

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 23 2018

APPEAL FROM THE ADMINISTRATIVE  
LAW COURT

S.C. SUPREME COURT

H. W. Funderburk, Jr. Administrative Law Judge

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MAR 23 2018

Case NO.(s) 17-ALJ-04-530-AP  
17-ALJ-04-529-AP

CC Court of Appeals

The State, ..... Respondent,

V.

Rashad D. Johnson ..... Appellant.

ORIGINAL BRIEF OF APPELLANT

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Appellant,

# TABLE OF CONTENTS

Table of contents	pg. 1
Table of Authorities	pg. 2
Statement of the case	pg. 3
Statement of Issues on Appeal	pg. 4
Argument	pg. 5, 7
Conclusion	pg. 8

TABLE OF AUTHORITIES

Butler - v - State, 206 SC. At 441,  
334 SE 2d At 813 ..... Pg. 7

Mccullom - v - State, 571 SE 2d 405 (2002) ..... Pg. 5

Strickland - v - State, 466 US)  
466 us 468, 686, 104 sct 2052,  
2064 (1984), ..... Pg.

# STATEMENT OF CASE

Appellant was brought to Trenton Correctional Institution lock up from dorm 2-CD on June 16, 2017. Appellant was placed under an Institutional 21 day Investigation due to Appellant allegedly being an active participant in a riot that occurred in the confines of 2-CD, on June 14, 2017. Appellant stayed under investigation until the date of July 18, 2017, which is approximately 32 days of investigation; then which in fact Appellant received two(2) forms, of documentations, One(1) for an extension, indicating that more time was needed to conduct the investigation. The other form was 19-69, stating that Appellant was formally being charged with 803 Riot, 820 Damage of state property 801 Assault on Staff, and 804 Threatening to inflict Harm on Staff, and Appellant would be brought in front of the DHO Board, and Mr. Lt. Brown, his accuser, on July 27th 2017. Evidence that was being held against the Appellant was a telephone call he supposedly made to his loved one's insinuating that he was going to partake in Assaulting a correction's officer. Appellant went in front of the board on the assigned date of July 27, 2017, and was found guilty of 803 Riot, 820 Damage to state property, and 804 Threatening to inflict Harm on Staff, and he was relieved of the charge 801 Assault on Staff due to the lack of evidence. Appellant was sanctioned to 60 days lost of good time, time served, 90 days lost of canteen, phone and property privileges. Appellant was then returned to the confines of his Cell, and was instructed that before he be released he would have to consult with Classification. Appellant remained stationed in PTHU, until the 7th day of August 2017, when he was confronted by classification, and informed that he was being enhanced to the custody level of Security Detention (S.D.), and would remain in lock up for a minimum, and stint of 6 months before he would be qualified for release, due to the severity of his offenses. Appellant then, in fact was appointed a grievance, that he filled out, and submitted October 4, 2017. Appellant went through the proper procedures of the Administrative Law Court. After being assigned a Judge H.W. Funderburk Jr. on the date of October 19, 2017, Appellant submitted his brief to the courts and agency on December 17, 2017. In the process of waiting on the Respondent's reply brief, he received a Motion for Remand from the Respondent in its place, on February 6, 2018, stating that, upon further review and meeting with the General Counsel's office, the Division of Operations had elected to rehear the Appellant's case. Furthermore implying that they sent this motion out January 31, 2018, which Appellant received February 6, 2018. On January 13, 2018 Appellant received an order to Remand from H.W. Funderburk Jr. Stating, that by, Appellant's lack of Response, to the Respondent's Motion For Remand the Motion was hereby granted on the 7th day of February 2018, approximately one(1) day after the Appellant received the Respondent's Motion for Remand. Appellant was then confronted by the Grievance coordinator for Trenton Correctional Institution, on February 22, 2018, with form 10-5A, stating the Specific's: That he's been notified that this matter has been resolved, and is in fact the Agency's final response in reference to this matter, also that he would be on the schedule to appear in front of the Disciplinary Board for a re-hearing pertaining to this matter on the 27th of February, 2018. Appellant went to his hearing, hearing on the 27th of February, 2018 and stood before the same officials who conducted his previous hearing that took place July 27, 2017. Appellant was found guilty in the same manner as his prior hearing. Appellant was sanctioned to remain on (S.D.); Due to the fact Appellant felt his case was handled improperly he submitted a Notice of Appeal to the Supreme Court, and parties involved in this matter on the 4th of March, 2018.

