

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Shirley C. Robinson, Administrative Law Judge

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App. Case No. 2017-001725

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Gregory Pencille, Appellant,

v.

State Of South Carolina, Respondent.

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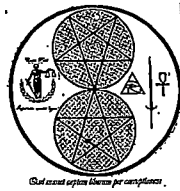
**RECEIVED**  
FEB 06 2018  
SC Court of Appeals

Initial Brief  
Supporting Documents (at 199)

Date:

February 15<sup>th</sup> 2018

Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010



## *Living Body Captured by the State of South Carolina*

### **"DECLARATION OF FACT**

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

### **AFFADAVIT**

I was wrongfully charged with 903. (Trafficking, use, or possession of narcotics, marijuana, or unauthorized drugs) and my due process rights were violated when allegedly two (2) small pills were found in an envelope addressed to Gregory Pencille by the mailroom agent in the mailroom during a routine illegal mail search of inmates mail. The pills were given to contraband office and determined to be Valium [By unknown testing procedure]. I was charged and found guilty during an improperly held tribunal. Where I was told to be quiet when I had not spoken and not allowed to make an argument in my defense or allowed to call forward witnesses.

My promptly filed step 1 and step 2 grievances were systematically dismissed without being properly processed. [I spoke to the warden who told me the charge was obviously a setup, yet failed to overturn the charge].

The ALC dismissed my case only days after I filed my initial brief (**attached; to be used as evidence and part of brief argument**), stating the receipt of an order of dismissal from The Agency of the South Carolina Department of Corrections which I never received. The order alleged issues not addressed in my initial brief and the ALC never addressed my brief, violating my due process rights.

## 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.2d 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

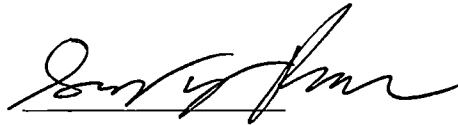
I am requesting the ALC, the Agency of SCDC to better follow their own policies properly that corrective actions or termination against SCDC employees (Sgt S. Goodman, Mrs. Brown, D HO and Lt. V. Smith, contraband) and to expunge my records of these false charges. SCDC to pay monetary value(s) in the 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 Given into bias.

I declare under penalty of perjury that the foregoing is true and correct to the best of


my knowledge and understanding. "

App. Case No. 2017-001725

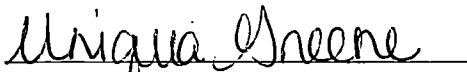


Gregory Pencille  
990 Wisacky hwy

Bishopville SC, 29010

 ~~January~~ <sup>February 1<sup>st</sup></sup> \_\_\_\_\_, 2018

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



notary public

my commission expires 9-27-2027



1 of 21  
Supporting Documents

State of South Carolina  
Administrative Law Court

Gregory T. Pencille. 312332.	)	
APPELLANT,	)	
	)	APPELLANT 'S BRIEF
VS.	)	
South Carolina Department of	)	
Corrections,	)	Docket no. 17-ALJ-04-0145-AP
RESPONDENT.	)	grievance no.: LeeCI-0586-16
	)	

**DECLARATION**

COMES NOW, Gregory Pencille who after being duly sworn, deposes and states:

**“ MEMORANDUM**

**STATEMENT OF THE ISSUES**

Have the actions of SCDC staff abridged my due process rights?

**SUMMARY OF ARGUMENT**

SCDC staff brought upon me improper charges, administered a broken /non-existent chain of custody of evidence, and held non-impartial hearing violating several SCDC policies and violating my due process rights guaranteed by U.S. Constitution 5<sup>th</sup> and 14<sup>th</sup> amendments and violating the South Carolina Constitution Article 1 Section 3.

**STATEMENT OF THE CASE**

On 12/08/2016, I was called into captain Stewart’s office and served charge papers for 903( trafficking, use, and or possession of narcotics, marijuana, or on authorized drugs, etc.) (R. p. 5) hereinafter ‘903’. I was unaware of the basis of the charge: that mail received at Lee CI was allegedly addressed to me and contained contraband drugs (R. pp. 1-4).

Six days before Captain Stewart served the papers, Associate Warden Davis told me that

he needed to speak to me about something received in the mail but he did not follow up or provide details. I was never notified by the mail room about the unauthorized correspondence or its contents. And at no time was the mail in my possession.

