

State of South Carolina

State Court of Appeals

In the Supreme Court

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Appeal From Richland Co.

OCT 13 2017

Court of Common Pleas

SC Court of Appeals

The Honorable Pugh K. Anderson

Case # 2017-001317

Steven Leo Higginbotham #237685

Appellant

vs.

State Dept. of Corrections

Respondent

Initial Brief

Steven Leo Higginbotham #237685, filer initial brief
on October 9th, 2017 with the State Court of Appeals,

Signature

October 9th, 2017

Steven Leo Higginbotham #237685

at
#59 Tyger River Correctional Institution

Zero Prison Rd. M3-109

Evans, Ga., 31735

Christina Carter Bishop Esq.,

State Dept. of Corrections

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PO Box 21787

Columbia, S.C. 29221-1787

Final Brief

The Appellant, Steven Lee Hahnemann #232680, - appeals
Case # 16-ALJ-04-0206-AP, primarily of violation of
rights. According to Wolff vs. McDonnell. 418 vs. 539 (1974),
deportant (Appellant) is guaranteed the right to
substitute Counsel to prepare case for Detention, Sec.
Dept. of Corrections Policy 2214.8-1, 8-2, and for
Statutes to be taken as to what exactly took place.
Substitute Counsel Mr. Armstrong, failed to meet
Appellant, or take statements prior to Detention Hearing.
Appellant, subsequently, did not have a properly
prepared defense, nor assistance as prescribed by
Wolff vs. McDonnell. This, along with policy violations,
Double Jeopardy, and technical errors call for overturning
Camp Job. Any Act described as a felony... See Sec.
Policy 2214. Appellant was charged on 6/8/16, convicted on
6/22/16. Steps 1+2 guidance was filed on 6/23/16 and 8/2/16,
respectively. Both measures were denied by S.A.D.C. Notice
of Appeal to S.A. Administrative Law Court was filed on 10/28/16.
The Honorable Ralph K. Anderson III, heard the case and denied appeal
on 3/31/17. Appellant has filed a notice of appeal on 9/26/17
to the S.A. Court of Appeals.

Filed this day 10/9/17



Steven Lee Hahnemann 232680

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Questions Presented

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- 1- Was Charge of S.C.D.C. 22.14 806 - "Any act defined as a felony by the laws of the State of South Carolina or the United States, and not otherwise defined in the rules." (Which here after is referred to as #806) appropriate for incident #060816, based on the evidence presented?
- 2- Was S.C.D.C policy properly followed in investigation and in disciplinary hearing for incident #060816?
- 3- Were laws of doubled Jeopardy and right of the appellant violated as a result of the charge of #806, based on the evidence presented?

The appellant respectfully requests a motion to over turn / dismiss the charge of #806, based on the following violations of S.C.D.C. Policy, S.C. and U.S. Supreme Court decisions, and disciplinary hearing technical errors for incident #060816.

The charge of #806 is in appropriate for incident #060816, as the appellant has already had two other incidents of the exact same circumstance dated 3/2000 and 11/4/13. The description of the former charge was clearly defined by S.C.D.C. employee Sgt. Singleton of Allendale Corr. Institution, as possession of contraband; and appropriately charge so. As S.C.D.C. has already defined the photos as 'contraband', the application of #806 in this case, is a violation of the law of Double Jeopardy. And enters a copy of 'U.S. vs Martin' 523 Fed 3rd 28 as evidence Exhibit 'A'

The photos in question are described by Lt. Williams, S.C.D.C. Lt.-contraband Kershaw Institution as altered, defining them clearly as contraband as described in S.C.D.C Op 22.14 817, in which a copy entered into evidence as exhibit B (Part 1) along with S.C.D.C Op 22.35 1.14, 1.16, as exhibit B (Part 2)

Lt. Williams used the form 'inappropriately touching...' in the narrative section of S.C.D.C. Form 1929 A. This statement is speculation, and does not met the burden of proof to defined the photos as 'Sexually Explicit'. The photos themselves depict a clinical nature. Appellant enter a copy of U.S. vs Fox 248 Fed 3rd 394 as evidence exhibit 'C'.

S.C. law 16-10-410 'Sexual Exploitation of a minor, 3rd degree' test cases from westlaw computer in law library deal primarily with interstate and internet trafficking of child pornography, which is not the case in incident #060816, and this is not an appropriate charge for this incident.

Test cases references to be omitted separately, due to law library scheduling.
enclosed.

S.C.D.C. Violations and Technical Errors

The following policy numbers were violated during the investigation and disciplinary hearing of incident #060816.

Appellant enters a list of transcript policy and technical errors into evidence as Exhibit 'D'.

