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The State of South Carolina
In S.C. Court of Appeals

Appeal from South Carolina Dept. of Corrections

Docket No. 2016-002227

Albarr-Ali Abdullah, #191449.....Appellant,

Vs.

South Carolina Dept. of Corrections.....Respondent,

Record on Appeal

Albarr-Ali Abdullah #191449
Kershaw C.I. / OB-57
4848 Goldmine Hwy.
Kershaw, SC 29067

Christina C. Bigelow
4444 Broad River Road
Columbia, SC 29210

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FEB 28 2017

SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Albarr Ali Abdullah, #191449,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0393-AP

Grievance No. KRCI 0316-16

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Albarr Abdullah (Appellant), who is incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals the final decision of the Department, wherein the Department concluded that Appellant's conviction for a disciplinary offense was supported by sufficient evidence and that Appellant was afforded due process. For the offense, Appellant was sanctioned eighteen days of accrued good time.

BACKGROUND

On January 27, 2016, Appellant made a phone call that was recorded and then reviewed by Lieutenant Price on February 1, 2016. Lieutenant Price recounted that Appellant stated, "I will have to call you on the wall phone now [due] to the other one had a bad misfortune today." Based on Appellant's continued conversation and the fact that a cell phone was found that day in an area where Appellant worked, Lieutenant Price charged Appellant with Possession of Any Communication Device.¹

The charge against Appellant was referred for a disciplinary hearing. On February 6, 2016, Appellant was given notice of the hearing, but refused to sign the hearing notice, as verified by two officers. Appellant averred that he did sign the first hearing notice he received, but not the second one that was prepared to correct the date. On February 22, 2016, a hearing was held and Appellant was found guilty based on the Lieutenant's report and the recording of the phone call. Because Appellant refused to sign the hearing notice, he was denied the witnesses he requested

¹ "898 The Possession of Any Communication Device: The possession, receipt, use, concealment, storage, purchase, sale or facilitation of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, i-pods, e-readers or any like devices." SCDC Policy OP-22.14, "Inmate Disciplinary System" 32 (Feb. 2, 2015).

(Attachment A)

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SC ADMIN. LAW COURT

via the kiosk system, based on Department policy. See SCDC Policy OP-22.14, “Inmate Disciplinary System” 10, ¶7.1 (Feb. 2, 2015). Appellant challenges the conviction on the basis that he was denied the opportunity to build a defense because he was not informed of the time of the call, allowed to review the evidence prior to the hearing, or allowed to call witnesses.

ISSUES ON APPEAL

1. Whether the Department erred in denying Appellant the opportunity to review the evidence.
2. Whether the Department erred in denying Appellant the opportunity to call witnesses.

STANDARD OF REVIEW

The Court’s jurisdiction to hear this matter is derived 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 Al-Shabazz decision explained that “procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment’s protection of liberty and property.” Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). The Court’s jurisdiction in inmate appeals includes cases in which an inmate has lost a state-created liberty interest due to a major disciplinary hearing. Al-Shabazz, 338 S.C. at 369, 526 S.E.2d at 750.

When reviewing the Department’s decisions in inmate grievance matters, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. Id., 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court’s review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency’s decision, including the agency’s findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Disclosure of Evidence

Appellant argues that he was denied due process because he was not given the opportunity to review the evidence against him prior to the hearing. It is well settled that the Department must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. See Al-Shabazz, 338 S.C. at 370, 527 S.E.2d at 750. These requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. Weighing the protections of the Constitution against the needs of the Department, the South Carolina Supreme Court enunciated the following five requirements to ensure procedural due process in inmate disciplinary matters:

(1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that inmate should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals; (4) that counsel substitute . . . should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Al-Shabazz, 338 S.C. at 371, 527 S.E.2d at 571 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974)). In selecting the minimal factors necessary to provide procedural due process in inmate disciplinary hearings, the U.S. Supreme Court based its conclusions on a review of the factors necessary in parole violation hearings, laid out in a case from two years earlier. See Wolff, 418 U.S. at 561, 94 S. Ct. at 2977 (referencing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 (1972)). In their review, the Court noted the qualitative and quantitative difference in the liberty interest at stake in a parole violation hearing and a prison disciplinary hearing. Id., 418 U.S. at 560-61, 94 S. Ct. at 2977. In Morrissey, the Court did conclude that disclosure of the evidence was a necessary component of due process in a parole violation hearing.² [However, in Wolff, disclosure of the evidence was not one of the factors deemed necessary to due process in an inmate disciplinary hearing.] See Wolff, 418 U.S. at 558-

² The necessary factors "include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." Morrissey, 408 U.S. at 489, 92 S. Ct. at 2604 (1972).

72, 94 S. Ct. at 2976–82 (enunciating the reasons for choosing the factors later adopted in Al-Shabazz, listed *supra*).³ Because disclosure of the evidence is not a factor adopted in either Wolff or Al-Shabazz, Appellant was not constitutionally entitled to an opportunity to review the evidence against him prior to the hearing.

Denial of Witnesses

Appellant argues that he was denied due process because the hearing officer refused him the opportunity to call witnesses. Pursuant to Al-Shabazz, an inmate has a right to call witnesses on his behalf unless there is “undue hazard to institutional safety or correctional goals.” Al-Shabazz, 338 S.C. at 371, 527 S.E.2d at 571 (citing Wolff, 418 U.S. at 563–72, 94 S.Ct. at 2978–82). To deny an inmate’s right to call a witness, the hearing officer must offer an explanation of the reason and that reason must concern institutional safety or correctional goals. See Ponte v. Real, 471 U.S. 491, 497, 105 S. Ct. 2192, 2196, 85 L. Ed. 2d 553 (1985).

In this case, the Department argues that its policy regarding inmates who refuse to sign the hearing notice justifies the denial of witnesses. See SCDC Policy OP-22.14, “Inmate Disciplinary System” 10, ¶7.1 (Feb. 2, 2015) (“Should the inmate refuse to sign SCDC Form 19-69, ‘Inmate Disciplinary Report and Hearing Record’, s/he will forfeit the opportunity to request that their accuser and/or witness(s) be present at their scheduled hearing.”). By relying on the policy, the Department creates for review the question of whether application of the policy to Appellant comports with the constitutional requirements set forth in Wolff and Al-Shabazz. See Al-Shabazz, 338 S.C. at 373, 527 S.E.2d at 752 (reviewing the Department’s disciplinary policy for compliance with Wolff). Since the standard set forth in Al-Shabazz allows Appellant’s right to call witnesses to be curtailed where there is a “hazard to institutional safety or correctional goals,” the question is whether obtaining an inmate’s signature on a hearing notice is an important enough correctional goal to warrant what would otherwise be an infringement on Appellant’s qualified right to call witnesses to support his case.

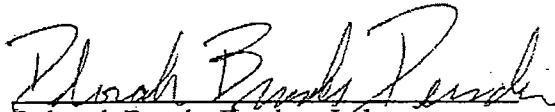
In this case, Appellant states that he did sign the first hearing notice he was served, but refused to sign the second one, which had a corrected date. This is clearly a pointless act of defiance, which not only has the potential to disrupt the prison environment, but prevents the

³ The Court notes that the Department incorrectly stated and cited the Wolff factors in its brief, including “disclosure of evidence against the defendant (may be limited).” The Court can only assume that the Department mistakes the Morrissey factor as one applicable to this case.

Department from easily demonstrating compliance with the Wolff factors. See Wolff, 418 U.S. at 563, 94 S. Ct. at 2978 (“Some [inmates] may be incorrigible and would merely disrupt and exploit the disciplinary process for their own ends.”). Under such circumstances, where the inmate has no valid reason (such as illiteracy or mental health problems) for his lack of cooperation, the Court concludes that the smooth operation of the prison and the disciplinary process is an important enough correctional goal to justify the denial of witnesses as a disincentive. Therefore, the Department did not err in refusing Appellant the opportunity to call witnesses at his hearing.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 27, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to 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 heretofore, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).
This 27th day of September 2016
By: R. C. Cal
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Albarr Ali Abdullah, #191449,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 16-ALJ-04-0393-AP

Grievance No. KRCI 0316-16

ORDER TO
SUPPLEMENT RECORD

STATEMENT OF THE CASE


This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed May 5, 2016 by Appellant above named, who is incarcerated with the South Carolina Department of Corrections (SCDC). Inmate appeals the decision of SCDC in his Step 2 Grievance in a disciplinary matter.

