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The State of South Carolina  
in the Court of Appeals

Appeal from the Administrative Law Court  
Carolyn C. Matthews, Administrative Law Judge

CASE NO. 11-ALJ-04-00992-AJ

Shango Damballah #137523 . . . . . Appellant

v

South Carolina  
Department of Corrections . . . . . Respondent

Record on Appeal

RECEIVED  
JAN 04 2013  
SC Court of Appeals

Shango Damballah #137523  
Kershaw Correctional Institution  
4848 Gold Mine Hwy  
Smo #90  
Kershaw, S.C. 29067  
P.O. SE

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OCT 13 2012

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Shango Damballah, #137525,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 11-ALJ-04-0992-AP

Grievance No. TYRCI 828-11

RECEIVED

ORDER JAN 4 2013

SC Court of Appeals

This matter is currently pending before the South Carolina Administrative Law Court ("Court") pursuant to Appellant's Notice of Appeal filed on December 19, 2011. The Record on Appeal was filed on February 23, 2012. The Appellant filed his Brief on March 1, 2012. The Appellant filed motions on March 19, 2012 and March 26, 2012 regarding the transcript of the hearing and discovery, respectively. On April 2, 2012, the Respondent filed a Motion to Dismiss for failure to file a brief under ALC Rule 60. This motion as denied by the Court on June 12, 2012. On June 27, 2012, the Respondent filed its Brief.

Appellant appeals the decision of SCDC in his Step 2 Grievance in which his conviction of Assault and/or Battery of an SCDC Employee (801) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost seven hundred and seven days of good time earned. Appellant appeals on the grounds that he was not afforded due process.

**STANDARD OF REVIEW**

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State. Al-Shabazz, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the Department's decisions in inmate grievance matters, the

Court sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Consequently, the review in these cases is limited to the Record presented.

### LAW/ANALYSIS

Since a state created liberty interest is involved, it is necessary to determine if Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750. However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Al-Shabazz, 338 S.C. at 370, 527 S.E.2d at 750. To that end, the Supreme Court has enunciated the following five requirements which, if established, will ensure procedural due process in inmate disciplinary matters:

(1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that inmate should be allowed to call witnesses and present documentary evidence; (4) that counsel substitute...should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Al-Shabazz, 338 S.C. at 371, 527 S.E.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974).

Applying those requirements to the record in this case we find the following:

Appellant was served with notice of the charge on June 2, 2011 and the hearing was held on June 6, 2011. The Disciplinary Report and Hearing Record show reliance on the incident report and testimony of Officer James Lance. The Disciplinary Report and Hearing Record show that the reason for the action taken was it was the Appellant's first conviction for 801. The Disciplinary Report and Hearing Record indicate the Appellant requested the presence of his accuser and he was present via speakerphone. The appellant was eligible for assistance by counsel substitute and such assistance was provided. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case. In his Brief, the Appellant alleges that he was denied his right to present a witness for his defense. This was addressed at the hearing and the transcript reflects that the hearing officer never received an inmate

request from the Appellant, which is why the witness was not present at the hearing.

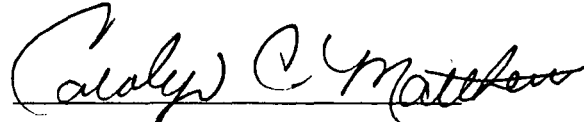
In this case, the Appellant wanted to leave his detention unit to go to the law library. The Appellant's wing was on lockdown at that time and Officer Lance told the Appellant he could not go to the library at that time. Officer Lance ordered the Appellant back to his cell, but the Appellant refused to comply. Officer Lance called for assistance from Lieutenant Holsinger. When she arrived, she ordered the Appellant to put his hands behind his back to be restrained. As she approached the Appellant to restrain him, the Appellant threw her to the ground. Officer Lance pushed the Appellant in the chest to get him away from Holsinger. As Lance attempted to pull his chemical munitions, the Appellant struck Lance in the face. Lance simultaneously struck the Appellant in the head. The Appellant struck Lance in the face again. Holsinger got back on her feet, pulled her chemical munitions and ordered the Appellant to stop his actions. Appellant complied and was restrained and removed from the area. Both officers had photographs of their injuries taken.

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) (Supp. 2011). Furthermore, 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. See § 1-23-380(5) (Supp. 2011); See also, Marietta Garage, Inc. v. South Carolina Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case the substantial evidence in the record supports SCDC's decision. It is thus clear that Inmate has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the Hearing Officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice.

Therefore, for the foregoing reasons this appeal is hereby **DISMISSED WITH PREJUDICE.**

**AND IT IS SO ORDERED.**



**CAROLYN C. MATTHEWS**  
S.C. Administrative Law Court

October 15, 2012  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15 day of October 2012

By: Raye P. Sydnor  
Judicial Law Clerk

**FILED**

JUN 12 2012

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Shango Damballah, #137525, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

Docket No.: 11-ALJ-04-0992-AP

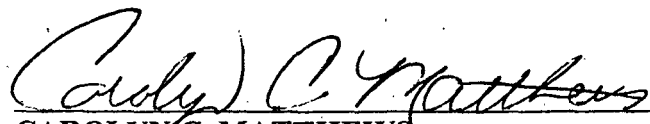
**ORDER DENYING RESPONDENT'S  
MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Appeal filed on December 19, 2011 by the Appellant. The case was assigned on December 29, 2011. The Record on Appeal was filed on February 23, 2012. On March 1, 2012, the Appellant filed his Brief. The Respondent filed a Motion to Dismiss on April 2, 2012 seeking dismissal of this appeal on the basis that the Appellant has failed to comply with ALC Rule 60.

Here, Appellant, pro se, filed a document which clearly set forth his argument as to why he believes he should not be subject to the penalties imposed on him by the Department. Enclosed is a copy of the Appellant's Brief. The Court finds that his Brief was timely filed.

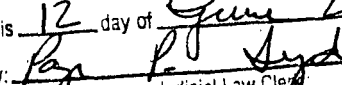
Therefore, based on the foregoing reasons, it is hereby **ORDERED** that the Department's Motion to Dismiss is **DENIED**. Respondents' brief shall be due twenty (20) days from the date of this Order.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
**CAROLYN C. MATTHEWS**  
Administrative Law Judge

June 12, 2012  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12 day of June 2012  
By:   
Judicial Law Clerk

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Harold Mosley, # 137525,	)	
	)	Docket No.: 11-ALJ-04-00992-AP
Appellant,	)	Honorable Carolyn Matthews
	)	
v.	)	
	)	<b>RESPONDENT'S MOTION</b>
South Carolina Department of Corrections,	)	<b>TO DISMISS</b>
	)	
Respondent.	)	
<hr/>		

STATEMENT OF FACTS

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the appeal of Harold Mosley (appellant). Appellant filed his Notice of Appeal on December 19, 2011. The case was assigned on December 29, 2011. The South Carolina Department of Corrections filed the record on February 23, 2012. Appellant has not filed an appellate brief.

ARGUMENT

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). In Al-Shabazz, the Supreme Court created a new avenue by which inmates could seek review of final decisions of the Department in "non-collateral" matters, *i.e.*, matters in which an inmate does not challenge the validity of a conviction or sentence, by appealing those decisions to the ALC. Id. at 373, 376, 527 S.E.2d at 752, 754.

The language in Rule 60 states:

Unless otherwise ordered, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of the assignment. Within eighty-five (85) days after the date of assignment, the respondent shall file an original brief in response. A reply brief may be filed within ninety-five (95) days after the date of assignment. The principal briefs shall not exceed ten (10) pages and the reply brief shall not exceed five (5) pages... At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.

Rule 62 states that:

Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section....


In the present case, although the Appellant has filed a notice of appeal, pursuant to Rule 60, the Appellant was required to file and serve an original brief "within sixty-five (65) days after the date of assignment." This case was assigned December 29, 2011.

Rule 62 provides that "upon motion of any party, or on its on motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedure, including the failure to comply with any time limits provided by this section. (Emphasis added). Appellant had an obligation to advance his position, Appellant has been given ample time to do so, and Appellant has not notified SCDC of any extenuating circumstances regarding his failure to file. However, Appellant has failed to file a brief in support of his appeal.

CONCLUSION

**WHEREFORE**, SCDC respectfully requests this matter be dismissed pursuant to Rule 62 for failure to comply with the time limits set forth in Rule 60.

Respectfully submitted,

  
SHANIKA JOHNSON

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South Carolina Department of Corrections  
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March 30, 2012  
Columbia, South Carolina

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

**DOCKET No.: 992 GRIEVANCE No.: TYRCI 828-11**

**INMATE NAME: Harold Mosley, SCDC #137525**

**DATE: June 6, 2011**

**CHARGE: 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public**

DHO: State your name and SCDC number please.

I/M: Harold Mosley, #137525.

DHO: Inmate Mosley, the purpose behind this hearing is to treat 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 removal. Do you understand?

I/M: Yes sir.

DHO: You're appearing before this disciplinary hearing which is being held at um, Leath...as you were...at Tyger River Correctional Institution, at approximately 11:51 a.m. on 6/6/11. I am Mr. Turner, Disciplinary Hearing Officer. Inmate Mosley is being represented by Counsel Substitute Lewis. Counsel Substitute Lewis, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: With that understanding, I will read the charges into the record. Inmate Mosley, I have before me case number 82 it reads Harold Mosley, 137525, inmate charged with 801 – Assault and/or Battery of an SCDC Employee or Other Government Employee, Contract Employee, Volunteer, or Member of the Public. Uh, charging official in this

**DHO: Disciplinary Hearing Officer**

**I/M: Inmate**

**OFC: Accuser**

**C/S: Substitute Counsel**

case is Officer J. Lance. Definition of this charge is as follows: Uh, the willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, volunteer, or member of the public with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency employee or contract employee who is exercising legitimate authority over the inmate, when such hitting, striking, throwing, or unauthorized touching causes bodily injury. Uh, charging official again in this case is Officer J. Lance. We do have Officer Lance present by speakerphone, at the request of the accused. Officer Lance, would you verify your presence by stating your name and rank please sir.

