

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
CAROLYN C. MATTHEWS, ADMINISTRATIVE LAW JUDGE

CASE NO.: 11-ALJ-04-00993-AP

SHANGO DAM BALLAH #137525 Appellant.

v

SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS Respondent.

RECORD ON APPEAL

SHANGO DAM BALLAH #137525
KERSHAW CORRECTIONAL INSTITUTION
4848 GOLD MINE HWY.
SMV #90
KERSHAW, S.C. 29067
PRO SE

RECEIVED
NOV 29 2012
SC Court of Appeals

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Amended

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APR 10 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Harold Mosley, #137525,

Docket No. 11-ALJ-04-0993-AP

Grievance No. TRYCI 858-11

Appellant,

vs.

ORDER RECEIVED

NOV 29 2012

South Carolina Department of Corrections,

Respondent.

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Appellant appeals the decision of SCDC in his Step 2 Grievance in which his conviction of Assault and/or Battery of an SCDC Employee (801) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost one thousand days of good time earned. Appellant appeals alleging he was not afforded due process.

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 Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. Consequently, the review in these cases is limited to the Record presented.

LAW/ANALYSIS

Since a state created liberty interest is involved, it is necessary to determine if Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an

inmate is disciplined for serious misconduct. Al-Shabazz, 527 S.E.2d at 750. However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has enunciated the following five requirements which, if established, will 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; (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, 527 S.E.2d at 751 citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

Applying those requirements to the record in this case we find the following:

Appellant was served with notice of the charge on June 2, 2011 and the hearing was held on June 13, 2011. The Disciplinary Report and Hearing Record show reliance on incident report and testimony of from Officer Harvin. The Disciplinary Report and Hearing Record show that the reason for the action taken was it was the Appellant's second charge for Exhibitionism & Public Masturbation. Inmate requested his accuser to be present at the hearing via telephone. Appellant was assisted by Counsel Substitute. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

In this case, Lieutenant Holsinger reported that she went to Appellant's room to speak with him. Appellant was agitated and spoke loudly. After attempting to get the Appellant to calm down, Lieutenant Holsinger ordered the Appellant to place his hands on the wall to be restrained and he refused several directives. Appellant then acted like he would cooperate and Hollinger continued her attempt to restrain the Appellant. Holsinger called for First Responders and as she was placing handcuffs on the Appellant, he grabbed Holsinger and threw her to the floor. At this time Officer Lance was present. Inmate eventually ceased resisting and was restrained. Appellant, Holsinger, and Lance were all examined by nurses.

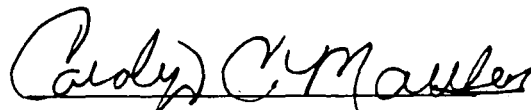
In Appellant's Brief filed on March 1, 2012, Appellant alleges that there was insufficient evidence to support his conviction, he was denied his right to call witnesses, he was punished twice for this conviction, he received ineffective assistance from counsel substitute, and that the punishment was arbitrary. As outlined above, Appellant received due process.

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(6) (Supp. 2010). Furthermore, 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. See § 1-23-380(6) (Supp. 2010); See also Marietta Garage, Inc. v. South Carolina Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case the substantial evidence in the record supports SCDC's decision. It is thus clear that Inmate has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the Hearing Officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice.

Therefore, for the foregoing reasons this appeal is hereby **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

April 10, 2012
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 hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 10 day of April 2012
By: Ray P. Sudd

(3)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Harold Mosley, # 137525,)	Docket No.: 11-ALJ-04-00993-AP
)	
Appellant,)	RESPONDENT'S BRIEF
)	
v.)	Honorable Carolyn Matthews
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Harold Mosley ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on June 18, 2011, challenging his disciplinary conviction for Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill or Injure, 801 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 19, 2011. This grievance was also investigated and denied. Appellant now appeals, claiming his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests that the disciplinary conviction be upheld.

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). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming,

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 Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), 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.

These requirements were complied with in this appeal. The Disciplinary Report and Hearing Record shows Appellant had notice of the charges (Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill or Injure), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on June 13, 2011), a neutral and detached hearing body (hearing officer), and a written statement of findings (Major Disciplinary Report and Hearing Record).

There was ample evidentiary support for the disciplinary conviction. Lieutenant Holsinger reported that she went to Appellant's wing to speak with him. When Lieutenant Holsinger arrived, Appellant was loud and agitated. As Lieutenant Holsinger attempted to handcuff Appellant, Appellant threw her to the floor, causing her to strike her head. After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based on Lieutenant Holsinger's report and testimony. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) ("The relevant question is whether there is any evidence in the record that

as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest.¹ See Sullivan at 443, 586 S.E.2d at 127.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that 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. Public Service Commission of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

¹ As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

could support the conclusion reached by the disciplinary board.”)²

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

**RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the “substantial evidence on the whole record” supports SCDC’s final agency decision. The hearing officer found Appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm’n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

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March 29, 2012
Columbia, SC

² In Hill, the Court further elaborated, “The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.” Id. (citations omitted).

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY HEARING PROCEDURE**

DOCKET No.: 993 GRIEVANCE No.: TYRC1 858-11

INMATE NAME: Harold Mosley, SCDC #137525

DATE: June 13, 2011

CHARGE: 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public

DHO: State your name and SCDC number please.

I/M: Harold Mosley, #137525.

DHO: Inmate Mosley, the purpose upon this hearing is to treat matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so would result in removal. Do you understand?

I/M: Yes sir.

DHO: You're appearing before this disciplinary hearing which is being held at um, Tyger River Correctional Institution, at approximately 8:45 a.m. on 3/13/11....excuse me 6/13/11. Um, I am Mr. Turner, Disciplinary Hearing Officer. Inmate Mosley is being represented by Counsel Substitute Fowler. Counsel Substitute Fowler, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: With that understanding, I will read the charges into the record. Inmate Mosley, I have before me case number 83 it reads Harold Mosley, uh, 137525, inmate charged with 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means and/or Intent to Kill

DHO: Disciplinary Hearing Officer

I/M: Inmate

OFC: Accuser

C/S: Substitute Counsel

or Injure. The charging official in this case is Lt. J. Holsinger. We do have Lt. Holsinger present by speakerphone, at the request of the accused. Lt. Holsinger, will you verify your presence by stating your name and rank? I think we lost her. Hold on, I'm getting her back. Lt. Holsinger, state your name and SC...uh, rank to verify your presence at the hearing.

OFC: Jackie Holsinger, Lieutenant.

DHO: Thank you. Inmate M...uh, supporting charge against the accused, following incident report. Tyger River Correctional Institution; date of the report uh, 5/23/11; uh, reporting official Lt. Jackie Holsinger, time of the report 8:30 a.m. approximately.

Employee ID number 014508. Date of the incident May 23rd, 2011. Location of the incident Unit 5, A-Wing. Time of the incident uh, 0745 a.m. approximately. Inmate in question, Harold Mosley, 137525. Uh, employees/witnesses involved Officer James Lance, Nurse Jamie Spencer, Nurse Randon Weaver, Captain Billy Lawter, and Barbara Lewis. On the above date and approximate time, I, Lt. J Holsinger, entered Unit Five, A-Wing to speak with Inmate Harold Mosley, 137525. Uh, when I entered the unit Officer J. Lance informed me that he had told Inmate Mosley to return to his room because the A-Wing of Unit Five was on modified lockdown and he could not leave. I went to the wing to speak to Inmate Mosley and he was loud and agitated. I tried to get him to calm down, and he would not. I then instructed him to place his hands on the wall to be restrained and he refused several directives. He then stated that he would uh, go to the holding cell and I informed him that he was going in restraints. I then called for First Responders. At that time he acted as if he was going to comply, and I attempted to put the handcuffs on his left wrist. He grabbed both of my upper arms and I placed both of my

- 1) hands on the front of his shirt and attempted to place him on the floor. Inmate Mosley
- 2) then threw me to the floor, causing me to strike my head on the bench as I landed under
- 3) it. When I got up, I observed Inmate Mosley going towards Officer Lance. I attempted to
- 4) draw MK-4 uh, fogger, while giving him directions to cease or stop his actions. Inmate
- 5) Mosley then ceased his actions and I was able to handcuff him. Inmate Mosley was
- 6) examined by Nurse Amy Spencer and Officer Lance and I were examined by uh, by
- 7) Nurse Brandon Weaver. Captain B. Lawter was notified. Officer Lance and I spoke to
- 8) Ms. Barbara Lewis, the Parent Representative. Signature is that of Lt. Jackie Holsinger.
- 9) Evidence listed, pictures 425 through 431 on RPR camera. I have a copy of a MIW that
- 10) was presented as nothing more than a recapitulation of those, that contained within the
- 11) report counsel you hearing.?
- 12) C/S: Yes sir.
- 13) DHO: Also present is a host of photographs depicting the injuries of various officers
- 14) involved showing bruises and contusions to Lt. Holsinger.
- 15) C/S: Yes sir.
- 16) DHO: Inmate Mosley, if you plead guilty to this charge, or if you happen to be found
- 17) guilty of the offense, you would not be eligible to earn good time for the month of May in
- 18) this case. Do you understand?
- 19) I/M: Yes.
- 20) DHO: In addition to this, if I happen to find you guilty of this charge, you could lose
- 21) visitation privileges, canteen privileges, telephone privileges, you could be assigned
- 22) disciplinary detention and there could further loss of good time in the case. Do you
- 23) understand this?