On July 18, 2016, Inmate filed a Motion to Supplement the Record on Appeal stating that SCDC failed to provide a copy of Kiosk Request numbers 16-621103, 16-010372, and 16-010366. SCDC did not file a response to the motion.

ORDER

IT IS THEREFORE ORDERED that the Department has ten days from the receipt of this order to supplement the record with a copy of Kiosk Request numbers 16-621103, 16-010372, and 16-010366.

AND IT IS SO ORDERED.


Deborah Brooks Durden
Administrative Law Judge

August 5, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served the order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 5th day of August 2016
By: R. E. Cal
Judicial Law Clerk

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SC ADMIN. LAW COURT

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State of South Carolina)
County of Richland)
)
Albarr-Ali Abdullah, # 191449,)
Appellant,)
)
Vs.)
)
South Carolina Dept. of Corrections,)
Respondent,)
_____)

In S.C. Administrative Law Court
Case # 16C0393, Judge Durden

Brief of Appellant Abdullah

Statement of the Issues on Appeal:

Issue #1: Where Price's incident report does not state a time as to when the call was made, and where Abdullah could not adequately raise an Alibi Defense where he could not narrow down the time the call was made, did Price deny Abdullah a (24) hour notice of facts pursuant to Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974), in violation of his 14th Amendment of the U.S. Constitution?

Issue #2: Where Abdullah timely requested witnesses in SCDC kiosk reference # 16-621103, did the DHO improperly deny Abdullah's witnesses to confirm that he was not present in the dorm to make the call pursuant to Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974), in violation of the 14th Amendment of the U.S. Constitution?

Issue #3: Where Abdullah timely requested review of data to cell phone and wall phone (evidence) prior to his 02/22/2016 DHO hearing to contradict Price's claim that he used the phones was denied by the DHO and never recorded or documented on SCDC form 19-69(A), was Abdullah's due process right under the U.S. Constitution requiring record of evidence violated within the meaning of Wolff vs. McDonnell, 97 S.Ct. 2963, 2979 (1974)?

Statement of Case:

On 02/01/2016, Lt. Price discovered a wall phone conversation, supposedly hearing Appellant Abdullah making reference to a cellphone found in the library area of Kershaw Prison on 1-28-2016, after a search team conducted a search. When Price wrote her incident report, she did not indicate the time this alleged call was made in the body of her incident report dated 02/01/2016.

Abdullah was served twice with SCDC disciplinary offense code 898 (Possession of Any Communication Device). The first charge was served on 02/09/2016, for which Abdullah requested both his accuser present and counsel substitute; and in his kiosk requests, he requested witnesses be present at the hearing to review the wall phone data, and to review data in the cellphone connecting him prior to his hearing.

On 02/22/2016, a hearing was conducted without Abdullah having any of the requested witnesses present to testify, and without allowing Abdullah to inspect the cell phone data and tape of the wall phone. Abdullah was found guilty and sanctioned with 180 days loss of canteen, visitation and phone with 18 days loss of good-time credits. Abdullah timely filed a Step 1 Grievance # KRCI-0316-16 on 02/22/2016, which was denied by the Warden on 3/23/2016. The Step 2 Grievance was timely filed on 3/27/2016 by Abdullah; it was denied on 04/26/2016 and received by Abdullah on 05/03/2016.

A timely Notice of Intent to Appeal was filed by Abdullah on 05/03/2016. This case followed.

Facts and Arguments for Issue #1

Where Price's incident report does not state a time as to when the call was made, and where Abdullah could not adequately raise an Alibi Defense where he could not narrow down the time the call was made, Price did deny Abdullah a (24) hour notice of facts pursuant to Wolff vs. McDonnell 94 S.Ct. 2963, 2979 (1994), in violation of his 14th Amendment of the U.S. Constitution.

Appellant Abdullah submits that the charging officer Lt. Price didn't type (state) the time the call was allegedly made by him in her incident report (See Record on Appeal at pg. 7 of 22, Price's typed 02/01/2016 Incident Report omitting the time the call was made.) And, therefore, Abdullah contends that he could not effectively argue an Alibi Defense; that this defect in her report caused confusion. As shown in Abdullah's testimony at his 02/22/2016 hearing, he referenced the 3:20 time Price discovered the incident on the wall phone. (See Record on Appeal at pg. 12 of 23.)

Abdullah also testified and denied that he was discussing a cellphone, that what Price might have heard was him talking about getting help from inmate Gordon to type his legal documents and that he didn't have I/M Gordon to do the typing anymore because Gordon was on lock-up, at a time uncertain because of Price's defective incident report. (See ROA at p.13 of 23).

Abdullah further directs this court's attention to his argument in his step one Grievance showing confusing (See ROA at 4 of 23, grievance complaint on Price claiming he's on the wall phone in the unit at 3:20 pm (at count time), and that the incident date changed from January 27th 2016 to January 28th 2016, when officials served the second notice of charges in SCDC Form 19-16, that which he refused to sign.) (ROA at pg.6 of 23).

Therefore, it was impossible for Abdullah to narrow down any time to effectively argue his Alibi Defense after he timely request witnesses to establish such a defense in Kiosk request #16-021103 date 02/17/2016 to support his claim that he was not in the unit or dorm to make the call, and that he was accounted for in the library. (See ROA pg. 18 of 23, Kiosk Request #16-021103 requesting Officers Ellis, Sims, Michaw and Bernard McFadden as witnesses to be present to establish alibi.)

The Due Process Clause requires that a written notice of the charges must be given to the Disciplinary-Action Defendant in order to inform him of the charges and to enable him marshal the facts and to prepare a defense. See, for example, Wolff vs. McDonnell, 94 S.Ct. 2963, 2987 (1975) (At last a brief period of time after the notice, no less than 24 hours, should be allowed to the inmate to prepare for the appearance before the adjustment committee.)

As an essential fact of the time that the call was made is missing from Price's incident report, this court should vacate the finding of guilt and all sanctions imposed, for it is a violation of Abdullah's 14th Amendment rights under the U.S. Constitution that requires due notice.

Facts And Arguments For Issue #2:

Where Abdullah timely requested witnesses in SCDC kiosk reference # 16-621103 dated 02/17/2016, the DHO did improperly deny Abdullah's witnesses to confirm that he was not present in dorm to make call pursuant to Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974), in violation of the 14th Amendment of the U.S. Constitution.

Appellant Abdullah further submits that according to SCDC OP-22.14 Inmate Disciplinary Policy and Procedure, he properly requested that his witnesses Officer Ellis, Officer Michaw, Officer Sims and inmate Bernard McFadden to be present in kiosk request # 16-021103 dated 02/17/2016 prior to his 02/22/2016 DHO Hearing. (See ROA at Pg. 18 of 23, Abdullah's kiosk request # 16-021103 for said (4) witnesses.) When Abdullah mentioned this kiosk request to the DHO during the hearing the DHO stated to Abdullah, "Your refusal to sign your 19-69 Form and to check all the boxes has hampered your requests, although there's no section on SCDC Form 19-69 for requesting witnesses; witnesses must be requested via kiosk if in general population. (See ROA at p. 6 of 23, SCDC Form 16-69 showing no section to request witnesses).

(See also ROA at p. 10 of 23, DHO stating witnesses and evidence denied because of Abdullah's refusal to check boxes).

In addition to the DHO improperly denying said witnesses because Abdullah did not check the boxes on SCDC Form 19-69, Abdullah also submits that the DHO did not properly document his reasons for excluding these witnesses as required by SCDC Inmate Disciplinary Policy and Procedure OP-22.14, Section 15.3, stating, "If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on SCDC Form 19-69." (See ROA at pg. 6 of 23, DHO did not document his reason for excluding witnesses on SCDC Form 19-69 during hearing dated 02/22/2016.)

