP
	)	
v.	)	
	)	
	)	MOTION TO REMAND
South Carolina Department of Corrections,	)	
Respondent.	)	
_____	)	Honorable Carolyn Matthews

This matter comes before the Administrative Law Judge Division ("Division") pursuant to the appeal of Billy Lisenby ("Appellant"), an inmate incarcerated with the Department of Corrections ("Department"). Appellant filed a Step One Grievance on April 17, 2009, complaining about his conviction for Assault and/or Battery of an SCDC Employee or Other Government Employee, Volunteer or Contract Employee with Means and/or Intent to Kill or Injure, 801 a level one offense under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on May 15, 2009. This grievance also was investigated and denied. Appellant received the final agency decision on July 21, 2009.

Upon further review and a meeting with the General Counsel's Office, the Division of Operations has elected to overturn the case due to errors in the disciplinary hearing process that did not become evident until the hearing was transcribed. Due to the seriousness of the offense, however, the charge will be re-heard at a later date. The Department therefore respectfully requests that this court remand the case for re-hearing.

October 5, 2009
Columbia, South Carolina

Respectfully submitted,



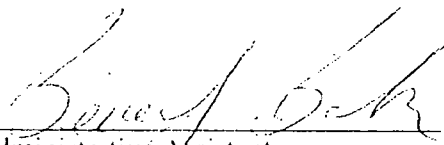
Barton Vincent
Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1278

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 to his/her last known address as follows:

Billy Lisenby, #200273
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936

Columbia, South Carolina
October 5, 2009



Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-8508

RECEIVED

OCT 13 2009

GENERAL COUNSEL

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SECRET

Billy Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 09-ALJ-04-00682-AP

ORDER GRANTING DISMISSAL
FOR
MOOTNESS

GRIEVANCE NO.: TCI 442-09

South Carolina Department of Corrections (DOC) moves to remand this matter to the Department for a new hearing. Because a new hearing will be held on the merits, the issues in this appeal are moot.

The issue in this motion is whether the Appellant's appeal is moot. "A case becomes moot when judgment, if rendered, will have no practical effect upon [the] existing controversy." Mathis v. South Carolina State Highway Dep't., 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). A court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996).

The Motion to Dismiss is **GRANTED** and this case is ended.

AND IT IS SO ORDERED.

Carolyn C. Matthews
CAROLYN C. MATTHEWS
Administrative Law Judge

October 9, 2009
Columbia, South Carolina

9th
October 2009
[Signature]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD - *Rehearing SAS*

Case# 09-00106 Inmate Name: BILLY LISENBY SCDC#: 200273
 Living Area: SMU - 128 Job: N/A Custody: DD2
 Offense Date: 03 / 30 / 09 Offense Time: 7:00 AM/PM AM Institution: SELOC A UNIT/TURBEVILLE C.I.

Offense Description: 801 ASSAULT AND/OR BATTERY OF AN SSC EMPLOYEE OR OTHER GOVERNMENT EMPLOYEE, VOLUNTEER, OR CONTRACT EMPLOYEE WITH MEANS/AND/OR INTENT TO KILL OR INJURE: THE WILLFUL HITTING, STRIKING, OR UNAUTHORIZED TOUCHING OF AN SSC EMPLOYEE OR OTHER GOVERNMENT AGENCY EMPLOYEE, VOLUNTEER, OR CONTRACT EMPLOYEE, OR VOLUNTEER WITH OR WITHOUT A WEAPON OR THE THROWING OF ANY SUBSTANCE AT OR ON AN SSC EMPLOYEE OR OTHER GOVERNMENT AGENCY EMPLOYEE OR CONTRACT EMPLOYEE WHO IS EXERCISING LEGITIMATE AUTHORITY OVER AN INMATE. WHEN SUCH HITTING, STRIKING, THROWING, OR UNAUTHORIZED TOUCHING CAUSES BODILY INJURY.

Charging Officer/Employee: NATASHA MILLER Title: CPL.
 INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

- ☐ I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
☐ I DO NOT WANT TO BE PRESENT AT MY HEARING
☒ I DO WANT MY ACCUSER PRESENT AT THE HEARING
☐ I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- ☐ I WAIVE MY RIGHT TO A HEARING
 SMU/SEGREGATION ONLY
☒ I WANT A COUNSEL SUBSTITUTE -
☐ I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 10/19/09 8:05 AM By (Print): Sgt M Scott
 Inmate Signature: Billy Lisenby SSC#: 200273 Date: 10/19/09

HEARING INFORMATION:

Hearing Date: 10/26/09 Hearing Time: 1:27 am/pm pm Tape: 102609 Side: A Start: 602 End: 723

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

Inmate admitted to striking Cpl. Miller stated she came around and pulled his hoodie. Directed him to display ID card on outer garment; He responded by striking her.
Evidence: Leave of Absence Report, Accident/Incident Report, Employee Statement of Injurer or Illness, MIN

OFFENSE CODES	<u>801</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: Based on Cpl. M. Miller Testimony and narrative that inmate turned around and struck her on the left side of her face & eye area.

HEARING LENGTH: 19 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) Telephone 180+509=689 Reprimand: ✓ Loss of Good Time (days): 150
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ 0 **
 * Canteen (Days) 180+509=689 Visit Suspension Thru 180+509=689
 * Other (Days) _____ Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 720-211=509 Appeal Right Given

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: Prior history of assaulting employees. Nature and seriousness of offense and act of injury to Cpl. Miller.

CREDIT FOR PHD TIME SERVED: (YES) NO IF YES, DAYS 211

DATE INMATE PLACED IN PHD 3/30/09

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Billy Lisenby DATE: 10/26/09

HEARING OFFICER (PRINT NAME) Shirley A. Singleton

APPROVED/REVERSE/MODIFY _____ REASON _____

Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record

Canary - Inmate (Service of Disciplinary Report)

Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)

Pink - Central Record

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

MAY 21 2010

GENERAL COUNSEL

NOTICE OF APPEAL

Billy Lee Lixby JR, #200273

Appellant,

vs:

South Carolina Department of Corrections,

Respondent.

DOCKET NO. -ALJ-04-GRIEVANCE NO.: 1007-442-09 C106R 917-09

Notice is hereby given that Billy Lee Lixby JR, does hereby appeal the final decision of the South Carolina Department of Corrections dated 4-30-10 and received on 5-14-10, 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 his Oct. 26, 2009 re-hearing for the charge of 301 Assault and Battery on an employee. On Oct. 5, 2009 [See Exhibit 1] The Honorable Carolyn Matthews granted the Respondent's request for a re-hearing, and granted Appellant's request to have his case overheard by DHO Shirley Singleton heard Appellant's case. Appellant argues he has been deprived of state created liberty interest in this matter because he lost 15 days of good time. (See 26 K.V. SCDC 605 S.E. 2d 506 (2004)) DHO Shirley Singleton stated (verbatim) that Appellant's case was being re-heard because there was no evidence of bodily injury. But please note there is nothing on the incident report that says the officer was injured, and a injury must occur to be charged with 301 Assault and Battery on an employee. [See Exhibit #2 Incident Report] Appellant wasn't ordered to pay Restitution, so an injury would not have occurred. Appellant argued that he shouldn't have been sentenced to 720 days for his 1st offense of 301 Assault and Battery. The max Appellant could've received was 360 days. But his charge was upgraded to a 2nd offense because he was convicted of striking an officer in 1999, in which is a level 2 offense. A level 1 offense and level 2 offense are two different offenses. Even when Appellant was released from S.C. Department of Corrections in Nov. of 2002, and released in May of 2003, Appellant was given approx. 6 1/2 years. The inmate Discipline policy states "16.4 Inmates released from the Dept.

Billy Lee Lixby JR, #200273
Appellant's Name

Signed

PO Box 2039
Mailing Address

Dated

Ridgeland S.C. 29936
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Billy Lixby (your name), on the 17th day of May, 2010, in Ridgeland (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: General Counsel SC DCAddress: 4144 Broad Area RdCity, State, Zip Code: Columbia S.C. 29201Billy Lee Lixby JR;
Print your name

Sign your name

(See reverse side for instructions)

of Corrections and returned to the Agency, within (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rules violation. Hearing officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. maximum parole, probation, etc." Appellant was at the (ALC) and by policy the 1999 conviction cannot be used against him, because this is his 1st offense of Assault and battery. [See Exhibit 3 which shows this is his first offense of Assault and battery]. [See Exhibit 4 which shows his entire disciplinary history and he only has 1 count of Assault and battery].

DHU Shirley Singleton gave Appellant 720 days again, then took 150 days good time, when in the first hearing he only lost 120 days good time. She took his visits, canteen, and telephone for 180 days after he came off lock-up. When on the first hearing it was completed already and running with his Disciplinary Detention Time. In the re-hearing she put plus signs beside everything, meaning he has to serve it after he finishes his DO time. Appellant cannot receive a harsher sentence for utilizing his appeal rights, and the count system.

Also Appellant only has a mental class of MI-3 out Patient Mental Health and Med Class 3 Med Prob/Protect Restriction. Section 3.3 of the disciplinary policy states "If the inmate has a mental health issue noted in his/her medclass screen or is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the mental health staff. This Referral must be documented on the 19-27A. (This change amended by Change Memo #2, dated June 1, 2003). In these instances, a memorandum from mental health care professional must be included as an attachment to SCDC form 19-27A. "Incident Report" attesting to the inmate's mental status and accountability for his/her action."

They didn't document anything on my 19-27A form and it plainly states you must do this. Appellant suffers from intermediate explosive disorder and was not being treated or seen by mental health at the time of the assault. Appellant went from Jan. 09 until May of 09 without seeing a mental health professional. When Appellant did see the mental health professional they immediately put him on Neurontin a medicine used to balance the brain and moods. [See Exhibit #2 Incident Report]

None of Appellant's appeal issues were addressed in the re-hearing was solely to harass Appellant for using his appeal rights.

Nothing in policy states that the Department can have a re-hearing on Step 2 on ALC. Policy only states on section 24.2 Step 1 Grievance: "A Warden can request through the Division of Operations that a hearing be re-heard at their level if the reasons noted in 24.1 are applicable."

It doesn't speak anywhere about a re-hearing at Step 2, on ALC level.

Attachment 1 of 4

10/1/12

Evenmore the only person who can dismiss a charge is the DHU. The Warden can approve the hearing results, overturn a guilty finding, or reduce the sanction of the hearing. But a Re-hearing can only be held if the case is dismissed. See Section 24.1. Also it plainly states "Where exceptional circumstances are found to exist, the Division of Operations may order that a disciplinary case Re-heard. This may be ordered if it is determined a disciplinary charge was dismissed, but compelling reasons exist for proceeding again with a rehearing of the disciplinary violation."

It states if the charge was dismissed, not if it's been overturned. No where does it state an overturned charge can be Re-heard.