- 1) I/M: Yes.
- 2) DHO: Uh, the charge of 801 – Assault and/or Battery of an SCDC Employee, case
- 3) number 83, how do you plead?
- 4) I/M: None.
- 5) DHO: This is your opportunity to make a statement on the record.
- 6) I/M: As the charge of 801 alleged against me by Lt. Holsinger, I would like to note that
- 7) nowhere in the narrative of her incident report, that she alleged that she sustained an
- 8) injury. All injuries on the evidence of the offense of 801, and the assault must be with
- 9) means or intent to kill or injure. Um, as you told me I couldn't read this statement like I
- 10) wrote Mr. Turner. I just want to say for the record that I'm in a situation where I had
- 11) Officer Lance repeatedly striking me.
- 12) DHO: I want to clarify that statement you just made sir, because it's not correct or
- 13) accurate. You were told that you could read anything in that is relevant to the charge.
- 14) That's what you were told. Do you understand?
- 15) I/M: Okay, alright. Alright, um, anyway I was in a situation where I was being struck.
- 16) Only thing I was trying to do with Lt. Holsinger is get away because she...she...I can say
- 17) for the record that Lt. Holsinger did nothing wrong. I was struck by Corporal Lance. Um,
- 18) she was trying to take me down. I re...I resisted. Um, but I at no time tried to hinder or
- 19) intend to hurt her. I didn't attempt to strike her at any time.
- 20) DHO: Counsel, do you have anything on behalf of the accused in this case?
- 21) C/S: Um, he has given me a list of questions to ask Lt. Holsinger.
- 22) DHO: As long as they're relevant to the charge.
- 23) C/S: And actually they're not, but...

- 1) DHO: If they're not, do not read them in. You may ask relevant questions and relevant
- 2) questions only and questions should not be repetitive in nature. It's clearly...the issue has
- 3) been clearly outlined in the officer's report that's repetitive questioning.
- 4) C/S: Yes sir. I understand.
- 5) I/M: Excuse me Mr. Turner. Um, did you get my request?
- 6) DHO: I have no request from you sir.
- 7) I/M: Okay, what about the questions that...you're not going to ask the questions?
- 8) C/S: Like I explained to you before we came in, they're not relevant to the case. Cause
- 9) they're all um, within the narrative of the disciplinary.
- 10) I/M: So, if I was holding up my hands during the whole incident, that's not relevant, to
- 11) the case?
- 12) C/S: It is...
- 13) DHO: You had the opportunity to put that on ste...on record sir and you did not. Go
- 14) ahead counsel.
- 15) C/S: Um, we don't have any questions then.
- 16) DHO: Ms. Holsinger, is the content of your report true and correct as written?
- 17) OFC: Yes sir it is.
- 18) DHO: Did you sustain any injuries as a result of this issue?
- 19) OFC: Yes, I did.
- 20) DHO: And what was the nature of those injuries?
- 21) OFC: Bruises on both upper arms, uh, bruise on the outside left thigh, and the outside
- 22) right thigh, due to being thrown across the rock sir.
- 23) DHO: This appeared to be an intentional act on behalf of the accused?

- 1) OFC: I beg your pardon sir.
- 2) DHO: Was this an intentional act that was committed by the accused?
- 3) OFC: Yes sir.
- 4) DHO: Do you have anything else relevant to the charge at hand?
- 5) OFC: No sir I do not.
- 6) DHO: I thank you kindly for your help.
- 7) OFC: Thank you sir.
- 8) DHO: With that understanding the information that will be used to support the charge
- 9) against you will be the incident report previously read into the record, the testimony of
- 10) your accuser during the hearing. I have provided you the opportunity to make a
- 11) statement, present evidence, call witnesses on your behalf, and I am prepared now to
- 12) recess this hearing and arrive at a decision. If you'll step up I'll be with you shortly.
- 13) Restate your name and SCDC number please.
- 14) I/M: Harold Mosley, 137525.
- 15) DHO: Inmate Mosley, I have found you guilty of the offense brought against you today.
- 16) The information that was used to arrive at this decision was the incident report previously
- 17) read into the record, the testimony of Lt. Holsinger that her report was true and correct as
- 18) written, and this was an intentional act by yourself, and she did sustain injuries, photos of
- 19) Lt. Holsinger's injuries. Sanctions that have been imposed 720 days disciplinary
- 20) detention, a hundred... 1080 days canteen, 1080 days telephone, 1080 days visitation,
- 21) 1000 days loss of good time, uh, uh medical restitution or cost of any medical treatment
- 22) provided to any of the victims in this case. Uh, that cost will be determined. You will be
- 23) notified by separate correspondence. You do have the right to appeal both the

determination of guilt and the sanctions portion of the charge. The manner in which you do so is you file an SCDC Form 10-5. That is a Step 1 Grievance Form with the Grievance Coordinator. Keep in mind that if you're going to appeal the case, it must be done within 15 days. That is 15 days from the time I hand you your copy of the hearing report here today. Also, remember that if you need any assistance with an appeal, the Grievance Coordinator helps you with the process. Do you understand the appeals rights?

JME: Yes.

DHO: That concludes this hearing.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT**

05-11-092

Institution/Center: Tyger River Correctional Institution				Date of Report: May 23, 2011	
Reporting Official (Full Name): Jacque Holsinger, Lt.				Time of Report: 8:30AM Approximately	
Employee ID #: 014508				Date of Incident: May 23, 2011	
Location of Incident: Unit 5 A-Wing				Time of Incident: 07:45AM Approximately	
Inmate(s)/Resident: .SCDC# Age Sex Race				Employee(s)/Witnesses Involved:	
1.	Harold Mosley	137525	43	Male	Black
2.					
3.					
4.					
5.					
				1.	Ofc. James Lance
				2.	Nurse Amy Spencer
				3.	Nurse Brandon Weaver
				4.	Capt. Billy Laughter
				5.	Barbra Lewis

- 1) On the above date and approximate time: Lt. J. Holsinger, entered Unit 5, A-Wing to speak to inmate Harold Mosley, #137525,
- 2) B/M, age 43. When I entered the Unit, Officer J. Lance informed me that he had told I/M Mosley to return to his room because the
- 3) A Wing of Unit 5 was on modified lock down and he could not leave. I went to the wing to speak to I/M Mosley and he was loud
- 4) and agitated. I tried to get him to calm down and he would not. I then instructed him to place his hands on the wall to be restrained
- 5) and he refused several directives. He then stated that he would go to the holding cell and I informed him that he was going in
- 6) restraints. I then called for First Responders. At that time he acted as if he was going to comply and I attempted to put the
- 7) handcuff on his left wrist. He grabbed both of my upper arms and I placed both of my hands on the front of his shirt and attempted
- 8) to place him on the floor. I/M Mosley then threw me to the floor causing me to strike my head on the bench as I landed under it.
- 9) When I got up, I observed I/M Mosley going towards Officer Lance. I attempted to draw the MK-IV Fogger while giving him
- 10) directions to stop his actions. I/M Mosley then ceased his actions and I was able to handcuff him. I/M Mosley was examined by
- 11) Nurse Amy Spencer and Officer Lance and I were examined by Nurse Brandon Weaver. Captain B. Laughter was notified. Officer
- 12) Lance and I also spoke to Ms. Barbara Lewis, the P.A.I.R. representative.

Signature: <i>Jacque Holsinger</i>	Title: Lieutenant.
Evidence: PICTURES 425-431 ON UPPER YARD CAMERA	
Disposition of Evidence: 6 PICTURES OF ASSAULT WOUNDS	

Supervisor's Comments: BOTH STAFF SEEN BY NURSE NEEVER INMATE SEEN BY NURSE SPENCER REFER TO REPORT # 05-11-095		
Printed Name: Billy LAUGHTER	Signature: <i>Billy Laughter</i>	Title: CAPT
	Date/Time: 5-23-11 9:30am	
Major/Responsible Authority: 807 801		
Printed Name: <i>Sarah Nurse</i>	Signature: <i>Sarah Nurse</i>	Title: Captain
	Date: 5/24/11	

STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown
This incident is DRUG related <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Responsible Authority Action Taken <input type="checkbox"/> Informal Resolution <input type="checkbox"/> Administrative Resolution <input checked="" type="checkbox"/> Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <i>Mrs. Poole</i>	TITLE:	DATE: <i>JUNE 13, 2011</i>
INMATE'S NAME: <i>Harold Masley</i>	SCDC #: <i>137525</i>	
INSTITUTION: <i>TYGER RIVER CORRECTIONAL</i>	LIVING QUARTERS: <i>SM 7</i>	

Sgt. Poole,

ON JUNE 2, 2011 I SENT AN INMATE REQUEST TO DHO TURNER REQUESTING TO HAVE NURSE AMY SPENCER PRESENT AT MY HEAR. AT THE HEARING OF JUNE 6, 2011 COUNSEL SUBSTITUTE MRS. LEWIS INFORMED DHO TURNER THAT I ~~did~~ IN FACT TELL HER THAT I REQUESTED THE SAME OF DHO TURNER, BUT HE DENIED THAT HE HAD RECEIVED A REQUEST FROM ME, ON JUNE 9, 2011 I SENT A REQUEST TO MRS. LEWIS REQUESTING NURSE SPENCER TO BE PRESENT AT MY HEARING BUT TODAY - JUNE 13, 2011 MRS. FOWLER WAS MY COUNSEL SUBSTITUTE. TODAY DHO TURNER TOLD ME AGAIN THAT HE HAD NOT RECEIVED THE REQUEST TO STAFF MEMBER. COULD YOU BY CHANCE HAVE RECEIVED THAT REQUEST I SENT TO DHO TURNER? ALSO, COULD YOU PLEASE INQUIRE OF MRS. LEWIS WHETHER OR NOT SHE RECEIVED MY REQUEST OF JUNE 9, 2011 REQUESTING NURSE SPENCER AS MY WITNESS? THANK YOU,