An inmate has a due process right to request witnesses at his disciplinary hearing if the request will not be unduly hazardous to institutional safety or correctional goals. (See again Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974) (Our U.S. Supreme Court stating, "We are also of the opinion that the inmate facing disciplinary proceedings should be allowed to call witness and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. See also AL-Shabazz vs. SCDC, 527 SE2d. 742, 751 (2000) (Citing Wolff vs. McDonnell – same).

Therefore, the DHO did improperly deny Abdullah's timely and properly requested witnesses, in violation of his 14th Amendment right under the US Constitution. And as the DHO has done such, this court should vacate the finding of guilt and all sanctions imposed.

Fact And Argument For Issue #3:

Where Abdullah timely requested review of data to cell phone and wall phone (evidence) prior to his 2/22/2016 DHO hearing to contradict Price's claim that he used the phones was denied by the DHO and never recorded or documented on SCDC Form 19-69 (A), Abdullah's due process right under the US Constitution requiring record of evidence was violated within the meaning of Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974).

Before Abdullah's 02/22/2016 disciplinary hearing, the DHO, Mr. Armstrong and Lt. Price all had reviewed the wall phone conversation outside the hearing room or outside of Abdullah's presence. (See ROA at pg. 10 or 23, Abdullah's Transcript showing the DHO listening to the recording for the wall phone conversation outside of Abdullah's presence.) According to SCDC OP-22.14 Disciplinary Policy and Procedure, Abdullah properly requested that all evidence be produced for inspection prior to his 02/22/2016 DHO hearing (See ROA at pg. 19 of 23, kiosk request # 16-016201 dated 02/13/2016, requesting data from cell phone, wall phone and all evidence to be produced for inspection prior to his 02/22/2016 DHO hearing). And when Abdullah mentioned this kiosk request to the DHO during the hearing, the DHO stated to Abdullah, "Your refusal to sign your 19-69 Form and check all the boxes has hampered your

requests, although there's no section on SCDC Form 19-69 for requesting inspection of evidence; evidence inspection request must be done via kiosk request (See ROA at pg. 6 or 23, SCDC Form 19-69 showing no section to request review of evidence prior to hearing).

Therefore, as a result of no inspection, Abdullah contends that he could not properly show the cell phone did not have data connecting him to any numbers to people he knew in support of his claim that he never possessed the particular cell phone. His defense was prejudiced from this lack of a timely inspection.

In addition to the DHO not allowing review of the cell phone and wall phone data, Abdullah submits the DHO also didn't enter the wall phone recording into his 02/22/2016 disciplinary hearing recording or record, so he could at least hear and determine which phone call Price was talking about, since several wall phone calls could have been made on the wall phone between January 27th, 2016 through January 28th, 2016, at a time uncertain as a result of Price's defective incident report not giving a time in its body (See ROA at p. 7 of 23, Price's defective incident report dated 02/01/2016).

Abdullah further submits that the DHO did not document the exclusion of the cell and wall phone data as required by SCDC OP-22.14 Inmate Disciplinary Policy and Procedure, Section 15.1, stating "...If one or more charges involved the possession of contraband, the items of contraband, a sample of the contraband or a picture of the item should be produced at hearing. (See ROA at pg. 6 of 23, SCDC Form 19-69 dated 02/22/2016 by the DHO, but not documenting his reasons for exclusion of this evidence.) Abdullah's grievances argue no evidence to tie him to the cell phone and the conversation or call on the wall phone. (See also ROA at pg. 3 and 4 of 23, Abdullah's Step 1 and Step 2 Grievances.)

Abdullah contends because the record is depleted of any data or recorded evidence in the record, his due process right under the U.S. Constitution has been violated.

In Wolff vs. McDonnell, 94 S.Ct. 2963, 2979 (1974), our U.S. Supreme Court has stated, "We also hold that there must be a written statement by the fact finders as to the evidence relied on and reasons for the disciplinary action." (Citations omitted). See also SCDC OP-22.14 Inmate Disciplinary Policy and Procedure, Section 12.1, stating, "...The recording will not be turned off at any time during the taking of evidence. **A**) Arguably, the recording was turned off when the DHO listened to the recording outside of Abdullah's presence. (See ROA at pg. 10 of 23.)

Therefore, where the DHO did not record the conversation into the hearing record, did not enter any data from the cell phone in the record, and did not document these exclusions on SCDC Form 19-69, Abdullah's 14th Amendment rights to a record or some evidence under the U.S. Constitution was violated.

Conclusion:

For all of the foregoing reasons, this Court should restore the loss of 18 days of good time and restore all loss of privileges in an order to vacate.

Respectfully Submitted,

s/ Albarr Ali Abdullah

Albarr-Ali Abdullah, # 191449

Kershaw CI / OB-57

4848 Goldmine Hwy.

Kershaw, S.C. 29067

Date: 8-3-2016

Declaration of Albarr-Ali Abdullah:

1. That I, Albarr-Ali Abdullah, 191449, State that all documents and facts in this Brief of Appellant Abdullah are true and correct, as well as all referenced witnesses.
2. And that I declare under penalty of perjury this 3 day of August 2016, that the foregoing facts are true and correct.

s/ Albarr Ali Abdullah

Albarr-Ali Abdullah, # 191449

Sworn and Subscribed Before Me

This 3rd day of August 2016

Catherine A. Chross

Notary Public For South Carolina

My Commission Expires: _____

My Commission Expires December 22, 2018

Proof of Mailing

Case # : 16CO393, Judge Durden

The undersigned hereby certifies that a true copy of the attached matter has been mailed to the person(s) listed below by depositing a properly – addressed – stamped envelope in the U.S. Mail this 3 day of August 2016; such matter being: (7) Page Brief of Appellant Abdullah and Abdullah's (23) Page Record on Appeal:

1. Sharon Hess, Administrative Assistant, SCDC:
Office of General Counsel, P.O. Box 21787,
Columbia, S.C. 29221-1787

*Clerk's Office, S.C.
Administrative Law Court
1205 Pendleton Street, Suite
224, Columbia, S.C. 29201*

s/ Albarr Ali Abdullah

Albarr-Ali Abdullah, # 191449

Sworn and Subscribed Before Me

This 3rd day of August 2016

Catherine A. Omorse

Notary Public For South Carolina

My Commission Expires: _____
~~My Commission Expires December 22, 2018~~

15

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Albarr-Ali Abdullah, #191449,)	Docket No.: 16-ALJ-04-0393-AP
)	[<u>Grievance No.: KRCI 316-16</u>
Appellant,)	
)	<i>Hon. Deborah Brooks Durden</i>
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT'S BRIEF
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the appeal of Albarr-Ali Abdullah ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "Department"). Appellant is appealing his February 22, 2016 conviction for offense 898, "Possession of Any Communication Device." The appeal of this disciplinary conviction was done through grievance # KRCI 316-16.

On February 22, 2016 Appellant filed a Step 1 grievance seeking reversal of his February 22, 2016 conviction on the basis of insufficient evidence and lack of due process. On March 25, 2016, SCDC denied the Step 1 grievance. Thereafter, on March 27, 2016, Appellant filed a Step 2 grievance alleging, again, insufficient evidence and lack of due process. On May 3, 2016, SCDC denied the Step 2 grievance, and this appeal followed.

STANDARD OF REVIEW

The ALC'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). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in

an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, 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(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, “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.” *Matthews v. S.C. Dep’t of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.); see S.C. Code Ann. § 1-23-380(5)(e); see also *Marietta Garage, Inc. v. S.C. Dep’t. of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep’t. of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). 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). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm’n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, the supreme 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.” *Matthews v. S.C. Dep’t of Corr.*, *supra*,

page 3 (citing *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters”)); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

ARGUMENTS

I. BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE 898 CHARGE AND CONVICTION, THE COURT SHOULD AFFIRM SCDC’S FINAL AGENCY ACTION.

