

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Milton G. Kimpson, Administrative Law Judge

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ALC Case No. 17-ALJ-04-0536-A17

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James L. West, #361673 . . . . . Appellant,

v.

South Carolina Dept. of Corrections . . . . . Respondent.

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RECORD ON APPEAL

**RECEIVED**

APR 03 2018

SC Court of Appeals

Christian Catoe Bigelow

Attorney of Respondent

S. C. Dept. of Corrections

P.O. Box 21787

Columbia, S.C. 29221

(803) 896-1355

S. C. Admin. Law Judge

The Honorable Milton G. Kimpson

Edgar A. Brown Building, Suite 224

1205 Pendleton Street

Columbia, S.C. 29201



HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

December 8, 2017

The Honorable Milton G. Kimpson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate James L. West, #361673, vs. SCDC  
Docket No. 17-ALJ-04-0536-AP

Dear Judge Milton G. Kimpson:

Find enclosed a copy of the Respondent's Record consisting of Inmate Grievance TCI 325-17, Disciplinary Report and Hearing Record, Incident Report, and Disciplinary Transcript, as well as other supporting documents in the above referenced case.

Please file the originals and return a clocked-in copy of the cover letter to me in the enclosed self-addressed envelope.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheron Hess", is written over a large, stylized, handwritten flourish that extends downwards and to the right.

Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

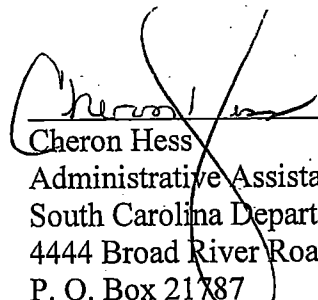
cc: Inmate James L. West, #361673  
File

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate James L. West  
Inmate Number: 361673  
Turbeville Correctional Institution  
Dorm-Room-Bunk: TA-0123-T

Columbia, South Carolina  
December 8, 2017

  
Cheron Hess  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broad River Road  
P. O. Box 21787  
Columbia, SC 29221-1787  
(803) 896-3922

Due: 7/31/17

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

AUG 30 2017

INMATE NAME: West, James  
SCDC NUMBER: 361673  
INSTITUTION: Timberville ✓  
HOUSING UNIT: \_\_\_\_\_  
WORK ASSIGNMENT: \_\_\_\_\_

RECEIVED

SEP 06 2017

INMATE GRIEVANCE

Office Use Only  
Grievance No. TCL-0325-17  
Code: General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc. Hear. 903 #3, 7/10/17  
Class. \_\_\_\_\_  
Date Received 8.31.17  
IGC Initials LC  
9/8/17 Jim

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

There is no Evidence of any Drug use,  
No Evidence of any Drugs. A spider got on me  
in my sleep and Sealed me. I am not Guilty. Please  
review this. How can I lose 90 days of my life  
over what an officer Belives, I ask for a Drug  
test to prove my Innocents also.

James L West 8-29-17  
Grievant Signature Date

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, Inhalants, Intoxicants and Synthetics (903), case #03, on July 10, 2017, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015, and the sanctions imposed, which included the loss of 90- days accrued good time, were appropriate for the rules violation. 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.

Joseph A. Rice 9/26/17  
Signature Date

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.

Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_ IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

(SEE REVERSE SIDE FOR INSTRUCTIONS)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 1**

JUL 12 2017

74235

<b>INMATE NAME:</b> <u>James L West</u>	<b>OFFICE USE ONLY</b>
<b>SCDC NUMBER:</b> <u>361673</u>	Grievance No. <u>TCF-825-17</u>
<b>INSTITUTION:</b> <u>Turbiville</u>	Code: General _____
<b>HOUSING UNIT:</b> <u>Tow Caw 122</u>	Policy _____
<b>WORK ASSIGNMENT:</b> <u>Bldg Detail</u>	Disc. Hear. <u>903 #3 7/10/17</u>
	Class. _____
	PREA _____
	Date Received <u>7-12-17</u>
	IGC Initials <u>LC</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.)

on June 24 2017 at about 10:05 pm I was in my bunk at Waterce Dorm 1 24 A Bed. There is not a screen on the window an is close to the ground. A spider got on me an woke me up from my sleep. It scared me so I exited my cell an collected myself an went back to kill the spider. At that point Sgt. Moyd cuffted me an took me to the Inside front gate. I explained to them what happened an went back to my living area. They charged me with a 903 an found me guilty. I was not under any influence an had no drugs no drugs test I requested a drug test an was denied that also. Please overturn this charge I am not guilty.