OFC: Officer James Lance.

DHO: Thank you. Reporting charge against the accused following incident report: Tyger River Correctional Institution; date of the report uh, 5/23/11; uh, reporting official James Lance, 045354; date of the incident uh, time 12...excuse me. Time of the incident rather 2030 hours. One more time, time of the report 2030 hours. Employee ID number 045354. Uh, date of the incident 5/23/11. Location of the incident A-Wing, Unit 5. Time of the incident uh, 0745 hours. Uh, inmate in question, Harold Mosley, 137525. Employees involved Lt. J. Holsinger. On the above date and approximate time, I, Officer James Lance was assigned to SE unit officer unit five. At this time I was having a problem with Inmate Harold Mosley, 137525. Inmate Mosley wanted to leave the unit in order to go to the Law Library. But I informed him that he would not be able to go at this time because his wing was on lock down. I gave inmate several orders to return to cell, but he just walked to the A-Wing rock area and sat down on the bench. After uh, several failed attempts to get the inmate to comply, I called for assistance from uh, Lt. Holsinger. When

she arrived, she entered the A-Wing and ordered the inmate to place his hands behind his back to be restrained. Uh, as Lt. Holsinger was attempting to restrain the inmate, he grabbed her by both arms and was able to throw her to the ground. I walked up to inmate and placed my hands in the inmate's chest area and pushed him away causing a separation from the staff and Inmate Mosley. As I was attempting to put my chemical uh, munition, pull my chemical munitions, Inmate Mosley punched me in the lower lip with closed fist. Simultaneously I used a closed hand strike to the inmate's uh, temple. Inmate Mosley then assaulted me again by punching me in the right eye. By this time Lt.

Holsinger was able to return to her feet and pulled her chemical munition and gave inmate several orders to stop his actions and the inmate complied and was restrained and removed from the area. Signature is that of James Lance, Officer 0...uh, 5/23/11. And evidence in this case I have uh, a series of photographs depicting injuries uh, uh, to both officers. To uh, Lance, there are injuries to the lip and interior of uh, excuse me, the uh, right cheek bone and contusion to the forehead. Uh, do you agree this is an accurate picture of the description of the evidence as presented?

C/S: Yes

DHO: Inmate Mosley, if you plead guilty to this charge, or if you happen to be found guilty of the offense, you would not be eligible to earn good time for the month of uh, May in this case. Do you understand?

I/M: Yes sir.

DHO: In addition to this, if I happen to find you guilty of this charge, you could lose visitation privileges, canteen privileges, telephone privileges, you could be assigned

- 1) disciplinary detention and there could further loss of good time in the case. Do you
- 2) understand this?
- 3) I/M: Yes sir.
- 4) DHO: To the offense of, uh, 5, excuse me, the offense of 801 – Assault and/or battery of
- 5) an SCDC Employee or Government Employee, Contract Employee or Volunteer, how do
- 6) you plead?
- 7) I/M: I plead not guilty due to the fact that this is unnecessary force (inaudible).
- 8) DHO: That may be something for you to grieve sir, but it's not relevant to this charge.
- 9) Do you have a statement you wish to make in your own behalf?
- 10) I/M: Yes. As the charge of 801 alleged against me by Corporal Lance, I would like
- 11) (inaudible) narrative in this incident report. Because he alleged he sustained injuries.
- 12) Bodily injuries is one of the offense of 801, the assault must be with means and/or intent
- 13) to kill or injure. Also, the 19-29A incident report, Lt. Holsinger, no where in her written
- 14) report did she allege I struck her.
- 15) DHO: I'm not dealing with Holsinger case. You will exclude that from your comments.
- 16) That is not the case at hand. We're talking about the charges and the, the brought about
- 17) relative to the injuries to Officer Lance, so excise that from your statement. You can
- 18) make a statement on that if and when we hear the other case. Do you understand?
- 19) I/M: Yes sir. Okay, the thing of it is, is that, I'm now present contradictory evidence.
- 20) The incident took place two hours (inaudible). One officer put in her report nowhere that
- 21) I assaulted her. And I base no other way for me to present this defense if I can't use the
- 22) report.
- 23) DHO: Did you hear what I said?

- 1) I/M: Yes sir.
- 2) DHO: Okay.
- 3) OFC: I...I don't understand any of that.
- 4) DHO: Just hold on sir. We're getting there. Go ahead.
- 5) OFC: Okay sir.
- 6) DHO: Wait.
- 7) I/M: (inaudible) that's all I got to say. Lt. Holsinger, I ain't know she wrote an inmate
- 8) request.
- 9) DHO: I have no inmate request from you sir.
- 10) I/M: Okay, I had a copy of the request.
- 11) DHO: Had a copy of it doesn't mean a thing to me sir. It has to be in my possession 24
- 12) hours prior to the hearing. You submitting a copy of it doesn't mean a thing to me.
- 13) I/M: I dropped in the mail Thursday.
- 14) DHO: Dropping it in the mail Thursday, it should've been here.
- 15) I/M: Okay, but...
- 16) DHO: I always checked before I left, and nothing had been presented.
- 17) I/M: Okay, due to the seriousness and nature of this offense I want to request an
- 18) extension to you.
- 19) DHO: No sir. I will not extend this. There's no reason for to extend this room...this case.
- 20) I/M: Okay (inaudible).
- 21) DHO: Counsel, do you have anything on the behalf of the accused? On this charge and
- 22) this charge alone at this time?

- 1) C/S: Yes, um, upon my interview with Inmate Mosley, around 2:15 on Friday, um, he
- 2) made me aware that he had not uh, written any request about the incident or questions to
- 3) ask Officer Lance um, I stated that he had been given 24 hours, he did not know who his
- 4) counsel substitute was; however, during, during our interview he did ask a question that I
- 5) can ask for him because it was (inaudible).
- 6) DHO: And this was on Friday, correct?
- 7) C/S: It was on Friday.
- 8) DHO: Okay, go ahead.
- 9) C/S: It was on Friday. Uh, I only have one question for you Officer um, Lance. As
- 10) reading your report um, it states, uh, we were understanding that um, in defense you only
- 11) um, struck in defense, Inmate Mosley one time.
- 12) OFC: Uh, say that again.
- 13) C/S: Okay....
- 14) DHO: You'll have to explain to me how that is relevant to the charge.
- 15) C/S: Because inmate, inmate states (inaudible)
- 16) DHO: The issue...he's making a claim about the brutality or something like that. That
- 17) may be a grievable issue, but it does not affect this charge. The charge in this case is
- 18) assault and battery on the officer. Do you have a relevant question to that pending charge
- 19) please let me know. Continue with the questions.
- 20) C/S: That was a pretty good question.
- 21) DHO: Officer Lance, is the content of your report true and correct as it is written?
- 22) OFC: Yes sir.

- 1) DHO: Uhm, I noticed that when I looked at the photographs that were taken on the day  
2) in question that this occurred, those were the injuries that you received in this incident, is  
3) that correct?  
4) OFC: Say that again sir. (Inaudible)  
5) DHO: I'm sorry, you garbled the last.  
6) OFC: I said (inaudible).  
7) DHO: I'm sorry. I couldn't understand it. Please speak a little less strongly okay. Maybe  
8) you'll come through a little bit clearer.  
9) OFC: Okay, you said we're asking me about my...  
10) DHO: As I read the uh, evidence into the case, and identified the photographs, the  
11) photographs identified injuries to your lip, bottom, lip, inside your gum, and also to the  
12) uh, left cheek bone and uh, the forehead. Is that the extent of the injuries you received?  
13) OFC: My lip and my left cheekbone area, yes sir.

DHO: Okay. You have anything else relevant to this charge?

OFC: Say that again.

DHO: Do you have anything else that is relevant to this charge?

OFC: No sir.

DHO: Thank you for your help.

OFC: Thank you.

DHO: Understanding the information that will be used to support the charge against you will be the incident report previously read into the record, the photographs submitted as evidence, the testimony of your accuser during the hearing. I have provided you the opportunity to make a statement, present evidence, call witnesses on your behalf, and I

am prepared now to recess this hearing and arrive at a decision. Step up, I'll be with you shortly. Restate your name and SCDC number please.

I/M: Harold Mosley, 137525.

DHO: Inmate Mosley, I have found you guilty of the offense brought against you today. The information that was used to arrive at this decision was the incident report previously read into the record, the uh, testimony of CO Lance that his report was true and correct as written, uh, and uh, the injuries that were indicated in the pictures to his mouth, gums, and cheek and forehead, were caused by you, the photos that depicted the injuries to uh, Officer Lance. Sanctions that have been imposed uh, 707 days disciplinary detention, 1067 days canteen, 1067 days telephone, 1067 days visitation, 500 days loss of good time. You do have the right to appeal both the determination of guilt and the sanctions portion of the charge. The manner in which you do so is you file an SCDC Form 10-5. That is a Step 1 Grievance Form with the Grievance Coordinator. If you're going to appeal the case, it must be done within 15 days. That is 15 days from the time I hand you your copy of the hearing report here today. Also, remember that if you need any assistance with an appeal, the Grievance Coordinator helps you with the process. Do you understand the appeals rights as I've explained them to you?

I/M: Yes sir.

DHO: That concludes this hearing.

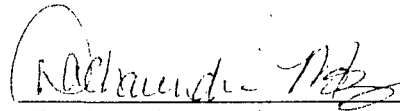
STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

Harold Mosley, # 137525, )  
 )  
Appellant, )  
 )  
-vs- )  
 )  
South Carolina Department of Corrections, )  
Respondent. )  
\_\_\_\_\_ )


**CERTIFIED  
TRANSCRIPT**

This is to certify that the following transcript of this tape-recorded 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.

  
\_\_\_\_\_  
Dachaundra Mosley  
Transcriptionist  
Office of General Counsel  
South Carolina Department of  
Corrections

SWORN TO before me this  
13<sup>th</sup> day of Feb, 2012.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 9-18-2018


STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

Harold Mosley, # 137525, )  
Appellant, )  
-vs- )  
South Carolina Department of Corrections, )  
Respondent. )


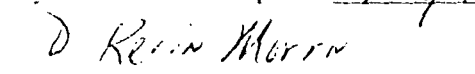
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**CERTIFICATION**

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 this tape-recorded hearing and hereby certify the transcript is true, accurate, complete, and constitutes the entire record of the proceedings.