Harold Masley

DISPOSITION BY STAFF MEMBER:

I received a request from you on 6/8/11 requesting nurse spencer in c/o. Lance's case. This was 2 days after your hearing. I did not receive a request on Lt. Holsinger's case in which you are referring to when you was represented by Ms. Fowler. The request was dated on 6/2/11 but did not receive until 6/8/11

DATE: <i>6/15/11</i>	SIGNATURE: <i>J.A. m. Poole</i>
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EXHIBIT "2"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: <i>MR. TURNER</i>	TITLE: <i>Disc. Hearing Officer</i>	DATE: <i>JUNE 2, 2011</i>
INMATE'S NAME: <i>Harold Mosley</i>		SCDC #: <i>137525</i>
INSTITUTION:		LIVING QUARTERS: <i>SMC #7</i>

Dtd Turner,

I AM REQUESTING TO HAVE NURSE ARMY SPENCER AS MY WITNESS TO BE PRESENT AT MY HEARING. CPL. LANCE - MY ACCUSER - WROTE IN HIS STATEMENT THAT HE ONLY STRUCK ME ONCE - IN THE TEMPLE - HOWEVER, NURSE SPENCER, WHO ACTUALLY TOUCHED MY INJURIES WILL CONTRADICT CPL. LANCE'S ALLEGATIONS BY TESTIFYING THAT I ALSO HAD SEVERAL ABRASIONS AROUND MY LEFT ^{EYE}, INCLUDING TWO (2) SWOLLEN BUMPS, ONE IN MY LEFT EYEBROW AREA AND THE OTHER UNDER MY LEFT EYE.

I DECLARE AND CERTIFY UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C. §1746 THAT AN ORIGINAL COPY OF THIS REQUEST, REQUESTING NURSE ARMY SPENCER AS MY WITNESS WAS SENT TO Dtd TURNER BY PLACING THE SAME IN THE SMC MAILBOX THIS 2nd DAY OF JUNE, 2011.

Harold Mosley
Harold Mosley #137525

DISPOSITION BY STAFF MEMBER:

received request on 6/8/11 after hearing.

DATE: <i>6/8/11</i>	SIGNATURE: <i>H. M. Poole</i>
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Shenguo Demballah # 137525
Appellant

South Carolina Department
of Corrections Respondent

Affidavit of Christopher Williams

Personally appeared before the undersigned officer duly authorized to administer oath, Christopher Williams, who after being sworn deposed and said the following:

- 1) I am witness to the incidents taking place at Tiger River Correctional Institution regarding inmates being denied their request to witnesses at their disciplinary hearings, and give this affidavit of my own personal knowledge, I am competent to give such testimony.
- 2) On July 17, 2011, I sent an inmate request to disciplinary hearing officer Sgt. Poole requesting to have inmate Frank Washington # 290987, as a witness to be present at my disciplinary hearing of July 25, 2011.
- 3) At the disciplinary hearing of July 25, 2011, DHO Turner denied receiving my request, therefore, my request witness was denied.
- 4) On July 25, 2011, I sent Sgt. Poole an inmate request inquiring if her had she received my request.
- 5) On July 28, 2011, I received a response from Sgt. Poole stating that she had the said request, but that she didn't receive it until 7/25/11, the day of my disciplinary hearing of 7/25/11
- 6) Further deponent with not.

Sworn to and subscribed before me
This 28 day of August 2011
Christine Thayer

Christopher Williams
Christopher Williams # 302684

Notary Public

My commission expires: 9/1/2011

my commission expires: 9/1/2019

locking table

2nd Edition for
Brown letter on this day of 2011
Charles Thomas

Thomas Winters #33196

~~Thomas Winters #33196~~

7) further delinquent with not...

6) I filed an institutional grievance on this matter on 7-25-11... my hearing...

5) on 7-12-11 I received a response from Sgt. Loo, stating that she received my request on 7-11-11, 5 days after received my request... that I wanted a list of 7 witnesses at my hearing. I also asked Sgt. Loo to let me know the date she

4) on 7-6-11 I sent a request to Sgt. Loo asking her to send me my request form back dated 6-30-11, stating request witnesses... I sent a request to Sgt. Loo asking her to send me my request form back dated 6-30-11, stating

3) Officer P.L. Turner denied receiving my witness request, even though I clearly noted on my disciplinary report the hearing record. My intent to have this list of 7 witnesses at my hearing, so he knew of my intent to

2) on June 30, 2011 I sent a written request to disciplinary hearing officer at Tiger River "C.I." Sgt. M. Loo, requesting to have a list of 7 witnesses at my hearing. My hearing was held on 7-6-11, none of my witnesses was at my hearing.

1) I Thomas Winters #33196, and I am giving this testimony outlined in this affidavit on my own personal knowledge, I am competent to give such testimony...

personally appeared before the undersigned officer duly authorized to administer oaths, Thomas Winters #33196 being duly sworn depose and states the following...

Affidavit of Thomas Winters #33196

DHHPO DAMB LACH #137525
-v-
Affiant
South Carolina Department
of corrections testimony

South Carolina Administrative
EXH. 6.17 "4"
C20 COFF

Exhibit "5"

Questions For Nurse Spencer

1. Nurse Spencer, did you examine F/m Mosely after the incident?
2. Did He have any Bruising around his left eye?
3. Did He show you a knot or bump under his left eye brow?
4. Did He show you Another knot or bump under his left eye?
5. on may 25, 2011 at sick call when you saw F/m Mosley did he also have A Black eye by then?
6. In your professional capacity is it your medical opinion that F/m Mosley was struck twice in the Left eye area as he alleges?

EXHIBIT "6"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Mrs. Caldwell	Assoc. Warden	July 8, 2011
INMATE'S NAME:	SCDC #:	
SHANGO DAMBALLAH FKA - Harold Masley	137525	
INSTITUTION:	LIVING QUARTERS:	
TYGER RIVER CORP. INST.	SM # 7	

ASSOC. WARDEN CALDWELL,
 ON JUNE 2, 2011 I SENT AN INMATE REQUEST TO DHO TURNER REQUESTING TO HAVE NURSE ARMY SPENCER PRESENT AS MY WITNESS. AT MY HEARING OF JUNE 6, 2011 DHO TURNER DENIED RECEIVING MY REQUEST. IN HER RESPONSE OF 6/15/11 TO ME SGT. POOLE STATED THAT SHE RECEIVED SAID REQUEST FROM ME ON 6/18/11 TWO (2) DAYS AFTER MY FIRST HEARING DATE. I SPOKE TO MAIL-ROOM EMPLOYEE MR. CRIDER ON 7/6/11 WHO INFORMED ME THAT AS SOON AS REQUESTS ARRIVE IN THE MAIL ROOM THEY ARE SENT TO THE RESPECTIVE EMPLOYEES ADDRESSED IN THE INMATE REQUEST THE VERY NEXT DAY. COULD YOU PLEASE EXPLAIN TO ME HOW SUCH A DELAY IN MY INMATE REQUEST COULD HAVE OCCURRED, ESPECIALLY SINCE I NEEDED THE REQUESTED EMPLOYEE WITNESS TO BE PRESENT AT MY DISCIPLINARY HEARING?

Sincerely,
 Shango Damballah

DISPOSITION BY STAFF MEMBER:
 Who did you address your ~~request~~ ^{request} to staff to - Ms. Spencer or Sgt. Poole? Ms. Spencer was away from the institution from 5-26-11 till 6-6-11. If you sent the request to Ms. Spencer, she did not get it until 6-6-11. After being out, it takes time to "sift" through your mail. That is probably where the delay came in.

DATE:	SIGNATURE:
7-15-11	W. Hoesey, Admin. Asst.

Exhibit "7"

QUESTIONS FOR Lt. Holsinger

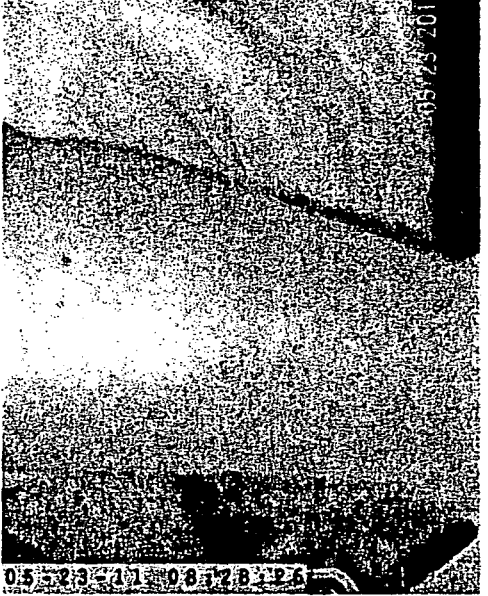
1. Lt. Holsinger, in your 19-29CA "Incident Report" you never mention seeing ILM Mosley striking of. lance, is that correct?
2. Lt. Holsinger as a result of the incident did you suffer a protracted loss or impairment of the function of a bodily member or organ?
3. Lt. Holsinger as a result of the incident did you require any surgical repair of a complex nature, or treatment to your wounds requiring the use of regional or general anesthesia?
4. Did ILM Mosley keep repeatedly placing both his hands in the air to avoid being cuffed by you?