James L West 7-11-17  
 Grievant Signature Date

**ACTION REQUESTED:** Overturn Charge, Get Custody Back to MRIB an get Printers Back

**ACTION TAKEN BY IGC:**  PROCESSED  UNPROCESSED  OTHER

IGC reviewed case and considered reasons for appeal. See Warden's response.

Coker 8/16/17  
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

**WARDEN'S DECISION AND REASON:**

Inmate West

TCI-0325-17 / # 361673

I have reviewed your concern. In your grievance you allege that the disciplinary hearing that was conducted on 7/10/17 where you were convicted of **903, The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants, case # 3** was unsubstantiated according to the facts presented at the hearing. You further allege you were innocent of this charge. However, you may file an appeal to this decision as the Warden is limited in addressing appeals from DHO hearings. Based on this information your grievance is **denied**. 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 SCDC Form 10-5A provided to you, in the Grievance Box at your local institution.

*N. C. [Signature]*

*8/21/17*

Warden Signature

Date

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

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

*[Signature]*

Grievant Signature

Date

*[Signature]*

*8/29/17*

IGC Signature

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  
DISCIPLINARY REPORT AND HEARING RECORD**

6-27-17  
9-17-17

Case#: 03 Inmate Name: JAMES WEST SCDC#: 361673  
 Living Area: TA 122T Job: BLDING DETAIL Custody: M12  
 Offense Date: 06 / 24 / 2017 Offense Time: 10:05 AM  PM Institution: WATERBURY

**Offense Description:**

003 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, inhalants, intoxicants and Synthetics. It is a violation of this section for an inmate to: Actually or constructively traffic, use, or possess drugs or intoxicants of any type or description (except those prescribed by an authorized physician and within authorized amounts and expiration dates) such as but not limited to: habituates, narcotics, medicines, marijuana, pot, hash, and synthetic cannabinoids; as well as all drug paraphernalia, such as but not limited to: needles, syringes, pipes, rolling papers and straws. Officers may rely on their training and experience to identify any intoxicating substance or paraphernalia where no available scientific tests have been created and/or confirmed credible. Substances which cannot be identified by the officer through their training and experience will be considered contraband and subject to an R17 Possession of Contraband charge unless the inmate can prove by a preponderance of the evidence at the disciplinary hearing that the substance was either: (1) issued to the inmate officially; (2) purchased in the institutional canteen; (3) authorized by the Warden and/or Agency policy; or (4) issued to the inmate by SCDC. This rule violation encompasses the "hoarding" of authorized prescribed medication by any inmate(s) or inmates who having accepted their medication, then failed to ingest the medication at the time they are issued it at the roll call (i.e., Under, or feign (pretend) to be under the influence of any medication, other than one prescribed by an authorized physician, which creates an altered state of physical or mental activity. The observation and determination by institutional staff of inmates exhibiting behavior such as paranoia, panic attacks, giddiness, agitation, hallucinations, psychosis, unexplained hypertension (high blood pressure), tachycardia (increased heart rate), vomiting, seizures, fainting at the canteen, blurred vision, total memory loss, inability to feel pain, suicidal thoughts, uncontrollable aggression or any other symptoms which through the staff member's training and experience would lead them to reasonably believe the inmate is under the influence of a drug or intoxicant would be sufficient to justify this charge. A voluntary admission by an inmate that they are intoxicated, whether spontaneously uttered or as a result of questioning by institutional staff, can be considered in making this charge but is not, in itself, enough to justify this charge. Test positive for any unauthorized drug or intoxicant, refuse to submit to a drug test, or fail to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03 01, "Inmate Drug Testing/Screening Program."