A disciplinary hearing was scheduled and held on 12/12/16 (R. p. 5). During the hearing, DHO Brown yelled at me to not interrupt her while she was reading the incident report, I had not spoken. She then refused to call my requested witness, Richard Pencille, and did not give an explanation for her refusal. I asked if I could see the 19-79 form and DHO Brown said she would show me on the recess, where she held it up (at least 4 feet away) then shoved it in a brown envelope quickly, when I asked if I could read it she said 'no'. During my testimony DHO Brown cut me off, stating that she did not want to hear the policies I found because they did not matter. The incident report provided no chain of custody, beyond proving by its own narrative that I was never given actual or constructive possession (R. pp. 2-3). Contraband supervisor LT. V. Smith signed the incident report and claimed that the substance tested positive for Valium--- any test would have read (benzodiazepine), not Valium; there's no specific test to determine exact drugs. The incident report Smith signed demonstrates that sufficient time did not elapse to allow SLED laboratory analysis prior to signing charge; the evidence of testing is inauthentic (R. p. 4). She asked me to step out of the room for the deliberation, then ask me to step back in a moment later. DHO Brown found me guilty of 903 (R. p. 5) based on non-existent and spurious evidence, failing as an impartial fact finder.

I promptly filed notice to review hearing recording and filed step 1 grievance (R. pp.7-8). The grievance was returned without merit. I then promptly filed step 2 grievance which was also denied (R. p. 9).

The warden obviously never read my step 1 grievance as is proven by her response: 'The issues you stated do not warrant a reversal' (R. p. 8) and 'decision of DHO was based on

substantial evidence' (R. p. 8). My issues more than warrant reversal and their evidence contains falsities and/or is non-existent (chain of custody). There obviously was no investigation or review of the case #006 for 903. There are several issues to warrant reversal, as proven by policy.

#### PROCEDURAL HISTORY

On 11/30/16, while scanning incoming mail, T. Diamond allegedly found two (2) pills in an envelope addressed to me. On the same day, V. Smith stated on the incident report that it tested positive for Valium (R. pp. 1-2).

On 11/30/16 Evidence chain of custody was created (R. p. 3).

On 11/30/16 Controlled substance and disposition form filled out (R. p. 4).

On 12/1/16, the Major signed off on the incident report (R. p. 2).

On 12/8/16, I was charged with 903 (Trafficking, use, and or possession of narcotics, marijuana, or unauthorized drugs, etc) (R. p. 5).

On 12/8/16 I submitted a RTSM (kiosk) to Disciplinary reporting witness (R. p. 6).

On 12/12/16, a hearing was held; DHO Brown on record read the incident report, denied my witness request giving no reason, and upon my request to show 19-79 form she stated she would show on recess. In which she did not. She found me guilty of 903 charge (R. p. 5).

On 12/12/16, I served step 1 grievance, stating several issues. On 12/29/16, the warden signed a refusal, denying my step 1 grievance. And on 01/09/17 it was returned to me (R. p. 7-8).

On 1/10/17, I served step 2 grievance in response to the wardens response of my step 1 grievance. It was returned to me 2/14/17 denied (R. p. 9).

On 2/7/17 Step Two grievance opened.

On 3/14/17 I was notified of Step Two grievance opinion.

On 3/27/17, I timely filed notice of appeal.

## ARGUMENT

### **Improper charge**

LT. Smith improperly charged me with (903) Trafficking, Use, Possession, of Narcotics, Marijuana or Unauthorized drugs, including prescription drugs, or inhalants or synthetics.

SCDC policy O.P. 22.14 section 14.1 reads: ‘... If the contraband involves. .. Controlled substances, ie. Illegal drugs..., 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 drugs found in possession of the inmate’ and ‘903 trafficking, use, and/ or possession of narcotics. .. Unauthorized drugs, including prescription drugs...Actually or constructively traffic, use, or possess drugs.. ‘

Because I never had possession, used, or trafficked or had knowledge to or intent to possess, use , or traffic unauthorized drugs and SCDC Policy 22.14 subsection 14.1 requires an inmate to ‘... Actually or constructively traffic, use, or possess drugs...’ I am not guilty of 903 (Trafficking, use, or possession, etc.).

### **Chain of custody was broken and/or did not exist**

After T Diamond allegedly found drugs (pills) in an envelope addressed to me there is no description as to how it was handled and/or by whom. (i.e. What did she do with it , where did it go, who touched/ handled it, who examined it.)

