

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. MCLEOD

CASE NO: 2013-002277

Michael Goins # 302385 ----- Appellant,

V.

South Carolina Department of Corrections ----- Respondents.

RECORD ON APPEAL

Dated: December ⁹~~11~~, 2013

Pro Se Appellant,

Mr. Michael Goins # 302385
430 Oaklawn Road
Pelzer, S.C. 29669

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Goins, #302385,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0476-AP

ORDER AFFIRMING DECISION

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated in the South Carolina Department of Corrections. His conviction for Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14 Inmate Disciplinary System, was affirmed. He was sanctioned with the loss of **three (3)** good time credits so a state created liberty interest is involved.

Appellant is classified as mentally ill but "able to understand the nature and quality of the act committed."

STANDARD OF REVIEW

The Court'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). 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. Id. at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented. 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. 2012).

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SC ADMIN. LAW COURT

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 Section 1-23-380(5); 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); South Carolina Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.*Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

Additionally, in Superintendent, Massachusetts Corr. Inst. v. Hill, 472 U.S. 445, 105 S. Ct. 2768 (1985), the U.S. Supreme Court held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board."

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, 527 S.E.2d at 750 (internal citations omitted). However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has prescribed 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, 527 S.E.2d at 751 citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

To facilitate checking against the record, the requirements of Wolff are summarized as follows:

- 1.) 24 hours advance written notice of charges;
- 2.) Written statement by factfinder as to evidence relied upon;
- 3.) Written statement by factfinders as to reason for disciplinary action taken;
- 4.) Opportunity to call witnesses and present documentary evidence;¹
- 5.) Counsel substitute allowed if inmate illiterate or if case is complex; and
- 6.) Impartial hearing tribunal.

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

1.) 24 hours advance written notice of charges;

Inmate was served with notice of the charge on 5-30-12 and the hearing was held on 6-7-12. See Disciplinary Report and Hearing Record (DRHR) and transcript of testimony.

2.) Written statement by factfinder as to evidence relied upon;

DRHR shows that conviction was based upon the report of officer and written "request to staff" wherein Appellant admitted the offense (see record).

3.) Written statement by factfinders as to reason for disciplinary action taken:

First offense of 854 and three priors of 822.

4.) Opportunity to call witnesses and present documentary evidence;

Appellant did not seek to introduce any documentary evidence. Appellant asserted at hearing that he wanted his accuser present but the DRHR indicated that he had waived the presence of his accuser. Appellant, at hearing, also asserted that he wanted to call witnesses but the hearing officer had not

¹ Right to call witnesses and present documentary evidence is limited if it will be unduly hazardous to institutional safety or correctional goals.

received any request for witnesses prior to the hearing and properly denied the request.

Section 8.2.4 of SCDC Policy OP-22.14, Inmate Disciplinary System, sets forth that a request for witnesses, whether by a Counsel Substitute or by an Inmate, is made by submitting SCDC Form 19-11, "Request to Staff Member", no later than 24 hours prior to the hearing.

The Record on Appeal shows that Appellant submitted a Form 19-11 that is dated 5-30-2012. However, Appellant made no request for the appearance of any witnesses at his disciplinary hearing.

5.) Counsel substitute allowed if inmate illiterate or if case is complex;

Inmate was represented by counsel substitute (McCarthy).

6.) Impartial hearing tribunal.

There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached.

~~It is thus clear that Inmate has been afforded the minimal process due in prison~~
disciplinary proceedings as required by Wolff. Additionally, it is clear that the conviction is supported by substantial evidence including the written admission of Appellant.

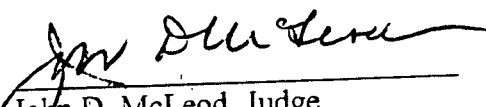
CONCLUSION

In the case at hand, I will not substitute my judgment for that of the agency because there is substantial evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice. Further, I conclude that the procedure used met the requirements of Wolff, id., that there was substantial evidence to support the findings of the lower tribunal; and, that Appellant's arguments are without merit and are denied.