Charging Officer/Employee: B. GOODRICH Title: OFC.  
**INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.**

I GIVE UP MY RIGHT TO 48-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING  
 DO NOT WANT TO BE PRESENT AT MY HEARING  
 I DO WANT MY ACCUSER PRESENT AT THE HEARING JW  
 I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

RII/OPH SEGREGATION ONLY  
 I WANT A COUNSEL SUBSTITUTE  
 I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 7/10/17 2:30 AM/PM By (Print): ok. Quattlebaum, Louis  
 Inmate Signature: [Signature] SCDC#: 361673 Date: 7/10/17

**HEARING INFORMATION:**

Hearing Date: <u>7/10/17</u>	Hearing Time: <u>12:11</u> am/pm	Medclass: <u>Nmt</u>	Reading Level: <u>7.5</u>
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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.

OFFENSE CODES	<u>903</u>	
INMATE PLEA (G, NG, None)	<u>NG</u>	
FINDINGS (G, NG, DS)	<u>G</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:

**SANCTIONS:**

Loss of Privileges (Days): <u>TV</u>	Reprimand: _____	Loss of Good Time (days): <u>90</u>
Property (Days): <u>360</u>	Extra Duty (Hours): _____	Restitution: \$ _____
Canteen (Days): <u>90 (60=150)</u>	Visit Suspension: <u>90 (60=150)</u>	
Phone (Days): <u>90 (60=150)</u>	Cell Restriction (Days): _____	
Disciplinary Detention (Days): <u>60</u>		
Other (Days): _____		

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: Nature of offense

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

DATE INMATE PLACED IN PHD: \_\_\_\_\_  
 INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 7-10-17

HEARING OFFICER (PRINT NAME): [Signature] [Signature]

APPROVED/ADD MODIFICATION ONLY: [Signature] WARDEN 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)  
 SCDC 19-69 (Rev. Feb 2017)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

Page 1 of 1

Institution/Center: <b>WRCI</b>				Date of Report: <b>6-24-2017</b>	
Reporting Official (Full Name): <b>Bethany Goodrich</b>				Time of Report: <b>Approx 10:30 pm</b>	
Employee ID #: <b>859712</b>				Date of Incident: <b>6-24-2017</b>	
Location of Incident: <b>Dorm 1 - A side</b>				Time of Incident: <b>Approx 10:05 pm</b>	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. <b>James West</b>	<b>361673</b>				1. <b>Sgt. Moyd</b>
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: **Sgt. Moyd and I ofc. Bethany Goodrich ID# 859712 observed 1/M James West scdc# 361673 Screaming, Crying, and pacing iratically back and forth He, 1/M James West scdc# 361673 then retreated back to his room 24A. Sgt Moyd then Cuff 1/M James West scdc #361673 and removed him from the unit.**

*Based on my training from watching the K-2 and drug videos I believe the inmate was under the influence.*

**END**

**RECEIVED**  
JUN 28 2017  
W.R.C.I.  
WARDEN OFFICE

Signature: *Bethany Goodrich* Title: **C/O**

Evidence:

Disposition of Evidence:

Supervisor's Comments: **I/M will be charged with 903: use or possession of narcotics. 1667 Nine Brown instructed 3/M to follow up with medical**

Printed Name: **Dannavan Hodge**

Signature: *Dannavan Hodge* Title: **Sgt** Date/Time: **6/24/17 11:54**

Major Responsible Authority:

**903 - K-2**

Printed Name: *T. J. ...*

Signature: *T. J. ...* Title: **1st Lt** Date/Time: **6/26/17**

STG Related - Refer to STG Committee  
( ) Yes ( ) No ( ) Unknown

This incident is DRUG related  
( ) Yes ( ) No ( ) Unknown

Responsible Authority  
Action Taken

( ) Informal Resolution  
( ) Administrative Resolution  
(X) Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Inmate Disciplinary System

LOSS OF PRIVILEGES - PERSONAL PROPERTY

(This form is to be completed by the major/responsible authority or the hearing officer when an inmate has been assessed loss of personal property privileges as a sanction following informal resolution, administrative resolution, or a disciplinary hearing administrative resolution.)