Rule 6 SCRCrimProc requires 'for the purpose of establishing the physical evidence of a controlled substance... a signed report by chemist or analyst performed the test... that the material delivered to him or her was properly tested under procedures approved by State Law Enforcement Division (SLED) he or she is certified by (SLED) as qualified under standards... a certified or sworn statement signed by each successive person having custody or evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery... the statement contains a sufficient description of the substance... statement says the substance was delivered in substantially the same condition as when received'. And 'any reports or papers mentioned in section A or B shall be made available to the defendant... not later than 11 days prior to the trial of the case...'

'Rule 6 rule for chemical analysis and chain-of-custody (a) report of chemical analysis for the purpose of establishing the physical evidence of a controlled substance or other substance regulated by title 44, chapter 53 of the code of laws or rule 60 1-4 of the Department of Health and environmental control, a report signed by the chemist or analysts who performed the test or tests required concerning its nature Shall be evidence that the material delivered to him or her was properly tested under procedures approved by the state law enforcement division (SLED), that these procedures are legally reliable and that the material is or contains the substance... stated.'

'(1) the report at minimum, identifies each item tested, the kind of test or tests conducted on each item, and the and the chemist or analyst conclusion whether the item is or contains a controlled or other regulated ( to include weight or quantity, if applicable) in a language which can be understood...'

'(2) the report is a company by an Affidavit of the chemist or analyst who performed the test...'

The Form 19-29A incident report has no listed Witnesses or employees involved

written in the space on the form, there is no description as to how it was handled and or by who (R. p. 2). There is no chain of custody and I could not call as Witnesses anyone involved in the testing process or if the testing process was done properly; abridging my due process rights.

### **Non-impartial hearing**

DHO Brown refused to call my requested Witnesses, refused to obtain my witness testimony, and refused to take my testimony.

O.P 22.14.section 18.1 'SCDC form 1969 will be used to provide a written record of the hearing. The record will include the following information: ...18.1.2 whether any requested Witnesses were excluded and, if so, the reasons for the exclusion.'

O. P. 22.14 section 1.9 '9.1 implementing and adhering to establish guidelines as they relate to the hearing phase of the disciplinary process'

and

'... 9.2 overseeing and coordinating due process hearing for inmates with disciplinary offenses...'

and

'...14.3 the inmate may call Witnesses unless the Witnesses are not relevant to the case... if Witnesses are denied by the hearing officer, the hearing officer must write his or her reasons for his denial on SCDC form 19-69, in the space provided.'

DHO Brown refused to call my witness which I had timely requested by kiosk (RTSM # 16-391347) (R. p. 6). During the hearing she gave no reason for denying my witness other than she would not call him and failing to obtain pertinent witness testimony; she also refused to listen to my testimony as it pertained to the hearing, stating it was not a valid issue. She also failed to record her reasons on the SCDC form 19-69 space provided (R. p. 5).

The hearing in which I attended, I was refused to bring requested witness and not

given valid reason. '...prison authority may not refuse to interview an inmate's 'requested witness ' without assigning a valid reason...' Fox V. Coughlin 893 F2d 475 (2nd Cir. 1990). I was refused to obtain witness testimony, Id., and I was not permitted to present testimony in my defense, abridging and interfering with my 'right to call witnesses; ... written statement of reasons for being found guilty; fair and impartial decision maker in the hearing' Wolff V. McDonnell 418 U.S. 539 (1974), and my '... opportunity to be heard before a competent tribunal...' U.S. Constitution, Amendment XIV, SC Constitution, Article I, Section 3. And also in violation of SCDC policies O.P.22.14. 9.1;9.2;14.3;18.1 creating a non-impartial, biased hearing. 'When the Constitution requires a hearing it requires a fair one, held before a tribunal which meets the current standards of impartiality. A party must be given an opportunity not only to present evidence, but also to know the claims of the opposing party and to meet them.' Bowles v Willingham, 321 US 503 (1944).

I was brought charges for 903 which I had no type of knowledge or possession; I was not afforded a proper assurance of chain of custody regarding such alleged charges (R. p. 3); and given an unfair trial, violating several SCDC policies and violating my due process rights guaranteed in the United States Constitution by the 5<sup>th</sup> and 14th Amendments, and violating South Carolina Constitution Article I, Section Three.

The foregoing actions have revoked my ability to live in a program dorm, I lost priviledges, and suffered an approximate monetary loss of twenty-four thousand dollars (\$24,000.00) of purchased personal equipment and purchased donated equipment utilized in the program dorm to which I had access to.