Black's Law Dictionary shows that dismiss and overturn have (2) two totally different definitions see as follows:

Dismiss - to send something away; specific; To Terminate <an action or claim> without further hearing esp. before the trial of the issues involved. 2. To release or discharge <a person> from employment

Overturn - To overrule or reverse <The Court overturned a long-established precedent>

So by Policy Appellant's Re-hearing was illegal.

In Appellant's re-hearing be requested (10) ten witnesses by way of inmate request to staff, in which it states to look in section 8.2.3, and 8.2.4. Appellant also personally gave the names to my counsel substitute and she didn't obtain a statement from not one. By Appellant being transferred from Turberville C.I. he needed her to get statements or have the DHU put them on speaker phone. When he advised the DHU of this she brushed it off. He stated "this on the record about his witnesses." DHU Singleton fail to document why Appellant couldn't call his witnesses. This is a violation of Due Process. This is grounds to have his case overturned pursuant AL-Shabazz v. State and Wolff v. Mc Donnell, 94 Sct. 2963 (1974) SCDC Disciplinary policy OP 22.19 section 15.3 states "The inmate may call witnesses unless the Hearing officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing Officer, the Hearing Officer must write higher reasons for this denial on the SCDC form 19-69, "Disciplinary Report and Hearing Record," in this denial on the SCDC form 19-69, "Disciplinary Report and Hearing Record," in the space provided." This was not done. 18.1 states "SCDC form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information:

18.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion."

This was not done.

"24.3 Time Limits: A re-hearing must occur within 21 calendar days from the date that the rehearing is ordered and signed by the Division of Operations."

The re-hearing was ordered on Oct. 5, 09 and Appellants' hearing was on Oct. 26, 09 that's 21 days. It says within not in 21 days. Appellant's change should be overturned due to this error alone. They used additional evidence at his hearing. They cannot do this because his case was not overturned due to insufficient evidence. Sec 24.4 "Evidence: Any evidence presented at the initial hearing may be presented at the re-hearings; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence, must be presented and considered at the re-hearing in order to find the inmate guilty."

The Respondent's violated the "Inmate Grievance System GA01.12" on numerous occasions, the incidents and violations are as follows:

Section 13.3 of The Inmate Grievance policy states "The Warden will respond to the grievant no later than 40 days from the initial receipt of the grievance (with the exception of a disciplinary hearing appeal, which will be responded to within 30 days.)"

It took the Warden (3) three months to respond to Appellant's Step 1 from Oct. 27, 09 to Jan. 20, 2010. This is well over 30 days, and no extension was issued.

Section 13.5 states "The Responsible official will render the final decision on the grievance within 60 days from the date that the Institutional Inmate Grievance Coordination received the appeal of the Warden's decision."

It took (3) three months for the Responsible official to respond to Appellant's Step 2.

Section 11 states "Note: The maximum extension that may be given is 75 days.

Under no circumstances will the grievance process exceed 180 days.)"

Attachment 3 of 4

SCDC has knowingly violated their own policy. "Accordingly, once SCDC established the administrative frameworks set forth in policy, SCDC personnel are bound to follow it. An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. US v. Morgan, 193 F.3d 252 (4th Cir. 1999) US v. Heffner, 420 F.2d 309 (4th Cir. 1969); and US ex rel Accardi v. Shoughnessy, 74 S.Ct 499 (1954)"

Where an entire procedural framework designed to insure the fair processing of an action affecting an individual is created, but then not followed by an agency, it is prejudicial.

There's too many errors in this case in which violates Appellant's Due Process Rights, his case should be overturned and all sanctions lifted. Another rehearing would only prejudice and harass Appellant. Because the Dept. has had (6) six chances to correct their errors.

Conclusion

Appellant ask that his case be overturned and vacated due to violation of his constitutional rights.

Enclosed is 17 exhibits.

Attachment 40FY

FILED

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273,

Docket No. 09-ALJ-04-00682-AP

Appellant,

ORDER GRANTING DISMISSAL
FOR
MOOTNESS

vs.

South Carolina Department of Corrections,

Respondent.

GRIEVANCE NO.: TCI 442-09

South Carolina Department of Corrections (DOC) moves to remand this matter to the Department for a new hearing. Because a new hearing will be held on the merits, the issues in this appeal are moot.

The issue in this motion is whether the Appellant's appeal is moot. "A case becomes moot when judgment, if rendered, will have no practical effect upon [the] existing controversy." Mathis v. South Carolina State Highway Dep't., 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). A court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996).

The Motion to Dismiss is **GRANTED** and this case is ended.

AND IT IS SO ORDERED.

Carolyn C. Matthews
CAROLYN C. MATTHEWS
Administrative Law Judge

October 9, 2009
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that this order was served on this date
served this order in the manner provided in the rules of the court upon all
parties to this cause by depositing it in the United States mail, postage paid, in the Interagency
Mail Service addressed to the party or their attorney(s).

This 9th day of October 2009

By: *[Signature]*

Exhibit 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Exhibit 2

Page 1 of 1

#106 SMU 152

Situation/Center: Tribbleville Correctional Inst.

Date of Report: 30 March 2009 Time of Report: Approx 8:00 am

Reporting Official: Natasha Miller Date of Incident: 30 March 2009

Location of Incident: Self A Unit Time of Incident: Approx. 7:00 am

Inmate(s)/Resident: SCDC# Age Race Sex Employee(s) Involved:

<u>Lisenby, Billy 200273 B/m</u>	1.
	2.
	3.
	4.
	5.

On the above date and approximate time: I, Cpl. Miller, Natasha gave inmate Lisenby, Billy 200273 B/m on Self A a directive to return to the Unit. The inmate Lisenby became disrespectful. I then gave him a directive to stop being disrespectful when he turned around and struck me on the left side of my face / eye. The inmate is being written up for Assault ^{1st} and Battery Employee Causing Harm #801

Signature: Natasha Miller

Print Name:

(es):

Supervisor's Comments: Tim Lisenby was placed SMU

STG Related - Refer to STG Committee
☐ Yes ☐ No ☒ Unknown

This Incident is DRUG related
☐ Yes ☒ No ☐ Unknown

Responsible Authority: Capt. Date/Time: 3-30-09

Charged with 801
to DHO - Inmate Placed SMU

Action Taken

- ☐ Informal Resolution
☐ Administrative Resolution
☒ Refer to Disciplinary Hearing

Signature: Maier

Date: 2-21-10

8:09-cv-02929-DCN-KDW Date Filed 08/16/10 Entry Number 22-10 Page 1 of 5

RECORD SUMMARY REPORT DATED 02/01/10

C0239

ITSENBY, BILLY - FBI # R74451A2 SID# SC00893467 SCDC # 00200273
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION...: KINGFELAND CORR INST DORM.....: ASH0128A
 SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE RACE.....: B SEX.....: M
 CURR INCARC SENT...: 13 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 07/13/2016
 CENTRAL MONITORING.: YES SEPREQ PROJ PAROLE DATE: 05/24/2011
 SOCIAL SECURITY #....: 247716842 EUC JOB...: NO CURRENT JOB
 EUC PGM...: NO CURR EDUC PROGRAM
 EUC LEVEL...: 0 EEC LEVEL:
 ASSIGNMENT...: LOCKED - UP
 CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 33 DATE OF BIRTH...: 2/19/76

PREVIOUS NUMBERS:

Y00200273

CURRENT OFFENSES	SENTENCE	YRS	MOS	DYS	COUNTY	SENTENCE	START	U/V	NU	CATEGORY
FAIL TO STOP FOR OFFICER	3	0	0	0	CHESTERFIE	3/19/20	8	N		2
ASSAULT W/INT TO KILL	10	0	0	0	CHESTERFIE	3/19/20	8	N		4
PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE	YRS	MOS	DYS	COUNTY	SENTENCE	START	U/V	NU	CATEGORY
POSSESS PISTOL AFTER CONV	0	6	0	0	CHESTERFIE	9/ 1/1995	N			3
COCAINE POSSESS	2	0	0	0	CHESTERFIE	9/ 1/1995	N			2
STRONG ARM ROBBERY	9	0	0	0	CHESTERFIE	9/ 1/1995	N			3
PRIOR COMMITMENTS OVER 90 DAYS:										
3/ 3/95	*INVOLUNTARY MANSLAUGHTER	0	YRS	30	MOS	0	DYS			
2/25/93	*POINTING A FIREARM	6	YRS	0	MOS	0	DYS			
2/25/93	COMMON LAW ROBBERY	6	YRS	0	MOS	0	DYS			

DETAINERS (HOLD, WANTED, NOTIFY):

ASSAULT W/INT TO KILL	HOLD	M. D. PARKER	CATEG: 4
RESISTING OFFICER	HOLD	M. D. PARKER	CATEG: 3
ATTEMPT TO COMMIT MURDER	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 5
NO DETAINERS			

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

4/14/ 2 ASSAULT-HIGH/AGGRV NATUR COURT

ASSAULTIVE DISCIPLINARIES:

3/30/ 9	A & B OF AN EMP, ETC W/INT	CONVICTED	MAJOR STAFF
3/22/ 9	STRIKING AN INMATE WITH/	DROPPED	MAJOR INMATE
7/25/ 8	STRIKING AN INMATE WITH/	NOT GUILTY	MAJOR INMATE
6/30/ 8	FIGHTING WITHOUT A WEAPON	CONVICTED	ADMIN
7/26/ 2	STRIKING AN INMATE WITH/		OTHER INMATE
5/14/ 2	POSSESSION OF A WEAPON	CONVICTED	MAJOR
2/ 6/ 1	ROBBERY WITH FORCE	DROPPED	MAJOR INMATE
5/11/ 0	STRIKING AN INMATE WITH/	DROPPED	CHARG INMATE WEAPON
6/27/99	STRIKING AN EMPLOYEE WIT	NOT GUILTY	MAJOR STAFF
5/20/99	FIGHTING WITHOUT A WEAPON	CONVICTED	MAJOR
2/10/99	STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR STAFF
11/16/98	POSSESSION OF A WEAPON	NOT GUILTY	MAJOR
11/14/98	POSSESSION OF A WEAPON	CONVICTED	MAJOR
6/29/98	POSSESSION OF A WEAPON	CONVICTED	MINOR
2/14/98	FIGHTING WITHOUT A WEAPON	CONVICTED	MAJOR
4/26/97	POSSESSION OF A WEAPON	CONVICTED	MAJOR
2/10/97	FIGHTING WITHOUT A WEAPON	CONVICTED	MAJOR INMATE
3/13/96	FIGHTING WITHOUT A WEAPON	CONVICTED	MINOR
12/18/96	FIGHTING WITHOUT A WEAPON	CONVICTED	MINOR
9/17/93	FIGHTING WITHOUT A WEAPON	CONVICTED	MINOR
9/17/93	FIGHTING WITHOUT A WEAPON	CONVICTED	MINOR

