

State of South Carolina
In The SC Court of Appeals

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SC Court of Appeals

Steven Higginbotham #237685
Appellant
v.
South Carolina Department of Corrections
Respondent

Case # 2017-001317

Grand No. # K.R.C.R. 856-16

Appellant's Initial Brief

November 13th, 2017

cc

Christine Catoe Blyden, Esq.

S.C. Dept. of Corrections

P.O. Box 21787

4444 Broad River Rd.

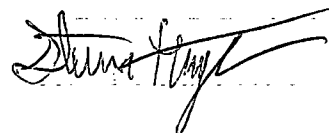
Columbia, S.C., 29211-1787

Steven Higginbotham #237685

Tyger River Correctional Institute

200 Prison Rd. W3109

Flores, S.C., 29335



November 13th, 2017

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Questions Presented

- 1- Did the S.C. Dept. of Corrections violate Appellant's rights during investigation and disciplinary hearing of 6/22/16?
- 2- Did the S.C. Dept. of Corrections violate its operations policy during investigation and disciplinary hearing of 6/22/16?

Statement of The Case

On June 22nd 2016, Appellant was charged with and found guilty of S.C. Code 16-15-410, Sexual Exploitation of a minor, 3rd degree, based on altered photos found in appellant's cell. Appellant pled not guilty. Appellant filed a Step 1 grievance on June 25th, 2016, which was denied on July 18th, 2016. Appellant then filed a Step 2 grievance on August 19th 2016, which was denied on September 19th, 2016. Appellant filed case in S.C. Administrative Law Court, seeking to dismiss charge of 16-15-410, based on Double Jeopardy violation and Policy violation. The double Jeopardy claim is based on two prior incidents of the same circumstances, dating 3/2000 and 11/21st, which resulted in charges of possession of contraband. The Honorable Ralph Anderson heard the case and ruled against the appellant, based on finding no Double Jeopardy nor Policy violations which would ^{have} affected the outcome of Appellant's disciplinary hearing.

Argument

The chief argument of Appellant's rights violation is failure of Substitute Counsel in Armstrong to wait appellant at least 24 hours prior to disciplinary hearing. This is in violation of SACDCA Policy 22.14-8.1, 8.2.2, as well as Wolff vs. McDonnell 330 S.Ct. 371, 527 S.Ct. 2d at 751, which respondent has cited in its own defense in its initial brief. It is the responsibility of the Substitute Counsel to take statements as to what exactly took place and to assist preparing case for disciplinary hearing. Appellant was denied these rights to have a proper case presented for disciplinary hearing of 8/22/16.

The charge of 16-15-410 increased punishment for the same acts as incidents of 3/2000 and 11/2/14, by increasing severity of charge from a minor charge to a major charge. This is a double Jeopardy violation, Appellant rights to present this are outlined in U.S. Constitution - 8th Amendment and SAC Article 1, 12.

Court cases of support include: State vs. Wilson 303-Sac 430
Hopkins vs. Greenville Co. - 370 Sac 308, and U.S. vs. Martin 523 Fed. 2d 28.

Lt. Williams documents in SACDCA 1029 A Form, that photos have been altered, clearly defining them as Contraband, which is defined in SACDCA Policies - 22.14-#817 and 22.35-9.14, 1.18.

As the evidence further supports, a possession of Contraband charge, rather than a charge of 16-15-410, it is the responsibility of the District officer to lay the more appropriate charge memo suited to the incident. SACDCA Policy 22.14 9.6

S.C.D.C. Claims of child Pornography do not meet the burden of proof. The photos themselves depict a clinical atmosphere, similar to videos seized by Lexington county Sheriff's Dept. from appellant on May 2, 1996.

Appellant was not charged with child Pornography then, as the video did not meet the burden of proof.

Government officials are responsible for properly determining that such material meets requirements to charge a suspect with child Pornography. (Cite)

U.S. vs FOX 248 Fed. 3^d 294. These standards ensure accountability of fairness in our Justice system.