The evidence presented at the hearing and relied upon by DHO Bittinger satisfies the “substantial evidence” standard of proof to uphold Appellant’s conviction. Here are the salient facts brought forth at the disciplinary hearing:

1. On February 1, 2016, Lieutenant Price was monitoring the inmate phone system and heard Appellant talking to a female. Appellant said, “I will have to call you on the wall phone now...due to the other one had a bad misfortune today.”
2. The phone call in question took place on January 27, 2016.
3. On January 27, 2016, a contraband cell phone was found in the library where Appellant worked at that time.
4. DHO Bittinger included in the record part of the phone conversation in question which was not in Lieutenant Price’s incident report. That statement by Appellant was, “I have to use the wall phone now because the other assets no longer available.”
5. Appellant testified at the disciplinary hearing that the asset he was referring to was his roommate who had been helping him with typing but was in the Restrictive Housing Unit at the time of the phone call.
6. SCDC Policy OP-22.14 Inmate Disciplinary System defines Offense 898 The Possession of Any Communication Device as “[t]he possession, receipt, use, concealment, storage, purchase, sale or facilitation of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, e-readers or any like devices.”

DHO Bittinger weighed the evidence based on the facts and testimony presented at the hearing and came to a just and fair decision. Appellant has failed to show to the Court that his substantial rights have been prejudiced or that DHO Bittinger's decision was clearly erroneous, arbitrary, or affected by a legal error. *Cf. Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisionsaspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.). Therefore, because Appellant's conviction was supported by substantial evidence, SCDC respectfully requests the Court affirm SCDC's final agency action.

II. BECAUSE APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than in a trial before a court. Due process, as the United States Supreme Court noted in *Wolff v. McDonnell*, requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

Here, Appellant had notice of the charges. Appellant also had an opportunity to challenge the evidence and face his accuser (Lieutenant Price), aid of counsel substitute (Mr. Armstrong) the presence of a neutral and detached hearing officer (DHO Bittinger),

and a written statement of the findings so that Appellant could make an appeal.

Appellant had an opportunity to be heard. He gave a statement at his hearing. His right to be heard includes the right to call witnesses so long as allowing him to do so "will not be unduly hazardous to institutional safety or correctional goals." *Wolff v. McDonnell*, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935 (1974). Appellant alleges that this his right to be heard was violated because he was not allowed to call witnesses. In this case, Appellant waived his right to call witnesses. Appellant refused to sign the SCDC Form 19-69 Disciplinary Report and Hearing Record when he was served with notice of the charge against him. SCDC Policy OP-22.14 Inmate Disciplinary System subsection 7.1 reads, "Should the inmate refuse to sign SCDC Form 19-69, 'Inmate Disciplinary Report and Hearing Record,' s/he will forfeit the opportunity to request that their accuser and/or witness(s) be present at their scheduled hearing." Appellant was made aware of SCDC Policy during his orientation when he arrived at SCDC. This policy was also available to him in his institution's law library. Thus he knew or should have known that refusing to sign the Form 19-69 would constitute a waiver of his right to call witnesses during the hearing. Appellant refused to sign and thus waived this right.

There is nothing in the record to indicate that Appellant's due process rights were violated. Accordingly, the Departments' final agency action should be affirmed.

CONCLUSION

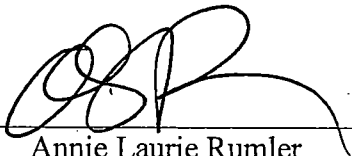
SCDC afforded Appellant all of the due process safeguards to which he was entitled. Moreover, DHO Bittinger relied on substantial evidence when making his decision to find Appellant guilty of the 898 offense. Thus, SCDC respectfully requests

that this Court affirm SCDC's final agency action.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: _____



Annie Laurie Rumler
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1355


Columbia, South Carolina
August 29, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Albarr-Ali Abdullah, #191449,)	
)	
Appellant,)	Certificate of Service
vs.)	
)	Docket# 16-ALJ-04-0393-AP
South Carolina Department of Corrections,)	
)	
Respondent.)	

I hereby certify that a copy of the foregoing brief was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Albarr-Ali Abdullah
Inmate Number: 191449
Kershaw Correctional Institution
Dorm-Room-Bunk: OB-0057-B



Annie Laurie Rumler
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-1355

August 29, 2016

State OF South Carolina
County OF Richland

IV S.C. Administrative Law
Court Case # 16CO343
Judge Durden

Albarr Ali Abdullah
#191449

Appellant,

VS.

Abdullah's Reply To
Respondent's Brief
Received 09-01-2016

South Carolina Dept.
OF CORR.

Respondent

Reply # 1; When Respondent State Appellant Waived his right by not signing Form 19-69, at p. 6 of 7. Appellant directs the Court's attention to the fact that: 1) Abdullah signed the first 24 hour Notice that requested presence of accuser and Counsel Substitute 2-9-2016 (See RDA, p. 22.) 2) Form 19-69 is defective in that it doesn't have a Section for requesting Witnesses, and therefore, was requested through the kiosk; Kiosk Requests should show an unwilling waiver of his due process rights and 3) Because Abdullah AMH is a 2.5, this Court should find that it was Counsel Substitute Armstrong duty to argue Abdullah did not wilfully waive his Federal Due Process Rights.

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Reply # 2: Where Respondent States that it was Abdullah's Cellmate and that DHO Bittinger included in the record a Statement that wasn't in the incident report at 4 of 7, Abdullah further Submits that these facts were not in the incident report and denies him a (24) hour Notice of Facts.

Abdullah further Submits that Gordon was not his Roommate at any Time.

Therefore, this Court should reject these arguments of Respondent's and Vacate disciplinary conviction for possession of a cell phone found in a common area of the library that had No data connected to Abdullah.

Respectfully Submitted,
Albarr Ali Abdullah

Date 9-6-2016

Albarr Ali Abdullah
#191449 Kershaw, C.I. 0B.57
4848 Goldmine Highway
Kershaw, SC 29067

Sworn And Subscribed Before Me

This 7th day of Sep 2016

Cathrine A. Cameron

Notary Public For South Carolina

My Commission Expires

Proof of Mailing

The undersigned hereby Certifies that a true Copy of the attached matter has been Mailed to the persons listed below by depositing a properly addressed-Stamped envelope in the U.S Mail this September day of 6, 2016; Such matter being ! Abdullah's Reply To Respondent's Brief Received 09-01-2016.

1) Annie Laurie Rumler
Staff Attorney: Office of
General Counsel, P.O.
Box, 21787
Columbia, S.C. 29221-1787

2) Hon. Judge Deborah Durden, SC
Administrative Law Court, Edger A.
Brown Building, Suit-224, 1200
Pendleton Street, Columbia, S.C.
29201

Sworn And Subscribed Before Me

This 7th Day of Sep 2016

Carmine A. Amore

Notary Public For South Carolina

My Commission Expires

My Commission Expires December 22, 2018.

Albarr Ali Abdullah

Albarr Ali Abdullah

#191449

Appellate, Pro-se

26

Motions for Reconsideration
are Prohibited.
See ALC Rule 65.

State OF South Carolina
County OF Richland

In The Administrative Law Court
Docket No. 16-ALJ-04-0393-AP
Grievance No. KRC-E-0316-16

Albarr Ali Abdullah
#191449

Appellant,
Vs.

South Carolina Dept Of CORR.
Respondent.

Motion To Alter Or Amend Order

Received September 30th 2016

Addressing Issue #1 (24) Hour ^{rec}
Notice OF Faets

FILED

~~OCT 04 2016~~

SC ADMIN. LAW COURT

Abdullah submits this Court did not address Issue #1 which alleges that SCDC denied him a 24 hour Notice of faets when Lt. Price's incident report. (see Record on Appeal at p. 13 of 23). Additionally, SCDC attorney for Respondent admits some faets were added by DHO Bittinger and made part of the record without 24 hour review at the hearing on 02-22-2016; this is what is prohibited pursuant to - Wolf vs. McDonnell, 94 S.Ct. 2963, 2979 (1974).

Therefore, Abdullah moves for a Order to address the following Federal Due Process Question Under the U.S. Constitution's 14th Amendment:

Issue #1: Whether Abdullah was denied a (24) hour Notice of faets where Price's incident report does.

Not State a Time or date as to when the Call was made, as well as where Respondent admits facts were added without (24) hour review for Abdullah.

WHEREFORE, Abdullah prays on Order issue to address Issue #1.