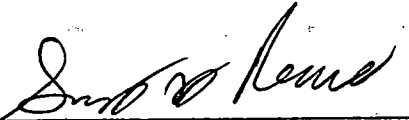
**CONCLUSION**

For the above-stated reasons I request this Honorable Court to :

1. Reverse all charges stated above.
2. Replace or monetarily reimburse to me all chattels lost as a result of this incident.
3. Expunge record of this occurrence in its entirety.”

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

Date: June 18, 2017

s/   
Gregory Pencille  
Lee CI F5 Bxxx  
990 Wisacky Highway  
Bishopville, SC 29010

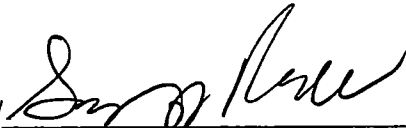
**State of South Carolina  
Administrative Law Court**

Gregory T. Pencille. 312332.	)	
APPELLANT,	)	
	)	CERTIFICATE OF SERVICE
VS.	)	
South Carolina Department of	)	
Corrections,	)	Docket no. 17-ALJ-04-0145-AP
RESPONDENT.	)	grievance no.: LeeCI-0586-16
_____	)	

I hereby certify that I, Gregory Pencille, on the 18 day of June, 2017, in Bishopville, SC, served a copy of the Appellant's Brief on all parties to this matter by depositing the same in the United States mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

What I need here is the address You send it to!

Date: June 18, 2017

s/   
\_\_\_\_\_  
Gregory Pencille  
Lee CI F5 Bxxx  
990 Wisacky Highway  
Bishopville, SC 29010

**State of South Carolina  
Administrative Law Court**

Gregory T. Pencille. 312332.	)	
APPELLANT,	)	
	)	RECORD ON APPEAL
VS.	)	
South Carolina Department of	)	
Corrections,	)	Docket no. 17-ALJ-04-0145-AP
RESPONDENT.	)	grievance no.: LeeCI-0586-16
_____	)	

Pursuant to Rule 58 SCALC the above titled Appellant, Gregory Thomas Pencille, provides his Record On Appeal.

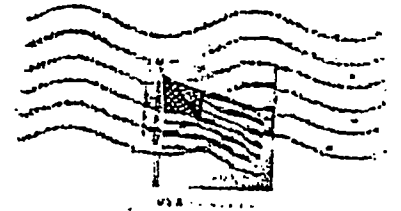
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**PF**  
Richard F. Penelle  
306 Palm Ln  
Myrtle Beach, SC 29577

COLUMBIA SC 29204

28 NOV 2015 8:03 AM



Gregory Penelle 312332

LECI FSA 166

970 Wisacky Hwy

Bishopville, SC

29010

29010-177590



**RECEIVED**

NOV 30 2016

LEECI MAJOR'S OFFICE

2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

Page 1 of 1

UH Subs.

Institution/Center: LEE CI					Date of Report: 11/30/2016
Reporting Official (Full Name): T. Diamond					Time of Report: 12:58PM
Employee ID #: C058412					Date of Incident: 11/30/2016
Location of Incident: Mailroom					Time of Incident: 12:46 AM - P/M - TD
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. Gregory Pencille	312332	39	Male	W	1.
2.					2.
3.					3.
4.					4.
5.					5.

**On the above date and approximate time:**

As I was scanning the incoming mail, I came across a letter written to Inmate Gregory Pencille SCDC # 312332 from Addressee Richard Pencille of 306 Palm Lane Myrtle Beach SC 29577. Once started to open the envelope I noticed a white powdery substance falling on my clothes after opening the envelope completely addressed to Inmate Gregory Pencille SCDC # 312332, I looked down inside and saw Two White Pills one whole and one a bit crushed with a (V) on one side and a solid line on the other side along with a donation letter and cd information inside of the envelope addressed to Inmate Gregory Pencille SCDC # 312332

I AM Charging Inmate Gregory Pencille SCDC # 312332 Code (817) Possession Of Contraband

RECEIVED

Signature: <i>T. Diamond</i>	Title: Postal Specialist	NOV 30 2016
Evidence: <i>Small white pills found in envelope</i>		LEECI MAJOR'S OFFICE
Disposition of Evidence: <i>Lee Contraband</i>		