S.C.D.C. made several policy and technical violations which may have effected a different outcome in appellant's case. Lt Hunt searched Appellant's cell in appellant's absence, alone, violation of S.C.D.C.

Policy 22.18-8.2. Judge Anderson disregarded this incident,

citing "one juror searched Appellant's cell." juror-Plural D.P.O. officer Bittinger testified that 100 pages of photos were confiscated. This is in conflict with

Lt. Williams documented testimony in S.C.D.C. 1929 Affirm stating 15 pages of photos were seized. Mr Bittinger also

denial statement of relevancy of 2 prior contained cases of 3/2000 and 11/2/14, telling appellant

to "move on." Transcript of D.P.O. hearing

6/8/16 Starn Highbottom #237685 page 2 lines 12, 20

Investigation start/stop dates not documented on S.C.D.C. 1929A Form.
 Mr. Bittlinger doubted that appellant was under investigation,
 however, Lt. Hunt, in the presence of Sgts. Blackwell and Glenn,
 came and packed up appellant, to be moved to
 lock up unit, telling the appellant that he was
 "under investigation."

S.C.D.C. Form 1929A Form lists Sgt. C. Hunt as
 a witness. As of 6/8/16, date of incident, there was
 no employee Sgt. C. Hunt. The unit counselor is
 Lt. C. Hunt. S.C.D.C. has named a witness
 it can not produce.

Transcript name is Higginbotham. The name listed
 on the transcript is Higgenbotham.

Finally, foot cases for 16-15-410 depict cases of trafficking
 and internet trafficking or child pornography.

The cases follow:

Trafficking

U.S. vs	Forrest	429	Fed 2nd 73
U.S. vs	Maxwell	49	Fed 410
U.S. vs	Peterson	294	Suppl. 2nd 797
U.S. vs	X-Citumont Video Inc. et al		
15 Sept. 464 18 U.S.C.A. 2252			

Internet Trafficking

John Ashcroft vs. ACLU	122	3rd 170
U.S. vs Matthews	209	Fed 3rd 372
U.S. vs. Wharby	550	2nd 326
U.S. vs Higgins	617	Fed 498

These two cases clearly show that the charge
of 16-18-410 does not properly fit the
incident of Appellant's charge of 618116

Conclusion and action requested

The evidence is solid and conclusive that
the charge of 16-15-410, sexual exploitation of a
minor, 3rd degree is not appropriate for the
incident of 618116. Appellant respectfully requests
that the court dismiss the charge with
consideration to the Appellant's rights being
violated and the myriad of violations made
during investigation and disciplinary hearing of
the Appellant on 6122116

Respectfully Submitted,



Steven Higginbotham # 237685
Tyger River Correctional Institution
200 Prison Rd. US-108
Enon, GA, 29335
on this date November 4th, 2017

State of South Carolina

In the S.C. Court of Appeals

Appeal from Richland County
Administrative Law Court
The Honorable Ralph K. Anderson

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SC Court of Appeals

Case # 2017-001317

Steven Loo Higginbotham 237685, Appellant


vs.

S.C. Dept. of Corrections, Respondent

Certificate of Service

The undersigned hereby certifies that a copy of the Appellant's Initial Brief has been served upon Christine Catoe-Bigelow, esquire, Counsel for the S.C. Dept. of Corrections, by depositing a copy of the same, postage paid, in the U.S. mail. This date of November 13th, 2017.

Christine Catoe-Bigelow, Esq.
S.C. Dept. of Corrections
4444 Broad River Rd
P.O. Box 21787
Columbia, S.C., 29221-1787


Steven Higginbotham #237685
Tyger River Correctional Institution
Zoo Prison Rd. U3-109
Florence, S.C., 29535

November 13th, 2017

Steven Higginbotham #297686

Tyger River Correctional Institution

200 Prison Rd • 43109

Waynesville, Ga, 29725

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TYRRI MAILROOM

SC Court of Appeals

Jonny Abbott Kitchings

Clerk of Court

P.O. Box 11629

Columbia, Ga 29211