

BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS APR 03 2018

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Phillip Lenski; Administrative Law Judge

Case No: 2018-00177

William Leon Burnett #358645 Appellant,
v.
South Carolina Department of Correction Respondent,

INITIAL BRIEF OF APPELLANT

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South Carolina Department of Corrections Policies:
OP-22.14 "Inmate Disciplinary System"
Sec. 8: Counsel Substitute
Sec. 14: Presentation of Evidence at the Hearing

Statement of Issues On Appeal

- Appellant was denied the right to call witnesses by Counsel Substitute.
- Appellant's classification custody level was substantially reduced due to disciplinary conviction.
- Counsel Substitute failed to introduce on the record of those interviewed, both officers and inmates alike.

STATEMENT OF THE CASE

On Monday, April 3, 2017, at 8:32 A.M., a targeted search was conducted by Lieutenant Ellen Inabinet, Corporal James Miller, and Tyquan Eady. Appellant was the first to be stripped searched then Michael Exall, and finally, Phillip Alan James. All occupants were stationed outside the room of Colleton Unit A-1, while Lieutenant went straight to the targeted area of Appellant's mat. When she initially looked under it, she didn't find what was at target. Then she moments later went back and found under the mat what appeared to be a six inch shank fabricated together by a broken off broom handle, a black, short shoestring as a hook at the top, maskin tape wrapped around the bottom of the handle to hold a metal bever with two razor blades dangling from it. Lieutenant Inabinet inferred a direct question to Appellant, first in stating, "Burnett, is this yours, because it was found under your mat?" In reply, Burnett stated, "No, it isn't, and I didn't even know it was there." Burnett went further into that statement adding, "I had no knowledge of it being there in the first place. Inabinet also questioned the Appellant's roommates, asking Michael Exall, "Is this yours?" Exall replied, "No, ma'am, Ms. Inabinet, it is not mine." Lastly, Inabinet asked Phillip Alan James, "Is this yours, Phil?" James responded, "No, it isn't mine." Inabinet came back around a second time and asked assertively, "Mr. Burnett, I'm going to ask you one more time, and you'd better tell me the truth, you got it!" She once more reiterated, saying, "Is this yours?" Appellant answered, "No, it is not mine." He adamantly asserted his innocence and stood on his word. After the fact of questioning she blatantly stated "I know it is yours, because I found it under your mat between two books." In reply, Appellant stated he was ignorant of how it got there in the first place. She handed it to Officer James Miller and commanded

Officer Tyquan Eady to write the incident report as though he found it himself, and his signature is on the report. Appellant was put in Pre-Hearing Detention on (P.H.D.) on April 3, 2017 without no explanation why, such as a physical threat to the order and safety of the officers and inmate population checked which wasn't checked in its correct box; nor did anyone make such a claim of being threatened by Appellant. On April 18, 2017, at 9:00 A.M. the D.H.O. commenced, Appellant plead "Not Guilty". Ms. Valerie Jones stated on the record it wasn't necessary that we allow Burnett to call witnesses. It definitely would have refuted the credibility of the officer's incident report. The only evidence was a pictograph of the shank found. Based solely on that, Appellant was found guilty. In turn, Officer Eady couldn't prove 100% that it belonged to Appellant, because he was questioned on the record whether or not he saw it on the Appellant or that someone, a close source witnessed and made such a claim that they heard he had it or saw it on his person.

FACTS

- Appellant Burnett didn't get fair treatment at his disciplinary hearing.
- Found shank - makeshift in a living quarters, open range that is accessible by ALL. SCDC Policy specifically makes it plain, clear and convincing that if there is more than one person in a room and no one claims what is found, ALL are charged.
- ALL three should have been placed in Pre-Hearing Detention instead of just Appellant Burnett
- Due Process was violated in that the liberty interest involved was violated.
- Appellant was still found guilty without justifiable cause beyond a reason in hearing other than personal and professional unbiasedness.

ARGUMENTS

I: The Administrative Law Court erred in its ruling and discretion when omitted a "Due Process Clause" violated and relied heavily on "Hands Off" Doctrine of cause and effect. Yes.

Liberty interest includes a three prong test: (1) Where right at issue is independently protected by the Constitution; (2) Where the challenged action causes the prisoner to spend more time in prison; and (3) When the action imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. The Appellant's right at issue to call witnesses was denied by Counsel Substitute, Ms. Valerie Jones and confirmed by Disciplinary Officer Ernest Rowe. See Edwards v. Balisok, 520 U.S. 641, 646-47, 117 S. Ct. 1584 (1997) (refusal to call witnesses was "obvious procedural defect."); Abruska v. Dept. of Corr., State of Alaska, 900 P. 2d 319, 322 (Alaska 1995) (holding Hearing Committee erred in refusing to call witnesses who could have impeached officer's credibility). To this extent, the alternative was to interview them outside of disciplinary hearing which Counsel Substitute Jones did or get written statements, that she did not do. Mitchell v. Dunnick, 75 F. 3d 517, 525-26 (9th Cir. 1996) (holding prison officials may use interviews of witnesses as substitute for calling them at the hearing.) Subsequently, Jones failed without informing Appellant, to bring up interviewed witnesses of inmates and officers alike. Due to her decision, Hebek v. State, 478 N.W. 2d 617, 619 (Iowa, 1991) "Unjustifiable refusal to permit live testimony of a defense witness.... will warrant reversal.", supporting a more of a reason that points to a due process violation regardless of the "hands off" doctrine