05-23-11 08:28:08



05-23-11 08:28:14



05-23-11 08:28:26



05-23-11 08:29:27



05-23-11 08:29:41



05-23-11 08:30:56



05-23-11 08:31:14

05/23/2011

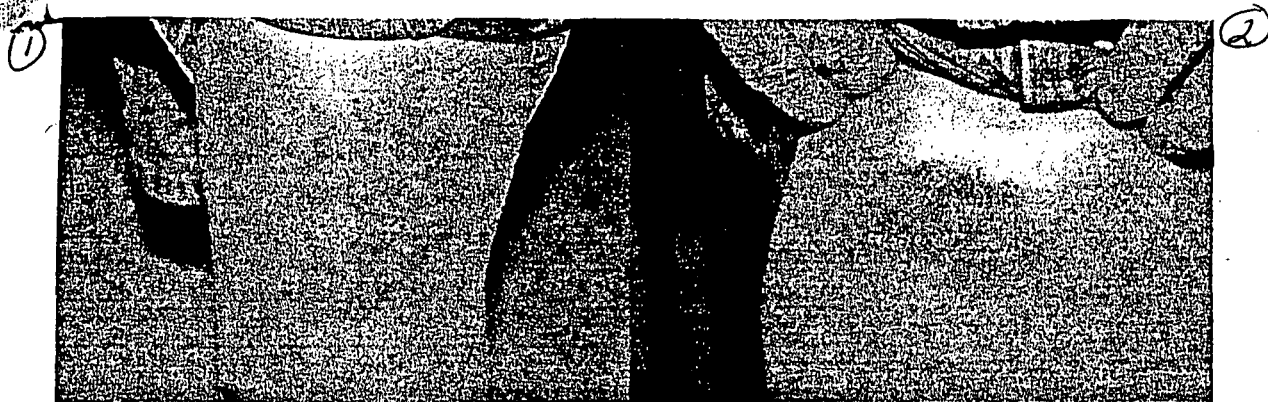
LT Holsinger & DIA HANDOUT ASSISTANT

(PAGE 24)

TYRRE 0828-11

801 Case # 82-1188

(A) (23) Harold Mosley #1375as



LT. JACQUE HOLSINGER 014508
TAKEN 5/25/11

- ① - Left outer Thigh near knee.
- ② - Right upper Thigh near hip.
- ③ - Shell case near shoulder.

(B) (29)

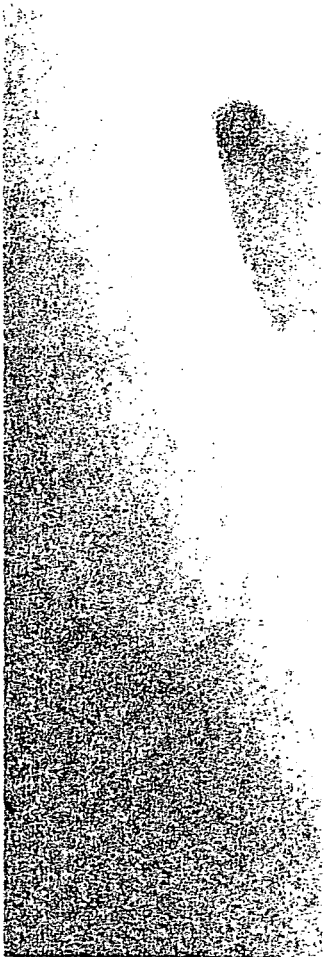
(C) (125)



Left Lower Thigh

L.T. Saeauu Holsinger 0145205

Taken 5/23/11



Right Inside Upper Arm

§ 16-3-600 - ASSAULT AND BATTERY

(A) FOR PURPOSES OF THIS SECTION

(1) "GREAT BODILY INJURY" MEANS BODILY INJURY WHICH CAUSES A SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES SERIOUS, PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER OR ORGAN

(2) "MODERATE BODILY INJURY" MEANS PHYSICAL INJURY REQUIRING TREATMENT TO AN ORGAN SYSTEM OF THE BODY OTHER THAN THE SKIN, MUSCLES, AND CONNECTIVE TISSUES OF THE BODY, EXCEPT WHEN THERE IS PENETRATION OF THE SKIN, MUSCLES, AND CONNECTIVE TISSUES THAT REQUIRE SURGICAL REPAIR OF A COMPLEX NATURE OR WHEN THE TREATMENT OF THE INJURIES REQUIRES THE USE OF REGIONAL OR GENERAL ANESTHESIA

GENERAL ASSEMBLY'S INTENT, PART 2

SECTION 2. It is the intent of the GENERAL ASSEMBLY that the PROVISIONS OF PART 2 OF THIS ACT SHALL PROVIDE consistency in SENTENCING CLASSIFICATIONS, PROVIDE proportional PUNISHMENTS FOR THE OFFENSES COMMITTED, AND REDUCE THE RISK OF RECIDIVISM

SECTION 7(b) PROVIDES:

THE COMMON LAW OFFENSES OF ASSAULT AND BATTERY WITH INTENT TO KILL, ASSAULT WITH INTENT TO KILL, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, SIMPLE ASSAULT AND BATTERY, ASSAULT OF A HIGH AND AGGRAVATED NATURE, AGGRAVATED ASSAULT, AND SIMPLE ASSAULT ARE ABOLISHED FOR OFFENSES OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS ACT

JUNE 2, 2010 ACT NO. 273,57(b)

reading at the sixth grade level and below will be assigned a counsel substitute. The highest consistent reading level noted in the Offender Management Screen will be the reading level considered when deciding if an inmate should be assigned a counsel substitute.)

8.1.3 When the inmate, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case.

8.1.4 When the inmate is confined to a segregation status pending the hearing *inmate documents on the 19-69, in which the inmate is found guilty of a disciplinary offense and they have no mental illness.* (Amended by Change 1, dated September 16, 2010)


8.1.5 When a witness requested by the accused inmate is unable to attend a disciplinary hearing because either the requested witness or the accused inmate has been transferred to another institution. (NOTE: Inmates who exhibit inappropriate behavior with a counsel substitute will forfeit the use of counsel substitute and may be charged accordingly.)

8.2 Responsibilities: Prior to the disciplinary hearing, the Counsel Substitute has the following responsibilities in preparing for the hearing:

8.2.1 Read the SCDC Form 19-29A and 19-69 to the accused inmate and make sure the inmate understands the charges.

8.2.2 Obtain the accused inmate's statement as to exactly what took place.

8.2.3 Obtain the names of all employees and inmates whom the accused wishes to call as witnesses.

 8.2.4 Interview relevant witnesses prior to the hearing. For those witnesses who will not be able to appear at the hearing (e.g., an inmate who has been transferred to another institution), obtain written statements that can be given to the Hearing Officer at the hearing (NOTE: Inmates will be required to use SCDC Form 19-11, "Request to Staff Member," listing the names of all witnesses they wish to be made available at their hearing. The form must be addressed to the inmate's Counsel Substitute or to the Hearing Officer if no Counsel Substitute has been assigned and must be received no later than 24 hours prior to the hearing.)

8.2.5 Inform the Hearing Officer of the names of all witnesses the inmate has requested.

8.2.6 Obtain any documentary evidence relevant to the case that is not already in the possession of the accused inmate.

9. HEARING OFFICER DUTIES: The Hearing Officer is responsible for the following:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process;

9.2 Overseeing and coordinating due process hearings for inmates with rule violations to include, but not be limited to maintaining an automated disciplinary case tracking system, and providing assistance to the institutions in setting case dockets and proper scheduling of rule violators to appear at hearings in the prescribed time limits set forth above.

9.3 Ensuring that the appropriate transactions are executed in the inmate's automated record within two (2) working days of the completion of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

9.4 The charges will be explained by the Hearing Officer to the inmate in terms s/he can understand. The Hearing Officer will also inform the inmate that if a guilty plea is rendered or if s/he is found guilty, s/he will automatically fail to earn his/her normal rate of good time (3 or 20 days depending on his/her

subjected to any form of coercion designed to persuade them to waive their rights to 24 hour notice. If inmates are offered the opportunity to waive 24 hours notice, they must be fully informed, in terms understandable to them, of the nature of the rights at stake. In addition, an inmate may waive his/her right to a hearing and indicate such on SCDC Form 19-69. When an inmate waives his/her right to a hearing, the Hearing Officer will review the waiver section of the SCDC Form 19-69, conduct the hearing in the absence of the inmate, determine guilt or innocence; if guilty, decide on appropriate penalties, and notify the inmate of the same using SCDC Form 19-69. Should an inmate refuse to sign a waiver and/or attend the hearing, the hearing will be held in the inmate's absence and tape recorded. (NOTE: The Hearing Officer will determine if a witness(es) will testify should an inmate waive his/her right to attend their hearing.) (4-4237)

7.3 The inmate may submit a written statement to the Hearing Officer in response to the charges. In addition, the inmate may make a verbal statement in his/her defense during the hearing. At the time an inmate is served with notice pursuant to a disciplinary hearing, the inmate will be informed of these rights. Confirmation that the inmate was advised of these rights will be noted on the original copy of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

7.4 One (1), 21 calendar day extension for holding the hearing will be allowed only with the written approval of the *Division of Operations* for unforeseen circumstances (inmate assault leave, employee extended leave, family medical emergency, etc.) via a memorandum. The extension must be *submitted to the Division of Operations* prior to the expiration of the initial 21 calendar day period. *If approved, the 21 calendar day extension will begin after the completion of the initial 21 day hearing period. The expiration date of the initial 21 day period must be noted in the memorandum.* Only one (1) such extension will be authorized. If the extension is approved by the *Division of Operations*, the inmate will be provided with a copy of the approval.

7.5 When an investigation is needed, the nine (9) calendar days begins once the investigation information is submitted to the Major (or Captain at those institutions with no Major) or higher authority. (NOTE: An investigation conclusion date will be noted on the investigative information report.)