  
Disciplinary Hearing Officer  
South Carolina Department of  
Corrections

SWORN TO before me this  
8<sup>th</sup> day of February, 2012.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: May 15 2015  


# "EXHIBIT #1"

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS REQUEST TO STAFF MEMBER

TO: NAME: <i>Mrs. Poole</i>	TITLE:	DATE: <i>JUNE 13, 2011</i>
INMATE'S NAME: <i>Harold Masley</i>	SCDC #: <i>137525</i>	
INSTITUTION: <i>TYGER RIVER CORRECTIONAL</i>	LIVING QUARTERS: <i>SM #7</i>	

*Sgt. Poole,*

*ON JUNE 2, 2011 I SENT AN INMATE REQUEST TO DHO TURNER REQUESTING TO HAVE NURSE AMY SPENCER PRESENT AT MY HEAR. AT THE HEARING OF JUNE 6, 2011 COUNSEL SUBSTITUTE MRS. LEWIS INFORMED DHO TURNER THAT I ~~did~~ IN FACT TELL HER THAT I REQUESTED THE SAME OF DHO TURNER, BUT HE DENIED THAT HE HAD RECEIVED A REQUEST FROM ME, ON JUNE 9, 2011 I SENT A REQUEST TO MRS. LEWIS REQUESTING NURSE SPENCER TO BE PRESENT AT MY HEARING BUT TODAY - JUNE 13, 2011 MRS. FOWLER WAS MY COUNSEL SUBSTITUTE, TODAY DHO TURNER TOLD ME AGAIN THAT HE HAD NOT RECEIVED THE REQUEST TO STAFF MEMBER.*

*COULD YOU BY CHANCE HAVE RECEIVED THAT REQUEST I SENT TO DHO TURNER? ALSO, COULD YOU PLEASE INQUIRE OF MRS. LEWIS WHETHER OR NOT SHE RECEIVED MY REQUEST OF JUNE 9, 2011 REQUESTING NURSE SPENCER AS MY WITNESS? THANKS YOU,*

*Harold Masley*

### DISPOSITION BY STAFF MEMBER:

*I received a request from you on 6/8/11 requesting nurse spencer in c/o. lance's case. This was 2 days after your hearing. I did not receive a request on Lt. Holsinger's case in which you are referring to when you was represented by Mr. Fowler. The request was dated on 6/2/11 but did not receive until 6/8/11*

DATE: <i>6/15/11</i>	SIGNATURE: <i>J.A. m. Poole</i>
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
MR. TURNER	Disc. Hearing Officer	JUNE 2, 2011
INMATE'S NAME:	SCDC #:	
Harold Mosley	137525	
INSTITUTION:	LIVING QUARTERS:	
	SML #7	

Dtd Turner,

I AM requesting to have nurse Amy SPENCER AS my witness to be present at my hearing. Cpl. Lance my accuser wrote in his statement that he only struck me once - in the temple - However, nurse Spencer, who actually touched my injuries will contradict Cpl. Lances' allegations by testifying that I also had several abrasions around my left <sup>eye</sup>, including two (2) swollen bumps, one in my left eyebrow area and the other under my left eye.

I declare and certify under penalty of perjury pursuant to 28 U.S.C. §1746 that an original copy of this request, requesting nurse Amy Spencer as my witness was sent to Dtd Turner by placing the same in the SML mailbox this 2nd day of June, 2011.

Harold Mosley  
Harold Mosley #137525

DISPOSITION BY STAFF MEMBER:

received request on 6/8/11 after hearing.

(19)

DATE	SIGNATURE
6/8/11	[Signature]

Shaygo Damballah #137525  
Appellant

South Carolina Department  
of Corrections Respondent

Affidavit of Christopher Williams

Personally appeared before the undersigned officer duly authorized to administer oath, Christopher Williams, who after being sworn deposed and said the following:

- 1) I am witness to the incidents taking place at Tiger River Correctional Institution regarding inmates being denied their request to witnesses at their disciplinary hearings, and give this affidavit of my own personal knowledge, I am competent to give such testimony.
- 2) On July 19, 2011, I sent an inmate request to disciplinary hearing officer Sgt. Poole requesting to have inmate Frank Washington #295489, as a witness to be present at my disciplinary hearing of July 25, 2011.
- 3) At the disciplinary hearing of July 25, 2011, DHO Turner denied receiving my request, therefore, my request witness was denied.
- 4) On July 25, 2011, I sent Sgt. Poole an inmate request inquiring if her had she received my request.
- 5) On July 28, 2011, I received a response from Sgt. Poole stating that she had the said request, but that she didn't receive it until 7/25/11, the day of my disciplinary hearing of 7/25/11
- 6) Further deponent saith not.

Sworn to and subscribed before me

This 28 day of August 2011  
Christine Thump

Christopher Williams  
Christopher Williams # 302684

Notary Public

My commission expires: 9/1/2011

South Carolina Department of Corrections Respondents

Affidavit of Thomas Waters #321296

Personally appeared before the undersigned officer duly authorized to administer oaths, Thomas Waters #321296 being duly sworn deposed and states the following...

1.) I Thomas Waters #321296, and I am giving this testimony outlined in this affidavit on my own personal knowledge, I am competent to give such testimony...

2.) On June 30, 2011 I sent a inmate request to Disciplinary hearing officer at Tiger River "C.I." Sgt. M. Pool, requesting to have a list of 7 witnesses at my hearing. My hearing was held on 7-6-11, none of my witnesses was at my hearing.

3.) DHO officer P.L. Turner denied receiving my witness request, even though I clearly noted on my disciplinary report and hearing record, my intent to have this list of 7 witnesses at my hearing. So he knew of my intent to request witnesses...

4.) On 7-6-11 I sent a request to Sgt. Pool asking her to send me my request form back dated 6-30-11, stating that I wanted a list of 7 witnesses at my hearing. I also asked Sgt. Pool to let me know the date she received my request...

5.) On 7-12-11 I received a response from Sgt. Pool, stating that she received my request on 7-11-11, 5 days after my hearing...

6.) I filed an institutional grievance on this matter on 7-25-11...

7.) Further delinquent with not...

*[Handwritten signature]*

Thomas Waters #321296

Sworn before me on this 22nd day of September 2011

*[Signature of Notary Public]*  
Notary Public

My commission expires: 9/1/2019

Exhibit "6"

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
<del>Mr. Caldwell</del>	<del>Assoc. Warden</del>	July 8, 2011
INMATE'S NAME:	SCDC #:	
SHANGO DAMBALLAH FKA - Harold Masley	137525	
INSTITUTION:	LIVING QUARTERS:	
TYLER TIVET CORP. INST.	SM # 7	

ASSOC. WARDEN CALDWELL,  
 ON JUNE 2, 2011 I SENT AN INMATE REQUEST TO DTR TURNER REQUESTING TO HAVE NURSE AMY SPENCER PRESENT AS MY WITNESS. AT MY HEARING OF JUNE 6, 2011 DTR TURNER DENIED RECEIVING MY REQUEST. IN HER RESPONSE OF 6/15/11 TO ME SGT. POOLE STATED THAT SHE RECEIVED SAID REQUEST FROM ME ON 6/18/11 TWO (2) DAYS AFTER MY FIRST HEARING DATE. I SPOKE TO MAIL ROOM EMPLOYEE MR. CRIDER ON 7/6/11 WHO INFORMED ME THAT AS SOON AS REQUESTS ARRIVE IN THE MAIL ROOM THEY ARE SENT TO THE RESPECTIVE EMPLOYEE'S ADDRESSED IN THE INMATE REQUEST THE VERY NEXT DAY. COULD YOU PLEASE EXPLAIN TO ME HOW SUCH A DELAY IN MY INMATE REQUEST COULD HAVE OCCURRED, ESPECIALLY SINCE I NEEDED THE REQUESTED EMPLOYEE WITNESS TO BE PRESENT AT MY DISCIPLINARY HEARING?

Sincerely,  
 Shango Damballah

DISPOSITION BY STAFF MEMBER:  
 Who did you address your ~~request~~ request to staff to - Ms. Spencer or Sgt. Poole? Ms. Spencer was away from the institution from 5-26-11 till 6-6-11. If you sent the request to Ms. Spencer, she did not get it until 6-6-11. After being out, it takes time to "sift" through your mail. That is probably where the delay came in.

DATE:	SIGNATURE:
6-7-11	W. H. Hickey, Admin. Asst.

Inmate Incident Copy of 1711  
**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
**INCIDENT REPORT**

05-11-095

Institution/Center: TyRCI				Date of Report: 05-23-11	
Reporting Official (Full Name): James Lance 045354				Time of Report: 2030 hours	
Employee ID #: 045354				Date of Incident: 05-23-11	
Location of Incident: A-wing Unit-5				Time of Incident: 0745 hours	
Inmate(s)/Resident: SCDC#		Age	Sex	Race	Employee(s)/Witnesses Involved:
1. Harold Mosley B/M		137525	age 43		1. Lt. J. Holsinger
2.					2.
3.					3.
4.					4.
5.					5.

**On the above date and approximate time:** I Officer James Lance was assigned as the unit officer in unit-5. At this time I was having problems with inmate Harold Mosley B/M # 137525. Inmate Mosley wanted to leave the unit in order to go to the Law Library but I informed him that he would not be able to go at this time because his wing was on lock-down. I gave the inmate several orders to return to his cell but he just walked to the A-wing rock area and sat down on the bench. After several failed attempts to get the inmate to comply I called for assistance from Lieutenant Holsinger. When she arrived she entered the A-wing and ordered the inmate to place his hands behind his back to be restrained. As Lt. Holsinger was attempting to restrain the inmate, he grabbed her by both arms and was able to throw her to the ground. I walked up to the inmate and placed my hands in the inmates chest area and pushed him away causing a separation from the staff and inmate Mosley. As I was attempting to pull my chemical munitions inmate Mosley punched me in the lower lip with a closed fist. Simotaniuosly, I used a closed hand strike to the inmates temple. Inmate Mosley then assaulted me again by punching me in the right eye. By this time Lt. Holsinger was able to return to her feet and pulled her chemical munitions and gave the inmate several orders to stop his actions and the inmate complied, and was restrained and removed from the area.

