

The South Carolina Court Appeals

Darrell Starkey #182368

Appellant

VS

Respondent

S.C.D.C.

INITIAL BRIEF of Appellant

Ms. Christina Catoe Bigelow, Esquire
4444 Broad River Road
Columbia SC 29210

Darrell Starkey
#182368
U-7-B-127
Tyger River C. I.
200 Prison Road
Enoree, SC 29335

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MAR 01 2019

SC Court of Appeals

STATEMENT OF ISSUE ON APPEAL

Whether the DHO, Warden and Responsible Officials decision(s) and reason(s) has been arbitrary, capricious and bias. Where there was no evidence presented as required by law or SCDC policy to find Appellant guilty

STATEMENT OF THE CASE

On Aug 1, 2017 the Appellant was charge with a 903. On Aug 23, 2017 the Appellant appeared before the D.H.O. upon the above said charge, which Appellant was found guilty. On Aug 25, 2017 the Appellant filed his Step 1 grievance, which was denied on Dec 6, 2017. On Dec 15, 2017 the Appellant filed his Step 2 grievance, which was denied on Jan 31, 2018. Which the Appellant filed a timely appeal to this court. his appeal follows

ARGUMENT

Appellant argues that the D.H.O. Warden and Responsible Officials decision and reasons has been arbitrary, capricious and bias Where there was NO evidence presented as required by law, showing that he possessed this LSD, "actually or constructively" SEE: State v Williams 552 SE2d 54

Even SCDC policy 903 states in part:
Trafficking, use and or POSSESSION of narcotics, marijuana or unauthorized drugs including prescription drugs or

inhalants. The ACTUAL OR CONSTRUCTIVE---

Here, its clear that The Appellant NEVER

Actually Nor Constructively possessed This
letter, env. or LSD SEE: Ex. A and Ex. B

"The incident report." Which The incident report
support Appellant argument alone with the
Law SEE state v. Williams SE2d 54 As well as
its own policy 903.

CONCLUSION

WHEREFORE: For all the reasons stated above this
court should reverse the DHO/SCDC decision
and sanctions.

Date: February 27, 2019

Respectfully submitted
s/ Darrell Hukeys

Ex A

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page 1 of 1

Institution/Center: livesay				Date of Report: 8/1/17	
Reporting Official (Full Name): J. Thomas				Time of Report: 1605	
Employee ID #: 051296				Date of Incident: 8/1/17	
Location of Incident: mail room				Time of Incident: 1322	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. Darrell Sturkey	182368		M	B	1. Mrs. Scott
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

I Lt. Thomas was called by Mrs. Scott to the mailroom for a letter containing an unknown item. Mrs. Scott gave me a letter addressed to inmate Darrell Sturkey #182368 and was sent by an Iva Sherman. Inside the letter were two photographs, a four page letter, and a small bag containing an unknown item wrapped in tin foil. In the letter Mr. Sherman mentions a gift he sent inmate Sturkey. Upon further investigation of the item wrapped in tin foil, I found it to be a piece of perforated paper with images of Charlie brown on it. Based on my research and the appearance of the paper it appears to be a sheet of LSD "acid". Inmate Sturkey has had previous correspondences with Mr. Sherman as an envelope recovered from Inmate Sturkeys property was addressed from Mr. Sherman, also found in inmate Sturkeys property was a photo of Mr. Sherman. A NIK (narcotic field test) was conducted on the substance found in the tin foil and it tested positive for LSD.

Signature:  Title: Lt

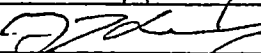
Evidence: SCDC form 19-79, photos, envelopes, letter, and a portion of LSD paper

Disposition of Evidence: turned over to contraband

Supervisor's Comments:

Refer To DHO

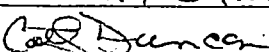
Printed Name: G. Kerby 013451

Signature:  Title: Capt. Date/Time: 8-1-17 4:36 PM

Major/Responsible Authority:

903

Printed Name: CATHY DUNCAN 947an

Signature:  Title: Capt. Date/Time: 8/4/17

STG Related - Refer to STG Committee

Yes No Unknown

This incident is DRUG related

Yes No Unknown

Responsible Authority

Action Taken

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Ex. B

Page _____ of _____

Institution/Center: <u>Livesay</u>				Date of Report: <u>8/1/17</u>	
Reporting Official (Full Name): <u>Katherine Scott</u>				Time of Report: <u>2:38 PM</u>	
Employee ID #: <u>047365</u>				Date of Incident: <u>8/1/17</u>	
Location of Incident: <u>Mailroom</u>				Time of Incident: <u>1:22 PM</u>	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1. <u>Darryl Sturkey (182368)</u>					1. <u>Katherine Scott</u>
2.					2. <u>Lt Thomas</u>
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

Lt. Thomas asked me (Katherine Scott) to write an incident report in reference to a suspicious item found in a letter addressed to inmate Darryl Sturkey (182368). The item, a piece of foil paper with an unidentified object inside, was found in a small plastic bag. The letter and all its contents are currently in Lt. Thomas' possession for further investigation.
The End

Signature: <u>Katherine Scott</u>	Title: <u>Admin Asst / Mailroom Supv.</u>
Evidence: <u>Letter and Contents</u>	
Disposition of Evidence:	

Supervisor's Comments: <u>Refer to DHO</u>	STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown
Printed Name: <u>Stacy L. Baber</u> 1525	This incident is DRUG related <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Signature: <u>Stacy L. Baber</u> Title: <u>LT</u> Date/Time: <u>8.1.17</u>	
Major/Responsible Authority:	Responsible Authority
<u>SUPPORTING STATEMENT</u>	Action Taken
	<input type="checkbox"/> Informal Resolution
	<input type="checkbox"/> Administrative Resolution
Printed Name: <u>CATNY DUNCAN</u> 95002	<input type="checkbox"/> Refer to Disciplinary Hearing
Signature: <u>Catny Duncan</u> Title: <u>GT</u> Date/Time: <u>8/4/17</u>	

The South Carolina Court of Appeals

Darrell Sturkey #182368 _____ Appellant

vs

S.C.D.C. _____ Respondent

#2018-000722

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SC Court of Appeals

PROOF OF SERVICE

I, Darrell Sturkey hereby swore that I have served the below persons my initial brief by placing the above said into the Tiger River Court Just. mail room on this 21 day of February

to be placed in the U.S. mail w/ postage prepaid

The Hon. Clerk Kitchings
P.O. BOX 11629
Columbia SC 29211

Atty AT LALES
Mes. Christina Bigelow
4444 Broad River Rd.
Columbia SC 29210

SWORN to before me on
this 21 day of FEB 2019

By Darrell Sturkey

Joel Oscar C.
Notary Public

My Commission Expires Dec. 10, 2024

The South Carolina Court of Appeals

Darrell Sturkey, #182368

v.

South Carolina Department of Corrections, Respondent.

Appellant Case No. 2018-000722

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SC Court of Appeals
Respondent,

Ms. Christina Catoe Bigelow, Esquire

v.

Darrell Sturkey #182368 _____ Appellant.

PROOF of SERVICE

I, Darrell Sturkey, 182368, Appellant, declare under penalty of perjury that the above listed information is true, and I did mail a notarized copy in the U.S. Mail at Tyger River South Carolina Department of Correction on this Date February 27, 2019

SWORN To And Subscribed Before Me

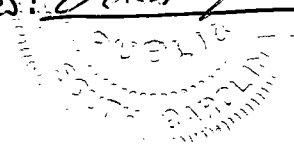
This 27 Day Feb 2019

[Signature]

Notary Public For South Carolina

My Commission Expires: Dec 19, 2020

Date:
cc



Respectfully submitter

Darrell Sturkey
Darrell Sturkey #182368

Tyger River Corr. Inst.
200 Prison Road
Euree, SC 29335

Darrell Sturkey #182368
7-B-127

Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

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MAIL ROOM
UNITED STATES POSTAGE



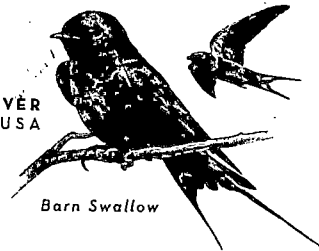
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MAILED FROM ZIP CODE 29335

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SC Court of Appeals

South Carolina Court of Appeals
Jenny ABBOTT KITCHINGS, CLERK
Post Office Box 11629
Columbia, South Carolina 29211

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