NON-ASSAULTIVE DISCIPLINARIES:

Exhibit 4



1 SENBY 8/09 BY 02925 DCN - BFA-5T Date Filed 03/16/10 Entry Number 2210002 Page 2 of 5 (NOED)

12/ 2/ 2	ABUSE OF PRIVILEGES	CONVICTED	ADMIN
10/ 4/ 9	ABUSE OF PRIVILEGES	CONVICTED	ADMIN
5/20/ 9	ABUSE OF PRIVILEGES	NOT GUILTY	MAJOR
3/ 3/ 9	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
10/ 3/ 8	REFUSING OR FAILING OBEY	CONVICTED	ADMIN
8/ 4/ 8	THREATENING TO INFLECT H	CONVICTED	MAJOR
7/ 5/ 8	DISRESPECT	CONVICTED	MAJOR
10/16/ 2	USE OBSCENE, VULGAR, PROFA	CONVICTED	MAJOR
10/18/ 2	FALSE STATEMENT TO HARM	CONVICTED	MINOR
7/19/ 2	DISRESPECT		OTHER
7/14/ 2	REFUSING OR FAILING OBEY	CONVICTED	MINOR
6/24/ 2	USE OBSCENE, VULGAR, PROFA		OTHER
5/ 2/ 2	POSSESSION OF CONTRABAND	NOT GUILTY	MINOR
5/ 1/ 2	ABUSE OF PRIVILEGES		OTHER
4/22/ 2	DISRESPECT	CONVICTED	MAJOR
12/31/ 1	USE OBSCENE, VULGAR, PROFA		OTHER
11/27/ 1	DISRESPECT		OTHER
10/17/ 1	ABUSE OF PRIVILEGES	DROPPED	MINOR
8/ 2/ 1	USE, POSS NARC, MARIJ, UNAU	NOT GUILTY	MAJOR
8/ 2/ 1	INCITING/CREATING A DIST	DROPPED	MAJOR
7/24/ 1	POSSESSION OF CONTRABAND	DROPPED	MAJOR
7/14/ 1	STEALING	DROPPED	MINOR
6/13/ 1	USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR
5/ 5/ 1	REFUSING OR FAILING OBEY	CONVICTED	MAJOR
4/23/ 1	STEALING		OTHER
11/ 3/ 0	USE OBSCENE, VULGAR, PROFA	NOT GUILTY	MINOR
9/29/ 0	EVADING A SECURITY DEVIC	DROPPED	MAJOR
8/19/ 0	USE OBSCENE, VULGAR, PROFA	DROPPED	MINOR
7/ 7/ 0	USE OBSCENE, VULGAR, PROFA		OTHER
6/17/ 0	REFUSING OR FAILING OBEY		OTHER
2/16/ 0	USE OBSCENE, VULGAR, PROFA	DROPPED	CHARG
2/16/ 0	USE OBSCENE, VULGAR, PROFA	DROPPED	CHARG
1/26/ 0	USE OBSCENE, VULGAR, PROFA		OTHER
1/26/ 0	USE OBSCENE, VULGAR, PROFA		OTHER
1/26/ 0	INCITING/CREATING A DIST	DROPPED	CHARG
12/18/99	THREATENING TO INFLECT H		OTHER
12/ 7/99	REFUSING OR FAILING OBEY	CONVICTED	MAJOR
9/22/99	THREATENING TO INFLECT H	CONVICTED	MAJOR
9/19/99	THREATENING TO INFLECT H	DROPPED	MAJOR
9/19/99	THREATENING TO INFLECT H	DROPPED	MAJOR
9/19/99	CREATING UNNECESSARY NOI	DROPPED	MAJOR
9/ 9/99	CREATING UNNECESSARY NOI	CONVICTED	MAJOR
9/ 8/99	REFUSING OR FAILING OBEY	DROPPED	MAJOR
7/ 5/99	INCITING/CREATING A DIST	NOT GUILTY	MAJOR
7/ 5/99	DAMAGE, DESTROY, PROP. VALU	DROPPED	MAJOR
6/20/99	USE OBSCENE, VULGAR, PROFA	DROPPED	MAJOR
6/20/99	THREATENING TO INFLECT H	DROPPED	MAJOR
6/ 2/99	THREATENING TO INFLECT H	CONVICTED	MAJOR
5/23/99	CREATING UNNECESSARY NOI	CONVICTED	MINOR
4/21/99	TRAFFICKING AND TRADING	DROPPED	MINOR
3/16/99	USE OBSCENE, VULGAR, PROFA	DROPPED	MINOR
2/ 8/99	USE OBSCENE, VULGAR, PROFA		OTHER
2/ 8/99	USE OBSCENE, VULGAR, PROFA		OTHER
1/22/99	DAMAGE, DESTROY, PROP. VALU	DROPPED	MAJOR
11/23/98	DAMAGE, DESTROY, PROP. VALU	CONVICTED	MINOR
11/15/98	FALSE STATEMENT TO HARM	CONVICTED	MAJOR
11/15/98	THREATENING TO INFLECT H	CONVICTED	MAJOR
8/25/98	OUT OF PLACE	DROPPED	MINOR
8/25/98	TRAFFICKING AND TRADING	CONVICTED	MINOR
8/25/98	OUT OF PLACE	CONVICTED	MINOR

Exhibit #4

LISENBY 809-LV-02925-DCN-8744-ST-02 Date Filed 03/18/98 Entry Number 22-90 Page 9 of 9 (CONTINUED)

3/ 4/98	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
2/ 1/98	OUT OF PLACE	CONVICTED	MINOR
1/ 2/98	FAILURE TO WORK	CONVICTED	MINOR
12/18/97	FALSE STATEMENT TO HARM	DROPPED	MAJOR
12/18/97	FALSE STATEMENT TO HARM	CONVICTED	MAJOR
12/18/97	REFUSING OR FAILING OBEY	DROPPED	MINOR
11/25/97	OUT OF PLACE	DROPPED	CHARG
8/27/97	GAMBLING AND LOAN SHARK	CONVICTED	MAJOR
8/27/97	FAILING/REFUSING RESPOND	CONVICTED	MAJOR
8/27/97	REFUSING OR FAILING OBEY	CONVICTED	MINOR
6/21/97	REFUSING OR FAILING OBEY	CONVICTED	MINOR
6/21/97	OUT OF PLACE	CONVICTED	MINOR
6/16/97	STEALING	CONVICTED	MAJOR
6/ 5/97	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
5/10/97	THREATENING TO INFLECT H	CONVICTED	MAJOR
5/10/97	USE OBSCENE,VULGAR,PROFA	CONVICTED	MINOR
3/20/97	INCITING/CREATING A DIST	CONVICTED	MINOR
3/19/97	USE OBSCENE,VULGAR,PROFA	CONVICTED	MINOR
3/19/97	INCITING/CREATING A DIST	CONVICTED	MINOR
1/ 9/97	FALSE STATEMENT TO HARM	CONVICTED	MAJOR
1/ 9/97	INCITING/CREATING A DIST	CONVICTED	MAJOR
12/13/96	REFUSING OR FAILING OBEY	CONVICTED	MINOR
1/18/96	INCITING/CREATING A DIST	CONVICTED	MINOR
11/20/93	REFUSING OR FAILING OBEY	CONVICTED	MINOR
9/17/93	REFUSING OR FAILING OBEY	CONVICTED	MINOR
8/26/93	REFUSING OR FAILING OBEY	CONVICTED	MINOR
8/26/93	INCITING/CREATING A DIST	CONVICTED	MINOR
8/26/93	USE OBSCENE,VULGAR,PROFA	CONVICTED	MINOR

HISTORY OF MOVEMENTS:

9/ 3/ 9	RIDGELAND	INCARCERATED	RETURN FROM COURT
9/ 3/ 9	JASPER CO	AUTH ABSENCE (AWL)	TO COURT
6/22/ 9	RIDGELAND	INCARCERATED	ADMINISTRATIVE
6/ 4/ 9	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
6/ 4/ 9	LEE	INCARCERATED	MEDICAL
5/18/ 9	TURBEVILLE	INCARCERATED	RETURN FROM COURT
5/18/ 9	CHESTFIELD CO	AUTH ABSENCE (AWL)	TO COURT
3/16/ 9	TURBEVILLE	INCARCERATED	RETURN FROM COURT
3/16/ 9	CHESTFIELD CO	AUTH ABSENCE (AWL)	TO COURT
3/ 3/ 9	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
2/10/ 9	EVANS	INCARCERATED	ADMINISTRATIVE
1/14/ 9	ALLENDALE	INCARCERATED	RETURN FROM COURT
1/14/ 9	DARLINGTON CO	AUTH ABSENCE (AWL)	TO COURT
10/ 2/ 8	ALLENDALE	INCARCERATED	RETURN FROM COURT
8/20/ 8	NORTH CAROLINA	AUTH ABSENCE (AWL)	TO COURT
8/13/ 8	ALLENDALE	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
6/ 3/ 8	MADDOUGALL CORR	INCARCERATED	ADMINISTRATIVE
5/ 2/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION
11/17/ 2	UNK	RELEASE	EXPIRATION OF SENTENCE
11/15/ 2	NORTH CAROLINA	AUTH ABSENCE (AWL)	TO COURT
10/ 7/ 2	PERRY	INCARCERATED	RETURN FROM COURT
10/ 7/ 2	CHESTFIELD CO	AUTH ABSENCE (AWL)	TO COURT
9/10/ 2	PERRY	INCARCERATED	ADMINISTRATIVE
9/ 9/ 2	KIRKLAND	INCARCERATED	RETURN FROM COURT
9/ 6/ 2	CHESTFIELD CO	AUTH ABSENCE (AWL)	TO COURT
6/ 5/ 2	PERRY	INCARCERATED	RETURN FROM COURT
6/ 5/ 2	MARI BORO CO	AUTH ABSENCE (AWL)	TO COURT
4/17/ 2	PERRY	INCARCERATED	RETURN FROM COURT
4/17/ 2	MARI BORO CO	AUTH ABSENCE (AWL)	TO COURT
3/29/ 2	PERRY	INCARCERATED	ADMINISTRATIVE
10/29/ 1	NOORHICK	INCARCERATED	RETURN FROM COURT

Exhibit 4

Due 5/17/09
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

TE NAME: Billy Lee Lisenby JR, AKA "Malik Al-Shabazz"NUMBER: #200273

APR 17 2009

LOCATION: TurbevilleSIC UNIT: ASU 152ASSIGNMENT: N/A

Office Use Only

Grievance No. TCZ-0442-09

Code: General

Policy:

Disc. Hear. 801-C106-4/16/09

Class:

Date Received 4/17/09IGC Initials PR

GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

was charged with 801 Assault and/or Battery of an SCDC employee, by CPL. N. Miller. I received notice of the charges by OFC. Brown. Hearing was held in front of Angela K. Brown on 4-16-09 in which I pled not guilty and was found guilty. DHO Brown gave me 10 days Detention Days and stated "This is the 1st and 2nd charge of this nature." This is not true. I have never been charged with battery. In 1999 I was convicted of striking an SCDC Employee 807 which is a total different charge. But I was released from prison in May of 2008. OP-22-14 the SCDC Disciplinary policy plainly states at 16.3 "Inmates released from the corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining if they commit an Agency Rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use a disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. maximum, etc." I was gone almost six (6) years a charge from 1999 cannot be used. Even more I have a mental class of M1-3 out health and Med Class: 3 Med Prob/Work Restriction. Policy states an 13 of the Disciplinary Policy "If the inmate has a mental health issue and is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the hearing officer. This referral must be documented on the 19-29A. (This change amended by Change Memo #2, dated June 1, 2008). In these instances a memo from the hearing officer must be included as an attachment to SCDC form 19-29A "Incident Report," attesting to the inmate's mental status and his/her actions. Refer to SCDC Policy/Procedure HS-19.01, "Placement of Inmates in Mental Health Observation and Evaluation Status," health issue and it deals with an assaultive nature. The mental health care professionals should have been notified. Also DHO Brown took part in the investigation of this case. Policy states 13. "Restrictions on personnel participating in the hearing: hearing officer nor the counsel substitute may be an employee who participated in the investigation of the charges. Mrs. Brown decided put this on record. The hearing officer violated 19.3 of the Disciplinary policy because she did not follow policy/procedures, and posed was not proportionate to the violation. This is my first offense of 801.

* Due to the above reasons my case should be overturned *

HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal Case #106

Billy Lisenby
Grievant Signature

4-16-09
Date

TAKEN BY IGC:

IGC reviewed grievance, pertinent documentation and conferred with appropriate staff.
See Warden's response.

Exhibit #5

pt the action taken by the IGC and consider the matter closed.
or accept the action taken and wish to appeal.

IGC Signature

Date

NIN

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Billy Lee Lisenby JB; #Malik Al-Shabazz
 SCDC NUMBER: #200273 MAY 14 2009
 INSTITUTION: Turbeville
 HOUSING UNIT: ASH 152 SMY-128
 WORK ASSIGNMENT: N/A

Office Use Only
 Grievance No. TCT-0442-C
 Code: General _____
 Policy _____
 Disc. Hear. 801-C106-4/10
 Class. _____
 Date Received 5/15/09
 IGC Initials (M)
DD 7-10-09

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
 HO BROWN found me guilty of my 2nd offense of 801 Assault and/or Battery of an SCDC employee. This was my first of offense
 ever been charged or found guilty of 801. She used a 1999 Statute on SCDC Employee which is an 807 to find me guilty of my 2nd
 x. She cannot do that there are (2) two different charges. If an inmate is released from prison and gone over (3) three years
 record cannot be used against him. See OP-22-14 the SCDC Disciplinary policy plainly states at 16.4 "Inmates released from the Dep
 corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining
 separate sanctions if they commit an Agency Rules violation." I was gone almost six years she cannot use my past history. Even more I
 mental class of MI-3 out Patient Mental Health. She violated Policy 3.3 of the Disciplinary Policy that a copy of the Incident
 at must be forwarded to the mental health staff. I have a mental health issue that deals with an assaultive nature. The men
 lth care professional should have been notified. The DHU Brown took part in the investigation of this case. She violated 13 of
 disciplinary policy "Restrictions on personnel participating in the hearing. She stop me from putting this on record.
 x hearing officer violated 19.3 of the Disciplinary policy because the DHU did not follow policy/procedures, and the sentence
 posed was not proportionate to the violation. This is my first offense of 801, Assault and Battery on a SCDC employee.
 he gave me 720 days and the max I could get is 360.

Billy Lisenby 5-13-09
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC
 oycce or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) on April 16, 2009,
 SCDC Policy OP-22.14, Inmate Disciplinary System, dated October 1, 2007, and the sanction(s) imposed, which included the loss of
 days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary
 ng Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing, you were
 ed due process rights, as required, and the offense was classified and heard in a timely manner.

fore, your grievance is denied.

ay appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out
 ached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Exhibit #6

Signature

Date

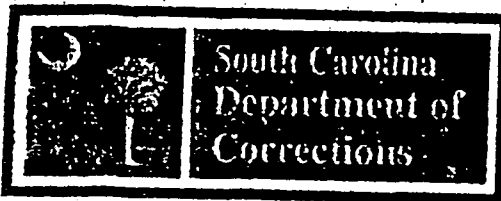
ie decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Pro-
 dure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final
 sponse to this matter.

Billy Lisenby
 Grievant Signature

7-21-09
 Date

M. E. Montague 7/21/09
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)



May 14, 2009

MARK SANFORD, Governor
JON OZMINT, Director

Ms. Patricia Lisenby
355 Hickory Street
Ruby, South Carolina 29741

RE: Inmate Billy Lisenby, SCDC #200273

Dear Ms. Lisenby:

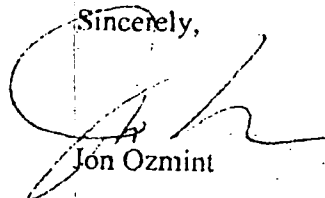
Your undated correspondence regarding the above referenced inmate has been received in my office. You express concern about a disciplinary infraction (Assault and Battery of an Employee) your son was convicted of on April 16, 2009. I have conferred with Warden Gregory Knowlin at Turbeville Correctional Institution and find the following.

Your son was given 720 days of disciplinary detention for the infraction. This was not his first offense of this nature. Records indicate on February 10, 1999 he was charged with Striking an Employee and was subsequently convicted of the charge on February 12, 1999. Even though Inmate Lisenby had been released between the two infractions, I feel that the sanctions imposed were appropriate.

SCDC Policy, OP-22.14, "Inmate Disciplinary System", states in part that inmates released from the SCDC and return to the Agency can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation. Disciplinary Hearing Officers and the Major/Responsible Authority will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return. (i.e., max-out, parole, probation, etc.)

I trust this is responsive to your inquiry.

Sincerely,



Jon Ozmint

JO:gk:smp

cc: Warden Gregory Knowlin, Turbeville CI
Offender Record
File

Exhibit #7

South Carolina Department of Corrections
Request To Staff

RECEIVED

MAY 20 2009

Requester:	WARDEN TURBEVILLE CI
Name:	Warden Gregory Knowlin
Request:	5-19-09
Institution:	SCDC #
	200273
	Living quarters:
	ASU 152

DHU Brown convicted me on or about 4-16-09 of 2nd offense of 801 Assault & Battery on SCDC employee. After reviewing my file and record which is enclosed. I see this was my 1st offense and the max I could've received was 360 days. But she gave me 720.

So why did you turn my appeal down?

nn

You will receive a letter from Dir. Ozmit about the DHU's decision.

Exhibit #8

Signature: *RV*

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Billy Lisenby
 SCDL NUMBER: 200273
 INSTITUTION: RCI
 HOUSING UNIT: SMU-128
 WORK ASSIGNMENT: _____

Office Use Only
 Grievance No. TCI 442-09
 Code: General _____
 Policy _____
 Disc. Hear. 801
 Class. _____
 Date Received 10-6-09
 IGC Initials [Signature]
10-6-09

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

The following is in response to the inmate's appeal to the Administrative Law Court (ALC).

[Signature] 10-6-09
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:
 Inby 200273 TCI 442-09 JS (DP)

On further review, and pursuant with a meeting with the Office of General Counsel, it was determined that your conviction of Assault or Battery of an SCDL Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to or Injure (801), Level 1 offense case # 106 for offense date April 16, 2009, will be overturned and all sanctions imposed will be 1. However, and approval for a rehearing will be granted.

Therefore, I consider this matter upheld.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must file the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 10/16/2009
 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.

Billy Lisenby 10-16-09
 Grievant Signature Date

[Signature] 10-16-09
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Billy Lee Lisenby JR; #200273
P.O. Box 2039
Ridgeland Corr. Inst.
Ridgeland, SC. 29936

Motions for Reconsideration
are Prohibited.
See ALC Rule 65.

The Honorable Carolyn C. Matthews
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton St.
Columbia, SC. 29201

Dated: Nov. 3, 09

Dear Judge Matthews,
I was sentenced by the Department of Corrections Disciplinary Hearing Officer Angelia Brown on April 16th, 2009 to 720 days Disciplinary Detention, 180 days loss of privileges, and 120 days loss of Goodtime. She used a 1999 conviction of Striking an Employee to enhance my sentence to 720 days instead of 360 days. She couldn't do this, because if you are gone from the Department over (3) three years your disciplinary history cannot be used against you. I was gone over (6) six years.

I appealed my conviction through Step 1 and Step 2 of the grievance system, and the Director Jun Ormont went against policy and stated "Even though you were released between the (2) two infractions I feel the sanctions were appropriate." The Department deals with law and Policy not feelings.

I appealed my conviction to the Administrative Law Court and on Oct. 5, 09. The General Counsel's Office filed a Motion To Remand and overturned my case due to errors in the disciplinary hearing process. So they asked that the case be re-heard at a later date, even though nothing in policy states they can re-hear a case that has been overturned on Step 2, or on the ALC level. It can only be re-heard on the Step 1 level.

On Oct. 9, 2009 You issued an order granting Dismissal for Motness and ^{you} stated "South Carolina Department of Corrections moves to remand this matter to the Department for a new hearing. Because a new hearing will be held on the merits, the issues in the appeal are moot."

On Oct. 26, 2009 DHu Shirley Singleton at Ridgeland Corr. Inst. did in fact re-hear my case and ignored the Judges order and gave me 720 days Disciplinary Detention, 180 days loss of Privileges after DD time, and 150 days loss of Goodtime. She gave me a Stiffer sentence than before and told me to appeal it again.

They have had (5) five chances to fix my sentence. Another re-hearing will constitute Double Jeopardy and Malicious Prosecution. I ask that you please intervene in this case.

Thanking you in advance!

Billy Jr

Exhibit #10

State of South Carolina
Administrative Law Court

Billy Lisenby, #200273
Appellant

Vs.
South Carolina Department of Corrections
Respondent

Docket No. 09-ALJ-04-01011-AP

Motion To Reconsider
(Judge McLeod)

FILED

DEC 14 2009

SC ADMIN. LAW COURT

Judge McLeod dismissed Appellant's Appeal on Dec. 3rd 09. Appellant filed the only document the agency gave him. His case had already been overturned, but by policy they could not re-hear it. There was no other document to enclose. The sanctions were up lifted but they were going to re-hear the case, and policy says they cannot.