Signature: <i>James Lance</i>	Title: officer 05-23-11
Evidence: Pictures 425 through 431 on the upper yard control room camera	
Disposition of Evidence: 6 pictures of assault wounds	

**Supervisor's Comments:** Min, and Use of Force submitted, Both staff seen by nurse Weaver as well as PAIR representative, Lewis **Only minor** wounds Inmate Seen by nurse Spencer. Refer To Major or Authority.

Printed Name: Billy Laughter

Signature: *Billy Laughter* Title: Capt. Date/Time: 05-23-11 0940 AM

Major/Responsible Authority: 807 801

Printed Name: *Jonathan Nance*

Signature: *JN* Title: Captain Date: 5/24/11

**STG Related - Refer to STG Committee**

( ) Yes ( ) No (X) Unknown

**This incident is DRUG related**

( ) Yes ( ) No (X) Unknown

**Responsible Authority Action Taken**

( ) Informal Resolution

( ) Administrative Resolution

(X) Refer to Disciplinary Hearing

(23)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 82 Inmate Name: HAROLD MOSLEY SCDC#: 137525  
 Living Area: SML 7A Job: \_\_\_\_\_ Custody: ST 2  
 Offense Date: 5/23/11 Offense Time: 7:45 AM/PM Institution: TYRCI

Offense Description:  
 801: Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government (refer to OP-22.14)  
 Charging Officer/Employee: J. LANCE Title: OFC.  
**INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.**

**INMATE WAIVERS:**

I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING  
 I DO NOT WANT TO BE PRESENT AT MY HEARING  
 I DO WANT MY ACCUSER PRESENT AT THE HEARING  
 I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING

I WAIVE MY RIGHT TO A HEARING  
 SMU/SEGREGATION ONLY  
 I WANT A COUNSEL SUBSTITUTE Louch  
 I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 6/12/11 8:55 AM/PM By (Print): Jon McMorris  
 Inmate Signature: [Signature] SCDC#: 137525 Date: 6/12/11

**HEARING INFORMATION:**

Hearing Date: <u>6/16/11</u>	Hearing Time: <u>11:51 AM/PM</u>	Tape: <u>TR570</u>	Side: <u>BA</u>	Start: <u>080</u> <u>496</u>	End: <u>243</u>
------------------------------	----------------------------------	--------------------	-----------------	---------------------------------	-----------------

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

Witness subpoenaed to witness the report and release the case file and all questions must be relevant to the charges and repetitive in nature

OFFENSE CODES	<u>801</u>				
INMATE PLEA (G, NG, None)	<u>None</u>				
FINDINGS (G, NG, DS)	<u>0</u>				

IF GUILTY, EVIDENCE PRESENTED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT, (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: (B) SC 10-10 Laws  
and complete as well as the report I was did pass  
and left check and for head photo

HEARING LENGTH: \_\_\_\_\_ (MINUTES)

SACTIONS:

Loss of Privileges (Days) \_\_\_\_\_ Reprimand: \_\_\_\_\_ Loss of Good Time (days): 500  
 \* Property (Days) \_\_\_\_\_ Extra Duty: \_\_\_\_\_ Restitution: \$ \*\*  
 \* Canteen (Days) 1067 (00730) Visit Suspension Thru 1067 (00736) Dependent Injury  
 \* Other 707 (00736) Cell Restriction (Days): 707 +0 (10) Comp  
 \* Disciplinary Detention (Days): 720-13

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st 801 conviction  
4 pages 807 conviction, 2 pages 809 conviction  
and 2010

CREDIT FOR PHD TIME SERVED? YES/NO IF YES, DAYS 13 days  
 DATE INMATE PLACED IN PHD 5/24/11  
 INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 6/16/11  
 HEARING OFFICER (PRINT NAME) [Signature]  
 APPROVED/REVERSE/MODIFY [Signature] REASON \_\_\_\_\_  
 Warden

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

White - Institutional Record  
 Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)  
 Canary - Inmate (Service of Disciplinary Report)  
 Pink - Central Record

\*(Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

720  
 15  
 707

707  
 (24)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

REC'D JUN 15 2011

STEP 1

INMATE NAME: Shango Damballah  
Harold Masley  
SCDC NUMBER: 137525  
INSTITUTION: TUGER RIVER CORR. INST.  
HOUSING UNIT: SMU # 7  
WORK ASSIGNMENT: N/A

410 6-15-11  
Office Use Only  
Grievance No. TRCI 0823-11  
Code: General DH  
Policy 801 # 82  
Disc. Hear. 6-6-11  
Class. A 801 # 82  
Date Received 6-16-11  
IGC Initials CA

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I hereby appeal the disciplinary decision of June 6, 2011 b/c of the following procedural errors.

1) PROCEDURAL ERROR - CONFLICT OF INTEREST - I WAS APPOINTED MRS. BARBARA LEWIS AS MY COUNSEL SUBSTITUTE TO REPRESENT ME AT MY HEARING OF JUNE 6, 2011. MRS. LEWIS IS ALSO LISTED AS HAVING INTERVIEWED BOTH OFFICERS AS THE "P.A.I.T" REPRESENTATIVE. I BELIEVE A PAIR REPRESENTATIVE IS A "POST-ASSAULT EMPLOYEE REPRESENTATIVE" OR SOMETHING TO THAT EFFECT AND THEY ARE RESPONSIBLE FOR INVESTIGATING ASSAULT AND FOR STRIKING CHARGES TO RECOMMEND THAT THE CHARGES BE PROSECUTED.

ACTION REQUESTED: I REQUEST TO KNOW FOR THE RECORD WHAT A P.A.I.T REPRESENTATIVE IS; WHAT ARE THEIR DUTIES? AND THAT CHARGES FOR 801 BE REVERTED/REVERSED. SANCTIONS BE REDUCED

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Disciplinary Appeal of June 6, 2011

Shango Damballah 6-14-2011  
Grievant Signature Date

ACTION TAKEN BY IGC: PAIR = Post Assault Institutional Representative; They assess the incident with the Correctional staff and refer information to the warden in the event an officer needs additional medical/counseling.

The PAIR representative did not participate in the incident. She only asked officers follow up questions about their injuries only.  
Fwd taken for resp  
IGC Signature Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

Fwd To WARDEN FOR RESPONSE N/A  
Grievant Signature Date

**WARDEN'S DECISION AND REASON:**

Inmate Harold Mosley:

This is in reference to grievance TRCI 0828-11

You have appealed the results of your disciplinary hearing conviction for charge 801 case 82 heard on 06/06/2011.

The issues you stated do not warrant a reversal of the charge. Pertinent documentation had been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on Officer Lance's report, and evidence presented at the hearing. The sanctions imposed were not excessive and are in accordance with the Operational Procedure Policy (OP 22.14), Inmate Disciplinary System.

**Therefore, your grievance is denied.** If you wish to appeal this decision to the next level, you must submit a Step 2 grievance form within five (5) days of receipt.

Refer to instruction # 5 listed below.

Jim Riley 7/11/11  
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.

Shango Dumbelloh 7-12-11  
Grievant Signature Date

C. Thompson 7/11/11  
IGC Signature Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. 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, via the Institutional Grievance Coordinator.

disciplinary charge of a circuit court felony charge. According to SCDC Policy of-22.14, section 13, "NEITHER THE HEARING OFFICER NOR THE SUBSTITUTE/COUNSEL MAY BE:

- AN EMPLOYEE WHO PARTICIPATED IN ANY INCIDENT THAT LED TO THE CHARGES IN QUESTION;
- AN EMPLOYEE WHO PARTICIPATED IN INVESTIGATION OF THE CHARGES
- AN EMPLOYEE WHO MADE THE DECISION TO PROCESS THE REPORT THROUGH A DISCIPLINARY HEARING

MY DUE PROCESS RIGHTS UNDER ARTICLES I § 3 & I § 22 OF THE STATE CONSTITUTION WERE VIOLATED WHERE THERE EXISTED A CONFLICT OF INTEREST. MRS. LEWIS COULD NOT REPRESENT BOTH Lt. HOLSINGER AND CORPORAL LANE ON ONE HAND AND ME ON THE OTHER, THAT WAS "UNETHICAL" SEE SCDC Policy of-22.14, 13 "RESTRICTIONS ON PERSONNEL PARTICIPATING IN THE HEARING

2) PROCEDURAL ERROR - THE SANCTION OF 720 DAYS DISCIPLINARY DETENTION IMPOSED BY THE DHO FOR A 1ST CONVICTION OF 801 VIOLATED SCDC Policy of-22.14 § 17.1. I COULD ONLY BE SANCTIONED TO 360 DAY DISCIPLINARY DETENTION FOR A FIRST CONVICTION OF 801 AND ALL THE 807 CHARGES THAT I'VE RECEIVED OVER THE YEARS STILL DO NOT CONSTITUTE A SECOND OFFENSE OF 801. SEE HEARING RECORD 19-69, WHERE DHO TURNER WROTE "1ST CONVICTION FOR 801"

3) PROCEDURAL ERROR - I WAS DENIED THE RIGHT TO CALL NURSE ARMY SPENCER AS MY WITNESS WHOM I REQUESTED IN A SCDC FORM 19-11 BY PLACING THE SAME IN THE SML MAILBOX ON JUNE 2, 2011 IN FRONT OF CPL. HORTON AND SGT. TREBAINE. THE DHO REFUSED TO GRANT ME A CONTINUANCE UNTIL HE COULD RECEIVE MY IMMATE REQUEST WHICH TO THIS DAY HE DENIES RECEIVING. THE DHO WAS NOT IMPARTIAL. EVEN MRS. LEWIS INFORMED HIM OF MY REQUEST.