Respectfully Submitted.
Alban Ali Abdullah
Albarr Ali Abdullah
#191449, Oak, B. 57
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067
10-04-2016

PROOF OF Mailing

The undersigned hereby Certifies that a true Copy of the attached matter has been Mailed to the person(s) listed below by depositing a properly-addressed-Stamped envelope in the U.S. Mail this 04th day of October 2016; such Matter being: Motion to Alter or Amend Order Received September 30th 2016, Addressing Issue #1, (24) Hour Notice of Facts:

1) Hon. Judge Deborah Brooks Durdur,
Judge, Administrative Law Court,
1205 Pendleton Street, Suite 224, 1200
Columbia, South Carolina, 29201

2) Annie Laurie Rumler
Staff Attorney; Office of
General Counsel, P.O.
Box, 21787
Columbia, S.C. 29221-1787

Sworn And Subscribed Before Me
This 4th day of October 2016
Catherine A. America

Notary Public For South Carolina
My Commission Expires.

My Commission Expires December 22, 2018

Alban Ali Abdullah
Albarr Ali Abdullah
Appellate, Pro-se
October 4, 2016

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE
DOCKET No.: 16-ALJ-04-0393-AP GRIEVANCE No.: KRCI 316-16
INMATE NAME: Albarr-Ali Abdullah SCDC No.: 191449
INSTITUTION: Kershaw Correctional Institution
DATE: February 22, 2016
CHARGE: 898 – Possession of Any Communication Device**

DHO: The purpose of this hearing is to treat the matter before us with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in your removal. State your name and SCDC Number for the Record.

I/M: Albarr-Ali Abdullah, 191449.

DHO: You're appearing before the Kershaw Disciplinary Hearing being recorded at 1 p.m., 2/22/16. I'm DHO Bittinger. You're being represented by Counsel Substitute Armstrong. Mr. Armstrong, are you and the Accused ready to proceed?

C/S: Yes sir.

DHO: I will now read into the Record Case 14: Inmate Abdullah, SCDC Number 191449; Offense Date: 2/1/16; 3:20 p.m.; Institution: Kershaw; Offense Description: 898 - Possession of Any Communication Device; Charging Employee is Lieutenant Price; Narrative: On the Above Date and Approximate Time I, Lieutenant Price, was monitoring the inmate phone system when I heard inmate Abdullah, Albarr-Ali, talking to a female and made the following statement, "I will have to call you on the wall phone now that...now due to the other one had a bad misfortune today (1/27/16). I don't have it anymore so I will have to keep money on the wall phone. My partner went to Lockup due to no access right now. I'll keep calling from the wall phone." The phone was found by the library area on January 27, 2016. Inmate Abdullah works in this area. Therefore, due to the comments that was made by the inmate on the phone system, he is being charged with 898 - The Possession of Any Communication Device. The evidence is obviously

DHO: Disciplinary Hearing Officer (Mr. Edward Bittinger)

I/M: Inmate (Albarr-Ali Abdullah)

C/S: Counsel Substitute (Mr. Armstrong)

OFC: Charging Official/Accuser (Lieutenant Price)

that phone call that she stated that she monitored. Prior to this hearing, myself and Mr.

Armstrong went up to the area where we could listen to that phone call together and we listened to that phone call into the...on its entirety, from start to finish. Correct Mr. Armstrong?

C/S: Yes sir.

DHO: Alright. If you plead guilty or are found guilty of this charge, you will not earn good time for Dec...excuse me, February 2016. You may also lose visiting, canteen, phone and property privileges, pay restitution, disciplinary detention and loss of good time. Did you sign and receive a copy of these charges on, I'm sorry, let me rephrase that. On 2/16/16, 10:37 p.m., Sergeant Watson attempted to serve you your disciplinary paperwork. At that time, you refused to sign it as verified by Officer Roseberry. Policy clearly states that in this case, refusing to sign for your notification, you give up the right to have your Accuser present at this hearing or call any witnesses.

I/M: Can I speak now?

DHO: No. On the charge of 898, how do you plead?

I/M: Not guilty.

DHO: We will now receive evidence on behalf of the Accused. Mr. Armstrong, do you have any witnesses or documentary evidence to present?

C/S: Yes sir, in reference to his 19-69 per signature conflict, he stated that he was served with the first and initial paperwork, sir, and he did sign for the Counsel Substitute and he wanted his Accuser present. He said he was puzzled by the fact that he got the same exact paper back again, except for the date was changed in the middle that he figured this time he shouldn't have to sign for it because he already signed the previous form. He said he did talk with the officer that gave him this charge paper and the Sergeant and he couldn't get it explained to him why he needed to sign another one, sir.

DHO: Well, he's explained it himself because there was a change in his 19-69 that they determined you needed to be re-served. I stipulate that, even though I don't have a copy of it, because it...this clearly states re-served on the top.

I/M: Do you know...

DHO: Shhh. You don't talk when I talk.

I/M: Okay.

DHO: You indicated in your notes to Mr. Armstrong that the only thing different was the date, well that's...I got...you got re-served because they had to change the date. They put the wrong date on the first one apparently. Uhm, the only one that matters, sir, is the one I have for the hearing. Any previous services are not really even being admitted as evidence. The only thing that matters is the last one that you were served. That's the only one I consider and we go by the policy, sir. I have that burden that I must follow policy, good, bad, or indifferent, as it comes to the inmates, the staff, or the agency itself. In this case, the policy states if you don't sign your service, you don't get your witness, any witnesses, and you don't get to have your Accuser, period. End of story. No more arguing about it. Now, do you have anything else, Mr.

Armstrong?

C/S: No, not in reference to that, sir.

DHO: Well, do you have anything about...in reference to anything?

C/S: Yes sir, his also concern is that the initial statement that he says on the 19-29.

DHO: Mmm (affirmative).

C/S: He's saying that that's not indicating, sir that he had any kind of cell phone or anything like that and plus finding that cell phone in that area where he was working at (inaudible) that particular time is also not an indicator that he had anything to do with that particular cell phone either, sir.

DHO: Okay. Anything else?

C/S: No sir.

DHO: Do you have anything you wanna add above and beyond that?

I/M: Yes sir. In the charge saying right here at the top, that there are, I made a phone call at 3:20 (inaudible) at the charge here on the 27th, this was when the Burgandy Team was over there at the school building shakin it down and tearin it up everywhere, everywhere. I have no...I actually have no idea how I got charged with this...this indictment here. I didn't have no cell phone. I didn't have no way of...I don't even know how to turn the thing on and off man. I don't have no use for one. All my phone calls I just go to the wall and call out.

DHO: Mr. Abdullah, ya notice how I called you Mr. Abdullah?

I/M: Yes sir.

DHO: Or Inmate Abdullah.

I/M: Yes sir.

DHO: Did I say, "hey man"?

I/M: No sir.

DHO: You're not either when you're addressing me. You understand?

I/M: Yes.

DHO: Thank you. Continue.

I/M: I apologize for saying "hey man", just a slang, but my main objective here is this write-up it's not correct. It's not correct, sir. I have done nothin' since I came over from Lubbock (inaudible).

DHO: Well, we have to address some issues. I have some questions to you.


I/M: Yes sir.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

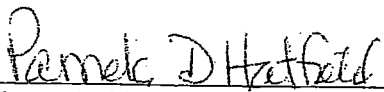
Albarr-Ali Abdullah, 191449,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent)

CERTIFIED TRANSCRIPT
Docket No.: 16-ALJ-04-0393-AP

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 the audio recording of this 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
1st day of July, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/15/2021

DHO: All these statements true enough were there and Mr. Armstrong sat beside me to verify these, but there's one other statement made that's not included in this write-up but was on the recording. You clearly state to, who apparently pieced together, is your sister, who has some sort of administrative program that she often talks to inmates on which is awesome, but you made the statement to her, "I have to use the wall phone now because the other asset's no longer available." Now, I would like you to explain to me what other asset you're talkin' about, and now is your chance.

I/M: The asset was Mr. Gordon, he was doing all my typing. This man types so fast. What takes me three days to do, he does in one. But the asset was he wrote to these attorneys. We're trying to attorneys for my case and his and that's what the... that's what I'm talkin' about. All the attorney we're tryin' to get. Some we got back, some we didn't get that and about the wall phone, that, you have a recording comes in and tell you have to put...put more money on it. And I said they ain't gonna put money on it. I need this asset out here on this, on this wall phone to call these lawyers. If they can make the calls for me...