Supervisor's Comments: <i>Refer to all/11/16. After being tested Positive for Valium - inmate is being charged with 903 - Possession of controlled drug</i>		
Printed Name: <i>Smith, V. LT.</i>		
Signature: <i>Smith, V.</i>	Title: <i>LT</i>	Date/Time: <i>11/30/16 2:57 PM</i>
Major/Responsible Authority: <i>(903)</i>		
Printed Name: <i>Bernhardt</i>		
Signature: <i>[Signature]</i>	Title: <i>[Signature]</i>	Date/Time: <i>12/1/16</i>

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

EVIDENCE

Case No. 11-12-578  
11-11-240

Evidence Description Small white pills found in envelope

Place Evidence Found Highway

Date & Time of Recovery 1/30/16 12:40

Suspect Gregory Pucille 312332 Offense 817

~~Victim~~

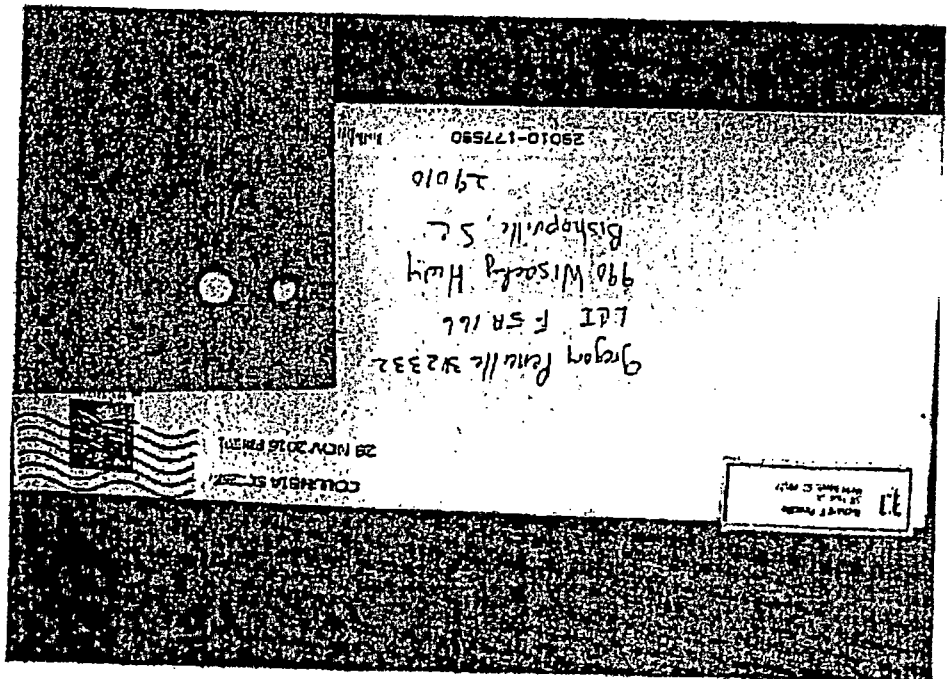
Evidence Recovered By [Signature]  
Signature, Rank

CHAIN OF POSSESSION OF EVIDENCE

Signatures Required

From	To	Date	Time
<u>J. Diamond</u>	<u>Antebroad</u>	<u>11/30/14</u>	<u>3:10 PM</u>

SCDC S-23 (Rev October, 1996)



CONTROLLED SUBSTANCE AND DISPOSITION FORM

RECEIPT CONTROL NUMBER: \_\_\_\_\_

CONTROL/LOG NUMBER: 11-16-048

LEE Co.

Date: 11/30/2012

GREGORY PENNILLE

SCDC #: 312332

SCDC #: \_\_\_\_\_

SCDC #: \_\_\_\_\_

DRUG/ALCOHOL ANALYSIS

1/2 Date Analyzed/Weighed: \_\_\_\_\_

Nitro Drug  Sight and Smell  Other: VOLUME

Marijuana  Cocaine  Heroin  Alcohol Content

Other: By Medical Doctor

S/ OFF E. Sciffa

PHARMACY PRESCRIPTION/MEDICATION VERIFICATION

11/30/16 Quantity/Weight: 1 1/2 pills

Details: white round tablet - Vonorembic 4008 on other = 1mg Valium (generic)

Conditions:  Are  Are not issued by SCDC  
 Were  Were not issued to inmate

S/ Richard R. [Signature]

