

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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JUL 14 2016

SC Court of Appeals

NOTICE OF APPEAL

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

DOCKET NO. ALJ-04
GRIEVANCE NO.: TCI - 0253 - 15

Notice is hereby given that MATTHEW KERR does hereby appeal the final decision of the South Carolina Department of Corrections dated 12-30-15 and received on 1-8-16, 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)):

I BELIEVE THERE IS NEGLIGENCE ON THE SCDC EMPLOYEE'S AS THE WAS NO INCIDENT REPORT DONE BY LT. BOWERS. ALL THAT WAS STATED IN THE LOG BOOK THAT STUFF WAS STOLEN AND HE WAS LOOKING FOR IN. LT. BOWERS NEVER STATED WHAT PROPERTY, CANTREAN, OR HYGIENE WAS STOLEN OR WHAT HE WAS LOOKING FOR. OFFICER COARKE FOUND THE BROKEN BROOM IN MY ROOM THAT SUPPOSEBLY WAS USED TO BREAK MY LOCK, BUT HAD NOONES I.D. FOR THE SIGN OUT OF THE BROOM. I WORKED FIRST SHIFT IN THE KITCHEN 3:30 AM, MY LOCKER AND DOOR WERE LOCKED SECURING MY STUFF WHILE AT WORK PLUS THE OFFICER LOCKS MY DOOR AT 3:45 AM FOR COUNT, SO I KNOW MY STUFF WAS SECURE. NOW TELL ME WHO WAS NEGLIGENCE. IF THE OFFICER'S WOULD HAVE DONE THEIR JOB PROPERLY I WOULD HAVE GOTTEN ALL MY STUFF BACK. THANK YOU.

MATTHEW KERR - 348874
Appellant's Name T.C.I - SA 222
P.O. BOX 252
Mailing Address TURBEVILLE, SC. 29162

Matthew Kerr
Signed
JANUARY 11, 2016
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, MATTHEW KERR (your name), on the 11TH day of JANUARY, 2016, in TURBEVILLE (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: STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Address: 1205 FENDLETON ST. SUITE 224
City, State, Zip Code: COLUMBIA, S.C. 29201

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

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.

I, MATTHEW KERR, 348874, WENT TO WORK ON AUGUST 22, 2012 AT 3:30 AM IN THE KITCHEN. I ALWAYS SECURE MY STUFF, BY LOCKING MY LOCKER AND LOCKING MY DOOR. WHEN MY ROOMMATE, ANTHONY BRAZELL, HAD COME BACK FROM BREAKFAST, HE ASKED WHY HAD THE DOOR BEEN UNLOCKED AND THE DOOR OPEN. OFFICER ROARKIE OPENED THE DOOR FOR SOMEONE WITHOUT CHECKING THE INMATE ROSTER FIRST. THERE WAS A BROKEN BROOM IN THE ROOM, SUPPOSEDLY USED TO BREAK MY LOCK, BUT NO I.D. WAS TAKEN FOR THE USE OF THE BROOM. AROUND 8:30 AM. SGT. BRAYBOY CAME TO GET ME OUT OF THE KITCHEN TO BRING ME BACK TO THE DORM AND FOREWARN ME THAT EVERYTHING HAD BEEN STOLEN. WHEN WE GOT BACK TO THE DORM LT. BOWERS, WANTED TO KNOW WHO DID THIS, BUT DID NOTHING ABOUT IT.

FOR SEVERAL WEEKS LT. BOWERS KEPT TELLING ME TO BE PATIENT, THAT HE WAS LOOKING INTO THE MATTER. LT. BOWERS WROTE IN THE LOGUE BOOK, THAT HE WAS LOOKING FOR STUFF THAT WAS STOLEN, BUT, NEVER STATED WHAT KIND OF STUFF OR WHO'S STUFF HE WAS LOOKING FOR. LT. BOWERS NEVER DID AN INCIDENT REPORT ON MY STUFF BEING STOLEN.

I HAD SPOKEN TO A NUMBER OF OFFICERS AND DIFFERENT PERSONNEL ON THIS YARD ABOUT THIS MATTER, WITH NO SATISFACTION. AT ONE TIME A/W BRANSHAW WAS GOING TO REIMBURSE ME FOR MY PROPERTY, HYGIENE, AND CANTEEN ITEMS THAT WERE STOLEN, EXCEPT MAJOR SHARP DENIED IT. HE SAID THAT MY DOOR WAS UNLOCKED AND I KEPT TELLING MAJOR SHARP, WHEN I WENT TO WORK ALL MY STUFF WAS SECURE, LOCKED IN MY LOCKER AND THE DOOR WAS LOCKED, AS I WAS AT WORK AT 3:30 AM AND COUNT IS AT 3:45 AM. THE ROOM WAS SECURE AND UNDER CONTROL OF S.C.D.C. STAFF.

AFTER CONFERRING WITH SEVERAL S.C.D.C. STAFF ABOUT THE MATTER TO TRY TO GET SOME RESOLUTION A STEP 1 GRIEVANCE WAS FILED ON (JULY 28, 2015) WITH THE DEPARTMENT (SEE ATTACHMENT A) THIS STEP 1 WAS DECIDED ON (11-10-15) AND APPELLANT WAS GIVEN NOTICE BY COPY ON (11-18-15), APPELLANT THEREAFTER FILED HIS STEP 2 ON (11-22-15) AND THE DEPARTMENT RECEIVED IT ON (11-23-15) THE DEPARTMENT GAVE THEIR FINAL DECISION ON (12-30-15) AND APPELLANT RECEIVED WRITTEN NOTICE ON (1-8-16) THE APPELLANT THEREAFTER FILED ON (1-12-16) IN THIS COURT HIS NOTICE OF APPEAL AND THIS CASE WAS ASSIGNED ON (1-29-16) THIS APPEAL FOLLOWS.