7.6 If the inmate is transferred to another institution, the hearing will still be held within 21 calendar days of being charged, unless extenuating circumstances prevent the hearing. For extenuating circumstances, the Division Director of Operations or designee may approve an extension. All documentation concerning the charges will be forwarded to the receiving institution promptly upon transfer of the inmate.

7.7 Disciplinary hearings held more than 30 calendar days after the incident date or date of the discovery of the incident, ~~when no extension has been approved by the Warden,~~ may only be held if approved by a ~~designee from~~ the Division of Operations. It will be the responsibility of the Warden where the inmate was charged to provide justification for disciplinary action beyond 30 calendar days.

8. COUNSEL SUBSTITUTES: Each institution will assign an employee(s) to act as a Counsel Substitute. A Counsel Substitute is an SCDC non-uniformed employee who is assigned to assist inmates with a disciplinary hearing.

8.1 Inmates will be assigned a Counsel Substitute at least twenty-four (24) hours prior to a hearing in the following cases: (Note: There is no requirement for the inmate to be interviewed by the Counsel Substitute twenty-four (24) hours prior to the hearing.)

8.1.1 When the inmate is intellectually impaired or has a physical disability which makes it difficult for him/her to understand and/or participate in the disciplinary process. Counsel Substitutes will be appointed in all cases in which: inmates are assigned to a sheltered unit for the intellectually impaired, i.e., Habilitation Unit, etc.; or inmates have questionable mental intellect or a mental illness as confirmed by mental health personnel.

8.1.2 When the inmate's literacy or understanding of English is questionable. (NOTE: Inmates

conviction(s)) for the date/month of the rules violation. *The Hearing Officer will inform the inmate of additional sanctions that may be imposed in addition to the forfeiture of earned good time if found guilty, or if they plead guilty.*

9.5 *The Hearing Officer will ensure that inmates with mental health issues, or language barriers are provided the necessary assistance to understand the disciplinary proceedings. The necessary assistance may require the postponement of the disciplinary hearing. NOTE: Must be noted on SCDC Form 19-69 and on the hearing tape.*

9.6 If, during the hearing, the Hearing Officer determines that the report should have been processed as a lesser included offense that more appropriately characterizes the incident, the Hearing Officer should reduce the charge to the lesser included offense. In such cases, there is no need to provide the accused inmate with an additional 24 hour notice to prepare for the hearing. However, if the Hearing Officer determines that another offense of an equal level is more appropriate, the inmate is entitled to an additional 24 hours notice in order to prepare for the new charge.

9.7 The Hearing Officer will complete SCDC Form 19-69, which will become a permanent part of the inmate's institutional and central records.

10. **RECORDER:** Each Warden will assign two (2) employees as a recorder. A recorder is an SCDC employee who is assigned to assist the Hearing Officer and the Major/Responsible Authority with their duties as it relates to the disciplinary process. S/he will be responsible for ensuring that all documentation for each case is available and each disciplinary infraction is entered in the automated system within time frames as outlined in policy as it relates to informal and administrative resolution cases as well as disciplinary hearings.

10.1 The Recorder will be responsible for the following:

- Prepare SCDC Form 19-69, Disciplinary Report and Hearing Record" with violation code, offense and description/definition;
- ensure the SCDC Form 19-69 will be served to the inmate at least 24 hours prior to the hearing;
- prepare a docket for cases to be heard by the Hearing Officer;
- notify accusers/witnesses of their need to be available for the hearing;
- ensure all hearing tapes are accounted for and secured for future use;
- maintain a disciplinary file on each case from the Hearing Officer and Major/Responsible Authority;
- ensure all sanctions are entered into the automated system within two (2) working days; and
- Prepare and submit reports as required to the Hearing Officer and/or to the Division of Operations.

11. **MODIFIER:** Each Warden will assign two (2) employees as a modifier. A modifier is an SCDC employee who is assigned by the Warden who will modify the hearing record in the automated system *if the disciplinary is reduced or dismissed at the Institutional level as a result of SCDC Policy GA-01.12, "Inmate Grievance System".*

11.1 The modifier will be responsible for modifying sanctions that were imposed by the Hearing Officer and ensure that copies of all documentation are forwarded to the recorder. S/he will also serve as back up to the Recorder.

12. TAPE RECORDER:

12.1 All disciplinary hearings will be recorded by tape recorder or other means of preserving a verbatim record of the proceedings. The recording will not be turned off at any time during the taking of evidence, regardless of the Hearing Officer's opinion concerning the relevancy of the testimony. However, if an inmate becomes assaultive or disruptive, the Hearing Officer may stop the tape recorder to regain security and control of the inmate. When the tape recorder is started again, the Hearing Officer will state the

OP-22-14, Inmate Disciplinary
reasons for the interruption and continue the hearing. The inmate will be excused from the hearing room during the Hearing Officer's deliberation (sanctioning process).

12.2 The recording will be maintained for a period of at least 18 months after the hearing.

12.3 The Hearing Officer will be responsible for ensuring that all tapes are numbered and dated. The tape number/date and the counter stop/start reading for each hearing conducted will be recorded on SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided.

13. RESTRICTIONS ON PERSONNEL PARTICIPATING IN THE HEARING: Neither the Hearing Officer nor the Counsel Substitute may be:

- an employee who has filed the charges;
- an employee who ordered the filing of the charges;
- an employee who participated in any incident that led to the charges in question;
- an employee who participated in investigation of the charges; or
- an employee who made the decision to process the report through a disciplinary hearing.

14. PRESENCE OF INMATE AT DISCIPLINARY HEARING:

14.1 Inmates charged with rules violations will be present at their disciplinary hearings unless s/he has waived the right to be present or *if the DHO determines that his/her behavior prior to, or during the hearing justifies their exclusion.* If an inmate refuses to appear at the hearing or *fails to appear at the notified time*, or is unavailable (i.e., when an inmate has escaped or for a protracted court appearance, etc.), the hearing may be conducted in the inmate's absence. See paragraph 7.2 for additional information.

14.2 Inmates may hear all evidence presented at the hearing, unless hearing the evidence will jeopardize the life or safety of persons or the security and order of the institution.

14.3 The Hearing Officer must provide written reasons in the record for the accused inmate's absence during any portion of the hearing. If security considerations require that the inmate be removed from the hearing for the presentation of any evidence or questioning of any witness, the inmate's Counsel Substitute will be permitted to remain and to act in the inmate's behalf. *NOTE: Must be noted on SCDC Form 19-69 and on the hearing tape.(4-4241)*

14.4 An inmate may be physically restrained during hearings if a present threat of violence or physically disruptive behavior exists.

14.5 If an inmate with a pending disciplinary is transferred to Gilliam Psychiatric Hospital, the Department of Mental Health, an SCDC Infirmary, or any other health care facility outside the control of the Agency, or for *protracted court appearances*, the 9/21 day time-limit for holding the hearing will be suspended until the inmate is returned to his/her institution. The suspended period of time will be noted on the SCDC Form 19-69 by the Hearing Officer
(Amended by Change 1, dated September 16, 2010)

14.6 *If a Hearing Officer determines that an inmate is behaving irrationally at the hearing, and believes he/she is unable to understand the significance of the disciplinary proceeding, the Hearing Officer will refer the inmate for assessment by the appropriate mental health staff. The hearing will be rescheduled once the mental health staff has documented that the inmate is lucid enough to understand the disciplinary proceeding. The 9/21 day time limit for holding the hearing will be suspended during this period. NOTE: Must be noted on SCDC Form 19-69 and on the hearing tape.*

14.7 For inmates who are outside the physical custody of SCDC when an incident occurs (e.g., designated facility, post conviction relief, community hospital, etc.), the date of the discovery will be the date and time of return to an SCDC institution or the date and time when the appropriate employee learns of the

incident, whichever is later.

14.8 An inmate who refuses to attend a hearing without properly waiving his/her appearance automatically waives the right to counsel substitute, the presence of accuser, and witness(es).

15. PRESENTATION OF EVIDENCE AT THE HEARING:

15.1 At the start of the hearing, the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the item(s) of contraband, a sample of the contraband, or a picture of the item should be produced at the hearing. Also, if the contraband involves a controlled substance, i.e., illegal drugs such as marijuana, the Hearing Officer must have available a copy of SCDC Form 19-79, "Controlled Substance Testing and Disposition Form," that establishes the exact type of illegal drug found in the possession of the inmate.

15.2 The accused inmate, or the inmate's Counsel Substitute, may make a statement on the inmate's behalf. The accused inmate, or the inmate's Counsel Substitute, may present documentary evidence.

15.3 The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), *is not relevant to the case*, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide *said* information.

15.4 The inmate must request the accuser's(s) presence prior to the hearing utilizing Form 19-69.

15.5 The Counsel Substitute, or inmate, if no counsel substitute is appointed, may question all witnesses who appear at the hearing. The Hearing Officer will ask the inmate, or the inmate's Counsel Substitute, whether there are any questions for the witnesses. The questioning of the accusing employee or other witnesses will be conducted by the Counsel Substitute or Hearing Officer, if no Counsel Substitute is appointed. Written statements from witnesses other than the accusing employee may be presented as evidence when the witnesses are unable to attend the hearing. Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official.

15.6 In circumstances where an inmate is an adversarial witness, the inmate who is charged may be excluded from hearing the testimony of the witness. In such cases, the charged inmate will be required to give a list of questions s/he wants asked of the witness to his/her Counsel Substitute. If no Counsel Substitute has been assigned, then the inmate will be required to provide a list of questions to the Hearing Officer who will ask the questions for the accused.