DISPOSITION OF CONTRABAND/EVIDENCE BY CONTRABAND CONTROL OFFICER

Where: \_\_\_\_\_ Place: \_\_\_\_\_

Turned into Sled  Held for Display

State Welfare Fund  Returned to: \_\_\_\_\_

S/ \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD**

12-7

Case#: 6 Inmate Name: PENCILLE, GREGORY SCDC#: 312332  
 Living Area: F5-0166B Job: RECREATION DEPT Custody: MH  
 Offense Date: 11/30/2016 Offense Time: 12:46 AM  PM Institution: LEE CI

**Offense Description:**  
 All the Trafficking, Use, and/or Possession of Marijuana, Marijuana, or Unlabeled Drugs, and using prescription drugs, Inhalants, Inhalants and Inhalers. It is a violation of the policy for an inmate to...  
 (1) returned to the inmate of facility, (2) purchased at the institutional store, (3) authorized by the Warden and/or a game pack, or (4) issued to the inmate by STC. The rule violation consequences...  
 (1) returned to the inmate of facility, (2) purchased at the institutional store, (3) authorized by the Warden and/or a game pack, or (4) issued to the inmate by STC. The rule violation consequences...  
 (1) returned to the inmate of facility, (2) purchased at the institutional store, (3) authorized by the Warden and/or a game pack, or (4) issued to the inmate by STC. The rule violation consequences...

Charging Officer/Employee: T. DIAMOND Title: MAILROOM

**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  
 I WANT A COUNSEL SUBSTITUTE  
 I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 12/08/16 4:50 AM/PM By (Print): DA Stewart (UIM)  
 Inmate Signature: [Signature] SCDC#: 312332 Date: 12/08/16

**HEARING INFORMATION:**

Hearing Date: <u>12/12/16</u>	Hearing Time: <u>1:57</u> PM	Type:	Side:	Start:	End:
-------------------------------	------------------------------	-------	-------	--------	------

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

19.79 Submitted

OFFENSE CODES	<u>403</u>				
INMATE PLEA (G, NG, None)	<u>NG</u>				
FINDINGS (G, NG, DS)	<u>1</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: FRANCIS WELLS LEXTEL

HEARING LENGTH: \_\_\_\_\_ (MINUTES)

**SANCTIONS:**

Loss of Privileges (Days): \_\_\_\_\_ Reprimand: \_\_\_\_\_ Loss of Good Time (days): \_\_\_\_\_  
 • Property (Days): 30 Extra Duty: \_\_\_\_\_ Restitution: \$ \_\_\_\_\_  
 • Canteen (Days): 30 Visit Suspension Thru: 12/15/16  
 • Other (Days): 30 Cell Restriction (Days): \_\_\_\_\_  
 • Disciplinary Detention (Days): 10

SPECIFIC FACTUAL REASONS FOR PARTICULAR PUNISHMENT IMPOSED: This is the inmate's 1st offense of this nature

CREDIT FOR TIME SERVED? YES/NO IF YES, DAYS \_\_\_\_\_

DATE INMATE PLACED IN PID \_\_\_\_\_

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 12/12/16

HEARING OFFICER (PRINT NAME): [Signature]

APPROVED BY WARDEN/ODIFY: [Signature] 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.)  
 S: 12-17-00 (Rev. 10/1/2007)

OMS **Offender Management System**

OMS Messenger 6 new Search By

File Inmate Non-Inmate Settings Tools Reports Help

No Image Available	Name: <b>PENCILLE, GREGORY</b>	Release:	Location: <b>LEE</b>	Pern #: <b>312332</b>	Print
	DOB: <b>06/06/0000</b>	Adm:		CIO #	Scan
	Sex:	SS #:	Block: <b>F5</b>	Bag Date: <b>05/09/2013</b>	
	Race: <b>W</b>	SCDC#: <b>312332</b>	Cell: <b>Bed 0100 0</b>	Class:	

Disciplinary - Len  
 Workflow Tasks  
 Inmate Requests

**Workflow: Inmate Requests**

**Inmate Request Information**

Request Type: **Disciplinary** Reference: **16-391347**  
 Date Requested: **12/08/2016 22:13** Number