Inmate Name: James West SCDC #: 3161673

Disciplinary Case #: 3 Date of Resolution or Hearing: 1/1

Unit: TA Length of Restriction (# of Days): 360

Date of Restriction: From: 7/15/19 To: 7/10/19

Major/Responsible Authority or Hearing Officer Name (Print): Lesia Johnson

The property items listed below are to be restricted for the time period indicated above. (Check one of the following items, A or B, as appropriate.)

A. Specific property items. (List below the specific items that are to be restricted. If all personal property is to be restricted, check item B, below.)

TV-Mail Out

B. All personal property except the following permitted items:

1. Legal materials;
2. Correspondence materials;
3. Religious Literature;
4. Incoming and outgoing mail;
5. Hygiene items;
6. Clothing necessities (as per SCDC Procedure OP-22.03);
7. Educational materials (materials used for academic programs in which the inmate is enrolled)

cc: Institutional Record  
Inmate  
Staff Enforcing Restriction

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE**

**DOCKET No.: 17-ALJ-04-0536-AP      GRIEVANCE No.: TCI 325-17**

**INMATE NAME: James L. West      SCDC No.: 361673**

**INSTITUTION: Wateree Correctional Institution**

**DATE: July 10, 2017**

**CHARGE: 903 – The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or  
Unauthorized Drugs, Including Prescription Drugs, or Inhalants, Intoxicants and  
Synthetics (Case 03)**

DHO: The purpose of this hearing is to treat the matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in your removal. Please state your name and SCDC Number for the record.

I/M: James West, 361673.

DHO: You are appearing before the Turbeville Major Disciplinary Hearing being recorded on July 10, 2017, at approximately 12:11 p.m. I am Disciplinary Hearing Officer Johnson. Inmate West is representing himself. Inmate West, are you ready to proceed?

I/M: I reckon so, yes, ma'am.

DHO: This is Case Number 3 of Inmate James West, SCDC Number 361673; Offense Date:

June 24, 2017; Offense Time: Approximately 10:05 p.m.; Institution: Wateree; Offense

Description: 903 - The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or

Unauthorized Drugs; Including Prescription Drugs, Inhalants, Intoxicants and Synthetics;

Charging Officer: Officer B. Goodrich. Under the Inmate Waiver Section, you check, "I do want

my accuser present at the hearing." Your accuser is present by way of speaker phone. You were

notified of this charge on July 6, 2017, at approximately 2:20 p.m. Supporting documentation I

have for this charge reads: On the Above Date and Approximate Time, Sergeant Moyd and I,

Officer B. Goodrich, observed Inmate James West, 361673, screaming, crying and pacing

erratically back and forth. He, Inmate James West, SCDC Number 361673, then retreated back

to his room, 24A. Sergeant Moyd then cuffed Inmate James West, SCDC Number 361673, and

**DHO: Disciplinary Hearing Officer (Johnson)**

**I/M: Inmate (James L. West)**

**OFC: Accuser/Charging Official (Officer B. Goodrich)**

removed him from the unit. Based on my training from watching the K-2 and drug videos, I believe the inmate was under the influence. You are being charged with 903 - The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics. If found guilty of this charge, you may fail to earn good time for the month of June. You may lose visitation, canteen, telephone privileges, property privileges, pay restitution and be given disciplinary detention. You being an adult offender, you may or may not receive an extension on your time. On the charge of 903 - The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, Inhalants, Intoxicants and Synthetics, how do you plea?

I/M: Not guilty.

DHO: At this time please present any documentary evidence or make any statements on your behalf.

I/M: It's time for me to talk?

DHO: Yes, sir.