15.7 The failure of the accused inmate to present non-frivolous evidence to contradict the staff member's report will permit the report to be the only evidence used against the inmate. If, on the other hand, the accused inmate presents non-frivolous evidence which, if true, would contradict the facts alleged in the staff member's report, the Hearing Officer must take at least one of the following steps at the hearing prior to the final disposition of the case:

15.7.1 question the charging employee;

15.7.2 examine additional documentary evidence (beyond investigation reports and/or written statements by the charging employee or witnesses); or

16. STANDARD OF GUILT:

16.1 The Hearing Officer will then decide the inmate's guilt or innocence with respect to each charge on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," based on a preponderance of the credible evidence; in other words, the Hearing Officer must review all of the evidence presented during the hearing and, from the evidence that was submitted, must decide whether it is more likely that the inmate is guilty or not guilty.

16.2 Sentencing Guidelines: If the inmate is found guilty, the Hearing Officer will determine the sanctions to be imposed for the violation. When sanctioning an inmate, the Hearing Officer will take into consideration:

- the inmate's prior conduct and the period of time since the inmate's last disciplinary violation;
- nature and seriousness of the offense;
- extent of injury to persons or damage/destruction to property (if applicable);
- penalties given to other inmates for the same or similar violations;
- specific program and security needs of the inmate.

The sanctions will be proportionate to the offense committed, and the Hearing Officer will be responsible for justifying any disciplinary actions imposed.

16.3 Guilty But Not Accountable: If a mentally ill inmate commits a disciplinary infraction, and the mental health staff determines that the inmate was not accountable for his/her actions, if the inmate is found guilty through a preponderance of the evidence presented, the inmate should be found Guilty But Not Accountable. The case will be referred back to the Mental Health authorities for appropriate intervention.



16.4 If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are totally separate and distinct violations. If the offenses are separate and distinct, then the inmate may be sanctioned consecutively for each offense. Inmates may not be sanctioned consecutively for lesser included offenses.

16.5 Inmates released from the Department of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. max-out, parole, probation, etc.

16.6 Inmates who had disciplinary sanctions imposed prior to release from SCDC on probation, parole, supervised furlough, or any other supervision under control of the SCDPPPS, and who return to SCDC before the "day for day" completion date of the sanctions, will have the sanctions remain in place until the original completion dates expire. Once the inmate is assigned to an institution from R&E, the resumption of Disciplinary Detention time will be at the discretion of the receiving Warden.

17. PENALTIES IMPOSED BY HEARING OFFICER: Penalties for disciplinary offenses are consecutive. If an inmate is serving Disciplinary Detention or has a loss of privileges or other sanction and commits another offense during the period of time s/he is in Disciplinary Detention or has lost privileges, the subsequent penalty period will begin upon completion of the first. More than one type of sanction may be imposed for a violation.

(Amended by Change 1, dated September 16, 2010)

17.1 Disciplinary Detention is served in an institutional Special Management Unit and may be imposed in the following amounts:

Disciplinary Offense	
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120

this would be the SEPTEMBER 1, 2009 Edition

on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official.

15.6 In circumstances where an inmate is an adversarial witness, the inmate who is charged may be excluded from hearing the testimony of the witness. In such cases, the charged inmate will be required to give a list of questions s/he wants asked of the witness to his/her Counsel Substitute. If no Counsel Substitute has been assigned, then the inmate will be required to provide a list of questions to the Hearing Officer who will ask the questions for the accused.

15.7 The failure of the accused inmate to present non-frivolous evidence to contradict the staff member's report will permit the report to be the only evidence used against the inmate. If, on the other hand, the accused inmate presents non-frivolous evidence which, if true, would contradict the facts alleged in the staff member's report, the Hearing Officer must take at least one of the following steps at the hearing prior to the final disposition of the case:

- 15.7.1 question the charging employee;
- 15.7.2 examine additional documentary evidence (beyond investigation reports and/or written statements by the charging employee or witnesses); or
- 15.7.3 question other witnesses.

16. STANDARD OF GUILT:

16.1 The Hearing Officer will then decide the inmate's guilt or innocence with respect to each charge on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," based on a preponderance of the credible evidence; in other words, the Hearing Officer must review all of the evidence presented during the hearing and, from the evidence that was submitted, must decide whether it is more likely that the inmate is guilty or not guilty.

16.2 **Sentencing Guidelines:** If the inmate is found guilty, the Hearing Officer will determine the sanctions to be imposed for the violation. When sanctioning an inmate, the Hearing Officer will take into consideration:

- the inmate's prior conduct and the period of time since the inmate's last disciplinary violation;
- nature and seriousness of the offense;
- extent of injury to persons or damage/destruction to property (if applicable);
- penalties given to other inmates for the same or similar violations;
- specific program and security needs of the inmate.

The sanctions will be proportionate to the offense committed, and the Hearing Officer will be responsible for justifying any disciplinary actions imposed.

16.4 If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are totally separate and distinct violations. If the offenses are separate and distinct, then the inmate may be sanctioned consecutively for each offense. Inmates may not be sanctioned consecutively for lesser included offenses.

16.4 *Inmates released from the Department of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. max-out, parole, probation, etc.*

17. **PENALTIES IMPOSED BY HEARING OFFICER:** Penalties for disciplinary offenses are consecutive. If an inmate is serving Disciplinary Detention or has a loss of privileges or other sanction and commits another offense during the period of time s/he is in Disciplinary Detention or has lost privileges, the subsequent penalty period will begin upon completion of the first. **More than one type of sanction may be imposed for a violation.**

IN THE SEPTEMBER 1, 2009 Edition THIS SECTION NUMBER WOULD BE 16.4

18.1 SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information:

18.1.1 Whether the accused inmate was excluded from the hearing during the taking of evidence and, if so, the reasons for the exclusion.

18.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion.

18.1.3 Whether any documentary evidence was excluded and, if so, the reasons for the exclusion.

18.1.4 Whether questioning of the inmate's accusers, if requested, was denied and, if so, the reasons for the denial.

18.1.5 If found guilty, the evidence presented and considered, and the reasons for determination of guilt.

18.1.6 If found guilty, the penalty imposed, and the specific factual reasons for the particular penalty chosen by the Hearing Officer. PHD time will be awarded towards the satisfaction of any DD time imposed unless the inmate received disciplinary charges subsequent to his/her placement in PHD.

18.2 At the conclusion of the hearing, the inmate will be given a copy of the written record of the hearing using SCDC Form 19-69. If the inmate was not present at the hearing, the Hearing Officer will notify the inmate if his/her whereabouts are known, of the hearing results and right to appeal the finding of guilt and/or penalty imposed by completing SCDC Form 10-5, "Inmate Grievance Form." A copy of SCDC Form 19-69 will be provided to the inmate. Upon the review and approval of the Warden, the SCDC Form 19-69 will be placed in the inmate's Institutional and Central Record. An additional copy will be maintained in the Hearing Officer's files. The Recorder will forward SCDC Form 19-69 to the Warden for his/her review.

18.3 Additionally, if the incident occurred at another institution, the Warden at the institution currently housing the inmate will review and sign the SCDC Form 19-69. Once signed, a courtesy copy will be sent to the Warden of the institution where the offense occurred.

19. APPEALS:

19.1 At the conclusion of the hearing, the Hearing Officer will inform the inmate of his/her right to appeal the decision of the Hearing Officer with respect to guilt or to the penalty imposed by using the inmate grievance procedure. If the inmate requests, a SCDC Form 10-5, "Step I Grievance Form," will be provided to the inmate by the Hearing Officer (see SCDC Policy/Procedure GA-01.12, "Inmate Grievance System"). (NOTE: Inmates may request the assistance of the Institutional Inmate Grievance Coordinator to assist them in completing their grievance form if they are unable to read or write, or have a language barrier.)

19.2 Inmates may appeal the decision of the Hearing Officer. The appeal must be initiated by the inmate and must be filed within 15 calendar days after receiving the written decision of the Hearing Officer or the inmate forfeits all rights to appeal. Appeals will be processed as described in SCDC Policy/Procedure GA-01.12, "Inmate Grievance System." The Warden will respond to disciplinary hearing appeals within 30 calendar days from the initial filing of the grievance.

19.3 The following factors must be considered when reviewing an appeal:

- Whether the Hearing Officer acted in substantial compliance with policies/procedures.
- Whether the decision of the Hearing Officer was based on **substantial** evidence. (Amended by Change 1, dated September 16, 2010)
- Whether, under the circumstances, the sentence imposed was proportionate to the violation.

20. **WARDEN'S REVIEW:** Upon receipt of SCDC Form 19-69, when the inmate is found guilty, the Warden or his/her designee at the institution where the inmate is housed may approve hearing results, overturn a guilty finding, or reduce the sanction of the Hearing Officer. The Warden will document this information on SCDC Form 19-69 in the space provided. If the Warden overturns or reduces the sanction, s/he will be responsible for providing the inmate with written notice of the overturned or reduced disposition. Copies of both SCDC Form 19-69 and the written notice provided to the inmate by the Warden will be placed in the inmate's Institutional Record and Central Record. An additional copy will be maintained in the Hearing Officer's files.

20.1 Disciplinary data entered into the OMS at the conclusion of a disciplinary hearing, which has been reviewed and approved by the affected Warden, will not be arbitrarily modified. Any need for modification must have the approval of the Division of Operations.

21. **DISCIPLINARY CHARGES FOR INMATES IN SPECIAL MANAGEMENT UNIT AND MAXIMUM SECURITY UNIT:** Inmates housed in SMU and MSU, who *habitually* commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29A. The infraction will be entered into the Offender Management System DISC screen using Type Action "03" which will show as, "Closed-Other Action Taken/Informally Resolved." If the inmate commits a non-assaultive charge and earns good time, s/he may be charged once per month and provided with a disciplinary hearing. Therefore, accrued good time may be taken for disciplinary violations. (NOTE: These Closed/Informally Resolved Cases will remain a part of the inmate's automated disciplinary history. The Institutional Classification Committee will consider these Closed/Informally Resolved charges to assess the inmate's behavior and determine the inmate's Security Detention level, readiness for release from Security Detention and/or transfer to the Maximum Security Unit.)