4) PROCEDURAL ERROR - DHO AND SCDC IS IN VIOLATION OF S.C. CODE OF LAWS (1976) § 24-13-210(C) WHERE ALL THE YEARS OF MY INCARCERATION MY GOOD TIME HAS BEEN FORFEITED BY SCDC OFFICIALS OTHER THAN THE COMMISSIONER/DIRECTOR. THIS VIOLATION IS "CAPABLE OF REPETITION IN THE FUTURE, YET EVADING REVIEW". I AM BEING HELD UNLAWFULLY IN VIOLATION OF MY RIGHT TO DUE PROCESS AND TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

IN RELATION TO PROCEDURAL ERROR 3 SEE SCDC Policy of-22.14 § 8.2.4 AND 15.3. NURSE SPENCER HAD EVIDENCE RELEVANT TO MY DEFENSE.

5) PROCEDURAL ERROR - SEE SCDC Policy of-22.14.16.4 - I WAS GIVEN 2 DIFFERENT CHARGES FROM THE SAME INCIDENT, WHICH WAS NOT TOTALLY SEPARATE AND DISTINCT VIOLATIONS. THE DHO WAS NOT IMPARTIAL.

992

due 7/17/11

TYRC 0828-11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 2

*Handwritten:* Harold Mosley

INMATE NAME: SHANGO DAMBALLAH  
SCDC NUMBER: 137525  
INSTITUTION: TYGER RIVER CORR.  
HOUSING UNIT: SML #7  
WORK ASSIGNMENT: N/A

REC'D JUL 15 2011

JUL 25 2011

Office Use Only  
Grievance No. TYRC 0828-11  
Code: General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc. Hear. 801 #32 6-6-11  
Class. \_\_\_\_\_  
Date Received 7-19-11  
IGC Initials CI

Inmate Grievance

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): *I stand by the claims of my step 1 appeal and incorporate each and all of them into this step 2 appeal by reference as they are all procedural errors.*

*1) Procedural error - As Mrs. Barbara Lewis served as my counsel substitute on June 6, 2011 and was also the "Post-Assault Institutional Representative" of the officers involved in my charge, she served as an "Investigative Agent" to find out whether or not the charge should be prosecuted as a court charge or a disciplinary, therefore, she was restricted by SCDC Policy of 22.14, section 13 which states that "neither the hearing officer nor the counsel substitute may be: Shango Damballah 7-13-11"*

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

It was determined that the Incident Report, SCDC Form 19-29A does support the charge and conviction of the Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) from the June 6, 2011 disciplinary hearing; however, the sanctions imposed were an excessive amount for the first conviction. Therefore, the amount of disciplinary detention imposed will reduced to 360 days, all other sanctions will remain unchanged.

Therefore, I consider this matter resolved.

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.

*[Signature]*  
Signature \_\_\_\_\_ Date 11/10/2011

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)

AN EMPLOYEE WHO PARTICIPATED IN INVESTIGATION OF THE CHARGES.

- AN EMPLOYEE WHO MADE THE DECISION TO PROCESS THE REPORT THROUGH A DISCIPLINARY HEARING.

SEE I.G.C. RESPONSE AND PROCEDURAL ERROR #1 OF MY STEP 1 APPEAL.

2) PROCEDURAL ERROR - SCDC POLICY OP-22.14 § 17.4 STATES THAT "IF AN INMATE IS CHARGED WITH MULTIPLE OFFENSES, THE INMATE CANNOT BE SANCTIONED SEPARATELY FOR EACH OFFENSE UNLESS THEY ARE TOTALLY SEPARATE AND DISTINCT VIOLATIONS." I COULD ONLY BE SANCTIONED TO 3600 DAYS DISCIPLINARY DETENTION FOR A FIRST CONVICTION OF 801. SEE SCDC POLICY OP-22.14 § 17.1 AND SCDC FORM 19-69 WHERE THE DTH WRITE "1ST CONVICTION FOR 801"

3) PROCEDURAL ERROR - I WAS DENIED THE RIGHT TO CALL NURSE AMY SPENCER AS MY WITNESS WHOM I REQUESTED IN A SCDC FORM 19-11 BY PLACING THE SAME IN THE SML MAILBOX ON JUNE 2, 2011. SEE EXHIBIT "1" I REQUESTED NURSE SPENCER TO BE PRESENT AT MY HEARING PURSUANT TO SCDC POLICY OP-22.14 § 2.4 AND A SCDC EMPLOYEE IS OBLIGATED TO PROVIDE INFORMATION THAT COULD LEAD TO A DIFFERENT DISCIPLINARY DECISION PURSUANT TO SCDC POLICY OP-22.14, 15.3. NURSE SPENCER HAD EVIDENCE RELEVANT TO MY DEFENCE. EXHIBIT "1" IS ATTACHED.

4) PROCEDURAL ERROR - THE DTH AND SCDC IS IN VIOLATION OF S.C. CODE OF LAWS (1976) § 24-13-210(C) WHERE ALL THE YEARS OF MY INCARCERATION MY GOOD-TIME HAS BEEN FORFEITED BY SCDC OFFICIALS OTHER THAN THE COMMISSIONER/DIRECTOR. THIS VIOLATION IS "CAPABLE OF REPEITION IN THE FUTURE, YET EVADING REVIEW." I AM BEING HELD UNLAWFULLY IN VIOLATION OF MY RIGHT TO DUE PROCESS AND TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

5) PROCEDURAL ERROR - SEE SCDC POLICY OP-22.14, 16.4 - I WAS GIVEN TWO (2) DIFFERENT 801 "ASSAULT" CHARGES FROM THE SAME INCIDENT WHICH WERE NOT TOTALLY SEPARATE AND DISTINCT VIOLATIONS YET THE DTH SANCTIONED ME CONSECUTIVELY FOR EACH OFFENSE WHICH SHOWS THAT HE WAS NOT FAIR AND IMPARTIAL AS DEMANDED BY WOLFF V McDONNELL.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

REC'D AUG 10 2011

STEP 2

INMATE NAME: Harold Mosley  
Shango Damballah  
SCDC NUMBER: 137525  
INSTITUTION: F4901 TUES OFF. Kershaw  
HOUSING UNIT: SML #19 90  
WORK ASSIGNMENT: N/A

Office Use Only  
Grievance No. F4901 0964-V  
Code: General MAIS  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class. \_\_\_\_\_  
Date Received 8.11.11  
IGC Initials CT

RECEIVED  
AUG 22 2011

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): THE WARDEN'S RESPONSE THAT NURSE Amy Spencer not being allowed to be present at my hearing did not prejudice me is unfounded. Nurse Spencer would have testified that I had two bruises on my face where I was struck by officer lance, this testimony would have altered the results of my hearing where I have testified and alleged that this entire incident started as a result of being struck twice by -now- Sgt. lance who used unnecessary use of force against my person. I also know of two (2) other inmates, Thomas Waters and Christopher Williams who were denied witnesses in the same manner. Thus, SCDC should go to preformatted forms for Shango Damballah 8/8/2011 19-11, then such allegations cannot be brushed off so easily.

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

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concerns have been reviewed. Warden Riley appropriately addressed your concerns. Mr. Crider, mail room supervisor, did confirm that all Request to Staff forms are processed and forwarded to the appropriate area daily. Nothing has been found to support your allegations that the mail room held your Request to Staff form from June 2, 2011 to June 8, 2011.

Therefore, this grievance is denied..

You may appeal this decision under the Administrative Procedures Act. 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.

John H. Carmichael 8-20-12  
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.

Shango Damballah August 29, 2012  
Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_

P. Nough 8/29/12  
IGC Signature \_\_\_\_\_ Date \_\_\_\_\_

(SEE REVERSE SIDE FOR INSTRUCTIONS)

reading at the sixth grade level and below will be assigned a counsel substitute. The highest consistent reading level noted in the Offender Management Screen will be the reading level considered when deciding if an inmate should be assigned a counsel substitute.)

8.1.3 When the inmate, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case.

8.1.4 When the inmate is confined to a segregation status pending the hearing . *unless the inmate documents on the 19-69, or verbally states on tape that s/he does not want a counsel substitute and they have no mental health issues.* (Amended by Change 1, dated September 16, 2010)

8.1.5 When a witness requested by the accused inmate is unable to attend a disciplinary hearing because either the requested witness or the accused inmate has been transferred to another institution. (NOTE: Inmates who exhibit inappropriate behavior with a counsel substitute will forfeit the use of counsel substitute and may be charged accordingly.)

8.2 Responsibilities: Prior to the disciplinary hearing, the Counsel Substitute has the following responsibilities in preparing for the hearing:

8.2.1 Read the SCDC Form 19-29A and 19-69 to the accused inmate and make sure the inmate understands the charges.

8.2.2 Obtain the accused inmate's statement as to exactly what took place.

8.2.3 Obtain the names of all employees and inmates whom the accused wishes to call as witnesses.

8.2.4 Interview relevant witnesses prior to the hearing. For those witnesses who will not be able to appear at the hearing (e.g., an inmate who has been transferred to another institution), obtain written statements that can be given to the Hearing Officer at the hearing (NOTE: Inmates will be required to use SCDC Form 19-11, "Request to Staff Member," listing the names of all witnesses they wish to be made available at their hearing. The form must be addressed to the inmate's Counsel Substitute or to the Hearing Officer if no Counsel Substitute has been assigned and must be received no later than 24 hours prior to the hearing.)

8.2.5 Inform the Hearing Officer of the names of all witnesses the inmate has requested.

8.2.6 Obtain any documentary evidence relevant to the case that is not already in the possession of the accused inmate.

9. HEARING OFFICER DUTIES: The Hearing Officer is responsible for the following:

9.1 Implementing and adhering to established guidelines as they relate to the hearing phase of the disciplinary process;

9.2 Overseeing and coordinating due process hearings for inmates with rule violations to include, but not be limited to maintaining an automated disciplinary case tracking system, and providing assistance *to the institutions* in setting case dockets and proper scheduling of rule violators to appear at hearings in the prescribed time limits set forth above.

