

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson

Appellate Case No.: 2016-001290

RECEIVED
SEP 21 2016
SC Court of Appeals

Anthony Williams, Jr. #285056,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

TOMMY A. THOMAS
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P.O. Box 88
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ATTORNEY FOR APPELLANT

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Al-Shabazz v. State, 338 S.C. 354, 525 S.E.2d 742 (S.C. 2000)

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STATEMENT OF THE ISSUES ON APPEAL

Did the Lower Court err in not setting aside the Appellant's disciplinary conviction for Possession of a Cell Phone and/or communication equipment on the basis of lack of evidence and/or failure to follow policy and procedure?

STATEMENT OF THE CASE

The incident in question occurred on June 8, 2015, at Evans Correctional Institution. The Appellant was charged with offense 809 Threatening to Inflict Harm on a staff member and 898 Possession of a Cell Phone and/or Communications Equipment.

Sgt. Hooper entered cell 5D-140 belonging to Inmate Williams and searched the cell. The Appellant suffers from a mental illness and informed the Sgt. that he was currently under medication and he was unable to stand and be searched. Sgt. Hooper indicated that Appellant was given a few minutes to gather his composure and when he tried to stand, he stumbled and he was allowed to sit on the toilet in the cell during their search. The Sgt. further indicated that while searching one of the legal boxes, a pair of white socks was found and that in that pair of socks was a black cell phone charger. At this point, the Appellant became agitated and believed that this item had been planted in his cell.

Sgt. Hooper indicated in his report that upon finding the cell phone charger, that the Appellant rushed to the cell door and passed an object to his roommate, inmate Williamson, who was standing outside of the cell. Sgt. Hooper testified that as he was attempting to go out of the cell to retrieve what he believed was being passed to inmate Williamson, that the Appellant rushed passed him on his way back into the room and

grabbed the cell phone charger that was lying on the floor. The Sgt. then asked Inmate Williams to hand the charger to him, which he refused. It was only after other officers arrived that Captain Ford ordered the Appellant to hand him the cell phone charger. The Appellant complied. Captain Ford stated that he retrieved a package from the top of one of the door guides between 5D 139 and 5D 140. In this package was a black LG type Smartphone. That this type of cell phone accepted the type of charger that was found in the Appellant's room. Inmate Williams was charged with 898 Possession of a Cell Phone and/or Communication Equipment and 809 Threatening to Inflict harm on a staff member.

The DHO found the Appellant guilty of 898 Possession of a Cell phone and/or Communication Equipment and 807 Striking an Employee. It appears that at some point the charge of 809 Threatening to Inflict Harm was enhanced to 807 Striking an Employee.

On June 25, 2015, a disciplinary hearing was convened at 12:10 p.m. Evidence was presented. The Appellant was found guilty by the Disciplinary Hearing Officer of Offense 898 and 807 after a plea of not guilty. The following sanctions were imposed:

(898) Possession of a Cell Phone and/or Communication Equipment
LOSS OF GOOD TIME FOR 90 DAYS
LOSS OF CANTEEN PRIVILEGES FOR 240 DAYS
LOSS OF TELEPHONE PRIVILEGES FOR 240 DAYS
LOSS OF VISITATION PRIVILEGES FOR 240 DAYS
DISC. DETENTION FOR 60

(807) STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON
LOSS OF GOOD TIME FOR 6 DAYS
LOSS OF CANTEEN PRIVILEGES FOR 138 DAYS
DISC. DETENTION FOR 27 DAYS
LOSS OF TELEPHONE PRIVILEGES FOR 138 DAYS
LOSS OF VISITATION PRIVILEGES FOR 138 DAY

Appellant filed a Step 1 grievance on July 2, 2015. This grievance was denied and was received by the Appellant on September 9, 2015. A Step II grievance was filed September 9, 2015, this grievance was also denied and a Notice of Intent to Appeal was filed by the Appellant.

STATEMENT OF THE FACTS

There had been interactions between the Appellant and Sgt. Hooper on previous occasions. Prior to this search, Appellant was shaken down by the Sgt., who believed that he had been passed contraband. After being searched, no items were found on Appellant. This was believed to be the motive for the alleged planting of the evidence.