I/M: Yes, ma'am. At the time of the incident, when I...when I left my cell, as I told you previously, there was a hole in the window big enough for a cat to come in. I was asleep, it was after 9 o'clock count was cleared. Something come in the window, got on me in my sleep, I got up and, ma'am, all due respect, if a spider got on you right now, I bet you'd get up and leave that chair you're setting in, just like I did. And I went back in there to look for my spider that come in the window to kill it, and they come in and put me in handcuffs and trying to say I'm on some type of synthetic drug or something. I asked for a drug test that night. I was not taken to Medical. I was not checked out that night. And they took me up here on Monday morning, checked my vitals and told me I was fine. So I would like to know how I'm guilty of any type of drugs. And

they searched my room. They didn't find no...there was no drugs or anything in my...I had nothing. I had nothing.

DHO: Disciplinary Report Number 3, which was read at the beginning of the hearing, will be used as evidence against you. Officer Goodrich?

OFC: Yes, ma'am.

DHO: Is this report true and correct?

OFC: Absolutely, ma'am.

DHO: So the inmate was screaming, crying and pacing back and forth?

OFC: Correct.

I/M: I'm not denying that.

DHO: Sir. Please be quiet. So this display, did he say anything to you about a spider being in the room?

OFC: No ma'am.

DHO: Okay. Inmate West, is there a question that you'd like for me to ask Officer Goodrich on your behalf?

I/M: Yes, ma'am. She and I had a discussion.

DHO: What question, what question?

I/M: The question is, does she remember the discussion that she and I had at the mail flap in Dorm One after I returned to my living area when she asked me what happened. And I told her at that point in time, the spider had come in the window and got on me. Does she remember that conversation?

DHO: Officer Goodrich, did you and this, um, inmate have a conversation about a spider being in his room after the fact?

OFC: After the fact, he did say there was a spider, but during his incoherent time of flailing and pacing and crying and screaming, it was not mentioned, ma'am.

DHO: So he mentioned to you after the fact, like, maybe minutes or hours later?

OFC: Yes, ma'am.

DHO: But not at the time. Not on June 24 at 10:05, when he displayed all these, um, signs.

OFC: Correct. It was after he was taken out in handcuffs.

DHO: Okay. Inmate Goodrich, is there another qu...I'm sorry. Inmate West, is there another question that you would like for me to address?

I/M: If...you need to speak with the people, Captain Benjamin was working in the-

DHO: Sir. You didn't request any witnesses. So the only person I'm going to contact is your accuser, which she is on the line.

I/M: Okay. Well, she should...Captain Benjamin also knows it was a spider on me and she...she was [overlapping conversations 0:05:30].

DHO: Sir? I'm going to ask you one last time. Is there any additional questions for Officer Goodrich? Because you're making statements. You've got a question?

I/M: Yeah. I got. Why is she lying?

DHO: I'm not going to ask her that. Anything else?

I/M: No ma'am.

DHO: Officer Goodrich? Is this report 100% true and correct, ma'am?

OFC: Yes, ma'am.

DHO: Okay. Inmate West, is there a final statement on your behalf?

I/M: Yes, ma'am. I'm not guilty and it was a spider on me and that's...that's the truth and the whole truth. I don't know where she's coming from and all this other spec...speculation. It's

strictly speculation. It was truly a spider on me and it come in that in the cell at Wateree through their window that didn't have a screen on it, and it got on me and while I was asleep. It scared me to the point where I got up and ran out of my cell.

DHO: Okay. I've heard the charge and provided an opportunity for the accused to make a statement and present evidence on his behalf. I will now recess this hearing to arrive at a just decision.

(Recess)

DHO: Please restate your name and SCDC Number for the record.

I/M: James West, 361673.

DHO: Inmate West, I do find you guilty of the charge brought against you. The evidence I relied on to reach this decision was the Offense Report as written and the testimony from Officer Goodrich. Your sanctions are: 360 days TV suspension, your television must be mailed out; 90 days canteen, telephone, visitation suspension; 60 days in disciplinary detention; 90 days loss of good time. You will receive a copy of this 19-69 form explaining the results. If you're unsatisfied with my sanctions or my findings, you will have 5 days to file a grievance with the Grievance Coordinator. If you'd like to listen to a copy of this hearing, you have three days to submit a Request of Staff to the Major. Would you like a Grievance Form, sir?