9.3 Ensuring that the appropriate transactions are executed in the inmate's automated record within two (2) working days of the completion of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

9.4 The charges will be explained by the Hearing Officer to the inmate in terms s/he can understand. The Hearing Officer will also inform the inmate that if a guilty plea is rendered or if s/he is found guilty, s/he will automatically fail to earn his/her normal rate of good time (3 or 20 days depending on his/her

subjected to any form of coercion designed to persuade them to waive their rights to 24 hour notice. If inmates are offered the opportunity to waive 24 hours notice, they must be fully informed, in terms understandable to them, of the nature of the rights at stake. In addition, an inmate may waive his/her right to a hearing and indicate such on SCDC Form 19-69. When an inmate waives his/her right to a hearing, the Hearing Officer will review the waiver section of the SCDC Form 19-69, conduct the hearing in the absence of the inmate, determine guilt or innocence; if guilty, decide on appropriate penalties, and notify the inmate of the same using SCDC Form 19-69. Should an inmate refuse to sign a waiver and/or attend the hearing, the hearing will be held in the inmate's absence and tape recorded. (NOTE: The Hearing Officer will determine if a witness(es) will testify should an inmate waive his/her right to attend their hearing.) (4-4237)

7.3 The inmate may submit a written statement to the Hearing Officer in response to the charges. In addition, the inmate may make a verbal statement in his/her defense during the hearing. At the time an inmate is served with notice pursuant to a disciplinary hearing, the inmate will be informed of these rights. Confirmation that the inmate was advised of these rights will be noted on the original copy of SCDC Form 19-69, "Disciplinary Report and Hearing Record."

7.4 One (1), 21 calendar day extension for holding the hearing will be allowed only with the written approval of the *Division of Operations* for unforeseen circumstances (inmate assault leave, employee extended leave, family medical emergency, etc.) via a memorandum. The extension must be *submitted to the Division of Operations* prior to the expiration of the initial 21 calendar day period. *If approved, the 21 calendar day extension will begin after the completion of the initial 21 day hearing period. The expiration date of the initial 21 day period must be noted in the memorandum.* Only one (1) such extension will be authorized. If the extension is approved by the *Division of Operations*, the inmate will be provided with a copy of the approval.

7.5 When an investigation is needed, the nine (9) calendar days begins once the investigation information is submitted to the Major (or Captain at those institutions with no Major) or higher authority. (NOTE: An investigation conclusion date will be noted on the investigative information report.)

7.6 If the inmate is transferred to another institution, the hearing will still be held within 21 calendar days of being charged, unless extenuating circumstances prevent the hearing. For extenuating circumstances, the Division Director of Operations or designee may approve an extension. All documentation concerning the charges will be forwarded to the receiving institution promptly upon transfer of the inmate.

7.7 Disciplinary hearings held more than 30 calendar days after the incident date or date of the discovery of the incident, ~~when no extension has been approved by the Warden,~~ may only be held if approved by a ~~designee from~~ the Division of Operations. It will be the responsibility of the Warden where the inmate was charged to provide justification for disciplinary action beyond 30 calendar days.

8. COUNSEL SUBSTITUTES: Each institution will assign an employee(s) to act as a Counsel Substitute. A Counsel Substitute is an SCDC non-uniformed employee who is assigned to assist inmates with a disciplinary hearing.

8.1 Inmates will be assigned a Counsel Substitute at least twenty-four (24) hours prior to a hearing in the following cases: (Note: There is no requirement for the inmate to be interviewed by the Counsel Substitute twenty-four (24) hours prior to the hearing.)

8.1.1 When the inmate is intellectually impaired or has a physical disability which makes it difficult for him/her to understand and/or participate in the disciplinary process. Counsel Substitutes will be appointed in all cases in which: inmates are assigned to a sheltered unit for the intellectually impaired, i.e., Habilitation Unit, etc.; or inmates have questionable mental intellect or a mental illness as confirmed by mental health personnel.

8.1.2 When the inmate's literacy or understanding of English is questionable. (NOTE: Inmates

incident, whichever is later.

14.8 An inmate who refuses to attend a hearing without properly waiving his/her appearance automatically waives the right to counsel substitute, the presence of accuser, and witness(es).

**\*15. PRESENTATION OF EVIDENCE AT THE HEARING:**

15.1 At the start of the hearing, the Hearing Officer will advise the inmate of the charges against him/her and will advise the inmate to enter a plea to each charge. If one or more of the charges involved the possession of contraband, the item(s) of contraband, a sample of the contraband, or a picture of the item should be produced at the hearing. Also, if the contraband involves a controlled substance, i.e., illegal drugs such as marijuana, the Hearing Officer must have available a copy of SCDC Form 19-79, "Controlled Substance Testing and Disposition Form," that establishes the exact type of illegal drug found in the possession of the inmate.

15.2 The accused inmate, or the inmate's Counsel Substitute, may make a statement on the inmate's behalf. The accused inmate, or the inmate's Counsel Substitute, may present documentary evidence.

**\*15.3 The inmate may call witnesses unless the Hearing Officer decides that the testimony of such witnesses is repetitive (that is, will simply repeat the testimony of other witnesses), is not relevant to the case, or is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied by the Hearing Officer, the Hearing Officer must write his/her reasons for this denial on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," in the space provided. If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information.**

15.4 The inmate must request the accuser's(s) presence prior to the hearing utilizing Form 19-69.

15.5 The Counsel Substitute, or inmate, if no counsel substitute is appointed, may question all witnesses who appear at the hearing. The Hearing Officer will ask the inmate, or the inmate's Counsel Substitute, whether there are any questions for the witnesses. The questioning of the accusing employee or other witnesses will be conducted by the Counsel Substitute or Hearing Officer, if no Counsel Substitute is appointed. Written statements from witnesses other than the accusing employee may be presented as evidence when the witnesses are unable to attend the hearing. Any witness, including the accusing employee, who is unable to attend the hearing may be interviewed by a speaker telephone during the hearing and the answers of the witness must be recorded. The unavailability of the accusing employee must be limited to those occasions when circumstances (i.e. employee is on inmate assault leave, medical emergency, military leave, etc.) arise at which time the approving supervisor indicated on SCDC Form 19-29A may be used as the accusing official.

15.6 In circumstances where an inmate is an adversarial witness, the inmate who is charged may be excluded from hearing the testimony of the witness. In such cases, the charged inmate will be required to give a list of questions s/he wants asked of the witness to his/her Counsel Substitute. If no Counsel Substitute has been assigned, then the inmate will be required to provide a list of questions to the Hearing Officer who will ask the questions for the accused.

**\*15.7 The failure of the accused inmate to present non-frivolous evidence to contradict the staff member's report will permit the report to be the only evidence used against the inmate. If, on the other hand, the accused inmate presents non-frivolous evidence which, if true, would contradict the facts alleged in the staff member's report, the Hearing Officer must take at least one of the following steps at the hearing prior to the final disposition of the case:**

15.7.1 question the charging employee;

15.7.2 examine additional documentary evidence (beyond investigation reports and/or written statements by the charging employee or witnesses); or

15.7.3 question other witnesses.

16. STANDARD OF GUILT:

\*16.1 The Hearing Officer will then decide the inmate's guilt or innocence with respect to each charge on the SCDC Form 19-69, "Disciplinary Report and Hearing Record," based on a preponderance of the credible evidence; in other words, the Hearing Officer must review all of the evidence presented during the hearing and, from the evidence that was submitted, must decide whether it is more likely that the inmate is guilty or not guilty.

16.2 Sentencing Guidelines: If the inmate is found guilty, the Hearing Officer will determine the sanctions to be imposed for the violation. When sanctioning an inmate, the Hearing Officer will take into consideration:

- the inmate's prior conduct and the period of time since the inmate's last disciplinary violation;
- nature and seriousness of the offense;
- extent of injury to persons or damage/destruction to property (if applicable);
- penalties given to other inmates for the same or similar violations;
- specific program and security needs of the inmate.

The sanctions will be proportionate to the offense committed, and the Hearing Officer will be responsible for justifying any disciplinary actions imposed.

*16.3 Guilty But Not Accountable: If a mentally ill inmate commits a disciplinary infraction, and the mental health staff determines that the inmate was not accountable for his/her actions, if the inmate is found guilty through a preponderance of the evidence presented, the inmate should be found Guilty But Not Accountable. The case will be referred back to the Mental Health authorities for appropriate intervention.*

[ 16.4 If an inmate is charged with multiple offenses, the inmate cannot be sanctioned separately for each offense unless they are totally separate and distinct violations. If the offenses are separate and distinct, then the inmate may be sanctioned consecutively for each offense. Inmates may not be sanctioned consecutively for lesser included offenses. ]

16.5 Inmates released from the Department of Corrections and returned to the Agency within three (3) years of their release can have their disciplinary history used in determining appropriate sanctions if they commit an Agency rules violation. Hearing Officers and Major/Responsible Authority(s) will have the discretion to use an inmate's prior disciplinary history. This procedure will apply to all inmates regardless of the method of release prior to their return, i.e. max-out, parole, probation, etc.

*16.6 Inmates who had disciplinary sanctions imposed prior to release from SCDC on probation, parole, supervised furlough, or any other supervision under control of the SCDPPS, and who return to SCDC before the "day for day" completion date of the sanctions, will have the sanctions remain in place until the original completion dates expire. Once the inmate is assigned to an institution from R&E, the resumption of Disciplinary Detention time will be at the discretion of the receiving Warden.*

17. PENALTIES IMPOSED BY HEARING OFFICER: Penalties for disciplinary offenses are consecutive. If an inmate is serving Disciplinary Detention or has a loss of privileges or other sanction and commits another offense during the period of time s/he is in Disciplinary Detention or has lost privileges, the subsequent penalty period will begin upon completion of the first. More than one type of sanction may be imposed for a violation. *Penalties will be imposed for a second or subsequent offense when the offense committed is identical to a previous offense(s).* (Amended by Change 1, dated September 16, 2010)

17.1 Disciplinary Detention is served in an institutional Special Management Unit and may be imposed in the following amounts:

Disciplinary Offense	
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18.1 SCDC Form 19-69, "Disciplinary Report and Hearing Record," will be used to provide a written record of the hearing. The record will include the following information:

18.1.1 Whether the accused inmate was excluded from the hearing during the taking of evidence and, if so, the reasons for the exclusion.