It is at this point, these prison officials took matters into their own hands. S.C.D.C. Policy DP-22.14: "Inmate Disciplinary System", Sec. 8 Counsel Substitute, subsec. 8.2.3 and 8.2.5, which states as follows: "Obtain names of all employees and inmates whom the accused wishes to call witnesses; inform the hearing officer of all the names of witnesses the inmate has requested, respectively. The names were never submitted to D.H.O. Official Mr. Ernest Rowe and Jones never collected the names of those she interviewed as the request was submitted by Appellant in SCDC Form 19-11 "Request to Staff Member" and stated on Friday, April 9, 2017, in front of Officer Cuberton, A.K.A. "Officer Cut," to gather the witnesses; character witnesses specifically. S.C.D.C. Policy DP-22.14; SEC. 14 Presentation of Evidence at the Hearing, subsec. 14.3, which states in part, "inmates may call witnesses unless Hearing Officer decides that the testimony of such witnesses is repetitive." It also goes on to state "... if witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reason for the denial on SCDC FORM 19-69 in the space provided. Sec. 14.4 states "inmates may request witnesses for the hearing. This was fulfilled, see Whitlock v. Johnson, 153 F.3d 380, 387-88 (7th Cir. 1998) (holding policies excluding appearances at the hearing of categories of witnesses "presumptive disfavored.")

11: The Court erred in its inclusion of law because Appellant was denied the Fourteenth Amendment to the United States Constitution Right. Yes.

Every inmate tried in a disciplinary hearing is entitled to the exact fulfillment of the Due Process four (4) prong test that must be

met as (1) Notice to hearing; (2) Right to be heard; (3) Call witnesses; and (4) Confront and cross-examine. See Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963 (1974); as well as Moore v. Moore, (S.L.P. 008) 376 S.C. 467, 657 S.F. 2d 743.

The charge was trumped up because a confidential informant, later found out to be Michael Exall, wrote the kite, in the nature and degree of information was an invitation to disciplinary sanctions. Helms v. Hewitt, 655 F.2d 487, 502 (3rd Cir. 1981) rev'd on other grounds.

Hewitt v. Helms, 459 U.S. 460, 130 S.Ct. 864 (1983); McCasum v. Miller, 695 F.2d 1044, 1049 (7th Cir. 1982) noting charge

of use of disciplinary hearing for "scheme revenge". See Newton v. City of New York, 779 F.3d 140, 151 (2nd Cir. 2015)

(Due process protections required adequate and accurate management of evidence that is accessible to inmates for purposes of demonstrating inmate is not

guilty). Because there was not a place for inmate(s) to actually see the shank before the hearing, he could not have avoided administrative segregation. See Williams v. Hobbs, 668 F.3d 994, 1000 (9th Cir. 2011) (liberty interest in avoiding administrative segregation.)

III: Appellant's custody level substantially dropped from MINIMUM-INP (M.I.P) to MEDIUM (M.E.P). Did Court err in denying a liberty interest that is included in the procedural due process clause in connection with S.C.D.C. Policy DP 22.14. Yes.

Appellant's classification status was taken back to a much lower class upon review by classification caseworker, Ms. Jackson at the time of review prior to

being released back into general population. This issue is that state officials have violated the state prison inmate's procedural due process right. Appellant establishes that a liberty interest is involved in receiving a modified classification custody from the custody status before the infraction. It adamantly has adversely affected Appellant by the state officials' actions, because they failed to protect the due process that is guaranteed by the Fourteenth Amendment.
Brown v. Evans, (S.C. 1996), 399 S.C. 189, 470 S.E.2d 848.

CONCLUSION

The relief being sought and petitioned is to have disciplinary conviction reversed.

March 22, 2018

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PROOF OF SERVICE OF APPELLANT'S INITIAL BRIEF

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Phillip Lenski, Administrative Law Judge

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William Leon Burnett # 352645 Appellant,
v.
South Carolina Department of Corrections Respondent,

PROOF OF SERVICE

I, William Leon Burnett, certify that I have served Ms. Christina Catoe Bigelow, the Appellant's Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, addressed to 444 Broad River Road, Columbia, South Carolina 29221 on March 22, 2018.

March 22, 2018

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