I/M: Yes, ma'am. I would.

DHO: This hearing is concluded. You are dis-

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

James L. West, #361673,  
Appellant,  
-vs-  
South Carolina Department of Corrections,  
Respondent.


CERTIFIED TRANSCRIPT  
Docket Number: 17-ALJ-04-0536-AP

This is to certify that the transcript of the recording of this administrative disciplinary hearing is a true, accurate and complete transcript of the proceedings and testimony hereby transcribed.

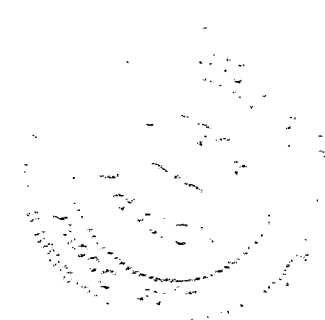
I do further certify that I was not present at the administrative disciplinary hearing that has been transcribed.



Capital Typing  
37 Pritchard Farm Lane  
Bluffton, South Carolina 29910



My Commission Expires  
September 25, 2018

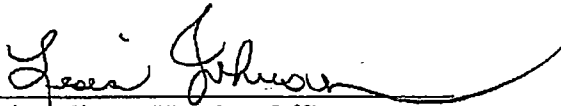


STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

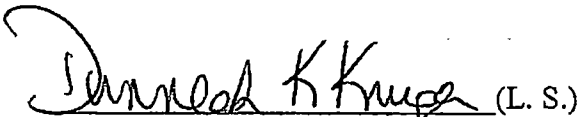
James L. West, #361673, )  
Appellant, )  
-vs- )  
South Carolina Department of Corrections, )  
Respondent. )

**CERTIFICATION**  
Docket Number: 17-ALJ-04-0536-AP

This is to certify that I am the Disciplinary Hearing Officer who presided at the administrative disciplinary hearing in this matter. I have reviewed the attached transcript of the audio recording of this hearing and hereby certify the transcript as true, accurate, complete and constitutes the entire record of the proceedings.

  
Disciplinary Hearing Officer  
South Carolina Department of Corrections

SWORN TO before me this  
13<sup>th</sup> day of November, 2017.

 (L. S.)  
Notary Public for South Carolina  
My Commission Expires: 6/22/21



HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

January 24, 2018

The Honorable Milton G. Kimpson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, South Carolina 29201

Reference: Inmate James Lowell West #361673, vs. SCDC  
Docket No. 17-ALJ-04-0536-AP

Dear Judge Kimpson:

Find enclosed an original and one copy of the *Respondent's Brief* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-3922.

Sincerely,

Cheron Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate James Lowell West #361673  
File:

**STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT**

James West, #361673,	)	Docket No.: 17-ALJ-04-0536-AP
	)	[Grievance No.: TCI 325-17]
Appellant,	)	
	)	<i>Hon. Milton G. Kimpson</i>
v.	)	
	)	
South Carolina Department of Corrections,	)	<b>RESPONDENT'S BRIEF</b>
	)	
Respondent.	)	
	)	

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**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of James West (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant is appealing his July 10, 2017 disciplinary conviction for offense 903, The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, Inhalants, Intoxicants and Synthetics. The appeal of this disciplinary conviction was done through grievance # TCI 325-17.

On July 11, 2017 Appellant filed a Step 1 grievance seeking reversal of his July 10, 2017 conviction on the basis of insufficient evidence. On August 29, 2017, SCDC denied the Step 1 grievance. Thereafter, on August 29, 2017, Appellant filed a Step 2 grievance alleging, again, insufficient evidence. On September 26, 2017, SCDC denied the Step 2 grievance, and this appeal followed.