## ISSUES ON APPEAL

- (1. Did D.H.O violate Appellants 6th Amendment right by denying him access to listen to this telephone recording at both hearings?
- (2. Were the Appellant's Constitutional rights, violated due to the fact extension, and Charge papers were served after the expiration date of the 21 days of investigation.
- (3. Did the Administrative Law Court Judge prematurely grant the Respondent's Motion to Remand by erroneously assuming Appellants time to respond had expired?
- (4. Did the Agency violate the Appellant's right to a fair hearing by allowing the Hearing Officer and Officials that conducted the first to do the exact same at the rehearing?

## ARGUMENT

1. DHO did in fact violate the Appellant's 6<sup>th</sup> Amendment's right, by denying him access to this telephone recording at both hearings.

Appellant was denied access to evidence that was being held against him, a telephone recording that he allegedly made to his family, insinuating that he was going to be an active participant in a riot. When asked to confront this recording, Appellant was told, on both occasions, his first hearing that took place July 27, 2017, and his rehearing that took place February 27, 2018, that his Council Substitute, Hearing Officer, and accuser L.T. Brown had already listened to the recording, and made their decision, by DHO failing to produce this recording, is a violation to the Appellant's 6<sup>th</sup> Amendment! The accused shall enjoy the right to a fair hearing before an impartial Jury, the right to effective assistance of Counsel, the right to obtain witnesses in his favor as well as confront witnesses/evidence against him U.S.C.A. Constitution Amendment 6. Appellant has a right to be present at all material stages of his hearing. *Mccollum v- State*, 571 SE 2d 405 (2002)

2. Appellant's Constitutional rights were violated, Appellant did not receive charges, or extension papers in the proper time frame of the 21 day investigation.

Appellant was brought to RHU from dorm 2-CD, and placed under a 21 day Institutional Investigation, on June 16, 2017, for the Appellant's alleged involvement in a riot that transpired in the confines of 2-CD. Appellant was stationed in RHU until July 18, 2017 when he was confronted by the DHO Assistant with an extension, and charge papers, which was in fact 32 days of Investigation, and also

a violation to policy op 22-14 SEC. 4-3-1 labeled Institutional Investigations, Stating the following: If the Major/responsible authority believes that further investigations of the circumstances is needed, in order to determine the inmates to be charged the nature of their acts, etc then He/She can direct that an Institutional Investigation be conducted (Investigations conducted by the Institution will be completed within 21-calender days.) The start, and end of the 21 day initial Investigation should be documented on SCDC form 19-29A by the Major/responsible authority. An entry of Investigation should be made into the OMS. The OMS narrative should reflect the beginning and ending dates of the Investigation. To include any extension if applicable. If more than 21 calender days are required for completion of the investigation an extension maybe granted, by the Division of operations. The written extension request should be completed, and signed by the Warden/Designee and approved by the Division of Operations prior to the expiration of the initial 21 days. The 21 day extension will commence on the date of approval by the Division of Operations. Op 22-14 SEC. 4-3-1 Institutional Investigations indicates that investigations would be conducted and completed within 21-calender days by SCDC failing to comply policy, and holding the Appellant for 32 days before confronting him with an extension and charges is a violation to policy. Furthermore a violation to the Appellant's 6th Amendment, rights to a fair hearing, and his 14th Amendment Due process of the Law.

(3. Administrative Law Court Judge did infact prematurely grant the Respondent's Motion For Remand by erroneously assuming the Appellant's time Respond had expired.