18.1.2 Whether any requested witnesses were excluded and, if so, the reasons for the exclusion.

18.1.3 Whether any documentary evidence was excluded and, if so, the reasons for the exclusion.

18.1.4 Whether questioning of the inmate's accusers, if requested, was denied and, if so, the reasons for the denial.

18.1.5 If found guilty, the evidence presented and considered, and the reasons for determination of guilt.

18.1.6 If found guilty, the penalty imposed, and the specific factual reasons for the particular penalty chosen by the Hearing Officer. PHD time will be awarded towards the satisfaction of any DD time imposed unless the inmate received disciplinary charges subsequent to his/her placement in PHD.

18.2 At the conclusion of the hearing, the inmate will be given a copy of the written record of the hearing using SCDC Form 19-69. If the inmate was not present at the hearing, the Hearing Officer will notify the inmate if his/her whereabouts are known, of the hearing results and right to appeal the finding of guilt and/or penalty imposed by completing SCDC Form 10-5, "Inmate Grievance Form." A copy of SCDC Form 19-69 will be provided to the inmate. Upon the review and approval of the Warden, the SCDC Form 19-69 will be placed in the inmate's Institutional and Central Record. An additional copy will be maintained in the Hearing Officer's files. The Recorder will forward SCDC Form 19-69 to the Warden for his/her review.

18.3 Additionally, if the incident occurred at another institution, the Warden at the institution currently housing the inmate will review and sign the SCDC Form 19-69. Once signed, a courtesy copy will be sent to the Warden of the institution where the offense occurred.

## 19. APPEALS:

19.1 At the conclusion of the hearing, the Hearing Officer will inform the inmate of his/her right to appeal the decision of the Hearing Officer with respect to guilt or to the penalty imposed by using the inmate grievance procedure. If the inmate requests, a SCDC Form 10-5, "Step I Grievance Form," will be provided to the inmate by the Hearing Officer (see SCDC Policy/Procedure GA-01.12, "Inmate Grievance System"). (NOTE: Inmates may request the assistance of the Institutional Inmate Grievance Coordinator to assist them in completing their grievance form if they are unable to read or write, or have a language barrier.)

19.2 Inmates may appeal the decision of the Hearing Officer. The appeal must be initiated by the inmate and must be filed within 15 calendar days after receiving the written decision of the Hearing Officer or the inmate forfeits all rights to appeal. Appeals will be processed as described in SCDC Policy/Procedure GA-01.12, "Inmate Grievance System." The Warden will respond to disciplinary hearing appeals within 30 calendar days from the initial filing of the grievance.

19.3 The following factors must be considered when reviewing an appeal:

- Whether the Hearing Officer acted in substantial compliance with policies/procedures.
- Whether the decision of the Hearing Officer was based on ~~substantial~~ *any* evidence. (Amended by Change 1, dated September 16, 2010)
- Whether, under the circumstances, the sentence imposed was proportionate to the violation.

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20. **WARDEN'S REVIEW:** Upon receipt of SCDC Form 19-69, when the inmate is found guilty, the Warden or his/her designee at the institution where the inmate is housed may approve hearing results, overturn a guilty finding, or reduce the sanction of the Hearing Officer. The Warden will document this information on SCDC Form 19-69 in the space provided. If the Warden overturns or reduces the sanction, s/he will be responsible for providing the inmate with written notice of the overturned or reduced disposition. Copies of both SCDC Form 19-69 and the written notice provided to the inmate by the Warden will be placed in the inmate's Institutional Record and Central Record. An additional copy will be maintained in the Hearing Officer's files.

20.1 Disciplinary data entered into the OMS at the conclusion of a disciplinary hearing, which has been reviewed and approved by the affected Warden, will not be arbitrarily modified. Any need for modification must have the approval of the Division of Operations.

21. **DISCIPLINARY CHARGES FOR INMATES IN SPECIAL MANAGEMENT UNIT AND MAXIMUM SECURITY UNIT:** Inmates housed in SMU and MSU, who *habitually* commit non-assaultive offenses will have the incidents disposed of by utilizing SCDC Form 19-29A. The infraction will be entered into the Offender Management System DISC screen using Type Action "03" which will show as, "Closed-Other Action Taken/Informally Resolved." If the inmate commits a non-assaultive charge and earns good time, s/he may be charged once per month and provided with a disciplinary hearing. Therefore, accrued good time may be taken for disciplinary violations. (NOTE: These Closed/Informally Resolved Cases will remain a part of the inmate's automated disciplinary history. The Institutional Classification Committee will consider these Closed/Informally Resolved charges to assess the inmate's behavior and determine the inmate's Security Detention level, readiness for release from Security Detention and/or transfer to the Maximum Security Unit.)

22. **CRIMINAL CHARGES FOR INMATES:** Cases involving inmates who have committed a criminal act will be immediately reported to the Warden or designee for transmission to an Investigator from the Division of Investigations in accordance with SCDC Policy/Procedure GA-05.01, "Investigations."

### 23. INMATE ACCESS TO TAPE RECORDINGS:

23.1 The inmate will have access to listen to (but not possession of) the tape recording of his/her disciplinary hearing to assist in preparing an appeal. The inmate will not have access to any portion of the tape where s/he was excluded from the hearing. If, after the inmate has been transferred to a new institution, the inmate then requests access to the tape recording of the hearing, the recording will be forwarded to the *Major* where the inmate is currently housed. *The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape.*

23.2 Inmates desiring to listen to a copy of their taped hearing must *submit a SCDC Form 19-11, "Request to Staff Member," informing the Major. The Major will task one of their staff members to coordinate the opportunity for the inmate to hear the tape. This staff member will be responsible for requesting the tape from the Hearing Officer/Recorder. The tape will be given to the assigned staff member who will be responsible for advising the inmate when it has been received and for scheduling a time for the inmate to review that portion of the tape for the respective inmate's hearing. The tape will be played for the inmate by, and in the presence of, the assigned staff member within fifteen (15) days of receiving the request. The Institutional Grievance Coordinator will be notified that the inmate has requested to hear their disciplinary hearing tape.*

23.3 Once the tape has been played for the inmate, the *assigned staff member* will return the tape to the *Hearing Officer/Institutional Recorder, and will notify the Inmate Grievance Coordinator that the inmate has heard the tape.*

23.4 If the inmate so requests in the appeal, the tape recording will be made available to the appropriate reviewing authority before deciding the appeal.

### 24. REHEARING:

Agency Hearing Officers will have limited access to the automated inmate disciplinary system.

## SCDC DISCIPLINARY OFFENSES

**1. RULES VIOLATION DEFINED:** The following disciplinary offenses represent violations of the SCDC inmate rules. A violation of these rules may consist of any of the following:

- Engaging in the specified behavior;
- Attempting to engage in the specified behavior;
- Conspiring to engage in the specified behavior; or
- Aiding others in engaging, attempting to engage, or conspiring to engage in the specified behavior.

**2. LIST OF OFFENSES:** The following is a list of the titles and code numbers of offenses.

### Level 1 Offenses

\*→ **801 Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure:** The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer, or member of the public with or without a weapon or the throwing of any substance at or on an SCDC employee or other government agency employee or contract employee who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching causes bodily injury. (Amended by Change 1, dated September 16, 2010)

**802 Sexual Assault:** Forcing another person, by violence or threats of violence, to perform a sexual act. (A sexual act is any intentional contact between the genitals of one inmate and the genitals, mouth, anus, or hands of another person.) A conviction for this charge will result in a loss of the inmate's visitation privileges for one (1) year regardless of where the infraction occurred.

**803 Riot:** When an inmate, with two or more persons, intentionally participates in conduct that creates danger of damage or injury to property or persons and substantially obstructs the performance of unit operations or institutional operations.

**804 Homicide:** The killing of any person with/without malice, advance thought, either expressed or implied.

**805 Hostage Taking:** The act of any inmate acting alone or with others who by threats, coercion, intimidation, or physical force, takes, holds, or carries away any person as a hostage for any reason whatsoever.

**806 Any Act Defined as a Felony by the Laws of the State of South Carolina or the United States and not otherwise Defined in these Rules.**(State Criminal Statute must be provided.)

**857 Assault and/or Battery of an Inmate with Means and/or Intent to Kill or Injure:** The willful hitting, striking, throwing of substances, or unauthorized touching of an inmate with or without a weapon by another inmate, when such hitting, striking, throwing, or unauthorized touching results in great bodily injury.

**896 Unauthorized wearing, possession and/or providing Agency uniform(s):** The wearing, possession and or providing of an Agency uniform is a serious offense as it relates to inmate identification, institutional order and security.

**897 Possession of Security Equipment/Property:** The unauthorized possession and or use of security equipment/property of SCDC or that of an outside source. Unauthorized items may include, but not be limited to, keys, restraints, chemical munitions, employee ID cards, crafted devices, i.e., hand cuff keys, or dummy like objects, (for escape/attempt escape purposes),etc.

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the same time and by the same conduct, committing a less serious offense. The latter is a lesser included offense (e.g., possession of contraband and possession of contraband for planning an escape) when the two charges involve the same items of contraband.

**Major/Responsible Authority** refers to the Major, Associate Warden, Duty Warden, or Warden of an institution, or where there is no Major assigned, the Captain. In Level II/III Institutions, the Warden can designate a Captain to serve in this capacity with the written concurrence of the Division of Operations. Level I Institutions can be a Lieutenant and above.