If you view the appeal it will explain better.

Dated: Dec. 6th 09

Respectfully Submitted,

Billy L.

Billy Lisenby JR, #200273

Ridgeland Corr. Inst.

PO Box 2039

Ridgeland, SC 29930

Motions for Reconsideration
are Prohibited.
See ALC Rule 65.

Exhibit #11

DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Billy Lisenby
SCDC NUMBER: 200273
INSTITUTION: RCT
HOUSING UNIT: SMU-128
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. TCI 442
Code: General _____
Policy _____
Disc. Hear. 801
Class. _____
Date Received 10-6-09
IGC Initials JS
10-6-09 JS

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

he following is in response to the inmate's appeal to the Administrative Law Court (ALC).

[Signature] 10-6-09
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:
Lisenby 200273 TCI 442-09 JS (DP)

pon further review, and pursuant with a meeting with the Office of General Counsel, it was determined that your conviction of Assault and/or Battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or/ Intent to ill or Injure (801), Level 1 offense case # 106 for offense date April 16, 2009, will be overturned and all sanctions imposed will be lifted. However, and approval for a rehearing will be granted.

herefore, I consider this matter upheld.

ou 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] 10/06/2009
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.

Billy Lisenby 10-16-09 [Signature] 10-16-09
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Exhibit #12

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

) Docket No. 09-ALJ-04-01011-AP
)
)
)
)
)
)
)
)
)
)

ORDER OF DISMISSAL

FILED

DEC 03 2009

SC ADMIN. LAW COURT

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).

One page of Appellant's Step 2 grievance was the only document filed with the Notice of Appeal. It did not include the first page of the Step 2 grievance form which provides the data necessary for the Court to determine whether a liberty interest is involved. SCALC Rule 59 requires that a copy of the final decision appealed from be filed with the Notice of Appeal.

SCALC Rule 51 provides:

Applicability. The Rules in this section shall apply exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

SCALC Rule 59 provides:

Notice of Appeal. The notice of appeal from the final decision to be heard by the Administrative Law Court

...

All of the foregoing quotations are from the portion of the SCALC Rules specifically crafted for Inmate appeals.

SCALC Rule 62 allows dismissal of appeals that fail to comply with rules of procedure.

In the case at hand, no complete final decision appealed from was attached to the



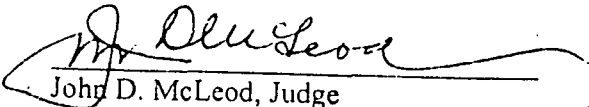
Exhibit #3

Notice of Appeal as required by SCALC Rule 59 and thus there is no final agency decision rendered upon which an appeal can be based. Therefore the appeal must be dismissed.

Moreover, from the one page that was attached, it appears that the Assault (801) conviction of that Grievance (TCI 442-09) and the sanctions imposed were lifted.

THEREFORE, IT IS ORDERED that the within appeal be and hereby is **DISMISSED, WITH PREJUDICE AND THIS MATTER FOREVER ENDED.**

Columbia, S.C.
December 3, 2009.


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE
I hereby 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 Federal
Mail Service addressed to the party(ies) or their attorney(s).

This 3 day of December, 2009
By: Anthony L. Goldstein
Judicial Law Clerk

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

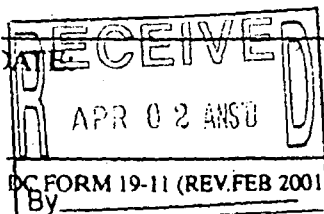
TO: NAME:	TITLE:	DATE:
Nurse Davis		March 31 st 2010
INMATE'S NAME:		SCDC #:
Billy Lisenby		200273
INSTITUTION:		LIVING QUARTERS:
P.C.I		ASU 123

I would like to know the name of the medicine the psychiatrist has me on.
Also I would like to ^{know} all my medical restrictions, and mental health grade.

Exhibit #14

DISPOSITION BY STAFF MEMBER:

You are on Celebra an Neurontin - your restrictions are: outpatient mental health daily nursing ground floor/ bottom bunk no climbing no work at extreme heights. If you have further questions you need to refer to mental health as well as your "mental Health grade"



SIGNATURE:

CLASSIFICATION SUMMARY REPORT DATED 09/25/08

200273
 LISENBY, BILLY -
 ER TYPE.: ADULT-STRAIGHT SENTENCE
 UTION.: NORTH CAROLINA
 TY/CUST.: 3 CODE NOT IN TABLE
 NCARC SENT.: 13 YRS 0 MOS 0 DYS
 MONITORING.: YES SEPREQ STG-NOT VAL
 SS: 3 MED PROB/WORK RESTRICT
 CLASS: MI-3 (OUTPATIENT MENTAL H
 PROGRAM.: NO CURRENT PROGRAM
 32

C045420
 FBI# 87465TA2

NORM.: 0000
 RESIDENT STAB.: NOT APPLICABLE
 PROJ MAXOUT DATE: 02/20/2015
 PROJ PAROLE DATE: 06/01/2011
 EWC JOB.: NO CURRENT JOB
 EDUC PGM.: NO CURR EDUC PROGRAM
 EWC LEVEL: 0 EEC LEVEL:
 ASSIGNMENT.: LOCKED - UP

NUMBERS:
 3

OFFENSES
 STOP FOR OFFICER
 /INT TO KILL

SENTENCE
 YRS MOS DYS COUNTY

SENTENCE
 START V/NU CAT INDICT

C OFFENSES (COMP)
 ISTOL AFTER CONV

SENTENCE
 YRS MOS DYS COUNTY

SENTENCE
 START V/NU CAT INDICT

ASSESS

1 ROBBERY

UNDER PREVIOUS NUMBER: Y00200273

FIREARM

ROBBERY

ITMENTS OVER 90 DAYS:

*INVOLUNTARY MANSLAUGHTER

*POINTING A FIREARM

HOLD WANTED, NOTIFY):

STOP FOR OFFICER

RAFFIC VIDA

/INT TO KILL

OFFICER

COMMIT MURDER

WANTED M. D. PARKER

WANTED M. D. PARKER

WANTED M. D. PARKER

WANTED M. D. PARKER

NOTIFY OPEV ARREST NOTIFICATION

0 YRS 30 MOS 0 DYS
 6 YRS 0 MOS 0 DYS

CATEG: 2
 CATEG: 1
 CATEG: 4
 CATEG: 3
 CATEG: 5

E HISTORY*

RGES:

VAL CHARGES HISTORY*

DISCIPLINARIES:

RIKING AN INMATE WITH/ NOT GUILTY

RIKING AN INMATE WITH/

SSSESSION OF A WEAPON CONVICTED

BBERY WITH FORCE DROPPED

RIKING AN INMATE WITH/ DROPPED

RIKING AN EMPLOYEE WITH/ NOT GUILTY

SESSION OF A WEAPON NOT GUILTY

SESSION OF A WEAPON CONVICTED

SESSION OF A WEAPON CONVICTED

SESSION OF A WEAPON CONVICTED

DISCIPLINARIES:

ATENING TO INFLECT CONVICTED

ESPECT CONVICTED

ING WITH OUT A WEAPON CONVICTED

IBSCENE, VULGAR, PROF CONVICTED

STATEMEN T TO HARM CONVICTED

SPECT

ING OR FAZ ILING ORE CONVICTED

IBSCENE, VULGAR, PROF

MAJOR INMATE
 OTHER INMATE
 MAJOR
 MAJOR INMATE
 CHARG INMATE WEAPON
 MAJOR STAFF
 MAJOR STAFF
 MAJOR
 MAJOR
 MINOR
 MAJOR

MAJOR
 MAJOR
 ADMIN
 MAJOR
 MINOR
 OTHER
 MINOR
 OTHER

Exhibit #15

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
	<i>Mental Health</i>	<i>April 26th</i>
INMATE'S NAME:		SCDC #:
<i>Billy Lisenby</i>		<i>200273</i>
INSTITUTION:		LIVING QUARTERS:
<i>R.C.I</i>		<i>Asu 128</i>

What is my mental health classification?

What is the new medication the psychiatrist has me on.

Exhibit #16

POSITION BY STAFF MEMBER:

Class - ME-3 - ^{crim} ~~MI-3~~
Meds: Prozac

<i>4/27/10</i>	SIGNATURE:
	<i>[Signature]</i>

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Assoc. Warden Burton		April 26 th 2010
INMATE'S NAME:		SCDC #:
Billy Lisenby		200773
INSTITUTION:		LIVING QUARTERS:
A.C.I		Asu 128

What is my mental health grade or classification?

Exhibit #17

PROPOSITION BY STAFF MEMBER: Out patient mental health.

DATE:	SIGNATURE:
4-27-10	Anthony Burt

State of South Carolina
Administrative Law Court

Billy Lee Lisenby JR, #200273

Appellant

vs.

South Carolina Department of

Corrections,

Respondent

Case: _____

Request For Transcript

The above Appellant, Billy Lee Lisenby JR, ask that the Respondent's provide him a copy of his Oct. 27, 2009 transcript, of his DHU hearing held by DHU Singleton at Ridgeland Corr. Inst.

Dated: May 17, 2010

Respectfully Submitted,

Billy J.

State of South Carolina
Administrative Law Court

Billy Lee Lisenby JR, #200273,
Appellant

Vs.

South Carolina Department of
Corrections,
Respondent

Case _____

Motion of Discovery

The above Appellant, Billy Lee Lisenby JR, is filing a "Motion of Discovery" pursuant Rule 21 of the South Carolina Rules of Court.

The above Appellant request the courts direct the Respondent's to provide him with the following:

1. Appellant want's a copy of the video of the assault. There has to be a video because it happen in front of the camera, and Appellant has a street charge and it has to be part of the record.
2. Appellant would like a copy of the assaultive package, in which the officer alleged she was assaulted. This should include details of her alleged injuries.
3. Appellant would like a copy of the restricted Use of Force policy.
4. Appellant would like a copy of the newest disciplinary policy.

Dated: May 17, 2010

Respectfully Submitted,

Billy L

Certificate of Service

I, Billy Lee Lisenby JR, swear under penalty of perjury that I have provided the addresses below with 1 copy of a Request for Transcript and 1 copy of a Motion For Discovery. He has placed it in the Mail Box at Ridgeland Corrections Inst. He has sent 1 copy of each to the following people:

General Counsel S.C. DC
4444 Broad River Rd.
Columbia S.C. 29201

Clerk's Office South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

Dated: May 17, 2010.

Respectfully Submitted,
Billy L.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1**

TCI-1221-09

Office Use Only

INMATE NAME: Billy Lee Lisenby JR.