Requested By: **KLOSK**

Request Details: **AS TO A CHARGE I RECENTLY RECEIVED I WOULD LIKE TO REQUEST AS PER POLICY 22.14 14.3 THE FOLLOWING WITNESSES PRESENT. (FATHER) RICHARD PENCILLE WHO IS MENTIONED IN THE REPORT AS THE SENDER. MY ACCUSER MRS. DIAMOND IMPROPERLY FILLED OUT THE SECTION LISTING EMPLOYEES INVOLVED, LEAVING IT BLANK, SO THEREFORE THE ONLY WITNESS I CAN REQUEST IS THE NAME MENTIONED IN THE REPORT OR I WOULD HAVE INCLUDED MORE STAFF MEMBERS I.E. CONTRABAND OFC. NURSE THAT TESTED SUBSTANCE I**

Review Level: **[ ]**

Disposition: **Pending**

Officer: **KLOSK**

Disposition Date: **[ ]**

**Request Responses**

Date	Author	Note

Print Edit

Powered by [Log Out] [Refresh] [Print] [Close]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Due 1/16/17

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Gregory Pencille</u>	OFFICE USE ONLY
SCDC NUMBER: <u>312332</u>	Grievance No. <u>Leect 0586-16</u>
INSTITUTION: <u>LCC</u>	Code: General
HOUSING UNIT: <u>F5A166</u>	Policy
WORK ASSIGNMENT: <u>Recreation</u>	Disc. Hear. <u>12/12/16 703 #6</u>
	Class.
	PREA
	Date Received <u>12/13/16</u>
	IGC Initials <u>[Signature]</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) *Grievance appeal for Case #006 held on 12/12/16. AS follows: OP-22.14-9-Hearing officers Duties; 9.1 H.O. Mrs. Brown failed to implement or adhere to established Guidelines for hearing; 9.2 Mrs. Brown failed to oversee and coordinate a due process hearing; and 9.4. Failed to explain the charge against me by the following Policies and reasons: OP-22.14.14.1 Upon request Mrs. Brown failed to produce for my review the 19-79 "controlled substance testing form"; she held it up in the air away from me then quickly showed it in an envelope. I asked if I could see and read it and she said "NO". OP-22.14.14.3 After Mrs Brown read my kiosk request for witnesses she said she would not call my witness and gave no reason. OP-22.14 18.1(1)(2)(3)(6)-Hearing records; 18.1.1 - I was not present in the room when Mrs. Brown spoke to my accuser over the phone, this was not noted on 19-69 records. 18.1.2 Records for excluding my requested witness was not listed on 19-69 form. 18.1.3 As far as I can tell by the 19-69 record, Mrs Brown excluded the 19-79 form as indicated by her writing it in the section to exclude evidence. 18.1.5 section where to explain guilt she wrote "found guilty based on (?)". This is not explanation of evidence presented and considered and reasons for determination of guilt.*

*I was found guilty of a possession charge when I was never in possession nor had any knowledge of existence of said drugs. I was never notified by the mail room as per Policy 10.08. 7.8 (rejected mail) Notification within 72 hrs, that I had mail rejected. I was never questioned or tested as per GA 03.03 for this incident. Anyone could have sent said letter to anyone. OP 22.14 19.3 - HO Mrs. Brown acted outside the compliance of Policy/Procedures for the above reasons Violating ADM-11.04 #040 - Negligence Job responsibilities and based her decision on little or no evidence. Therefore this charge should be overturned and dismissed, or as per 22.14-24.1*

*[Signature]* 12/12/16  
Grievant Signature Date

ACTION REQUESTED:  
Overturn and dismiss guilty verdict in case # 006

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

*[Signature]* 12/28/16  
IGC Signature Date

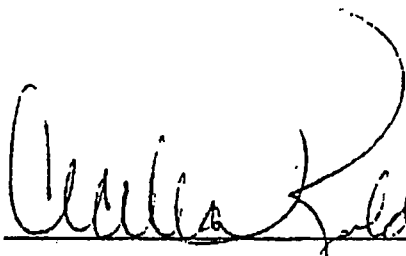
(CONTINUE ON REVERSE SIDE)

**WARDEN'S DECISION AND REASON:**

Inmate Pencille:

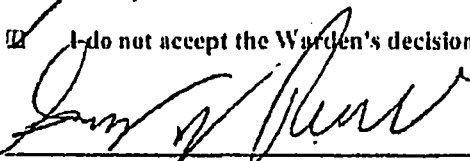
This is in response to LEECI-0580-16. You have appealed the results of your 12/12/16 Disciplinary Hearing where you were found guilty on the charge of 903 Use or Possession of Narcotics, Marijuana or Unauthorized Drugs, Including Prescription Drugs, or Inhalants, case #6. The issues you stated do not warrant a reversal of the charge. Pertinent documentation has been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence were noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence. Based on this information, your appeal is without merit and therefore denied.