*Continuance: When a case is moved to another hearing date within the appropriate timeframe. The reasons for a continuance include, but are not limited to : employee on medical, military inmate assault or some other type of leave; a need to review additional information relevant to the disposition of the case.*

*Convicted: When an inmate is/was found guilty, or pled guilty of the charged infraction.*

*Dismissed: When an inmate's charge was dropped due to technical reasons and/or procedural errors.*

*Closed: When an infraction is disposed of through informal or some other means (Inmate in SMU that is a habitual offender and the action is non-assaultive in nature) within the disciplinary process.*

*Not Guilty: When an inmate is cleared of charged infraction in a formal disciplinary hearing through a preponderance of the evidence presented.*

*Guilty But Not Accountable: When a mentally ill inmate commits a disciplinary infraction and the mental health staff determines that the inmate was not accountable for his/her action(s), and the Hearing Officer finds the inmate guilty through a preponderance of the evidence presented, the inmate should be found guilty, but not accountable.*

s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

#### APPENDIX A

Access to the automated Inmate Disciplinary System will be limited. The Division of Operations will determine and manage employee application usage. The Division of Resource and Information Management will provide employees with access to the automated Inmate Disciplinary System.

All Wardens will determine the employees responsible for managing the institutional disciplinary process as follows. The employees will have specific access to the automated system as it relates to their duty assignment.

Employee/Assignment	Authorized Number of Employees
Major/Responsibility Authority	No Limit
Recorder	Limit 2
Modifier	Limit 2
Counsel Substitute	No Limit
Shift Supervisor	No Limit

**NOTE:** Other institutional employees will have inquiry access only to the inmate automated disciplinary system.

Agency employees in designated divisions will have approved access to the automated inmate disciplinary system.

**898 The Possession of Any Cell Phone or Other Type of Communication Device:** Possession of, receives or uses (audio/visual), conceals, disposes, stores, facilitates, barter, buys, sales of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, or any like devices.

**901 Class I Escape:** Any escape, attempted escape, or aiding/abetting escape from a Level 2 or 3 Institution or from medium or maximum custody at a local detention center. Also includes escape from a Level 1 Institution or minimum custody at a local detention center that involves any threat of violence, physical harm, or other aggravating circumstances. NOTE: Should an inmate assigned to an outside detail at any level institution, walk-off (with no aggravating circumstances), should be classified as a Class II escape.

**902 Class II Escape:** Any escape, attempted escape, or aiding abetting escape from a Level 1 Institution or minimum custody at a local detention center that does not involve any threat of violence, physical harm, or aggravating circumstances.

**903 The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants.** The actual or constructive possession of any item which was not issued to the inmate officially or which cannot be purchased by him or her in the prison canteen, or which has not been authorized by the Agency Director or Warden. Drugs of any description (except those prescribed by an authorized physician and within authorized amounts, *expiration date*, e.g. barbiturates, narcotics, medicines, marijuana and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03.03, "Inmate Drug Testing/Screening Program." This rule violation encompasses the "hoarding" of prescribed medication by any inmate(s). Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which when inhaled, creates an altered state of physical or mental activity.

**904 Possession of Escape Tools and/or Paraphernalia:** *The actual or constructive possession of any tool, device, document, drawing, or any other item that could be used to plan or execute an escape from a correctional institution.*

#### Level 2 Offenses

**\* 807 Striking an SCDC Employee or other Government Employee, Contract Employee, or Volunteer, or Member of the Public:** The willful hitting, striking, or unauthorized touching of an SCDC employee or other government agency employee, contract employee, or volunteer, or member of the public with or without a weapon or the throwing of any substance at or on an SCDC employee, other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, when such hitting, striking, throwing, or unauthorized touching does not cause bodily injury. (Amended by Change 1, dated September 16, 2010)

**808 Fighting With a Weapon:** Any group of two or more inmates who engage in a physical altercation with any instrument used for the purpose of inflicting physical injury on another person.

**809 Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public:** Communication, verbal or written, by an inmate to an individual that s/he intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future; or one who commits a physical act of a threatening nature, and the probable result of such threats or action is to place the individual in fear of bodily injury; or one who causes evacuation of a building; or one who creates serious disruption or alarm. Any unauthorized body contact of an employee or member of the public which creates serious alarm, but does not result in bodily injury.

**810 Striking an Inmate With or Without a Weapon:** The willful hitting, striking, throwing of any substance at, or unauthorized touching of one inmate by another inmate with or without a weapon, whether or not such hitting, striking, or unauthorized touching causes bodily injury.

**811 Possession of a Weapon:** The actual or constructive possession by an inmate of any instrument intended to be used to inflict physical injury on another person.

**812 Robbery with Force:** The taking of property of another person in that person's presence with use of force and violence which places that person in fear of his/her safety by the use of such force, violence, or threats.

**813 Throwing of any Substance or Object on an SCDC Employee or other Government Employee, Contract Employee, or Volunteer :** The throwing of any substance at or on an SCDC employee or other government agency employee, contract employee, or volunteer who is exercising legitimate authority over an inmate, whether or not such throwing causes bodily injury.

**814 Inciting/Creating a Disturbance:** Any act or activity which results in a disruption of institutional operations or a breach of institution security. Any inmate who purposefully incites or urges a group of two or more other inmates to engage in a current or impending disturbance of institutional operations or gives commands, directions, instructions, or signals to a group of two or more persons to cause, continue, or enlarge a disturbance. An inmate may be found guilty of this violation even where no disruption of institutional operations actually occurs as a direct or indirect result of his/her actions. A disturbance as used herein is an assemblage of three or more persons which creates grave danger or damage or injury to property or persons and/or substantially disrupts the normal functioning of the institution.

**820 Damage, Loss, Destruction, or Defacing of Property Valued at 100.00 or more:** *The intentionally intentional or reckless* damaging, destroying, or disfiguring property belonging to a government agency, a private citizen, an employee, or another inmate. *Possession of damaged, destroyed, or disfigured property also qualifies as a violation of this offense.* (NOTE: This does not include cases in which an inmate loses his/her ID Card or issued room key. In these cases, the inmate will be required to pay a replacement fee for such items and will not be processed pursuant to these procedures. See also, SCDC Policies/Procedures OP-21.06, "Inmate Identification Cards," and OP-22.17, "Key Control," for information regarding the processing of replacement fees.) This charge must be forwarded to a Disciplinary Hearing. (Amended by Change 1, dated September 16, 2010)

**822 Sexual Misconduct:** (1) Engaging in sexual acts or intimate physical contact of a sexual nature with others; or soliciting sexual acts from others." A conviction for this charge will result in a loss of the inmate's visitation privileges for 360 days regardless of where the infraction occurred. This charge must be forwarded to a Disciplinary Hearing. *NOTE: The conviction of 822 does not require the wearing of pink jumpsuits with the exception noted in section 17.8.* (Amended by Change 1, dated September 16, 2010)

**854 Exhibitionism and Public Masturbation:** (1) Engaging in acts of indecent and/or unnecessary exposure of genitals or other private body parts to a staff member or other person; or (2) engaging in acts of masturbation or any manual stimulation of one's exposed or unexposed genitals in a public setting, or in the view of a staff member or other person. A conviction of this charge will result in a loss of the inmate's visitation privileges for one (1) year.

**855 Smuggling and/or Conspiracy to Smuggle in Contraband:** Any inmate found to have conspired, aided, or acted in collusion with any person, *or acting alone* with the intent of introducing any form of contraband into any SCDC facility. Conspiracy, aid, or collusion may be defined as using any form of communication or providing any type of assistance with/to any person where plans are made with the intent of introducing contraband. The physical possession/receipt of the contraband by the inmate is not needed to support this charge. An inmate can be charged with this offense if his/her approved visitor is caught bringing in contraband and it is reasonable to believe that the visitor's intent was to supply the inmate with the contraband.

~~895 The possession and/or use of another inmate's identification card. To have possession of another inmate's ID card is a serious violation. To possess another inmate's ID card for the purpose of misrepresentation, making purchases, etc., is a chargeable violation to include monetary reimbursement. (Amended by Change 1, dated September 16, 2010)~~

§16-3-600

(A) For purposes of this section

- (1) "Great Bodily Injury" means bodily injury which causes a substantial risk of death or which cause serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ
- (2) "Moderate Bodily Injury" means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles and connective tissues that require surgical repair of a complex nature or when the treatment of the injuries requires the use of regional or general anesthesia

## GENERAL ASSEMBLY'S INTENT, PART 1

Section 2. It is the intent of the General Assembly that the provisions of Part 1 of this Act shall provide consistency in sentencing classifications, provide proportional punishments for the offenses committed, and reduce the risk of recidivism.

[Section 7(6)] Provides:

THE common law OFFENSES OF ASSAULT AND BATTERY WITH INTENT TO KILL, ASSAULT WITH INTENT TO KILL, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, SIMPLE ASSAULT AND BATTERY, ASSAULT OF A HIGH AND AGGRAVATED NATURE, AGGRAVATED ASSAULT, AND SIMPLE ASSAULT ARE ABOLISHED FOR OFFENSES OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS ACT

[JUNE 2, 2010] Act no. 273, § 7(6)

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From the Administrative Law Court  
Carolyn C. Matthews, Administrative Law Judge

CASE NO. 11-ALJ-04-00992-AJ

Shamso Damballah #137525 . . . . . Appellant,

v

South Carolina

Department of Corrections . . . . . Respondent.

CERTIFICATE OF COUNSEL / APPELLANT

The undersigned hereby certifies that the record on appeal contains  
all material proposed to be included by any of the parties and  
not any other material.

January 2, 2013

Shamso Damballah  
Shamso Damballah #137525

THE STATE OF SOUTH CAROLINA  
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Appeal from the administrative law court  
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Shango Damballah #137525 . . . . . Appellant,  
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South Carolina  
Department of Corrections . . . . . Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the record on appeal on the respondent by placing the same in the Kershaw Correctional Institution same mail box with postage affixed and addressed to Shanika Johnson at the Office of General Counsel, P.O. Box 21287, 4444 Broad River Road, Columbia, S.C. 29221-1287 this 2 day of January 2013. Appellant has sent a copy of the same to Carolyn C. Matthews Administrative Law Judge.

January 2, 2013

Shango Damballah  
Shango Damballah #137525  
Kershaw Correctional Institution  
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Kershaw, S.C. 29067