

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Durden, Administrative Law Judge

App. Case No. 2017-001724

Gregory Pencille, Appellant,

v.

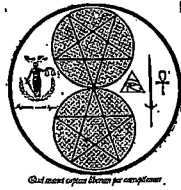
State Of South Carolina, Respondent.

Initial Brief

Date: February 15th, 2018

Gregory Pencille
990 Wisacky Highway
Bishopville, SC 29010

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SC Court of Appeals



Living Body Captured by the State of South Carolina

Appellate case No. 2017-001724

"DECLARATION OF FACT

I the living, Gregory Pencille, **Do hereby declare to all**, the following to be a statement of the truth and nothing but the truth of events:

AFFADAVIT

I was wrongfully charged with possession of contraband items found in a bolted vent where no tool to unbolt vent was found. I was forced to write and sign a statement under duress claiming ownership after four days had past and the investigation had been closed. At institution disciplinary hearing I was found guilty without being allowed to call witnesses, make a statement in my defense, or have counsel. Upon filing grievances to argue disciplinary process my arguments were dismissed without valid explanation and the agency responded to my grievances well beyond the allotted time for response. Also losing purchased hobby craft equipment and access to contractual items donated for specified purpose. Voiding said contract and creating a state-created liberty and property interest.

I properly filed an appeal to this, the Administrative Law Court on. 06/29/2017. On 07/13/2017, The case was appointed a judge and case number. On 07/17/2017, The case was dismissed by Respondents' order to dismiss which stated grounds not raised or mentioned in appellant's notice to appeal. No time was allotted to file a brief on the issues and only 4 days after court was appointed jurisdiction the case it was dismissed with prejudice. . Appellant Gregory Pencille was never informed of a motion to dismiss and never received notice of such motions filing. Mr.Pencille timely filed a 59 (e) to clarify to this court that their ruling (with prejudice) was based on a fraudulent order to dismiss document. This court refused filing of the 59 (e) stating that motions to reconsider are not allowed by the ALC which a 59 (e) is no such motion and a filing of such motion is actually allowed in this court.

Fact of law

The following case(s) of law are a determining factor in proving any burdens of ruling:

Howard v. SCDC 399S.C. 618 (2012) 733 S.E.2nd 211. Clearly determines that: this matter is reviewable By the ALC where an inmates appeal...implicates a state-created liberty or property interest, ...ALC may not summarily dismiss an appeal solely on the basis that it involves the loss of opportunity to earn sentence-related credits. Instead, the ALC must also consider whether the appeal implicates a state-created liberty or property interest. [Note: the Agency argues issue of sentence related credits even when no such issue was raised by Appellant].

As stated in **Howard v. SCDC 399S.C. 618 (2012) 733 S.E.2nd 211,** alternatively, even if policy is found to be valid as applied. to. Appellate claims he was convicted of a disciplinary violation without due process of law because of the following substantive and procedural errors in the disciplinary hearing (1) he was not allowed an opportunity to question his accuser, and (2) he was not permitted to present inmate Witnesses and documentary evidence that would have refuted the charged offense.

‘The requirements of procedural due process apply only to the deprivation of interests encompassed by the 14th amendment’s protection of Liberty and property.’ **Al-Shabazz, 338 S.C. at 369, 527 S.C.2^d at 750**(quoting **Bd. Of Regents of the state Colls., v. Roth, 408U.S. 564, 569, 92 S.Ct.2701, 33L.Ed2d 548 (1972)**).

Al-Shabazz, 338 S.C. at 373,527 S.E.2d at 752 (holding that SCDC’S disciplinary and grievance procedures are consistent with constitutional standards delineated in **Wolff v. McDonnell 418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974)**, which established the minimum constitutional requirements for procedural due process when an inmate is disciplined for “serious misconduct”).

[Because the plain language of Section 1-23-600 (D) would prohibit an ALC from hearing all inmates appeals involving a loss of opportunity to earn sentence-related credits, we clarify that the ALC may not summarily dismiss an appeal solely on the basis that it involves the

loss of opportunity to earn sentence-related credits. Instead, ALC must also consider whether the appeal implicates a state-created Liberty or property interest.]

[The majority recognizes this, as well as the fact that an inmate's right to judicial review of decisions that implicate constitutional interest is not and cannot be diminished by the removal of administrative review by an executive agency.]

Al-Shabazz v. State, 338, S.C. 354, 369, 527, S.E.2d 742, 759 (2000). Indeed, Article 1, subsection 22, of the South Carolina Constitution explicitly guarantees the right to judge a review of all final agency decision that affect private rights or Liberty or property interest.

CONCLUSION

I am requesting the ALC, the Agency of SCDC to better follow their own policies properly that corrective actions or termination against SCDC employees (Sgt S. Goodman, Mrs. Brown, DHO and Lt. V. Smith, contraband) and to expunge my records of these false charges. SCDC to pay monetary value(s) in the amount of \$20,000 for lost personal property, donation contracts voided by agencies/employee's corrupt actions and pay monetary value(s) in the amounts of \$5000.00 pain and suffering of their process and damages to be paid in full into inmate Pencille cooper trust fund upon granting judgment within 30 days.

It is clear that not only the short time frame of appointment to dismissal of this case proves collusion but violates due process of the law. The Agency of South Carolina Department of Corrections falsely accuses and wrongfully convicts, extorts, and sanctions it's captives but the Court of South Carolina Administrative law ignores pleas of innocence from captives in custody of The Corporation of South Carolina Corrections. I the living, Gregory Pencille state that The South Carolina Administrative law Court is corrupted and must be brought to justice by this higher court. Justice is blind and so cannot be Givin into bias.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding. “



Gregory Pencille
990 Wisacky hwy
Bishopville SC, 29010



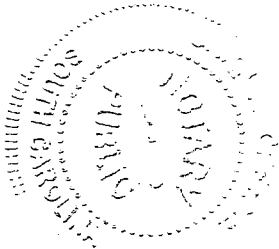
~~December~~ February, ^{1st} 2018
~~2017~~

Sworn and subscribed to me
this 1 day of Feb, 2018.

Miqua Greene

notary public

my commission expires 9-29-2027



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CERTIFICATE OF SERVICE

I, Gregory Pencille, do hereby certify that I have served the

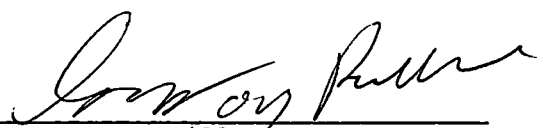
INITIAL BRIEF

by depositing the same in the prison mail system, addressed to the following
addresses, postage prepaid on February 1st, 2018.

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

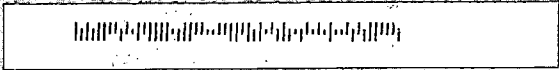
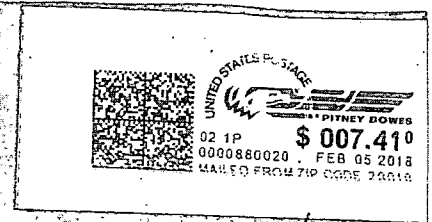
Hon. Jana E. Shealy
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Christina Catoe Bigelow
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