If not satisfied with my response, see Step 5 below.

  
Warden Signature 12-29-11  
Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

  
Grievant Signature 1/9/17  
Date

  
IGC Signature 1/9/17  
Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

4  
Dec 1/16/17

RECEIVED

INMATE NAME: Gregory Penelle  
SCDC NUMBER: 312332  
INSTITUTION: Lee CI  
HOUSING UNIT: FS-166B  
WORK ASSIGNMENT: Recreation

Office Use Only  
Grievance No. LeeCI-0586  
Code: General  
Policy  
Disc. Hear 2/12/16 903  
Class.  
Date Received 1/17/17  
IGC Initials [Signature]

JAN 13 2017  
DP

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

The Warden's Response to LeeCI-0586-16 is ambiguous and states there are no issues stated to warrant reversal of my charges.  
• Though rights of a prisoner may be diminished by the needs and exigencies of the institutional environment, he is not wholly without the protection of the Constitution and due process clause. (U.S.C.A. Const. Amendments 1, 14 p)  
• An Inmate can hear all evidence presented at hearing (42 U.S.C.A 1997-1997-28 CFR 40.1-40.22)  
The Issues stated do merit reversal of the charges. All my grievated policies are Proper Violations of procedure and violate Due process.  
The evidence presented does not constitute a guilty Verdict.

- 1: *Walt v. McDonald* sup.ct 418 U.S. 539, 567-72 (1974)
- 2: *Al-shabazz*, 527 S.E.2d 701

[Signature]  
Grievant Signature  
Date 1/10/17

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants (903), case #6, Level 3 Offense, on December 12, 2016, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of -0- 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 forty-eight (48) 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]  
Signature  
Date 2/7/17

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.

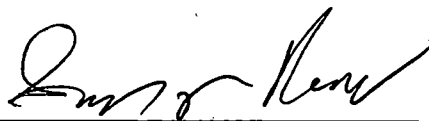
[Signature] 3/14/17  
Grievant Signature Date

[Signature] 3/14/17  
IGC Signature Date

**CERTIFICATE OF APPELLANT**

I hereby certify that the Record On Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: June 19 2017

s/ 

Gregory Pencille  
Lee CI F5 Bxxx  
990 Wisacky Highway  
Bishopville, SC 29010


**State of South Carolina  
Administrative Law Court**

Gregory T. Pencille. 312332.	)	
APPELLANT,	)	
	)	CERTIFICATE OF SERVICE
VS.	)	
South Carolina Department of	)	
Corrections,	)	Docket no. 17-ALJ-04-0145-AP
RESPONDENT.	)	grievance no.: LeeCI-0586-16
_____	)	

I hereby certify that I, Gregory Pencille, on the 18 day of June, 2017, in Bishopville, SC, served a copy of the **Record On Appeal** on all parties to this matter by depositing the same in the United States mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

**Honorable Judge Robinson  
Dept. of General Counsel  
S.C. Dept. of Corrections  
PO Box 21787  
Columbia, SC 29221**

Date: June 18 2017

s/   
\_\_\_\_\_  
Gregory Pencille  
Lee CI F5 Bxxx  
990 Wisacky Highway  
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Shirley C. Robinson, Administrative Law Judge

App. Case No. 2017-001725

Gregory Pencille, Appellant,

v.

State Of South Carolina, Respondent.

CERTIFICATE OF SERVICE

RECEIVED  
FEB 06 2018  
SC Court of Appeals

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


INITIAL BRIEF, Supporting documents (21 pages)

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

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

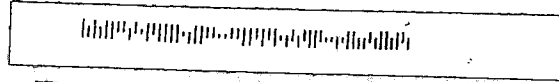
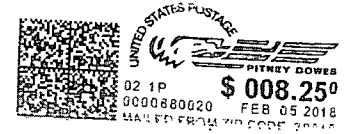
Hon. Jana E. Shealy  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

Christina Catoe Bigelow, Esquire  
PO Box 21787  
Columbia, SC 29221-1787



Gregory Pencille  
990 Wisacky Highway  
Bishopville, SC 29010

Gregory Penick 312332  
Lee CI F5A 0166  
990 Wisacky Hwy  
Bishopville SC 29010



**RECEIVED**

FEB 06 2018

SC Court of Appeals

Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29201