DHO: What asset?

I/M: I use the word asset because to have asset to someone who could help, that's (inaudible).

DHO: That's an access, not assess.

I/M: Alright. (Inaudible).

DHO: No sir, don't...we're not playing with words. I know what you said.

I/M: Yes.

DHO: You said it very clearly.

I/M: Alright. (Inaudible).

DHO: We don't refer to other human beings as that unless maybe in spy movies.

I/M: This was the only way that I was getting all these cases dist...Mr. Gordon knows so many people. He calls his family members and they go on line and pull up these lawyers or pull up cases we need, alright? And that was the asset I'm speaking on, on that term.

DHO: But you were talking to your sister, making statements such as, "I needed to talk to you. I had to do it on the wall phone because the other asset is not available." That has nothin' to do with just your explanation, sir. You needn't talk to, I get also by listening to the call, that your sister was aiding you in some legal work and sending you copies of some stuff that she had gotten accomplished for you. I get all that, but you were referencing to her you contacting her that you had to do it on the wall phone now because the other asset's no longer available and the explanation you just gave me doesn't fit that statement. Go ahead.

I/M: This is way I (inaudible) using the wall phone, any phone, (inaudible). I speak to what I speak now because they understand what I'm talkin' about. She take those papers to the courthouse for me and when I said asset, I mean I don't have no more control what (inaudible). I have a typewriter. I peck with one hand, I peck, and (inaudible) on the paper and just type everything without looking at the typewriter. My fingers hit two keys sometimes. You don't wanna type 2-3 pages and then you have to do it all over again. Everyday I use the word, same word.

DHO: Alright, so that's what you're staying with, correct?

I/M: That's the only thing I got.

DHO: Okay. Anything else you wanna add, Mr. Armstrong?

C/S: No sir.

DHO: We will now receive evidence to support the charge against the Accused. Disciplinary Report 14, which was read at the beginning of the hearing, will be considered as evidence against you as will the actual recording that was listened to prior to this hearing by myself and your

Counsel Substitute, Mr. Armstrong. I have heard the charge and provided an opportunity for the Accused to make a statement, present evidence, call witnesses on their behalf. I have considered the evidence and witnesses against the Accused. I will now recess this hearing to arrive at a decision.

(Recess)

DHO: Restate your name and SCDC Number for the Record.

I/M: Albarr-Ali Abdullah, 191449.

DHO: I found you guilty of the charge brought against you. The evidence I relied upon was the Lieutenant's report and the recording listened to and honestly you did...did good...did not give a convincing explanation as to what those phrases you uttered during that conversation could mean because, in my experience, that kind of vocabulary can only mean one thing and that's a cell phone. That's the only other way you could've contacted, other than the wall phone, the legal system. Your sanctions will be: therefore, loss of personal TV for 365 days, it must be mailed out; 150 canteen, phone, and visitation; 30 days disciplinary detention; 18 days loss of good time. You were given this sanction because it is your first 898 conviction, which is a level one offense. You will receive a copy of the Hearing Record. You have five days to appeal my decision as to guilt and punishment imposed using a Grievance Form with the Grievance Coordinator who can assist you if you need help. Do you want a Grievance Form?

I/M: Anything you got.

DHO: If you want to listen to a recording of this hearing, you have three days to do so through the Major's Office utilizing the Kiosk system. That concludes this hearing.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT

Albarr-Ali Abdullah, 191449,)
Appellant,)
-vs-)
South Carolina Department of Corrections,)
Respondent)

CERTIFICATION
Docket No.: 16-ALJ-04-0393-AP

This is to certify that the following transcript of the recording of this 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.

Sandra Lee Avery

Sandra Lee Avery
Transcriptionist
Reporters Transcription Center

P. 38

Reserve

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

020116

Institution/Center: Kershaw CI				Date of Report: 02/01/16	
Reporting Official (Full Name): A. Price				Time of Report: 4:16 pm	
Employee ID #: 025423				Date of Incident: 02/01/16	
Location of Incident: Contraband				Time of Incident: approx:3:20 pm	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. Abdullah Albarr-ali	191449			b/m	1.
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

I Lt. Price was monitoring the inmate phone system when I heard inmate Abdullah Albarr-Ali talking to a female and made the following statement "I will have to call you on the wall phone now do to the other one had a bad misfortune today (1-27-2016) I don't have it anymore so I will have to keep money on the wall phone,my partner went to lockup due to no access right now I'll keep calling from the wall phone. The phone was found by the in the library area on January 27,2016 inmate Abdullah works in this area. Therefore due to the comments that was made by the inmate on the phone system he is being charge with 898 The possession of any communication device.

Signature: *A Price* Title: Lt

Evidence: Inmate Phone System

Disposition of Evidence:

Supervisor's Comments: *I concur with 898 charge Forward to make for further action*

Printed Name: *Benjamin Davis*
Signature: *[Signature]* Title: *LT* Date/Time: *2/1/16 6:00 PM*

Major/Responsible Authority: *Refer to DHO for 898*

Printed Name: *T. Smith*
Signature: *T. Smith* Title: *CAPT* Date/Time: *2-3-16 8:36 AM*

STG Related - Refer to STG Committee
 Yes No Unknown

This incident is DRUG related
 Yes No Unknown

Responsible Authority
Action Taken

- Informal Resolution
- Administrative Resolution
- Refer to Disciplinary Hearing

P 39

2/29
2/12

AMH 25 TV4

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 14 Inmate Name: Abdullah Albarr-al SCDC#: 191449
Living Area: OB.63B Job: n/a Custody: n/a

Offense Date: 2 / 1 / 16 Offense Time: 3:20 AM PM Institution: Kershaw

Offense Description:
898 The Possession of Any Communication Device: The possession, receipt, use, concealment, storage, purchase, sale or facilitation of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, e-readers or any like devices.

Charging Officer/Employee: A Price Title: Lt

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: 2 / 9 / 16 7:32 AM/PM By (Print): Sgt. Pm Riggs

Inmate Signature: *Abdullah Albarr-al* SCDC#: 191449 Date: 2 / 9 / 16

HEARING INFORMATION

Hearing Date:	Hearing Time:	am/pm	Tape:	Side:	Start:	End:

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				
INMATE PLEA (G, NG, None)				
FINDINGS: (G, NG, DS)				

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.

HEARING LENGTH: (MINUTES)

SANCTIONS:

Loss of Privileges (Days): _____ Reprimand: _____ Loss of Good Time (days): _____

* Property (Days): _____ Extra Duty: _____ Restitution: \$ _____**

* Canteen (Days): _____ Visit Suspension Thru: _____

* Other (Days): _____ Cell Restriction (Days): _____

* Disciplinary Detention (Days): _____

40

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED:

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 14 Inmate Name: Abdullah Albarr-ali SDC#: 191449
Living Area: OB 63B Job: n/a Custody: n/a
Offense Date: 02 / 01 / 16 Offense Time: 3:20 AM PM Institution: Kershaw

Offense Description:
898 The Possession of Any Communication Device: The possession, receipt, use, concealment, storage, purchase, sale or facilitation of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, e-readers or any like devices.

Charging Officer/Employee: A Price Title: Li
CCard

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 SEPARATION ONLY

I WANT A COUNSEL SUBSTITUTE

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 02/16/2016 10:37 AM By (Print): Sgt R. Nelson 23315 / Sgt Roseberry
Inmate Signature: Tomato Refused to Sign SDC#: 191449 Date: 02/16/2016

HEARING INFORMATION:

Hearing Date: <u>2/22/16</u>	Hearing Time: <u>1:00 am</u>	Tape: <u>(initials)</u>	Side: _____	Start: _____	End: _____
------------------------------	------------------------------	-------------------------	-------------	--------------	------------

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) IDENTIFICATION, 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.

