

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the South Carolina Department of Corrections

Bryan P. Stirling, Director

Case No.: 62

RECEIVED

OCT 24 2018

SC Court of Appeals

Perry Gilmore, #344879,

Appellant,

v.

South Carolina Department of Corrections

Respondent.

NOTICE OF APPEAL

I hereby give notice that I appeal the final decision on South Carolina Department of Corrections Disciplinary Report and Hearing Record (herewith) dated September 27, 2018 revoking earned good time credits from me upon convicting me of disciplinary offense 854 Exhibitionism and Public Masturbation in a disciplinary hearing held in the South Carolina Department of Corrections on same above-said date. (NOTE: I can appeal straight to this court because Respondent and the Administrative Law Court made administrative remedies unavailable to me. See correspondence from each herewith. Law v. South Carolina Dept of Corrections, 368 S.C. 424 (2006) HN 22).

I appeal because Respondent violated my constitutional rights to be served with notice of my charge 24 hours before-not after-my initial hearing, and to be present, make statements, present documentary evidence, and call witnesses in my disciplinary hearing. ¹ See Al-Shabazz v. State, 338 S.C. 354 (2000) (indicating I have due process rights not to be deprived of such).

Respondent also violated my right to not be convicted on evidence which is the "fruit of the poisonous tree," Nardone v. United States, - U.S. - (1939), where it was an observation of my bare genitals by an opposite sex staffmember while I "showered." See X v. Bratten, 32 F. 3d 564 (4th Cir. 2010) (prisoners have a substantive due process right to not be observed by opposite sex staffmembers while they shower). See also Lawrence v. Texas, 539 U.S. - (2003) (reversing a conviction of a sex act where it was obtained as the result of an officer violating the convicted's right to privacy).

Because the decision appealed from involves a "revocation" of "earned" good time credits, this court may hear this appeal. Howard v. South Carolina Department of Corrections, 399 S.C. 618.

October 17, 2018
Bennetsville, SC

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(APPELLANT) (PRO SE)

¹ Respondent held my hearing in my absence despite my request to be present. Evans Correctional Institution Law Library sign-in sheet shows I was in the library on 9/27/18. Cpl. Davis will verify I was not called.

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PROOF OF SERVICE

I certify I this day served copies of: (1) Notice of Appeal; and (2) Motion and Affidavit to Proceed In Forma Pauperis on all parties of this case at their last known address.

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OCT 19 2018

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