**STANDARD OF REVIEW**

The ALC’s jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in

an appellate capacity. *Id.* at 377; 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the supreme court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-

380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, “an Administrative Law Judge may not reverse or modify an agency’s decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law.” *Matthews v. S.C. Dep’t of Corr.*, Case No.: 04-ALJ-04-00248-AP, available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004) (Anderson, A.L.J.); see S.C. Code Ann. § 1-23-380(5)(e); see also *Marietta Garage, Inc. v. S.C. Dep’t. of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (1999); *S.C. Dep’t. of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm’n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

In deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In *Al-Shabazz*, the supreme court “underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts and therefore this tribunal adhere to a ‘hands off’ approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA.” *Matthews v. S.C. Dep’t of Corr.*, *supra*, page 3 (citing *Al-*

*Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757 (stating that “[c]ourts traditionally have adopted a ‘hands off’ doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters . . . .”)); *see also Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

### ARGUMENTS

#### **I. BECAUSE SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE 903 CHARGE AND CONVICTION, THE COURT SHOULD AFFIRM SCDC’S FINAL AGENCY ACTION.**

The evidence presented at the hearing and relied upon by DHO Johnson satisfies the “substantial evidence” standard of proof to uphold Appellant’s conviction. Here are the salient facts brought forth at the disciplinary hearing:

1. Officer Goodrich stated in her incident report that on July 6, 2017 she observed Appellant “screaming, crying and pacing erratically back and forth” outside of his room. Based on her training, she believed that Appellant was under the influence of synthetic marijuana.
2. Officer Goodrich testified during the hearing that after he was calmed down, Appellant told her there was a spider in his room but he did not mention this when first approached.
3. Appellant testified that on July 6, 2017, he was lying in his bed when a spider crawled in through his window. He awoke to a spider on him and jumped up and exited his room in fright. He then re-entered his room to kill the spider and a correctional officer came and handcuffed him. Appellant further testified that he was not under the influence of any drugs.
4. SCDC Policy OP-22.14 Inmate Disciplinary System defines Offense 903 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, Inhalants, Intoxicants and Synthetics as, in relevant part, “It is a violation of this section for an inmate to: Actually or constructively traffic, use, or possess drugs or intoxicants of any type or description (except those prescribed by an authorized physician and within authorized amounts and expiration dates) such as but not limited to: barbiturates, narcotics, medicines,

marijuana, poisons, inhalants and synthetic cannabinoids; as well as all drug paraphernalia, such as but not limited to: needles, syringes, pipes, rolling papers and straws. **Officers may rely on their training and experience to identify any intoxicating substance or paraphernalia where no available scientific tests have been created and/or confirmed credible...Or;**

Under, or feign (pretend) to be under, the influence of any intoxicant, other than one prescribed by an authorized physician, which creates an altered state of physical or mental activity. The observation and documentation by institutional staff of inmates exhibiting behavior such as paranoia, panic attacks, giddiness, agitation, hallucinations, psychosis, unexplained hypertension (high blood pressure), tachycardia (increased heart rate), vomiting, seizures, foaming at the mouth, blurred vision, total memory loss, inability to feel pain, suicidal thoughts, uncontrollable aggression **or any other symptoms which through the staff member's training and experience would lead them to reasonably believe the inmate is under the influence of a drug or intoxicant would be sufficient to justify this charge...** [Emphasis added].

DHO Johnson weighed the evidence based on the facts and testimony presented at the hearing and came to a just and fair decision.

Appellant argues that DHO Johnson's reliance on Officer Goodrich's incident report was inappropriate because Officer Goodrich said she "believed" that he was under the influence of synthetic marijuana. Appellant takes issue with the word "believed" arguing it is somehow different from an officer relying on their "training and experience." Appellant's Brief, page 2. Officer Goodrich clearly stated in her incident report that she formed that belief based on her training on the subject of synthetic marijuana. The distinction Appellant is attempting to draw has no real meaning. It was appropriate and reasonable for DHO Johnson to rely on the incident report of Office Goodrich.

Appellant has failed to show to the Court that his substantial rights have been prejudiced or that DHO Johnson's decision was clearly erroneous, arbitrary, or affected by a legal error. *Cf. Matthews v. S.C. Dep't of Corr.*, Case No.: 04-ALJ-04-00248-AP,

available at <http://www.scalc.net/decisions.aspx?id=1203&q=4> (filed Dec. 21, 2004)

(Anderson, *A.L.J.*). Therefore, because Appellant's conviction was supported by substantial evidence, SCDC respectfully requests the Court affirm SCDC's final agency action.

