

The State Of South Carolina
In The Court Of Appeal.

Appeal From Administrative Law Court
The Honorable Deborah B Durdan, Administrative Law Judge.

ALC Case No# 15-ALJ-04-0396-AP
Appellate Case No# 2016-0345

Gabriel Randolph Appellant
vs
South Carolina Department of Correction Respondent

APPELLANT FINAL BRIEF

RECEIVED
JUN 28 2016
SC Court of Appeals

May 22, 2016

Pro Se

Gabriel Randolph # 248729
Lieber Correction Inst. E-B-60
P.O. Box 205
Ridgeville, SC. 29472

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- SC. Code Ann § 1-23-600 _ _ _ _ _
- SC. Code Ann § 1-23-380 _ _ _ _ _
- SC. Code Ann § 24-13-210 _ _ _ _ _

II. Cases

- Al-Shabazz vs State 527 SE 2d 742 (SC. 2000) _ _ _ _ _
- Lake vs Reeder Constr. Co. 498 SE 2d 650 (SC. 1998) _ _ _ _ _
- Wolff vs McDonnell 418 US 589 (1974) _ _ _ _ _
- Wlikin vs Austin 545 US 209 (2005) _ _ _ _ _
- Pearson vs JPS Converter & Indus Corp 489 SE 2d 219 (SC. 1997) _ _
- Porter vs SC. Public Serv. Comm'n 507 SE. 2d 328 (SC. 1998) _ _ _

STATEMENT OF THE ISSUE ON APPEAL

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

STATEMENT OF CASE

This matter come before this honorable court pursuant to the appeal of Gabriel Randolph, appellant an prisoner incarcerated with the South Carolina Department Of Correction = SCDC. Appellant was illegal convicted of exhibitionism and public masturbation offense 854 under SCDC policy OP. 22-14, Inmate Disciplinary System following a disciplinary hearing. Appellant filed a Step One Grievance on March 24, 2015 challenging his disciplinary conviction and 20 day GTC when convicted by policy OP. 22.14 Ap →

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

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

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

GTC mean Good Time Credit.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of SC. Supreme Court in Al-Shabazz vs State 527 SE^{2d} 742 (SC. 2000). ALC'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/her sentence, sentence related credit, or custody status and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. When reviewing the SCDC decision in prisoner grievance matter, the ALC sit an appellate capacity. Al-Shabazz vs State 527 SE^{2d} at 756. Consequently the review in these case is limited to the record presented, SC. Code Ann § 24-13-210.

SC. Code Ann § 1-23-610 (B) provide the applicable standard of review;

The review of the administrative law judge's order must be confined to the record.

The review tribunal may affirm the decision or remand the case for further proceeding or it may reverse or modify the decision if the substantive right of the petitioner have been prejudiced because of the finding conclusion or decision is;

- a) in violation of constitutional or statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by other error of law;
- e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Review SC. Code Ann § 1-23-380(s) Lake vs Beeder Constr Co. 498 SE^{2d} 650 (SC. 1993).

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

Wolff vs McDonnell 418 US 539 (1974), requirement was violated by respondent and Record demonstrate and how Disciplinary Hearing Officer = DHO manipulated

disciplinary hearing and put the burden on the appellant. When Mental Health Counsel M Harris relied on Ofc. Fubio, and Ofc Fubio explain that he never give Mental Health Counsel M Harris prisoner name or identity this alone show that DHO violated appellant constitution right. Which due process clauses are designed to protect the prisoner against arbitrary government action Wilkinson vs Austin 545 US 209 (2005).

The record also reveals there was not proper disclosure of evidence due to fact that Incident Report 19-29 (Form) and testimony. Appellant went by policy and procedure of SCDC Inmate Disciplinary System of section 3-3.3 of how the Incident Report is written. Ofc Fubio he did not give a name or identification of prisoner to Mental Health Counsel, M Harris. The testimony alone show that due process was violated to support disciplinary conviction.

Clearly a violation of due process. Appellant respectfully request decision of the ALC be REVERSED.

II. Respondent's Final Agency Decision Is Not Support By Substantial Evidence.

Substantial evidence is evidence which considering the record as a whole would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Pearson vs JRS Converter & Indus. Corp. 489 SE2d 219 (SC. 1997) The fact are that Ofc Fubio did not give name or identification of the prisoner to Mental Health M Harris. SCDC Inmate Disciplinary System OP-22.14 section 3-3.3 properly show to identify a prisoner this clearly show no substantial evidence. The testimony of Ofc Fubio establishes falsification in Mental Health Counsel M. Harris statement of Incident Report.

Appellant has show that the disciplinary hearing Officer / DHO decision is clearly erroneous and arbitrary or capricious or an abuse of discretion Porter vs SC. Public Serv. Comm'n 507 SE2d 328 (SC. 1998) Consequently ALC decision must be REVERSED.

CONCLUSION

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

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Ridgeville SC.
May 22. 2016

The State Of South Carolina
In The Court Of Appeal

Appeal From Administrative Law Court
The Honorable Deborah B Durden, Administrative Law Judge

ALC Case No # 15-ALJ 04-0369-AP
Appellate Case No # 2016-0345

Gabriel Rondolph — — — — — Appellant

vs
South Carolina Department Of Correction — — — — — Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Court a copy of Appellant Final Brief by depositing a copy of the same in the United State Mail postage, prepaid May 22, 2016 address to Court as follow:

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SC Court of Appeals

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In The Court Of Appeals

Appeal From Administrative Law Court
The Honorable Deborah B. Durden Administrative Law Judge

ALC Case No # 15-ALJ-04-0396-AP
Appellate Case # 2016-0345

Gabriel Randolph — — — — — Appellant
vs
South Carolina Department Of Correction — — — — — Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Respondent a copy of Appellant Final Brief by deposition a copy of same in the United State Mail postage, prepaid May 22, 2016 address to the Respondent as follows:

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JUN 28 2016

SC Court of Appeals

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