22. **CRIMINAL CHARGES FOR INMATES:** Cases involving inmates who have committed a criminal act will be immediately reported to the Warden or designee for transmission to an Investigator from the Division of Investigations in accordance with SCDC Policy/Procedure GA-05.01, "Investigations."

23. INMATE ACCESS TO TAPE RECORDINGS:

23.1 The inmate will have access to listen to (but not possession of) the tape recording of his/her disciplinary hearing to assist in preparing an appeal. The inmate will not have access to any portion of the tape where s/he was excluded from the hearing. If, after the inmate has been transferred to a new institution, the inmate then requests access to the tape recording of the hearing, the recording will be forwarded to the *Major* where the inmate is currently housed. *The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape.*

23.2 Inmates desiring to listen to a copy of their taped hearing must *submit a SCDC Form 19-11, "Request to Staff Member,"* informing the *Major*. *The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape. This staff member will be responsible for requesting the tape from the Hearing Officer/Recorder. The tape will be given to the assigned staff member who will be responsible for advising the inmate when it has been received and for scheduling a time for the inmate to review that portion of the tape for the respective inmate's hearing. The tape will be played for the inmate by, and in the presence of, the assigned staff member within fifteen (15) days of receiving the request. The Institutional Grievance Coordinator will be notified that the inmate has requested to hear their disciplinary hearing tape.*

23.3 Once the tape has been played for the inmate, the *assigned staff member* will return the tape to the *Hearing Officer/Institutional Recorder*, and will notify the *Inmate Grievance Coordinator* that the inmate has heard the tape.

23.4 If the inmate so requests in the appeal, the tape recording will be made available to the appropriate reviewing authority before deciding the appeal.

24. REHEARING:

Agency Hearing Officers will have limited access to the automated inmate disciplinary system.

SCDC DISCIPLINARY OFFENSES

1. RULES VIOLATION DEFINED: The following disciplinary offenses represent violations of the SCDC inmate rules. A violation of these rules may consist of any of the following:

- Engaging in the specified behavior;
- Attempting to engage in the specified behavior;
- Conspiring to engage in the specified behavior; or
- Aiding others in engaging, attempting to engage, or conspiring to engage in the specified behavior.

2. LIST OF OFFENSES: The following is a list of the titles and code numbers of offenses.

Level 1 Offenses

*→ 801 Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, *with Means/and/or Intent to Kill or Injure*: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer, *with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency employee or contract employee who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching causes bodily injury.* (Amended by Change 1, dated September 16, 2010)

802 Sexual Assault: Forcing another person, by violence or threats of violence, to perform a sexual act. (A sexual act is any intentional contact between the genitals of one inmate and the genitals, mouth, anus, or hands of another person.) A conviction for this charge will result in a loss of the inmate's visitation privileges for one (1) year regardless of where the infraction occurred.

803 Riot: When an inmate, with two or more persons, intentionally participates in conduct that creates danger of damage or injury to property or persons and substantially obstructs the performance of unit operations or institutional operations.

804 Homicide: The killing of any person with/without malice, advance thought, either expressed or implied.

805 Hostage Taking: The act of any inmate acting alone or with others who by threats, coercion, intimidation, or physical force, takes, holds, or carries away any person as a hostage for any reason whatsoever.

806 Any Act Defined as a Felony by the Laws of the State of South Carolina or the United States and not otherwise Defined in these Rules.(State Criminal Statute must be provided.)

857 Assault and/or Battery of an Inmate with Means and/or Intent to Kill or Injure: The willful hitting, striking, throwing of substances, or unauthorized touching of an inmate with or without a weapon by another inmate, when such hitting, striking, throwing, or unauthorized touching results in great bodily injury.

896 Unauthorized wearing, possession and/or providing Agency uniform(s): The wearing, possession and or providing of an Agency uniform is a serious offense as it relates to inmate identification, institutional order and security.

897 Possession of Security Equipment/Property: The unauthorized possession and or use of security equipment/property of SCDC or that of an outside source. Unauthorized items may include, but not be limited to, keys, restraints, chemical munitions, employee ID cards, crafted devices, i.e., hand cuff keys, or dummy like objects, (for escape/attempt escape purposes),etc.

the same time and by the same conduct, committing a less serious offense. The latter is a lesser included offense (e.g., possession of contraband and possession of contraband for planning an escape) when the two charges involve the same items of contraband.

Major/Responsible Authority refers to the Major, Associate Warden, Duty Warden, or Warden of an institution, or where there is no Major assigned, the Captain. In Level II/III Institutions, the Warden can designate a Captain to serve in this capacity with the written concurrence of the Division of Operations. Level I Institutions can be a Lieutenant and above.

Continuance: When a case is moved to another hearing date within the appropriate timeframe. The reasons for a continuance include, but are not limited to : employee on medical, military inmate assault or some other type of leave; a need to review additional information relevant to the disposition of the case.

Convicted: When an inmate is/was found guilty, or pled guilty of the charged infraction.

Dismissed: When an inmate's charge was dropped due to technical reasons and/or procedural errors.

Closed: When an infraction is disposed of through informal or some other means (Inmate in SMU that is a habitual offender and the action is non-assaultive in nature) within the disciplinary process.

Not Guilty: When an inmate is cleared of charged infraction in a formal disciplinary hearing through a preponderance of the evidence presented.

Guilty But Not Accountable: When a mentally ill inmate commits a disciplinary infraction and the mental health staff determines that the inmate was not accountable for his/her action(s), and the Hearing Officer finds the inmate guilty through a preponderance of the evidence presented, the inmate should be found guilty, but not accountable.

s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

APPENDIX A

Access to the automated Inmate Disciplinary System will be limited. The Division of Operations will determine and manage employee application usage. The Division of Resource and Information Management will provide employees with access to the automated Inmate Disciplinary System.

All Wardens will determine the employees responsible for managing the institutional disciplinary process as follows. The employees will have specific access to the automated system as it relates to their duty assignment.

Employee/Assignment	Authorized Number of Employees
Major/Responsibility Authority	No Limit
Recorder	Limit 2
Modifier	Limit 2
Counsel Substitute	No Limit
Shift Supervisor	No Limit

NOTE: Other institutional employees will have inquiry access only to the inmate automated disciplinary system.

Agency employees in designated divisions will have approved access to the automated inmate disciplinary system.

898 The Possession of Any Cell Phone or Other Type of Communication Device: Possession of, receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, buys, sales of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, or any like devices.

901 Class I Escape: Any escape, attempted escape, or aiding/abetting escape from a Level 2 or 3 Institution or from medium or maximum custody at a local detention center. Also includes escape from a Level I Institution or minimum custody at a local detention center that involves any threat of violence, physical harm, or other aggravating circumstances. NOTE: Should an inmate assigned to an outside detail at any level institution, walk-off (with no aggravating circumstances), should be classified as a Class II escape:

902 Class II Escape: Any escape, attempted escape, or aiding abetting escape from a Level I Institution or minimum custody at a local detention center that does not involve any threat of violence, physical harm, or aggravating circumstances.

903 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants. The actual or constructive possession of any item which was not issued to the inmate officially or which cannot be purchased by him or her in the prison canteen, or which has not been authorized by the Agency Director or Warden. Drugs of any description (except those prescribed by an authorized physician and within authorized amounts, *expiration date*, e.g. barbiturates, narcotics, medicines, marijuana and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03.03, "Inmate Drug Testing/Screening Program." This rule violation encompasses the "hoarding" of prescribed medication by any inmate(s). Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which when inhaled, creates an altered state of physical or mental activity.

904 *Possession of Escape Tools and/or Paraphernalia: The actual or constructive possession of any tool, device, document, drawing, or any other item that could be used to plan or execute an escape from a correctional institution.*

Level 2 Offenses

*→ 807 Striking an SCDC Employee or other Government Employee, Contract Employee, or Volunteer *Members of the Public*: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer with or without a weapon or the throwing of any substance at or on an SCDC employee, other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching does not cause bodily injury. (Amended by Change 1, dated September 16, 2010)

808 Fighting With a Weapon: Any group of two or more inmates who engage in a physical altercation with any instrument used for the purpose of inflicting physical injury on another person.

809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public: Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future; or one who commits a physical act of a threatening nature, and the probable result of such threats or action is to place the individual in fear of bodily injury; or one who causes evacuation of a building; or one who creates serious disruption or alarm. Any unauthorized body contact of an employee or member of the public which creates serious alarm, but does not result in bodily injury.

810 Striking an Inmate With or Without a Weapon: The willful hitting, striking, throwing of any substance at, or unauthorized touching of one inmate by another inmate with or without a weapon, whether or not such hitting, striking, or unauthorized touching causes bodily injury.

OP-22-14 Inmate Disciplinary System 2/1/10
811 Possession of a Weapon: The actual or constructive possession by an inmate of any instrument intended to be used to inflict physical injury on another person.

812 Robbery with Force: The taking of property of another person in that person's presence with use of force and violence which places that person in fear of his/her safety by the use of such force, violence, or threats.

813 Throwing of any Substance or Object on an SCDC Employee or other Government Employee, Contract Employee, or Volunteer : The throwing of any substance at or on an SCDC employee or other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, whether or not such throwing causes bodily injury.