Note: Prior to hearing DHO & CS listened to entire conversation referenced in 19-292

OFFENSE CODES	<u>898</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: see above

HEARING LENGTH: 15 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) TV-365 Reprimand: _____ Loss of Good Time (days): 18

Property (Days) _____ Extra Duty: _____ Restitution: \$ _____

Canteen (Days) 150+30=180 Visit Suspension Thru 150+30=180

Other phone (Days) 150+30=180 Cell Restriction (Days): _____

Disciplinary Detention (Days): 30

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: This is the accused 1st 898 conviction

CREDIT FOR P.I.D. TIME SERVED? YES/NO _____ IF YES, DAYS _____

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: unable to sign DATE: 2/22/16
Sgt Tucker

HEARING OFFICER (PRINT NAME) E. Buttinger

APPROVED REVERSE/MODIFY J. Stumera 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 Roll - 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.)

SCDC 19-09 (REV. 01/07)

Inmate Request

Today's Date: 8/9/16 14:23

Name: ABDULLAH, ALBARR-ALI
Booking #: 191449
Permanent #: 191449

Reference #: 16-021103
Date Requested: 02/17/16 16:39
Request Type: Disciplinary
Requested By: Kiosk

Request Details: DEAR MR. BITTINGER RE LT. PRICE'S DISCIPLINARY OFFENSE OF POSSESSION OF A CELL PHONE AFTER HEARING A WALL PHONE CONVERSATION , AND NOW MY REQUEST FOR THE FOLLOWING WITNESSES - MR. SIMS , MR. ELLIS , MRS. MICHAW AND ALL LAW LIBRARY / LIBRARY WORKERS - INCLUDING LIBRARY PATRON BERNARD MCFADDEN THESE WITNESSES CAN ESTABLISH AN ALIBI AT THE TIME OF THE ALLEGED PHONE CALL . THEREFORE , WILL YOU PLEASE LET THE ASSIGNED COUNSEL SUBSTITUTE KNOW THAT I WANT ALL OF THESE WITNESSES PRESENT AT MY DHO HEARING .

Disposition: Complete
Officer:
Disposition Date: 02/18/16 09:20

Request Responses

Date	Author	Note
02/18/16 09:21	c024348	Your refusal to sign your 19-69 and check any of the boxes has hampered your request.

42

Inmate Request

Today's Date: 9/1/16 12:10

Name: ABDULLAH, ALBARR-ALI

Booking #: 191449

Permanent #: 191449

Reference #: 16-016201

Date Requested: 02/13/16 19:33

Request Type: Disciplinary

Requested By: Kiosk

Request Details: DEAR MR. BITTINGER RE MY REQUEST TO REVIEW WALL PHONE TAPE LT. PRICE USED / HEARD WHEN WRITING HER INCIDENT REPORT FOR CHARGING ME WITH POSSESSION OF A CELL PHONE PER THE WARDEN'S OFFICE , THE DHO MAY HEAR THE WALL PHONE TAPE LT. PRICE CLAIMED SHE HEARD ME MAKING REFERENCES TO A CELL PHONE . 2 QUESTIONS 1 MAY I BE ABLE TO HEAR THIS TAPE ALONG WITH YOU 24 HOURS PRIOR TO THE HEARING AND 2 IF NOT , WHEN MAY I HEAR THIS TAPE TO PREPARE A DEFENSE PLEASE KNOW THAT I WANT ALL DISCOVERY IN THIS MATTER , ALONG WITH ANY AND ALL INFORMATION THAT LT. PRICE USED IN DETERMINING TO CHARGE ME WITH THIS OFFENSE - AS WELL AS ANY INFORMATION THAT COMES ABOUT AFTER SUBMITTING THIS REQUEST .

Disposition: Complete

Officer:

Disposition Date: 02/18/16 09:10

Request Responses

Date	Author	Note
02/18/16 09:19	c024348	Per Mr. Armstrong - your refusal to sign your 19-69 may hamper your request.

Inmate Request

Today's Date: 8/9/16 14:22

Name: ABDULLAH, ALBARR-ALI

Booking #: 191449

Permanent #: 191449

Reference #: 16-010366

Date Requested: 02/09/16 21:03

Request Type: Disciplinary

Requested By: Kiosk

Request Details: DEAR MR. BITTINGER RE LT. PRICE'S INCIDENT REPORT CHARGING ME WITH POSSESSION OF A CELL PHONE AFTER HEARING A RECORDED PHONE CONVERSATION FROM THE WALL PHONE WHAT LT. PRICE HAS WRITTEN IN HER INCIDENT REPORT I DID NOT SAY. 1 QUESTION MAY I HAVE A CHANCE BEFORE THE HEARING TO HEAR THE TAPE OF WHAT LT. PRICE WAS LISTENING TO WHEN SHE WROTE HER INCIDENT REPORT

Disposition: Complete

Officer:

Disposition Date:

Request Responses

Date	Author	Note
02/18/16 09:07	c024348	No.

Inmate Request

Today's Date: 8/9/16 14:22

Name: ABDULLAH, ALBARR-ALI
Booking #: 191449
Permanent #: 191449

Reference #: 16-010372
Date Requested: 02/09/16 21:08
Request Type: Disciplinary
Requested By: Kiosk

Request Details: DEAR MR. BITTINGER I WOULD LIKE TO SAY THAT LT. PRICE MADE A VERBAL THREAT BEFORE OTHER INMATES THAT IF ANY CONTRABAND FOUND ANY PLACE IN THE LIBRARY SHE WAS GOING TO LOCK ME UP

Disposition: Complete
Officer:
Disposition Date: 02/18/16 09:08

Request Responses		
Date	Author	Note
02/18/16 09:08	c024348	Noted - Present your case at the hearing.

45

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2 8 2016

(DUE)
3/30/16
Office Use Only
IRI-036-10

INMATE NAME: Albarr Ali Abdullah
SCDC NUMBER: 191449
INSTITUTION: Kershaw
HOUSING UNIT: Oak B Room 57
WORK ASSIGNMENT: _____

RECEIVED

APR 06 2016

Grievance No. _____
Code: General
Policy _____
Disc. Hear 3907#14
Class. HD 2/22/16
Date Received 3/28/16
IGC Initials ph

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

I am hereby appealing the warden decision. The Warden indicates there was no technicalities instituted in the instant case is erroneous as a matter of SCDC Inmate policy Op.22.14. The first technicality is when the supervisor on duty signed off on the 19-29a incident report 2-2-16 at 6:00p.m pass the 24 hour time period outlined in section 3 of the inmate disciplinary policy. The second technicality is when I requested to have the inmate phone recording present and the cell phone that supposedly tide me to the incident at my hearing. In this case the hearing officer did not play the inmate phone system recording in the record to substantiate the charging officer's accusation and neither did he have a photo copy of the phone. It's clear the charging employee speaks of a cell phone found in my work area is the reason why she instituted a charge. The hearing officer decision was not based on substantial evidence but instead based on insufficient of evidence b/c the cellphone nor the IM phone system recording was introduced as evidence. And I was not allowed any witnesses I requested.

Albarr Ali Abdullah
Grievant Signature 3-27-16 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Possession of Any Communication Device (898), case #14 on February 22, 2016 under SCDC OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -18- days accrued good time, were appropriate for the rules violation. 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 forty-eight (48) 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.

Wayne C. Miller 4-28-16
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)

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP FEB 29 2016

2/19/16

INMATE NAME: Abdullah Albarr-Alt
 SCDC NUMBER: 191449
 INSTITUTION: Kershaw
 HOUSING UNIT: OB 63B77
 WORK ASSIGNMENT: _____

OFFICE USE ONLY
 Grievance No. lect 0316-16
 Code: General
 Policy: _____
 Disc. Hear. 2/15/16 #14
 Class. HT 2/2/16
 PREA _____
 Date Received 2/11/16
 IGC Initials JK

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) I am appealing my conviction of an 898. I was never in possession nor was I caught in the act of using or violating S.C.D.C. Policy. Based on an alleged statement (evidence 19-29c) I have been charged. This evidence does not support the claim or basis for this charge. The incident allegedly occurred at 3:20 pm on Jan 27th at count time. ON this date I was held over at the library by the shutdown team. In the narrative it gives no account of finding any communication device in my possession. I have been hindered by my counsel substitute as well as Mr. Bittinger to defend my case. I received my first charged on the 9th of Feb 2016. I signed and asked for my accuser to be present as well as to have witnesses called on my behalf. Kiosk ref: 16 021103, 16-016201, 16-010372, 16-010366 and was denied at all angles % I did not comply and sign a second charge for the same incident. By Policy it states that anyone can be a counsel substitute and I requested the change of C/S with no response. I asked Armstrong to check all logback for these days that the offense occurred and his words were get out of my office this is nothing to worry about. spoken in front of Capt. Jefferson. By Policy all evidence should be depicted in the narrative. I am charged with possession but there is no cellular device to support such a claim. I was never charged formally for a phone, what phone am I to have been charged with, because Lt. Price is charging me with using the wall phone in the unit at 3:20 pm (at count time). In regards to this alleged statement it is a big time difference. This statement was made allegedly on the 1st of Feb 2016 and this incident happened on the 27th of Jan. The first incident narrated claimed I made this statement on the 27th of Jan, 2016. I received this charge Feb 9 2016. On Feb 16 I received the same charge but now the incident occurred on the 28th of Jan, 2016. At 3:20 pm. Count time. On Feb 1 2016 I was locked in my room for the 3:00 pm count like all other inmates. This clearly show that Lt. Price 025423 conduct as well as her abuse of authority has placed this incident in a form of harassment this has been a continuing situation.

