

The State of South Carolina  
In The Court of Appeals

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Appeal From Administrative Law Court

Honorable John D. McLeod

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Case No. 11-ALJ-04-1004-AP

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Sammie Stroman, #242033 . . . . . Appellant,

v.

South Carolina Department of Corrections . . . . . Respondent.

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Final Brief of Appellant

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December 21, 2012.

~~Sammie Stroman~~ #242033

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Sammie Stroman # 242033

K.C.I. / MSU-13

4344 Broad River Rd.

Columbia, S.C. 29210

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DEC 27 2012

SC Court of Appeals

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## Statement of the Issue on Appeal

I. Is Respondent's Final Agency Decision Supported By Substantial Evidence?

Statement of Case

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This matter comes before this Honorable Court pursuant to the appeal of Sammie Stroman ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of 817/ Possession of Contraband under SCDC Policy DP-22.14, Inmate Disciplinary System following a disciplinary hearing. (R.p. 24). Appellant lost 30 days of good time due to the conviction. (R.p. 24). Appellant filed a Step One Grievance on May 3, 2011, challenging his conviction. This grievance was investigated and denied. (R.p. 26-29). Appellant filed a Step Two Grievance on June 3, 2011. This grievance was also investigated and denied. Appellant received the final agency determination of his grievance on November 29, 2011. (R.p. 30-31).

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E. 2d 742 (2000), claiming his conviction should be overturned because Hearing Officer had fail to comply with SCDC's mandatory regulations and also base her final decision on substantial evidence. (R.p. 32). After the parties filed briefs, the ALC dismissed the appeal and found the conviction was sufficiently supported by the evidence in the record. (R.p. 2-5).

Appellant now seeks review of the ALC's decision. He argues his conviction was not supported by sufficient evidence. For the reasons that follow, Appellant respectfully requests that the ALC's decision be overturned.

### STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610 (B) provides the applicable standard of review :

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings, or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the findings, conclusion, or decision is :

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(Emphasis added); see also S.C. Code Ann § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E. 2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610 (B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

### Argument and Citation of Authority

#### I. Respondent's Final Agency Decision In Convicting Appellant Of Possession Of Contraband Is Not Supported By Substantial Evidence.

A reviewing court will not disturb finding of an administrative agency if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E. 2d 219 (Ct. App. 1997).

"Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo. Inc., 276 S.E. 2d 304 (1981).

During the Appellant's disciplinary hearing, the record as a whole clearly indicates that the Hearing Officer based

her final decision on the following evidence : (a) narrative and testimony of accuser; (b) picture of five-dollar bill; and (c) appellant's statement that he had the money in his possession. (R. p. 24). At this time, the Appellant would like to point out that all of the evidence relied upon was insubstantial due to the fact that it was used in violation to an SCDC regulation written in mandatory language.

The appellant's disciplinary case arose from a grievance filed by him on January 20, 2011, alleging that an SCDC employee had given him a five-dollar bill. (R. p. 34-36). Prior to filing his grievance with the Inmate Grievance Branch (IGB), the appellant attached the five-dollar bill to his grievance as evidence to substantiate his claim. (R. p. 37). Upon receipt of the appellant's complaint, the IGB forwarded the matter to the agency's Division of Investigations for review. (R. p. 34). On February 7, 2011, the appellant was interviewed by investigator J. Smith and asked if he (appellant) would participate in resolving his complaint by agreeing to a polygraph evaluation. The appellant agreed. (R. p. 27). On February 9, 2011, the appellant was provided the polygraph and the results came back as inconclusive. (R. p. 27). On March 17, 2011, the Respondent used the results of the appellant's polygraph evaluation; the five-dollar bill attached to the appellant's grievance; and the information cited in the appellant's

grievance to initiate internal disciplinary action against him. (R. p. 25).

As the appellant has mentioned above, the Hearing Officer based her final decision on insubstantial evidence due to the fact that the evidence was used in violation to section (3) and (4.1) of SCDC Policy/ Procedure GA-01.12, Inmate Grievance System. A portion of section (3) specifically states, "No inmate will be subjected to reprisal, retaliation, harassment, or disciplinary action for filing a grievance or participating in the resolution of a grievance." (R. p. 33). A portion of section (4.1) specifically states, "Statements made by, or information received from, a grievant or other affected inmate relating to a grievance will not be used to initiate internal disciplinary action against an inmate(s). Grievance forms and accompanying documents will be treated as confidential." (R. p. 33).

All evidence presented at the Appellant's hearing and relied upon by the Hearing Officer indicates Appellant was innocent/aid or immune of this disciplinary offense. The record does not establish that there was "substantial evidence on the whole record" to support the Respondent's final agency decision. (R. p. 30).

Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious,

or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998). Appellant has met this burden and this case should be overturned.

### CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should reverse the Respondent's decision in this case. Moreover, based on the above argument, Appellant respectfully requests the ALC's decision be overturned.

December 21, 2012.

Sammie Stroman # 242033

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South Carolina Department of Corrections . . . . . Respondent.

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Certificate of Service

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I hereby certify that I have served Respondent a copy of the Final Brief of Appellant by depositing a copy of same in the United States Mail, addressed as follows:

Christopher D. Florian  
S.C. Department of Corrections  
P.O. Box 21787  
Columbia, S.C. 29221

This 21<sup>st</sup> day of  
December, 2012.

~~Sammie Stroman~~ # 242033  
Sammie Stroman # 242033  
K.C.I. / MSU-13  
4344 Broad River Rd.  
Columbia, S.C. 29210

CERTIFICATE OF COMPLIANCE

The Appellant hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.

January 11, 2013.

Sammie Stroman # 242033  
Sammie Stroman # 242033  
K.C.I. / MSU-13  
4344 Broad River Rd.  
Columbia, S.C. 29210

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