814 Inciting/Creating a Disturbance: Any act or activity which results in a disruption of institutional operations or a breach of institution security. Any inmate who purposefully incites or urges a group of two or more other inmates to engage in a current or impending disturbance of institutional operations or gives commands, directions, instructions, or signals to a group of two or more persons to cause, continue, or enlarge a disturbance. An inmate may be found guilty of this violation even where no disruption of institutional operations actually occurs as a direct or indirect result of his/her actions. A disturbance as used herein is an assemblage of three or more persons which creates grave danger or damage or injury to property or persons and/or substantially disrupts the normal functioning of the institution.

820 Damage, Loss, Destruction, or Defacing of Property Valued at 100.00 or more: ~~intentionally~~ ~~reckless~~ ~~damaging~~, destroying, or disfiguring property belonging to a government agency, a private citizen, an employee, or another inmate. *Possession of damaged, destroyed, or disfigured property also qualifies as a violation of this offense.* (NOTE: This does not include cases in which an inmate loses his/her ID Card or issued room key. In these cases, the inmate will be required to pay a replacement fee for such items and will not be processed pursuant to these procedures. See also, SCDC Policies/Procedures OP-21.06, "Inmate Identification Cards," and OP-22.17, "Key Control," for information regarding the processing of replacement fees.) This charge must be forwarded to a Disciplinary Hearing. (Amended by Change 1, dated September 16, 2010)

822 Sexual Misconduct: (1) Engaging in sexual acts or intimate physical contact of a sexual nature with others; or soliciting sexual acts from others." A conviction for this charge will result in a loss of the inmate's visitation privileges for 360 days regardless of where the infraction occurred. This charge must be forwarded to a Disciplinary Hearing. ~~and is subject to the exception noted in section 822.1~~ (Amended by Change 1, dated September 16, 2010)

854 Exhibitionism and Public Masturbation: (1) Engaging in acts of indecent and/or unnecessary exposure of genitals or other private body parts to a staff member or other person; or (2) engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting, or in the view of a staff member or other person. A conviction of this charge will result in a loss of the inmate's visitation privileges for one (1) year.

855 Smuggling and/or Conspiracy to Smuggle in Contraband: Any inmate found to have conspired, aided, or acted in collusion with any person, *or acting alone* with the intent of introducing any form of contraband into any SCDC facility. Conspiracy, aid, or collusion may be defined as using any form of communication or providing any type of assistance with/to any person where plans are made with the intent of introducing contraband. The physical possession/receipt of the contraband by the inmate is not needed to support this charge. An inmate can be charged with this offense if his/her approved visitor is caught bringing in contraband and it is reasonable to believe that the visitor's intent was to supply the inmate with the contraband.

~~895 The possession and/or use of another inmate's identification card. To have possession of another inmate's ID card is a serious violation. To possess another inmate's ID card for the purpose of misrepresentation, making purchases, etc., is a chargeable violation to include monetary reimbursement.~~ (Amended by Change 1, dated September 16, 2010)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
CAROLYN C. MATTHEWS, ADMINISTRATIVE LAW JUDGE

CASE NO. 11-ALJ-04-00993-AJ

Harold Mosley #137525 Appellant,

V

South Carolina
Department of Corrections Respondent.

CERTIFICATE OF COUNSEL / APPELLANT

THE undersigned hereby certifies that the record on appeal contains all material proposed to be included by any of the parties except Appellant's notice of appeal to the ALC, step one GRIEVANCE FORM FOR GRIEVANCE number TYPIC-858-11 and Appellant's Brief to the ALC and not any other material.

NOVEMBER 23, 2012

Harold Mosley
Harold Mosley #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
SMU #90
Kershaw, S.C. 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Harold Mosley #137525 Appellant,
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Appendix to the
Record on Appeal

Harold Mosley #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
SMU #90
Kershaw, S.C. 29067

3 Hanika Kenyatta Johnson
OFFICE OF GENERAL COUNSEL
P.O. Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787

(803) 896-1943

6000 Time - 2700 Unit
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 83 Inmate Name: HAROLD MOSLEY SCDC#: 137525

Living Area: SML 7A Job: _____ Custody: ST2

Offense Date: 5/23/11 Offense Time: 7:45 AM/PM Institution: TYRCI

Offense Description:
801: Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government (refer to OP-22.14)

Charging Officer/Employee: J. HOLSINGER 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 *Fouled*
- I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 6/12/11 8:56 AM/PM By (Print): Sgt McMorris
Inmate Signature: Harold Mosley SCDC#: 137525 Date: 6/12/11

HEARING INFORMATION:

Hearing Date: 6/13/11 Hearing Time: 8:45 am/pm Tapes: 571 Side: RA Start: 5:03 End: 4:50

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.

6) If an accused all questions must be relevant to the charge and non-repetitive in nature.

OFFENSE CODES	<u>801</u>			
INMATE PLEA (G, NG, None)	<u>None</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: (B) (C) Testimony of Lt Holsinger that her report says that

HEARING LENGTH: did not finish (MINUTES) out by 11:00 Mosley out 5:45

SANCTIONS: did not finish
 Loss of Privileges (Days): _____ Reprimand: _____ Loss of Good Time (days): 1080
 * Property (Days) _____ Extra Duty: _____ Restitution: \$780
 * Canteen (Days) 1080 (00+360) Visit Suspension Thru 1080 (00+360)
 * Other 720 (Days) 1080 (00+360) Cell Restriction (Days): _____
 * Disciplinary Detention (Days): 720

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 2nd 801 conviction

CREDIT FOR PHD TIME SERVED? YES/NO (NO) IF YES, DAYS _____

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Harold Mosley DATE: 6/13/11

HEARING OFFICER (PRINT NAME) R. L. Turner

APPROVED/REVERSE/MODIFY Jim Riley Warden REASON _____

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record Canary - Inmate (Service of Disciplinary Report)
 Golden Rod - 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.)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

JUL 25 2011

Office Use Only

Grievance No. TYRCI 0858-11
Code: General _____
Policy _____
Disc. Hear. 801 #85 6.13.11
Class. _____
Date Received 7.19.11
IGC Initials CT

INMATE NAME: Shango Damballah
SCDC NUMBER: 137525
INSTITUTION: TYGER RIVER CORR. INST.
HOUSING UNIT: SML # 7
WORK ASSIGNMENT: N/A

RECD JUN 5 2011 INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I Stand by all claims I made in my step 1 appeal and hereby incorporate each and every claim into this step 2 appeal by reference.

1) PROCEDURAL ERROR - DOUBLE JEOPARDY - I WAS CHARGED TWICE WITH TWO (2) 801 RULES VIOLATIONS STEMMING FROM THE SAME INCIDENT YET THE DHO SANCTIONED ME CONSECUTIVELY FOR EACH OFFENSE IN VIOLATION OF SCDC POLICY OP-22.14.16.4 WHICH STATES "IF AN INMATE IS CHARGED WITH MULTIPLE OFFENSES, THE INMATE CANNOT BE SANCTIONED SEPARATELY FOR EACH OFFENSE UNLESS THEY ARE TOTALLY SEPARATE"

Grievant Signature Shango Damballah Date 7-13-11

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) on June 13, 2011, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of 1000 days accrued good time, were appropriate for the rules violation(s). 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 twenty-four (24) 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.

[Signature] 11/23/2011
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.

Shango Damballah 11-22-11
Grievant Signature Date

[Signature] 11/22/11
IGC Signature Date

(30)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

- 1) "IMMEDIATE AND DISTINCT VIOLATIONS." SEE incident report 5
- 2) Procedural Error - I WAS DENIED THE RIGHT TO CROSS-EXAMINE my ACCUSER in violation of SCDC Policy 01-22.14 & 15.5. At my hearing I gave counsel substitute my Fowler a list of questions to ask my Accuser Holsinger. Ms. Fowler refused to ask the questions stating that the questions were not relevant. It is not the responsibility of a counsel substitute to decide whether or not a question is relevant, that is the responsibility of the DHO. DHO Turner refused to allow me to ask questions of my Accuser at my hearing in violation of Wolff v. McDonnell.
- 3) Procedural Error - I WAS DENIED THE RIGHT TO PRESENT WITNESSES. It is undisputed that I requested to have nurse Amy Spencer present at my hearing as a witness. SEE Exhibit "1" from disciplinary appeal GRIEVANCE no. TYP/CI-0828-11. At the time I wrote my request to the DHO on June 2, 2011 I could not foresee that disciplinary hearing would be divided into two separate hearings. I requested said witness pursuant to SCDC Policy 01-22.14. And where that right was denied it is a violation of 01-22.14
- 4) Procedural Error - LACK OF EVIDENCE: At my hearing Lt. Holsinger stated that she received bruises to her arms and ribs but stated nothing about having received an injury to her head for which I was accused. The APA establishes the "substantial evidence" standard and there is nothing in the hearing record to confirm that Lt. Holsinger received an injury to her head for which I was charged and there is no evidence that she received any "injuries" whatsoever to constitute the charge of 801. SEE S.C. CODE ANN. § 1-23-380(CA)(X)(D).
- 5) Procedural Error - Per SCDC Policy 01-22.14 & 23.2 I wrote a request to Mayor Parrish on June 13, 2011 requesting to hear my disciplinary tapes & to this day I have not been allowed to hear it.
- 6) Procedural Error - The taking of my good-time without due process is a violation that is "capable of repetition, yet evading review" in violation of S.C. CODE ANN. § 24-13-216(c). Only the Commissioner/Director of the SCDC can take my good-time. By Statute that responsibility cannot be delegated to others.
- 7) Procedural Error - SCDC Policy 01-22.14 & 4.3-4.33. This incident that led to these charges are being investigated by the DDO so why were the disciplinary charges even brought before the DHO in the