Alban A. Abdullah 2-22-16
 Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER
Disciplinary documentation reviewed. See Warden's Response.
P. Nourse 2/10/16
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

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WARDEN'S DECISION AND REASON:

Inmate Abdullah;

This is in response to KRCL-0316-16. You have appealed the results of your 2/22/16 Disciplinary Hearing where you were found guilty on the charge of 898 Possession of a Cell Phone, case # 14. 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 below.

[Signature] 3/23/16
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.

[Signature] 3/23/16
IGC Signature Date

Alban Ali Abdullah
3-25-16
Grievant Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing review. 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
State Classification and Inmate Records

DISCIPLINARY IMPOSED PROPERTY RESTRICTION
LOSS OF PRIVILEGES - PERSONAL PROPERTY

(This form is to be completed by the hearing officer when an inmate has been assessed loss of personal property privileges as a penalty following conviction pursuant to a minor or major hearing.)

Inmate Name: Albarr-ali Abdullah SCDC #: 191449

Disciplinary Case #: 14 Date of Hearing: 2/22/16 Type of Hearing: Minor

Unit: DB 63 B Length of Restriction (# of Days): 365 Major

Date of Restriction: From: 2/22/16 To: 2/21/17

Hearing Officer Name (Print): E. Butinger

The property items listed below are to be restricted for the time period indicated above. (Check one of the following items, A or B, as appropriate.)

- A. Specific property items. (List below the specific items that are to be restricted. If all personal property is to be restricted, check item B, below.)

TV - Must be mailed

- B. All personal property except the following permitted items:

1. Legal materials;
2. Correspondence materials;
3. Religious Literature;
4. Incoming and outgoing mail;
5. Hygiene items;
6. Clothing necessities (as per SCDC Procedure OP-22.03(OP));
7. Educational materials (materials used for academic programs in which the inmate is enrolled)

cc: Institutional Record
Inmate
Staff Enforcing Restriction

P 49

State of South Carolina)
County of Richland)

In South Carolina Court of Appeals
Appeal #2016-002227

Albarr-Ali Abdullah)
#191449)
Appellant)

Declaration of Abdullah

Vs.)
)
)

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NOV 28 2016

SC Court of Appeals

South Carolina Dept. of Corrections)

- 1.) That new evidence has developed in this case and now gives reason to believe that Charging Officer / Lt. Price have concealed information in the cellphone that implicates inmate Anthony Gordon, # 259798.
- 2.) That on 10-27-2016, Gordon was caught leaving the library with a phone on his person. Gordon was also present in the Library on the day the Burgundy Team found the phone. Lt. Price knew Gordon possessed the phone on January 27th, 2016, and that data connected him.
- 3.) That I also direct this court's attention to the Respondent's effort to make it appear that Gordon and I were roommates in their brief. (See ROA at p. 33 of 53, Respondent's Brief incorrectly and deliberately misleading the ALC by stating [sic] Appellant testified at the disciplinary hearing that the asset he was referring to was his cellmate who had been helping him with his typing but was in the Restrictive Housing Unit at the time of the phone call.)
- 4.) That because of this false information that Gordon and I were roommates, the fact that the Department has refused to disclose the cellphone data, the fact that Price knew but never charged Gordon, and the fact that Gordon has been caught with yet another cellphone coming from the Library on 10-27-2016, there is reason to believe that Lt. Price, the DHO and Mr. Armstrong all have conspired to make it appear that the data in the phone belonged to me, when in fact, Lt.

Price knew the data belonged to Gordon in the cellphone she charged me with.

That I, Albarr Ali Abdullah, #191449, declare under penalty of perjury this 22 day of November, 2016, that the foregoing is true and correct.

s/ Albarr Ali Abdullah

Albarr-Ali Abdullah, #191449
Appellant, Pro-Se

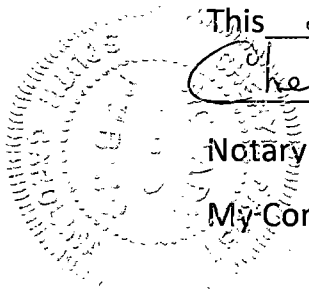
Sworn and Subscribed Before Me

This 22 day of Nov, 2016

Cheryl R. Lott

Notary Public for South Carolina

My Commission Expires Jan. 27, 2025



State of South Carolina
In South Carolina Court of Appeals
Appeal from Lancaster County

Docket No. 2016-002227

Albarr-Ali-Abdullah, #191449,.....Appellant,

Vs.

South Carolina Dept. of Corrections,.....Respondent,

Designation of Matter

To be Included in the Record on Appeal:

Appellate proposed the following be included in the Record on Appeal:

1. SCDC Steps 2 and 1 Grievance #KRCI-0316-16.....Pgs. 46-48
2. SCDC 2nd Disciplinary Report and Hearing Record.....Pg. 41
3. Charging Ofc./Lt. Price's Incident Report.....Pg. 39
4. SCDC State Classification and Inmate Records.....Pg. 49
5. SCDC Disciplinary Hearing Transcript.....Pgs. 30-38
6. Abdullah's SCDC Kiosk Requests for witnesses/Evidence.....Pgs. 42-45
7. SCDC 1st Disciplinary Report and Hearing Record.....Pg. 40
8. Brief of Appellate Abdullah.....Pg. 2
9. Brief of Respondent..... Pg. 3
10. Reply Brief of Abdullah..... Pgs. 24-26
11. Abdullah's Motion to Alter or Amend..... Pgs. 27-29

- 12.) ALC Order To Supplement the Record.....pg.44
- 13.) ALC Order Affirming SCDC's Decision.....pgs. 3-7
- 14.) Declaration of Abdullah.....pgs. 50-51
- 15.) Certificate of Record on Appeal.....pgs. 52-53

I certify that this designation contains no matter which is irrelevant to this Appeal.

s/ *Albarr Ali Abdullah*
Albarr-Ali Abdullah, #191449
Kershaw C.I. / OB-57
4848 Goldmine Hwy.
Kershaw, SC 29067

Date: 11-22-2016

Albarr Ali Abdullah
#191449 Oak, B.57
Kershaw Corr. Inst.
4848 Goldmine Hwy
Kershaw, S.C. 29067

02/22/2017

Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629,
Columbia, S.C. 29211

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FEB 28 2017

SC Court of Appeals

RE: Abdullah vs. South Carolina Dept. OF Corrections,
Appeal #2016-002227

Dear Clerk:

Enclosed, please find Appellant's (53) page Record on Appeal for filing in your office. Be also advised that Respondent was initially mailed also a copy of the ROA on November 22nd, 2016 particularly Mrs. Annie Laurie Rumber, Assistant General Counsel, according to the Proof of Mailing attached to Appellant's Initial Brief!

Your attention concerning this matter is greatly appreciated.

cc: Christina Catoe Bigelow, Deputy General Counsel

/s/ Albarr Ali Abdullah
Albarr Ali Abdullah #191449

Deposit for Mailing also documented on SCDC Form 10-14 dated 02-22-2017

Content and deposit also witnessed 02-22-2017 by: P/ Personal
P/ copy signed