**II. BECAUSE APPELLANT RECEIVED THE DUE PROCESS TO WHICH HE WAS ENTITLED, THE COURT SHOULD AFFIRM SCDC'S FINAL AGENCY ACTION.**

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than in a trial before a court. Due process, as the United States Supreme Court noted in *Wolff v. McDonnell*, requires the following in prison disciplinary cases:

- a) Written notice of charges at least 24 hours in advance of the hearing;
- b) opportunity to present witnesses and documentary evidence;
- c) neutral and detached hearing body;
- d) aid of non-attorney counsel substitute where inmate is illiterate or the case is complex;
- e) written statement by the fact-finder as to the evidence relied upon (disclosure of this evidence may be limited);
- f) no right to confront and cross-examine adverse witnesses.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

Here, Appellant was given notice of the charges when he was served on July 6, 2017 which was more than 24 hours in advance of his July 10, 2017 hearing. See SCDC form 19-69 Disciplinary Report and Hearing Record and Transcript, page 1. Appellant had a neutral and detached hearing officer in the form of DHO Johnson. Transcript, page 1. Appellant had an opportunity to present his witnesses and documentary evidence. Specifically, Appellant testified on his own behalf and questioned Officer Goodrich. Transcript pages 2-3 & 3-4, respectively. DHO Johnson provided Appellant with a

written statement of the findings and the evidence relied upon in the form of SCDC form 19-69 Disciplinary Report and Hearing Record which was included in the Record.

Appellant did not have a counsel substitute because Appellant did not have the right to a counsel substitute in this case. *Wolff* requires that inmates be afforded a counsel substitute only where the inmate is illiterate or the case is particularly complex. *Wolff*, at 418 U.S. 570. Appellant is not illiterate. Additionally, this is not a complex case. In *Wolff*, the court elaborated on what they meant by a complex case saying, "the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case." *Id.* The issue in this case was relatively simple; Appellant was identified as being under the influence of synthetic marijuana by an officer trained in how to recognize the signs and symptoms of synthetic marijuana use. Because Appellant is not illiterate and this was not a complex case as contemplated by the court in *Wolff*, Appellant had no right to a counsel substitute and thus the lack of a counsel substitute did not violate his due process rights.

There is nothing in the record to indicate that Appellant's due process rights were violated. Additionally, Appellant makes no argument that his due process rights were violated. He argues only that there was not sufficient evidence for his conviction. Accordingly, the Departments' final agency action should be affirmed.

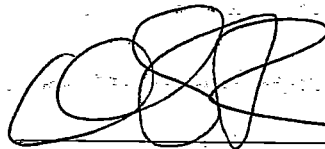
### **CONCLUSION**

SCDC afforded Appellant all of the due process safeguards to which he was entitled. Moreover, DHO Johnson relied on substantial evidence when making his decision to find Appellant guilty of the 903 offense. Thus, SCDC respectfully requests that this Court affirm SCDC's final agency action.

*Signature block on following page.*

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**



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Columbia, South Carolina  
January 24, 2018



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Milton G. Kimpson, Administrative Law Judge

ALC Case No. 17-ALJ-04-0536-AP

Appellant Case No. 2018-000397

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SC Court of Appeals

James L. West, #361673 . . . . . Appellant,

v.

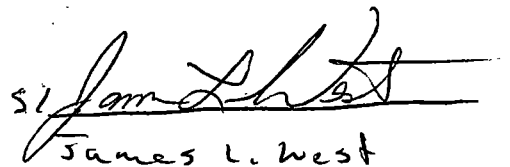
South Carolina Dept. of Corrections . . . . . Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing copy of the RECORD ON APPEAL to Respondent and S.C. Admin. Law Judge, Milton G. Kimpson by depositing a copy of same in the U.S. Mail postage prepaid, on March 28, 2018, addressed as follows:

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