Therefore, the order appealed from is **AFFIRMED** and this appeal **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

Columbia, S.C.
October 1, 2013


John D. McLeod, Judge
S.C. Administrative Law Court

I hereby certify that the undersigned has duly 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 1 day of October, 2013
By: Anthony R. Hollman
Judicial Law Clerk

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 90 Inmate Name: Caine, Michael SCDC#: 302385
Living Area: A49 Job: LIV Custody: DD2
Offense Date: 5/24/12 Offense Time: 8:50 AM/PM Institution: Penit
Offense Description: 854 - Exhibitionism and Public Molestation

Charging Officer/Employee: McLendon Title: EC
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
☐ I WANT A COUNSEL SUBSTITUTE
☐ I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 5/30/12 10:37 AM/PM By (Print): Harris
Inmate Signature: Michael Caine SCDC#: 302385 Date: 5/30/12

HEARING INFORMATION: Verbal DM

Hearing Date: <u>6/7/12</u>	Hearing Time: <u>10:27</u> am/pm	Type:	Side:	Start:	End:
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EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES; (4) DOCUMENTATION; OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS THE HEARING

(1) I was assigned CH (MHA) Mental Health Services
prosecutor stated I was able to understand
the nature of charges and I got counsel
I was advised by policy that no witnesses request in
as required by policy

OFFENSE CODES	<u>854</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: (B) (D) Request to
stop stating I was not responsible for
this act signed Michael Caine SCDC 302385

HEARING LENGTH: 15 (MINUTES)

SANCTIONS:

Loss of Privileges (Days)

- * Property (Days)
- * Canteen (Days) 360 (20/10)
- * Other (Days) 360 (20/10)
- * Disciplinary Detention (Days): 180

Reprimand:

Extra Duty:

Visit Suspension Thru 240 (20/10)

Cell Restriction (Days):

Loss of Good Time (days): 2

Restitution: \$

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st 854 charge
3 prior qualifying 822 a

CREDIT FOR PHD TIME SERVED? YES ☒ NO ☐ IF YES, DAYS

DATE INMATE PLACED IN PHD

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Michael Caine DATE: 6/7/12

HEARING OFFICER (PRINT NAME): Robert L. Harris

APPROVED/REVERSE/MODIFY: Robert L. Harris 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)

maxout
8/30/12

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Michael Gains
SCDC NUMBER: 362385
INSTITUTION: PCI
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. PCI-1544-12
Code: General _____
Policy _____
Disc. Hear. 854 #96
Class. 6/7/2012
Date Received 4-11-2013
IGC Initials _____

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

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," your grievance has been forwarded to Central Office for response.

for Alex Hallman 4/11/2013
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction(s) of Exhibitionism and Public Masturbation (854), case #90, Level 2 offense, on June 7, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanction(s) imposed, which included the loss of -36- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner. You were convicted based upon the preponderance of the evidence/testimony presented at your hearing. You did not request witnesses as outlined in policy.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 4/16/13
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

7

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

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

STEP 1

INMATE NAME: Michael Goins
SCDC NUMBER: 302,385
INSTITUTION: Perry C.I.
HOUSING UNIT: B-X-5
WORK ASSIGNMENT: N/A

INMATE
JUN 08 2012

Office Use Only
Grievance No. PC1-1544-12
Code: General
Policy
Disc. Hear. 854 #90
Class. HD 6/7/12 CMS 42
Date Received 6/8/12
IGC Initials SM

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy)
On 6-7-12, I went to DHO for an 854 offense. I was found guilty from an Not guilty pleading. I was sanctions to 360 days visitation, telephone, canteen. I was sanctions to 180 days Disciplinary Detention. I was also sanctioned to loss of good time 360 days. I'm grieving this decision because this case has multiple technicalities. First they did not have my accusers present as I requested. The 1969 forms is checked that I didn't want my accuser present and I did sign the form but I did not check that box and to prove it I didn't initial the check as it was suppose to be done. Secondly, none of my witnesses were present or questioned. I sent an Request to staff member to have Sgt. Robertson, Cte. McCall, I'm Jerome McDaniel and I'm Kerwin Johnson. None of them were questioned or present. Also, there was an staff request written with my name to SCDC # on it stating that I did this. DHO never asked me if I wrote that to submit that into evidence. These are the technicalities of this case.