SCDC NUMBER: #200273

INSTITUTION: P.C.I.

HOUSING UNIT: SMU-128

WORK ASSIGNMENT: N/A

NOV 19 2009

OCT 29 2009

J.O.

Grievance No. RCI-0917-09

Code: General

Policy

Disc. Hear. ✓ (801)

Class.

Date Received 10/30/09 14-10

IGC Initials mm

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

On Oct. 5, 2009 a re-hearing was given by The Honorable Carolyn Matthews for The Charge of 801 Assault and Battery on an employee. The Honorable Matthews granted my request to have my case overturned for several errors. On 10-26-09 a re-hearing was conducted by DHO Shirley Singleton, and she stated (unquote) That my case was being re-heard because there was no evidence of bodily injury. Nothing like that was in my appeal. (See Step 1 and Step 2 enclosed) I argued that I shouldn't have received 720 days when this was my 1st offense of 801 Assault and Battery, the max I could've received was 360 days. But DHO Angelia Brown of Turberville changed me with a 2nd offense using a 1999 Striking an Officer to upgrade my penalty. But I was released from S.C. Department of Corrections in Nov. of 2002, and returned in May of 2008. I was given approx. 6 years. The inmate disciplinary policy plainly states "10-4 Inmates released from the Dept. of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency Rules violation. Hearing officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release from their return, i.e. parole, probation, etc." As I was at the (ALC) and by policy the 1999 conviction cannot be used against me. DHO Shirley Singleton gave me 720 days again, then took 150 days quarantine, when in the first case I only lost 120 day quarantine, took my visits, canteen, and telephone 130 days after I came off lock-up when on the first hearing it was completed already and running with my Disciplinary Detention time. In the re-hearing she put plus signs beside everything. I cannot receive a harsh sentence for utilizing my appeals rights, and the court system. Also I have a mental class of MI-3 out Patient Mental Health and Med Class 3 med Prob/Work Restriction. Section 3.3 of the Disciplinary Policy states "If the inmate has a mental health issue noted in his/her medical record or is acting in such a manner that indicates a mental health concern then a copy of the Incident Report must be forwarded to the mental health staff. This referral must be documented on the 19-29 A. (This change amended by Change Memo #2, dated June 1, 2009). In these instances, a memorandum from mental health case →

ACTION REQUESTED:

Appeal

See Attachment
2 and 3

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Appeal

Billy Lisenby
Grievant Signature

Oct. 27, 09
Date

ACTION TAKEN BY IGC: unprocessed. Forwarded to Turberville for processing. Incident occurred there. NEA 10/30/09

This grievance is being returned unprocessed as the re-hearing of this disciplinary was heard by DHO Singleton at Ridgeland. per 1-14-10

Grievance re-opened and processed because Disciplinary Hearing was heard at RCI.

M. E. Montague
IGC Signature

1/19/10
Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

SMU-128

WARDEN'S DECISION AND REASON:

LISENBY, BILLY LEE - 200273 - RCI-0917-09

You have appealed the results of your 10/26/09, Case #00106 Disciplinary Hearing Conviction where you were found guilty of 801 Assault and/or Battery of an Employee or other Government Employee, Volunteer, or Contract Employee with Means and/or Intent to Kill or Injure. The issues you stated in your grievance do not warrant a reversal of this conviction. Pertinent documentation has been reviewed. No technical errors, procedural errors or misinterpretation of the evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. The willful hitting, striking, or unauthorized touching of an SCDC employee who is exercising legitimate authority over you, when such hitting, striking, throwing, or unauthorized touching causes bodily injury. Based on this information, your appeal is without merit and therefore denied.

Leif Cohen 1/20/2016
Warden Signature Date

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

Bill Lien 1-27-10
Grievant Signature Date

M. E. Monteth 1-27-10
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Due 1-31-10

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Billy Lee Lisenby JR. **RECEIVED**
SCDC NUMBER: #2009213
INSTITUTION: B.C.I. FEB 03 2010
HOUSING UNIT: ASU128 INMATE GRIEVANCE
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. RCL-0917-09
Code: General _____
Policy _____
Disc. Hear. ✓ C801
Class. _____
Date Received 2/28/10
IGC Initials MM
✓ IGA - ABH 4.21.2010

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Original case was overturned because I was charged and convicted of my 2nd offense of Assault and battery, when it was my 1st offense. The max I've received was 360 days, but they gave me 720 days. Also they didn't forward my Incident Report to the Mental Health Staff, they denied my issues. Nothing in policy states a re-hearing can be heard at the Step 2 ALC. A re-hearing must be held within 21 days, and my trial was at the 21st day. Also they used additional evidence to convict me again. They cannot use new evidence because my case was not overturned due to sufficient evidence. Please review my Step 1 carefully. Because policy is quoted in there.

Billy Lisenby
Grievant Signature

Jan. 28th 2010
Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801), Level 1 offense, case #106, on October 26, 2009 under SCDC Policy OP-22.14, Inmate Disciplinary System, dated October 1, 2007, and the sanction(s) imposed, which included the loss of -150- days accrued good time, were appropriate for the rules violation(s). There is no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) 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. You were convicted based upon the preponderance of the evidence/testimony presented at your hearing.

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 on the form within 30 days of receipt.

DeVita 4/30/2010
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.

Billy Lisenby 5-14-10
Grievant Signature Date

M. E. Montfort 5-14-10
IGC Signature Date

NOV 19 2009

professional must be included as an attachment to SCDC form 19-29A, "Incident Report," attesting to the inmate's mental status and accountability for his/her actions."

They did document anything on my 19-29A form and it plainly states you must do this. I suffer from intermediate explosive disorder and was not being treated or seen by mental health at the time of the assault. I went from Jan. 09, until May of 09 without seeing a mental health professional. When I did see one they immediately put me on Neurontin a [redacted] medicine used to balance the brain and moods.

None of my appeal issues were addressed in the re-hearing, the re-hearing was solely to harass me, for using my appeal rights.

Nothing in policy states that the Department can have a re-hearing on Step 2 on ALC. Policy only states on section 24.2 Step 1 Grievance: A Warden can request through the Division of Operations that a hearing be reheard at their level if the reasons noted in 24.1 are applicable."

It doesn't speak nowhere about re-hearing at Step 2, on ALC level.

Evenmore the only person who can dismiss a charge is the DHU. The Warden can approve the hearing results, overturn a guilty finding, or reduce the sanction of the hearing. But a rehearing can only be held if the case is dismissed. See section 24.1. Also it plainly states "A request for a disciplinary re-hearing will include written justification by the Warden to the Division of Operations.) This was not done in my case.

In my re-hearing I request (U) ten witnesses by way of inmate request to staff in section 8.2.3, and 8.2.4. I personally gave the names to my counsel substitute and she didn't obtain a statement from not one. By me being transferred from Terrebonne C.I. I needed her to get statements or have the DHU put them on speaker phone. When I advised the DHU of this she brushed it off. I stated this on the record. DHU Singleton fail to document why I couldn't call my witnesses. This is a violation of Due Process. Because section 15.3 states "The inmate may call witnesses unless the hearing officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the hearing officer, the hearing officer must write his/her reasons for this denial on the SCDC form 19-69, "Disciplinary Report and Hearing Record," in this denial on the SCDC form 19-69, "Disciplinary Report and Hearing Record," in the space provided." This was not done. 18.1 states "SCDC form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The Record will include the following information:

18.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion."

This was not done.

"24.3 Time Limits: A re-hearing [redacted] must occur within 21 calendar days from the date that the rehearing is ordered and signed by the Division of Operations."

The re-hearing was ordered on Oct. 5, 09 and my hearing was on Oct. 26, 09 that's 21 days. It says within not in 21 days. My charge should be overturned due to this error alone. They used additional evidence at my hearing. They cannot do this because my case was not overturned due to insufficient evidence. See 24.4 Evidence: Any evidence presented at the initial hearing may be presented at the re-hearing; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence, [redacted] must be presented and considered at the rehearing in order to find the inmate guilty.

Attachment (2) of 3

NOV 19 2009

I had already served my 180 days for my visits, canteen, and phone, because DHO Brown didn't give me 130 plus, but DHO Singleton did. My privileges should be re-instated, but she gave me a more harsh sentence.

24.5.2 Supports this it states "Sanctions imposed as a result of the initial hearing may again be assessed; however, the inmate will be given credit for penalties already served."

My case should be overruled and all sanctions lifted.

Another re-hearing would only prejudice and harass me.

Because the Dept. has had ^{three} chances to correct this.

Date: Oct. 27, 09

Billy L. R.

Attachment (3) of 3

RECEIVED

FEB -7 2011

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GENERAL COUNSEL

Billy Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 10-ALJ-04-00508-IJ

ORDER

STATEMENT OF CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Billy Lisenby, an inmate incarcerated with the Department of Corrections (Department or DOC). Lisenby was convicted of violating SCDC Disciplinary Code § 801 (Assault and/or Battery of an SCDC Employee). As a result of his conviction, Lisenby lost one hundred fifty (150) days of "good-time" credit. He filed a grievance with the Department and the Department issued a final decision on April 30, 2010. Following the Department's denial of that grievance, Lisenby filed this appeal with the ALC.

BACKGROUND

On March 30, 2009, Corporal Miller gave Appellant a directive to return to his Unit when he became verbally abusive. Corporal Miller gave Appellant a directive to stop being disrespectful. Appellant then turned and struck Corporal Miller on the left side of her face, causing swelling of her cheek and eye area. As a result, Appellant was charged with violating SCDC Disciplinary Code § 801 (Assault and/or Battery of an SCDC Employee).

On October 26, 2009, a Major Disciplinary Hearing was held before a DOC Disciplinary Hearing Officer (DHO). Appellant was represented by Counsel Substitute. Appellant asked that his accuser be present, therefore Corporal Miller was present via speakerphone. During the hearing, the DHO read a narrative of the Incident Report into the Record and received testimony from the Appellant. At the conclusion of the hearing, the DHO found the Appellant guilty of the charge and sanctioned him to the loss of one hundred fifty (150) days good time. After the

FILED

JAN 23 2011

hearing, the DHO completed a Major Disciplinary Report and Hearing Record which documented the DHO's findings.

Appellant Lisenby filed a grievance with the Department appealing his conviction of the charge. After reviewing his contentions, the Warden denied Appellant's grievance. The Appellant then appealed the Warden's decision and the Department subsequently denied that grievance stating that the evidence supported the conviction and that the sanction imposed was appropriate for the violation that the Appellant committed. This appeal followed. In his appeal brief, Appellant alleges various Due Process violations.