Inmate Marquavious Williamson, the Appellant's roommate stated "that he was part of the shakedown at 5D-140. The conducting officer Hooper entered the cell and started his search. He went through our things throwing our personal items on the floor. Hooper then stated that he saw Anthony Williams hand me something and rushed passed Williams, pushing him in the process of getting to me. Hooper conducted a search two days before this saying that he saw Williams exchange something with another inmate. Hooper did a strip search on Williams and it turned up empty. Hooper then came back and shook us down once again. I honestly feel that the Officer had it out for Williams. Hooper was very rude every encounter that he had with Williams. I also had the same reaction when he shook down the room. He proceeded to throw our things around the floor and talked very rudely to us both."

It appears from the documents in the Record on Appeal that an initial hearing was set for June 18, 2015 and due to the fact that the DHO could not contact the accuser, Sgt. Hooper, that the hearing was rescheduled for June 25, 2015. A hearing was held on

June 25, 2015. Based upon the transcript submitted, it appears that the DHO states the purpose of the hearing and then asks the Appellant to state his name and SCDC number for the record. The Appellant answered, "Anthony Williams." Counsel Substitute states "and your number". DHO then states: "You've got two seconds to tell me what your number is." And then the transcript indicates that the DHO states that the "Inmate is failing to cooperate" and he is removed from the hearing room. The DHO Officer indicates "I will conduct this hearing in his absence."

The hearing was completed in the Appellant's absence and the counsel substitute was allowed to say several things on his behalf. The Counsel Substitute in essence stated that no errors or technical errors were in the reports. She summarized the Appellant's position that he felt the office had been giving him problems prior to the incident because he had been shaking his room down and had not been able to find any contraband. That the Appellant felt like the office had a vendetta against him and had been harassing him.

There is also in the record, a South Carolina Department of Corrections Disciplinary Mental Health Statement regarding the Appellant. It is noted that he was able to understand the nature and quality of the act he committed. The Appellant has been diagnosed with a mental illness and is currently being treated for this illness.

ARGUMENT

Did the Lower Court err in not setting aside the Appellant's disciplinary conviction for Possession of a Cell Phone and/or communication equipment on the basis of lack of evidence and/or failure to follow policy and procedure?

In *Al-Shabazz v. State*, 338 S.C. 354, 525 S.E.2d 742 (S.C. 2000), the South Carolina Supreme Court held that an inmate may seek review of a final decision of the

South Carolina Department of Corrections in administrative matters under the South Carolina Administrative Procedures Act. The Court noted that “administrative matters typically arise in two ways: 1) when an inmate is disciplined and punishment is imposed and 2) when an inmate believes prison officials have erroneously calculated his sentence, sentence related credits, or custody status.”

Here the Appellant was given a number of sanctions in his Disciplinary Hearing held on June 25, 2015.

(898) Possession of a Cell Phone and/or Communication Equipment
LOSS OF GOOD TIME FOR 90 DAYS
LOSS OF CANTEEN PRIVILEGES FOR 240 DAYS
LOSS OF TELEPHONE PRIVILEGES FOR 240 DAYS
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LOSS OF TELEPHONE PRIVILEGES FOR 138 DAYS
LOSS OF VISITATION PRIVILEGES FOR 138 DAY

As a result of these sanctions, Appellant submits that his case falls within the confines of the first category enunciated in *Al-Shabazz*. Appellant’s argument is that his convictions should not stand due to a lack of evidence; and failure to follow policy.

The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a) Made upon unlawful procedure,
- b) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

- c) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted abuse of discretion.

S.C. Code Ann. § 1-23-380 (5) (Supp. 2015)

Appellant would respectfully argue that proper procedure was not followed in two instances:

- 1. It appears that this matter had been originally been scheduled on June 18, 2015 and was continued due to the inability of the witness to be at the hearing. None of the witnesses were available at the June 25, 2015, however, the DHO decided to go forward with the hearing because the inmate allegedly had waived the presence of the witnesses.