ARGUMENT

THE APPELLANT CONTENDS THAT WHEN HE WENT TO WORK AT 3:30 AM.

HIS DOOR WAS SECURE, HIS LOCKER WAS LOCKED AND SECURE, THAT ALL

DOORS ARE UNDER LOCK AND UNDER TOTAL CONTROL OF S.C.D.C.

STAFF. SPECIFICALLY, AS DISCUSSED IN THE STATEMENT OF THE CASE,

THE ONLY PERSON WHO HAS ACCESS OR COULD ALLOW SUCH ACCESS

WOULD BE THE DULY SWORN WING OFFICER, WHO IS ASSIGNED THE

"KEYS" AS TO ALLOW ACCESS TO SAID ROOM.

OFFICER ROARKE WAS ASSIGNED TO SE-LOC A SIDE,

TO PERFORM HIS DUTIES AS THE DORM OFFICER, TO MAINTAIN

ORDER AND TO HAVE CONTROL OF SAID DOORS WITHIN HIS

ASSIGNED AREA.

UNDER AL-SHABAZZ V. STATE SUPRA AND THE STANDARDS

OF § 1-23-380, THIS COURT WOULD HAVE PROPER JURISDICTION

TO DECIDE THE ISSUES OF THEIR MERITS AND BECAUSE THE ISSUE

HERE INVOLVE A PROPERTY INTEREST THIS CASE SHOULD BE DECIDED ON

IT'S MERITS.

FURTHER, UPON INSPECTION A BROKEN BROOM WAS DISCOVERED,
AS A POINT OF CLARITY, THERE IS A POLICY AND PROCEDURE AT
TURBEVILLE OF COLLECTING AN OFFENDERS I.D. CARD UPON ISSUANCE
OF A BROOM IN ORDER TO ENSURE IT'S RETURN TO THE DORM OFFICER.
HAD THIS PROCEDURE IT COULD HAVE EASILY BEEN ASCERTAINED WHO
GOT THE BROOM AND COULD REASONABLE DEDUCED WHO WAS RESPONSIBLE
FOR THE BREAKING OF THE LOCK IN ORDER TO GAIN ACCESS TO THE
APPELLANTS PERSONAL PROPERTY* AND EVERYTHING ELSE.

CONTRARY TO THE FINAL DECISION OF "S.C.D.C.", THERE WAS
IN FACT NO INCIDENT REPORT DONE BY LT. BOWERS, BUT, THE STAFF
WAS AWARE OF THE INCIDENT THAT ITEMS WERE STOLEN AND A
REASONABLE MIND WOULD CONCLUDE AS DESCRIBED BEFORE, THE ONLY
PERSON WHO HAS CONTROL AND CUSTODY OF INSTRUMENTS (KEYS) TO
OPEN A CELL DOOR WOULD BE THE DULY AUTHORIZED OFFICER.

* IT IS COMMONLY KNOWN BY BOTH STAFF AND OFFENDERS THAT
OFFENDERS USE BROOM HANDLES IN ORDER TO TURN LOCKS IN ORDER
TO BREAK THEM.

IN CLOSING, IT IS CLEAR FROM THE RECORD HERE THAT:

- 1) PROPERTY WAS STOLEN AND 2) THAT THIS OCCURRED ONLY DUE TO THE NEGLIGENCE OF THE WING OFFICER, AS HE OPENED AND GAVE ACCESS TO AN OFFENDER WHO WAS NOT ASSIGNED TO MY ROOM, AND
- 3) HAD THIS OFFICER FOLLOWED PROTOCOL AND COLLECTED I.D.'S FOR THE USE OF BROOMS, HE COULD HAVE EASILY ASCERTAINED THE IDENTITY OF THE PERPETRATOR OF THIS INCIDENT.

CONCLUSION

BASED ON THE FOR GOING, THE APPELLANT PRAYS THAT THIS COURT OVERTURN THE ("S.C.D.C.'S") DETERMINATION AS NOT BEING BASED ON SUBSTANTIVE EVIDENCE, OR, VACATE S.C.D.C.'S DETERMINATION BECAUSE IT IS CLEARLY ERRONEOUS AND NOT BASED ON FACTS ^{AND}/OR THAT REASONABLE MIND WOULD CONCLUDE THE DECISION THAT THE DEPARTMENT REACHED.

RESPECTFULLY SUBMITTING,

Matthew Kerr
MATTHEW KERR

(3)

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADM. LAW COURT

CASE # 16-ALJ-04-0027-AP

THE HONORABLE S. PHILLIP LENSKI

APPELLANT CASE #: 2016-000904

Matthew Kerr, Jr.,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

PROOF OF SERVICE

I certify that I have served a copy of my Brief of Appellant, Record on Appeal, Motion to proceed In Forma Paupus, on the Respondent's Counsel of Record as indicated below and the South Carolina Administrative Law Court as indicated below by depositing the same in the United States Mail, Postage Prepaid and addressed as indicated below on this Date:

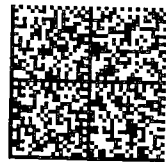
This 8TH day of July, 2016.


Matthew Kerr, Jr.

South Carolina Dept. of Corrections
Mr. David Tartasky, General Counsel
P.O. Box 21787
Columbia, SC 29221-1787
(Counsel for Respondent)

S.C. Adm. Law Court
1205 Pendleton St. Suite 224
Columbia, SC 29201

MATTHEW KERR 348874
T.C.I. - SA 109
1578 CLARENCE COKER HIGHWAY
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