STANDARD OF REVIEW

The Court'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). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, 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. Id.¹

As set forth above, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented. 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(A)(5) (Supp. 2009). Furthermore, 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. See Section 1-23-380(A)(5); see also Marietta Garage, Inc. v. S.C. Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); S.C. Dept. of Labor, Licensing and Reg. v. Girgis, 332 S.C. 162,

¹ In Sullivan, the Supreme Court also found that other conditions of confinement could potentially implicate a state created liberty interest. However, those interests are "generally limited to freedom from restraint which... imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan v. S.C. Dept. of Corrections 355 S.C. 437, 586 S.E.2d 124 (2003) (quoting Sandin v. Conner, 515 U.S. 472, 484 (1995)). See also Slezak v. S.C. Dept. of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004).

503 S.E.2d 490 (Ct. App. 1998). “ ‘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 or must have reached in order to justify its action.” Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, 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).

Additionally, in Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455-456, 105 S.Ct. 2768 (1985), the U.S. Supreme Court held that “the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” Moreover, in Al-Shabazz, the 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. Al-Shabazz at 757; see also Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) (stating the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

In this case, Appellant Lisenby alleges that the Department should not have revoked his one hundred fifty (150) days of accrued good time. Inmates have a protected liberty interest in their earned statutory good-time credits under the Fourteenth Amendment. Therefore, when, as here, the Department revokes an inmate’s good-time credits as punishment in a “major disciplinary hearing” involving “more serious rule violations,” prison officials must provide that inmate with “minimal due process.” Al-Shabazz at 750. Consequently, specific administrative procedures must be followed before depriving an inmate of statutorily granted earned credit, including adequate advance notice of the charges, adequate opportunity for a hearing in which the inmate can present witnesses and documentary evidence, and an impartial hearing officer who prepares a written statement of all the evidence presented and the reasons for his decision. Id. at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974)).

DISCUSSION

Due Process

Appellant argues that his Due Process rights were violated because the DHO considered additional evidence at his re-hearing. To prove the denial of due process, a party must show that it has been substantially prejudiced by the administrative process. Palmetto Alliance, Inc. v. S. C. Public Service Comm'n., 282 S.C. 430, 319 S.E.2d 695 (1984). Appellant relies on 24.4 of the SCDC Disciplinary Policy which provides, in part, "Any evidence presented at the initial hearing **may** be presented at the re-hearing; however, if the disciplinary conviction was overturned due to insufficient evidence, additional evidence **must** be presented and considered at the rehearing in order to find the inmate guilty." (emphasis added). Appellant seems to infer that the only way additional evidence can be presented is if the re-hearing is due to insufficient evidence being presented at the original hearing. However, the policy does not **restrict** additional evidence at a re-hearing, but rather **requires** additional evidence when a re-hearing is conducted due to insufficient evidence. Therefore, his argument that the DHO was precluded from considering additional evidence pursuant to OP-24.4 is without merit.

Appellant furthermore argues that the DHO did not re-hear his case or respond to his grievance within the time prescribed by policy. To prove the denial of due process, a party must show that it has been substantially prejudiced by the administrative process. Palmetto Alliance, Inc. v. S. C. Public Service Comm'n., 282 S.C. 430, 319 S.E.2d 695 (1984). The Appellant does not set forth that he was substantially harmed in any way by the Department's failure to act within the provided time. Moreover, "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." Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996). The "constitutional minima" in this case is circumscribed by Al-Shabazz, 338 S.C. 354 and Wolff v. McDonnell, 418 U.S. 539 (1974). The Appellant failed to establish that these due process rights were violated.

Lastly Appellant argues that he was denied witnesses at his hearing. The Record reflects that Counsel Substitute attempted to obtain statements from Appellant's witnesses; however she was unable to do so due to the unwillingness of the witnesses to provide them. Furthermore, Appellant did not raise an objection to Counsel Substitute's failure to procure witness statements at the hearing. An inmate cannot sit silently during a hearing, raising no objections, and then

raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). The issue preservation requirement applies to assertions of constitutional violations as well. State v. Passmore, 2005 WL 415993 (Ct. App. 2005). In I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716 (2000), the South Carolina Supreme Court explained the underlying principle behind this rule:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

(internal citations omitted). Consequently, the Appellant's allegation was not preserved for appellate review.

The Appellant's due process rights in this proceeding are summarized in Al-Shabazz, Id. I find that the Appellant was afforded all process due him pursuant to Al-Shabazz. The Record indicates that the Appellant received written notice of the charges against him in excess of twenty-four (24) hours prior to a hearing that was held before an impartial Disciplinary Hearing Officer. In addition, although not constitutionally required, the Appellant was afforded a counsel substitute who assisted him in his defense. After the DHO determined that the Appellant was guilty of the charged offense, he prepared a written report detailing the evidence he relied upon and the penalty assessed in finding the Appellant guilty of the disciplinary infraction. The Appellant was also permitted to appeal the DHO's decision through the inmate grievance process.

Substantial Evidence

The Record clearly supports the facts recited in the "Background" portion of this Order. In evaluating the evidence presented at the hearing, "[t]he fact finder is imbued with broad discretion in determining credibility or believability of witnesses." Small v. Pioneer Machinery, Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Moreover, in Superintendent v. Hill, 472 U.S. 445, 455-56, 457 (1985), the U.S. Supreme Court held that the revocation of good time must be supported by "some evidence in the record." However, "[a]scertaining whether this

standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.* at 455. Thus, if reasonable minds could arrive at the DHO's conclusion based upon the evidence presented, the Department's decision must be upheld regardless of the derivation of the evidence. See also Smith v. Samu, 54 F.3d 788 (10th Cir. 1995).

I find that there is substantial evidence to support the Appellant's conviction of violating SCDC Disciplinary Code § 801, Assault and/or Battery of an SCDC Employee. A Code 801 violation is:

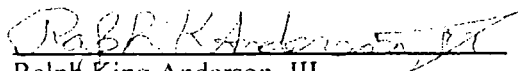
The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, volunteer, or contract employee, or volunteer with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency employee or contract employee who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching causes bodily injury.

When viewed in light of the DHO's discretion, the Record sufficiently establishes substantial evidence that the Appellant assaulted Corporal Miller. Accordingly, I find that there is substantial evidence to support the Appellant's conviction of violating SCDC Disciplinary Code § 801 (Assault and/or Battery of an SCDC Employee).

ORDER

IT IS THEREFORE ORDERED that the appeal of the Appellant is DISMISSED and the Final Decision of the Department is AFFIRMED;

AND IT IS SO ORDERED.


Ralph King Anderson, III
Chief Administrative Law Judge

January 28, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served in a true and correct copy of 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 System as provided by the Department of their attorney(s).
On 28th day of January, 2011
by Vivian M. Scott
Clerk

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Billy Lee Lisenby, Jr., Appellant,

v.

South Carolina Department of
Corrections, Respondent.

Appeal From the Administrative Law Court
Ralph K. Anderson, III, Administrative Law Court Judge

Unpublished Opinion No. 2012-UP-411
Submitted June 1, 2012 – Filed July 11, 2012

AFFIRMED

Billy Lee Lisenby, Jr., pro se.

Christopher D. Florian, of Columbia, for Respondent.

PER CURIAM: Billy Lee Lisenby, Jr., appeals the Administrative Law Court's (ALC) order dismissing his inmate grievance arising out of his

conviction of assault and battery of a South Carolina Department of Corrections (the Department) employee with intent to injure. Lisenby argues the ALC erred in finding (1) the record contained substantial evidence of bodily harm to support his conviction; (2) he was not denied the right to present witnesses; and (3) he was properly sentenced. We affirm.¹

1. We hold the record contains substantial evidence of bodily harm to support Lisenby's conviction of assault and battery of an employee of the Department employee with intent to injure. When reviewing an appeal from the ALC, an appellate court must not substitute its own judgment for that of the ALC on questions of fact when those facts are supported by substantial evidence. Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000). "Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Id. Such evidence exists when a court would refuse to direct a verdict because the evidence presented would raise a question of fact for the jury. Id. Here, the record indicates the officer Lisenby assaulted missed work from March 30, 2009, until May 15, 2009. Additionally, the incident report provided the incident resulting in Lisenby's charge took place on March 30, 2009. Based on this evidence, the record contains substantial evidence tending to show Lisenby's attack caused the officer bodily harm.

2. We hold the ALC correctly found Lisenby's right to due process was not violated. Due process in a prison disciplinary proceeding involving serious misconduct requires, in part, that the inmate should be allowed to call witnesses and present documentary evidence. Al-Shabazz, 338 S.C. at 371, 527 S.E.2d at 751. Contrary to Lisenby's contention, the record reveals he was provided the opportunity to present witnesses at his hearing before the Department. The record further indicates he did not have any witnesses testify on his behalf, not because he was never provided an opportunity to present witnesses, but because the witnesses did not respond to his requests to testify. Accordingly, we hold Lisenby's right to due process was not violated.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

3. Because Lisenby never argued any issue concerning his sentencing to the ALC, it is not preserved for our review. See Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755 (noting issues or arguments not raised to and ruled upon by the ALC are not properly preserved for further appellate review).

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.



RECEIVED

JUL 30 2012

The South Carolina Court of Appeals

GENERAL COUNSEL

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 27, 2012

The Honorable Jana E Shealy
Edgar A. Brown Building
1205 Pendleton St.
Ste 224
Columbia SC 29201

REMITTITUR

Re: Lisenby, Billy v. SCDC (2)
Lower Court Case No. 2010AL0400508
Appellate Case No. 2011-184826

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Billy Lee Lisenby, 00200273
Christopher D. Florian

For the above reason he ask that a re-hearing be held.

Respectfully Submitted,

Blitz Luuff.

Date: July 17th 2012

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Chief Administrative Law Judge Ralph King Anderson III

Case No: 10-ALJ-04-0503-15

Billy Lee Lisenby JR, #200273 Appellant

v.
South Carolina Department of Corrections Respondent

Certificate of Service

I, Billy Lee Lisenby JR, certify that I have today served the within Petition For Re-hearing upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to MR. Christopher D. Florian PO. Box 21737 Columbia S.C. 29221-1737. I further certify that all parties required by Rule to be served have been served this 17th day of July, 2012.

Billy Lee Lisenby JR
Billy Lee Lisenby JR, #200273
4343 Goldmine Highway
Kershaw S.C. 29069

The State of South Carolina

In The Court of Appeals

Appeal From Administrative Law Court

Chief Administrative Law Judge Ralph King Anderson, III

Case No 10-ALJ-04-0503-IJ

Billy Lee Lisenby JR, #200273 Appellant

V.