Appellant submitted his brief on December 17, 2017, to the Respondent, and Honorable Judge H.W. Funderburk Jr. of the Administrative Law Court. In the process of waiting for a reply brief from the Respondent, Appellant received a Motion For Remand in it's place which should infact been dismissed, and thrown out due to the fact the Respondent didn't comply with the rules of the (ALC) part v. Special appeals by violating Rule 60(A) time for filing briefs. Appellant received the Respondent's Motion on the 6th of February 2018, which is exactly one (1) day before the Honorable Judge H.W. Funderburk signed, and approved the Respondent's Motion For Remand which was practically impossible for the Appellant to have respond to in a timely manner. Rule 5: In the (ALCA) labeled Filing defined (A) States, the date of filing is the date of delivery or the date of mailing as shown by the postmark or by the date affixed by the mail room at the Appellant correctional Institution. Therefore Appellant's time infact hadn't expired, by Judge H.W. Funderburk failing to rightfully assess the matter, and rightfully dismiss the Respondent's motion, and reverse the Appellant's case all together, he has violated the Appellant's 14 Amendment all Citizens shall enjoy the right to Due process as well as equal protection of the law. U.S.C.A. Constitution 14.

14. The Agency did in fact violate the Appellant's right to a fair hearing; by allowing the Hearing officer, and officials that conducted the first to do the exact same at the rehearing.

The Agency violated the Appellant's 6th Amendment rights, by failing to have a different Disciplinary Hearing officer conduct the Appellant's Hearing. The Appellant was brought forth in front of the same Disciplinary Hearing Officer, who conducted the Appellant's last hearing, which Appellant believes the said officer has developed a personal vendetta against him, and ruled his first hearing unjustly. Safe to say Appellant did not receive any relief at his hearing, he was found guilty of the same offenses he went on Appeal for 820 Damage to State property, and 803 riot. Appellant also wasn't able to confront any evidence that was being held against him, by the Agency failing to appoint a new Hearing officer to conduct the Appellant's hearing, so the Appellant would have a fair hearing and allowing the same things to transpire at the rehearing, is a violation to the Appellant's 6th Amendment right, rights to a fair hearing. The Hearing conducted undermined the proper functioning of the adversarial process that the hearing can not be relied upon as having produced a just result. Strickland, 466 US 668, 686, 104 Sct 2052, 2064 (1984) See Butler v State, 286 SC. At 441, 334 S 2d At 813.

## CONCLUSION

Appellant's case be reversed, and Appellant should be released from any restrictions, and, or any Restrictive Housing unit he's been confined in, due to lack of evidence, and violations of the Appellant's rights.

Respectfully Submitted,

Rashad D. Johnson  
Rashad D. Johnson

March 20, 2018

Appellant

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In The Supreme Court

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SC Court of Appeals

I certify that a true copy of the Original Brief of the Appellant has been Served upon the respondent, and all parties involved by depositing a copy of it in the United States Mail, postage prepaid, on this 21st day of March, 2018,

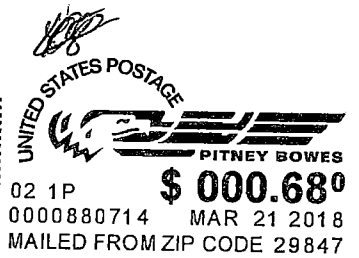
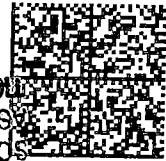
March 20, 2018

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THE DEPARTMENT OF CORRECTIONS HAS NOT INSPECTED OR CEN  
SORED THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT  
ASSUME RESPONSIBILITY FOR ITS CONTENTS - TRENTON CORREC  
TIONAL INSTITUTION, S.C. DEPARTMENT OF CORRECTIONS.



MAR 21 2018

THE SUPREME COURT OF South Carolina  
DANIEL E. SHEAROUSE, CLERK OF COURT  
P.O. Box 11330  
Columbia, South Carolina 29211

29211330 BOSS

