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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson

Appellate Case No.: 2016-001297

Anthony Williams, Jr. #285056,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES ON APPEAL.....	4
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS	6
ARGUMENTS.....	8
 Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee due to lack of evidence and/or failure to follow policy and procedure?	
 Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee as being improperly enhanced from Threatening to Inflict Harm on a Staff member?	
CONCLUSION	11

TABLE OF AUTHORITIES

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

SCDC Policy regarding Mental Health Classification (HS-19.06)

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

STATEMENT OF THE ISSUES ON APPEAL

Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee due to lack of evidence and/or failure to follow policy and procedure?

Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee as being improperly enhanced from Threatening to Inflict Harm on a Staff member?

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. (R. pp. 9-10)

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. (R. p. 19)

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. (R. p. 10) 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. (R. pp. 20-21)

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 (R. p. 11):

(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 I 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. (R. pp 5-17)

STATEMENT OF THE FACTS

There had been interactions between the Appellant and Sgt. Hooper on previous occasions. That 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 by the Appellant for the alleged planting of the evidence. (R. p. 21)

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.” (R. pp. 21-22 & p. 11)

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. (R. p. 16) 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.” (R. p. 18)

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. (R. p. 22)

There is also in the record, a South Carolina Department of Corrections Disciplinary Mental Health Statement regarding the Appellant. It is noted that although

the Appellant is classified as mentally ill, 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. (R. p. 23)

ARGUMENT

Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee due to lack of evidence and/or failure to follow policy and procedure?

Did the Lower Court err in not setting aside Appellant's disciplinary conviction for Striking an Employee as being improperly enhanced from Threatening to Inflict Harm on a Staff member?

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 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
LOSS OF VISITATION PRIVILEGES FOR 240 DAYS
DISC. DETENTION FOR 60

(807) STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON
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DISC. DETENTION FOR 27 DAYS

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 support of 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 for 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 Department of Corrections has formulated a policy for inmates with Mental Health Classifications. (Policy No.: HS-19.06) Pursuant to this Policy, the Department may determine a proper resolution for the offender as it relates to sanctions verses treatment. 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. (R. pp 47-59)

In this case, it is clear that the Appellant's mental health status played a role in both the alleged behavior and inability to defend these charges. According to the record,

the behavior of the Appellant, in running in and out of the room, was erratic and his panic attacks are directly related to his mental condition. As a result, his behavior created a suspicion that he was attempting to hide contraband and also caused him to be ejected from the hearing.

There is no evidence that he threatened to cause harm to the officer and even less evidence that he struck the officer in question. The Appellant was initially charged with threatening to inflict harm, which was later enhanced to a striking charge. The Appellant would argue that there is no evidence to support the original charge and certainly not the enhanced charge.

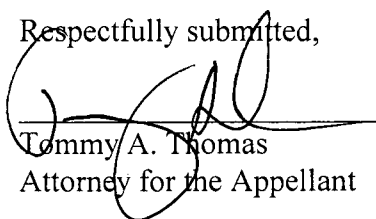
The Appellant would also argue that the original charge of 809 Threatening to Inflict Harm was improperly enhanced to 807 Striking an Employee. There was no basis for the enhancement of this charge. He was never given notice that the charge was being changed, modified or enhanced. Appellant argues that the facts as stated in the initial Incident Report do not support the enhancement of this charge. That there is no evidence to support the charge of 807 Striking an Employee.

Conclusion

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

December 2, 2016

Respectfully submitted,



Tommy A. Thomas
Attorney for the Appellant

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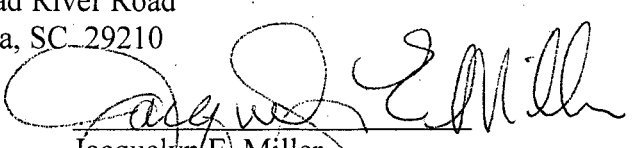
South Carolina Department of Corrections,

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 Final Brief of Appellant, with postage prepaid and the return address clearly shown on said envelope to the following:

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December 2, 2016