Substitute Counsel Mr. Armstrong assigned to appellant, did not visit appellant prior to disciplinary hearing of incident 06 08 16 nor did not take any statements from the appellant. A copy of S.C.D.C. Op 22.14 8.1, 8.22 is entered into evidence as exhibit 'E'. Also Wolff vs McDonnell 418 U.S. 539 (1974)

Investigation start and stop dates are not documented on S.C.D.C. 1929 A Form for incident #060816. Appellant was told by Lt. C. Hunt, in the presence of two witness Sgts. Blackwell and Glenn, that appellant was 'under investigation' and was housed in P.H.D for same. Failure to document investigation start/ stop dates on S.C.D.C. 1929 A Form is a violation of policy 22.14 4.3, in which a copy entered into evidence as Exhibit 'F'.

S.C.D.C. 1929 A Form for incident #060816 - has witness name of Sgt C. Hunt. There is no Sgt. C. Hunt working at Kershaw Corr. Institution. There is a Lt. C. Hunt working at Kershaw Corr. Institution, S.C.D.C. has named a witness that it cannot produce. A copy of S.C.D.C. OP 22.14 . 3 is entered into evidence as Exhibit 'G'.

Appellant cell and personal property were searched by Lt. C. Hunt in the appellant absence. No other employee was listed on the S.C.D.C. 1929 A Form for incident #060816. Lt. Williams and CPL. Hooper searched property at contraband office the next day.

Initial search by Lt. C. Hunt alone is a violation of S.C.D.C. Op 22.19 8.2 in which a copy is submitted into evidence as exhibit 'H'.

Double Jeopardy Laws, Appellant's Rights Violations

The appellant argues that the application of the charge of #806, specifically - 16-15-410 'Sexual Exploitation of a minor' 3rd degree, is a violation of Doubled Jeopardy and violates the appellants rights to Due Process. If is also a case as cruel and unusal punishment, the following are submitted into evidence.

Hopkins vs Greenville Co. 340 S.C. 608 west notes #14 Exhibit 'I'.

Harden vs State Exhibit 'I'

U.S. Constitution Eight Amendment and State vs Wilson 353 S.C. 430 Exhibit 'J'.

The D.H.O. is responsible for ensuring that the proper charge is levied in proportion to the offense.

A copy of S.C.D.C. OP 22.14 9.6 is entered into evidence as Exhibit 'K'.

South Carolina article 1, 12 also protects the appellant from actions that would result in the appellant being placed in Doubled Jeopardy.

A copy of S.C. article 1, 12 is submitted into evidence as Exhibit 'L'.

Other relevant facts:

S.C.D.C has not protested nor challenged the following evidence:

* Illegal search of appellants' locker & cell by Lt. Hunt alone, no other employee present. Violation of policy 22.19 8.2.

S.C Administrative Law Judge Anderson stated (Page 4, Line 6) that Lt. Williams participated in search of appellant cell. Lt. Williams, however, testified in S.C.D.C 1929 A Form that Lt. Hunt, brought appellant property to contraband office on 6/6/16 at 9:00 am the day after contraband was found in appellant cell. This affirms the fact that the appellants as required by S.C.D.C Policy 22.19 8.2, but also the ruling by the S.C Administrative Law court was based on an assumption that Lt. Williams participated in appellant cell search on 6/7/16, which is not the case, as documented on S.C.D.C 1929 A Form by Lt. Williams.

* ~~Mr. Armstrong did not visit appellant or take any statements from appellant at any time prior to D.H.O hearing on 6/22/16. This is in direct defiance of the evidence that S.C.D.C used in their defense of Administrative Law Court - Wolff vs McDonell 418 U.S 539 (1974)~~

Section #4

Conclusion

With the absence of Mr. Armstrong not visiting appellant prior to D.H.O hearing on 6/22/16 nor taking any statements or other evidence gathering. The appellant contests that substantial rights were violated by denying counsel substitute assistance.

Appellant requests that the court overturn the conviction of any act defined as a felony... 806.

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Stawn Leo Higginbotham)
237685)
Appellant)

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S.C. Dept. of Corrections)
Respondent)

Certificate of
Service

initial brief

Case # 2017-001317

I hereby certify that I have served a copy of the initial brief upon the following individual by placing a copy of the same in mail to the last known address.

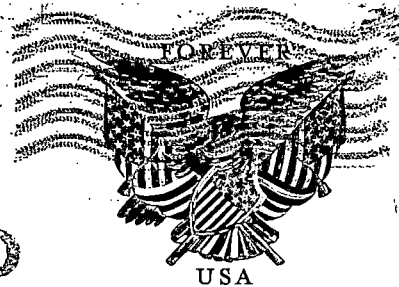
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