- i. The Appellant argues that he did not waive the presence of the witnesses. If you look at the form submitted into evidence, it does appear that this block is checked. However, this block is immediately below the block that says I do want my witnesses present. There appears to be evidence in the record to support the fact that he did wish to have his witnesses there in that this matter had been previously continued to allow the witnesses to be present.

- ii. The Appellant is currently under Mental Health treatment. He was ejected from the hearing based upon the fact that he was uncooperative. Given the fact that he is being treated by Mental Health, and the fact that the hearing officer stated “you’ve got two seconds to tell me your inmate number”; that this ejection was unreasonable. Appellant states in his Step 1 and Step 2 grievance that he is claustrophobic and suffered a panic

attack. Appellant would argue that DHO should have given him some discretion rather than immediately ejecting him from the hearing.

The South Carolina Department of Corrections has formulated a policy for inmates with Mental Health Classifications (HS-19.06). This policy is directed for inmates who receive disciplinaries with a Mental Health Classification. There are three different categories for Mental Health Inmates: 1. Where the offender has a mental illness which likely contributed to an inability to control his or her behavior. 2. The offender suffers from a mental illness which may have contributed to the behavior. 3. That the offender is guilty of the charges and was able to understand the nature and quality of the act committed.

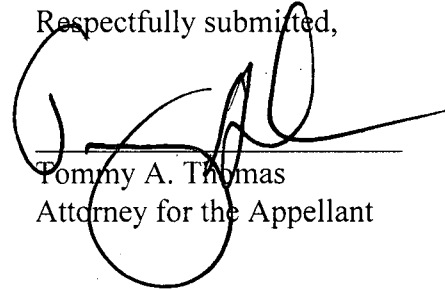
While the Mental Health statement in the record shows that the Appellant was able to understand the nature and quality of the act committed, it appears that there is evidence to support the fact that his actions were affected by his mental health condition. This argument is supported by the erratic behavior of the Appellant as described by the Officer and also by his panic attack and ejection from the hearing.

The Appellant would argue that the Department of Corrections did not follow its own procedure regarding mental health inmates. That there was no proper determination whether Appellant's mental health condition had an effect upon the alleged disciplinaries. This is further exacerbated by the fact that the Appellant was immediately ejected from the hearing and not given an opportunity to speak on his own behalf.

CONCLUSION

For the foregoing reasons, Appellate respectfully submits that the Court should reverse the Lower Court's decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', is written over a horizontal line. The signature is stylized and somewhat cursive.

Tommy A. Thomas
Attorney for the Appellant

September 19, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson

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SC Court of Appeals

Appellate Case No.: 2016-001290

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Appellant,

vs.

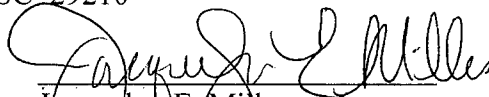
South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, hereby certify that I placed in the United States Mail, a copy of the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal, with postage prepaid and the return address clearly shown on said envelope to the following:

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September 19, 2016

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Attention: Tanya A. Gee
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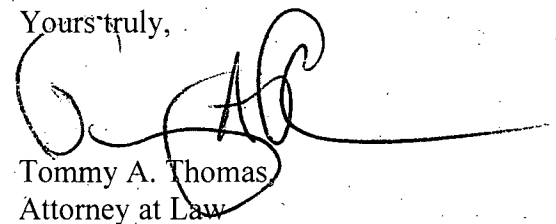
RE: Anthony Williams, Jr. v. SCDC
Appellate Case Nos.: 2016-001290 and 2016-001297

Dear Ms. Gee:

Enclosed please find two original and two copies of the two Initial Briefs of Appellant and Designations of Matter to be Included in the Record of Appeal along with two original and two copies of the Certificates of Service.

Kindly return the clocked copies to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



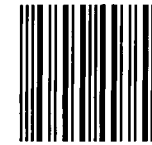
Tommy A. Thomas
Attorney at Law

TAT/jem
cc: Kensey Collins, Esq.
Anthony Williams, Jr.



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