South Carolina Department of Corrections Respondent

Petition For Re-hearing

Petitioner ask that a rehearing be held and the following be reviewed:

1. Appellant was denied his right to call witnesses, because the D.H.O and Counsel Substitute didn't give his witnesses ample amount of time to respond. The C/s sent an e-mail/phone call to another institution 10mins. before the hearing. There was 10 inmates, Turbeville C.I would have to find all ten (10) inmates and get them up front, and take their statements.
2. Appellant argued he wasn't properly sentenced. He argues this in his initial Brief. He argues that first offense of 301 Assault and/or Battery of an SCDL Employee carries a sentence of max. of 360 days, and he was sentenced to 720 days. He further argued that Respondent's sentenced him for a second offense of the ~~301~~ level 1 offense of Assault and/or Battery, by using a 1999 conviction of a level 2 offense of striking an officer which is totally two (2) different charges. Appellant argued that S.C.D.C violated OP-22.14 Section 16.1 by using a 1999 conviction which was a level 2 to upgrade a level 1 charge and Appellant had been out of prison since Nov. 2002, almost six (6) years to May 2003? Appellant argues that he argued each issue at the ALJ and this court is in error for not ruling on this issue.

The South Carolina Court of Appeals

Billy Lisenby, #200273, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2011-184826

The Honorable Ralph K. Anderson, III.
Administrative Law Court
Trial Court Case No. 2010AL0400508

RECEIVED

AUG 27 2012

GENERAL COUNSEL

ORDER RECALLING REMITTITUR

This Court's Remittitur was sent to the Clerk of the Administrative Law Court on July 27, 2012. It is now necessary for this Court to recall the remittitur. The Clerk of the Administrative Law Court is, therefore, directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten (10) days from the date of this order.

IT IS SO ORDERED.

John C. Few, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Billy Lee Lisenby, 00200273
Christopher D. Florian
Jana E Shealy

FILED

August 24, 2012

The South Carolina Court of Appeals

Billy Lisenby, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2011-184826

RECEIVED

SEP 27 2012

GENERAL COUNSEL

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Daniel G. Pieper J.

U. Ke J.

John Nester J.

Columbia, South Carolina

cc:

Billy Lee Lisenby, 00200273

Christopher D. Florian

FILED

September 25, 2012

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 1011-508 GRIEVANCE No.: TCI 442-09 & RCI 917-09
INMATE NAME: Billy Lisenby, SCDC #200273
INSTITUTION: Turbeville Correctional Institution
DATE: October 26, 2009**

CHARGE: 801 Assault &/or Battery of an SCDC Employee or Other Government Employee, Volunteer or Contract Employee with Means &/or Intent to Kill or Injure

DHO: State your full name & #.

I/M: Billy Lisenby, #200273.

DHO: This is case 106 being recorded 10/26/09 approximately 1:27 p.m. The purpose of this hearing is to treat the matter before me with fundamental fairness & arrive at a just decision.

I/M, you must conduct yourself properly. Failure to do so will result in you being removed from the hearing & your case being hearing in your absence. All testimony's to be truthful & honest, do you understand?

I/M: Yes.

DHO: Cpl. Miller, all testimony's to be truthful & honest, do you understand?

OFC: Yes.

DHO: You're being charged with 801 Assault &/or Battery of an SCDC Employee or Other Government Employee, Volunteer or Contract Employee with Means &/or Intent to Kill or Injure. As in the willful hitting, striking or unauthorized touching of an SCDC employee or other governmental agency employee, volunteer or contract employee with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency

DHO-Disciplinary Hearing Officer
OFC-Accuser
C/S-Counsel Substitute
I/M-Inmate

Page 2

employee who's exercising legitimate authority over an I/M when such hitting, striking, throwing or unauthorized touching causes bodily injury. The alleged offense occurred 3/30/09 approximately 7:00 a.m., offense location Seloc A unit at Turbeville CI. This is a re-hearing as the original hearing took place earlier. On 10/19/09 approximately 8:05 p.m., Sgt. M. Scott served you your charge papers. Did you receive a copy?

I/M: Yes.

DHO: At that time you indicated you wanted your accuser present, Cpl. Miller's present by way of speakerphone. You also indicated you wanted assistance from C/S. Did you've an opportunity to speak with Ms. Crittington?

I/M: Yes.

DHO: If you plead guilty you'll not earn good time for the month. In addition other sanctions may be imposed. They are verbal reprimand, loss of good time, phone, canteen, visit suspension, disciplinary detention. Do you understand the sanctions which may be imposed?

I/M: Yes.

DHO: This is a re-hearing based on an I/M grievance. You signed for notification 10/16/09, Dennis Patterson, Div. of Operations signed on 10/6/09 enabling us to conduct this re-hearing today. If you're found guilty all sanctions even though they've been re-instated, your good time, everything's re-instated, all your credits because you were on lock-up goes back to 3/30. Those are the dates, I want you to understand the process. Any questions?

I/M: Yes, *It goes back to 3/30* (inaudible).

DHO: If I find you guilty or you plead guilty.

I/M: It starts all over?

DHO: You get credit for your lock-up time.

I/M: OK.

DHO: The narrative reads on the above date & approximate time I, Cpl. Natasha Miller gave I/M Billy Lisenby, #200273 on Seloc A, a directive to return to the unit. He became disrespectful. I then gave him a directive to stop being disrespectful when he turned around & struck me on the left side of my face & eye. He's being written up for assault & battery of an employee causing harm. The judge re-instated based upon the fact there was no documentation to indicate the officer was ill or injured. At this time we have evidence & it's leave & year to date activity indicating Cpl. Miller was out on I/M assault leave from 3/30-5/16/09. We also have a copy of the required accident & incident report & employee's statement of that & a copy of the MIN's as evidence. To the offense of 801, how do you plead?

I/M: Not guilty.

DHO: Ms. Crittington?

C/S: I spoke with the I/M & I'll let him describe better in his own words what he wants you to know. I'll ask questions as I see need to.

DHO: I/M, what do you want me to know about the incident?

I/M: That's not why they overturned it because of that.

DHO: You were ordered a re-hearing. This was evidence found to be included in the re-hearing. So whether they (inaudible) or not, we're at a re-hearing. Let's talk about the incident. The re-hearing has been ordered & we're doing that now.

I/M: I don't deny the striking part, but the evidence now you can't bring it up because I filed the appeal. Y'all didn't file the appeal. Then you can bring this up against me.

DHO: Don't tell me what I can & can't do. We also have a copy of your mental health evaluation, your status there indicating you were fully aware of what you were doing at the time.

Why did you strike her?

I/M: She choked me & when she did I hit back. She didn't advise me to go to the dorm. I had my order to report. I had went to the mailroom.

DHO: So you were being released to go to the mailroom?

I/M: Yes, I was out of the Seloc unit. She came all the way on the yard. She's over Seloc unit & grabbed me by the back of my hoodie. When I turned around she grabbed my ID. She said, where's your ID? Which was right, I had it under my coat. She said, outer garment, sir. So I pulled my ID out. I was placing my ID on my strap near my hoodie. She said, no. So she grabbed it & put it here toward the collar area. So I was moving it back closer up, that's when she grabbed me by my neck & then that's why I struck her.

DHO: Why'd she grab you around your neck if you're putting your ID card on your lapel?

I/M: I've no idea why.

DHO: I'll ask her. Go ahead.

I/M: Like I say I'm not really sure. I had bruises on my neck the same day.

DHO: Well I don't have that. Cpl. Miller, you heard I/M Lisenby's comments?

OFC: Yes.

DHO: Any comments?

OFC: *For the record,* (inaudible) I did not put my hand on that I/M. I didn't put my hand on him at all.

DHO: Did the incident happen on the yard as stated by the I/M or did it happen in the unit?

OFC: It happened at the door.

DHO: We do have a copy of the assault leave where you were out from 3/30 till around the middle of May. You've been cleared to come back to work as you are at work, correct?

OFC: Yes.

DHO: Anything else, I/M?

I/M: I asked her to get my witnesses.

DHO: I/M asked you to get statements from witnesses. Did you contact Turbeville CI?

C/S: Yes, but I didn't receive anything from any individual from his witnesses or the names he gave me for them to go around ^{and} (inaudible) to get statements from.

DHO: Cpl. Miller, anything?

OFC: That's it.

DHO: I've heard the charge & provided the accused an opportunity to make statements, present evidence & witnesses on his behalf. I'll recess.

DHO: State your full name & #.

I/M: Billy Lisenby, #200273.

DHO: To the offense of 801 you pled not guilty, however, you do admit to striking Cpl. Miller. You stated you were out on the yard when she came & pulled the hoodie on your jacket & you responded as a result of that. I'm finding you guilty based on Cpl. Miller's testimony & narrative that you turned around & struck her on the left side of her face & eye area causing injury. Sanctions imposed, verbal reprimand, 150 days loss of good time, phone, canteen & visits suspended 180 days each, 720 days disciplinary detention. Disciplinary detention & sanctions are based on your prior history of assaulting employees, the nature & seriousness of the offense & the extent of injury to Cpl. Miller requiring her to miss about 6-7 weeks from work. You have 15 days from today's date in which to grieve. I've given you credit for your PHD time

since 3/30/09 because that's when you were incarcerated. What I did was subtracted the 211 from the 720 days, you've a total of 509 days to serve in disciplinary detention. Do you understand the sanctions?

IM: Yes. That's why (inaudible) 720 days. *what I got @ Turberville,*

DHO: For whatever reason these are the sanctions I'm giving you based upon what I heard from you, from Cpl. Miller, from the report & information I received. You can grieve it, you know your grievance rights, you know it well with that. If you feel you should have less disciplinary detention go ahead & grieve it & ask that it be done. But right now this is my determination on that & I'm basing it on your prior assaultive behavior, striking an employee & your history. So I just want you to understand the sanctions as I see them. Someone else may see them different, but this is how I see them, OK?

IM: OK.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273

Appellant,

-vs-

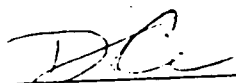
South Carolina Department of Corrections,

Respondent.

CERTIFIED
TRANSCRIPT

This is to certify that the following transcript of this tape-recorded 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.



Denise Cannarella
Transcriptionist
Office of General Counsel
South Carolina Department
of Corrections

SWORN TO before me this
_____ day of _____, _____.

_____(L. S.)
Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273

Appellant,

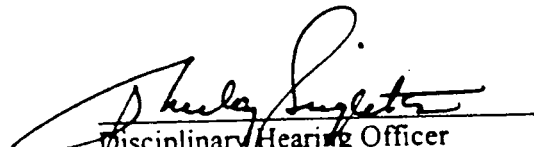
-vs-

South Carolina Department of Corrections,

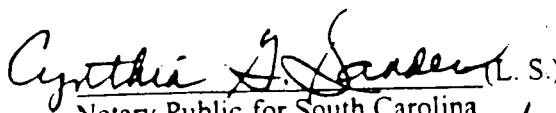
Respondent.

CERTIFICATION

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 this tape-recorded 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
12 day of Jan. 2010

 (L. S.)
Notary Public for South Carolina
My Commission Expires: 5/14/11