

STATE OF SOUTH CAROLINA
THE S.C. COURT OF APPEALS

6-3-17

EUGENE DAVIS, 252831

APPELLANT

VS

S.C. DEPT OF CORRECTIONS

RESPONDENT

APPELLATE CASE No. 2017-000752

APPELLATE RECEIVED

JUN 08 2017

SC Court of Appeals

STATEMENT OF CASE

This matter is before the court by way of appeal from the decision by the Administrative Law Court. On June 22, 2016, Appellant was convicted of seizure violation 809 threatening to inflict. June 25, 2016 Appellant filed a step 1 Grievance seeking reversal, which was denied. Aug 12, 2016, Grievance was again denied. Aug 14, 2016, Appellant filed a step 2 alleging due process violation. Aug 30, 2016, Grievance was denied. Grievance appealed to the Administrative Law Court, which met the same results. Appellant appeals the ALC decision in favor of seizure (1) finding that there was substantial evidence to support guilty verdict.

Issues Presented:

1. There was no substantial evidence, ALJ basically relied on the I/O's, officer reports, and letters in record.
2. Was Appellant denied due process by Respondent by not including in the record on appeal.
3. Was ALJ bias by not dismissing case pursuant to Rule 38.

Standard of Review

In an appeal from an ALC decision, the Administrative Procedure Act provides the appropriate standard of review.

- S.C. Code ANN 1-23-610 (BX) off 2012. The court confines its analysis of an ALJ decision to whether it is
- (a) in violation of constitutional or statutory provisions,
 - (b) in excess of the statutory authority of the agency
 - (c) made upon an unlawful procedure
 - (d) affected by other error of law
 - (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the record as a whole
 - (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In determining whether the ALJ's decision was supported by substantial evidence, the court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALJ. Hill v S.C. Dept of Health & Env Control, 388 S.C. 19-10, 688 S.E.2d 612, 617 (2010). However the court may reverse the decision of the ALJ where it is in violation of a statutory provision or it is affected by error of law. Alltel Commons Inc v S.C. Dept of Revenue, 399 S.C. 313, 316, 731 S.E.2d 869, 870-71 (2012). Clearly there was no substantial evidence nor credible.

Arguments

1. The evidence relied upon was two request to staff member forms and a note given to inmate Lyles. Not one did any evidence surface nor proof that Affelont gave these forms to officer Michaw. All of this is hearsay evidence. Not one did inmate Lyles testify to this, or state

Give him any thing. As such, this case should be reversed.

2. Appellant was undeniably denied due process because Respondent failed to include the entire record on appeal. Rules of Procedure For The Administrative Law Division Rule 30 ~~was violated~~. The record is according to the rules is obligated to comply with A, B, C, D, E, and F, of Rule 30. The transcript did not include questions 1-8 in the record. ~~prejudicing~~ Appellant in the ALJ. In *Wolf v. McDonnell*, due process, as the U.S. Supreme Court noted, requires the following in prison disciplinary cases: (a) written notice of charges at least 24 hours in advance, (b) opportunity to present witnesses & documentary evidence, (c) neutral and detached hearing body, (d) aid of non-attorney counsel substitute where inmate is illiterate or the case is complex (e) written statement by the fact finder as to the evidence relied upon (f) no right to confront and cross examine adverse witness. Appellant did request the presence of inmate Clinton Lyles.

3. An administrative decision maker is entitled to a presumption of honesty and integrity. *Morris* 794 F.2d at 1044 (quoting *Withrow*, 421 U.S. at 47, 95 S.Ct. 1456. However, personal bias may disqualify an adjudicator if it stems from a source. *Id.* See Administrative Law Judge was clearly bias. It is obvious that Rule 30 was violated. You need only to read the transcript to see that wasn't the entire record on appeal. As such, it (case) should have been dismissed.

Conclusion

Appellant was denied due process, not only at the side hearing, but the ALC as well. Evidence is obvious throughout the transcript. As such, Appellant request that this case be reversed.

Respectfully

Eugene Davis. 252831

RHU/37

200 Prison Rd.

Greene, S.C.
29335

Proof of Service

Proof was served on Respondent Christine Carter Bigelow at 4444 Broad River Rd. on 6-4-17.

RECEIVED

JUN 08 2017

SC Court of Appeals

Eugene Davis
252831

RECEIVED

JUN 08 2017

SC Court of Appeals

GREENVILLE
SC 296
06 JUN '17
PM 4 L

Pd. 49



02 1P
0000835848 JUN 06 2017
MAILED FROM ZIP CODE 29335

\$ 000.46⁰

Rt 137

200 Pines Rd
E Jones, S.C 29335

SC Court of Appeals
P.O. Box 11629
Columbia, SC
29211

RECEIVED

JUN 06 2017

TYRCI MAILROOM

LEGAL MAIL