ACTION REQUESTED: I'm requesting that some charges be made in P.C.I. Disciplinary Hearings. I'm also requesting that all charges be dropped and all sanctions be lifted. I'm also requesting to be transferred from P.C.I. for such unprofessionalism.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

N/A

Michael Goins 8/7/12
Grievant Signature Date

ACTION TAKEN BY IGC:

Filed to IGB for processing. 7/17/12 SM

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

IGC Signature Date

Grievant Signature Date

Michael Goins, #302325,
Appellant,

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No.: 13-ALJ-04-0476-AP

v.

South Carolina Department
of Corrections.

Respondents.

APPELLANT'S BRIEF

The pro se Appellant, Michael Goins, hereby briefs grievance No.: PCI-1544-12 and states as follows:

HISTORY

- 1.) This matter is before the South Carolina Administrative Law Court (ALC) Pursuant to the Notice of Appeal filed by the appellant per grievance No.: PCI-1544-12.
- 2.) Appellant states this his clearly established due process rights have been violated. Appellant requested and was unlawfully denied witness(es) that have personal knowledge of the incident who would corroborate appellants version of the incident. The Appellant was also denied access to confront and cross-examine his accuser.
- 3.) Moreover, the Inmate Grievance Coordinator (IGC) and the Warden failed to properly investigate the grievance as requested by appellant and required by SCOC policy/procedure DP-22.14 "Inmate Disciplinary System".

QUESTIONS PRESENTED

- I. Did the respondents violate appellants due process rights by refusing to call requested witnesses?
- II. Did the respondents violate appellants due process rights by the IGC & warden failing to properly investigate the grievance?
- III. Did the respondents violate appellants due process rights by denying him the opportunity to ~~confront~~ confront or cross-examine his accuser?
- IV. Is it true that the inmate is suppose to initial by the checks "I want a counsel substitute" or "I do not want my accuser present at the hearing" on the SCOC 19-69 form when he signs it? If so, how come I did not initial the check "I do not want my accuser present at the hearing"?
- V. Is it true that the Disciplinary Hearing Officer (DHO) could have did on continuance to the hearing since there were technicalities about the appellant

submitting a request for witnesses? The continuance would have allowed the appellant to re-submit another request for witnesses just as DHOs use a continuance to contact an accuser (Example: Byron Spivey # 3116537; Case # 35; hearing date: 8-29-13 and continuance until date 9-5-13 because the DHO could not contact his accuser for the first hearing). If a continuance will be given to contact an accuser against an inmate, it should as well be given for an inmate to re-submit a request for witnesses in his behalf. That's only fair and just.

VI. Does SCOC policy/procedure OP-22.14 "Inmate Disciplinary System" section 4.1 & 4.12 clearly state that the Major/Responsible Authority has 9 days to sign off on the form 19-29A and check a box? If so, why is it on Exhibit A attachment no major/responsible authority signed it or checked a box?

VII. Did appellant state on the hearing tape that he did send in a Request to Staff Member requesting witnesses and that he wanted his accuser present (page #'s 2, 4 & 5 of the transcript)?

ARGUMENT

5.) I. The respondents violated appellants clearly established due process rights by refusing to call requested they witnesses.

II. Appellants due process rights were violated by respondents not affording him a chance to confront or cross-examine his accuser.

6.) Courts have repeatedly held that refusal to call witnesses with personal knowledge of the incident in question denies due process. Fox v. Laughlin 893 F.2d 475, 478 (2d Cir. 1990). This is especially so when a prisoner faces a credibility problem trying to disprove the charge of a prison guard. Romeray v. Kerby 936 F.2d 1102, 1104 (10th Cir. 1991), and when the hearing officer refuses to hear any witnesses corroborating the accused inmate. Graham v. Baughman, 772 F.2d 441, 445 (8th Cir. 1983). Green v. Nelson, 442 F.Supp. 1047, 1057 (D. Conn. 1977). The right to call in one's behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539 (1974).

7.) A refusal could be expressed by actions. Sgt. Robertson was appellant's key witness and his testimony would corroborate appellants. In fact, Sgt. Robertson would have testified that appellant was not masturbating. Sgt. Robertson was escorting the accuser around and was holding security at the appellants cell door during the entire incident. Knowing this, the DHO did not make a meaningful attempt to locate the appellants request to staff member for the hearing. Such action must be viewed a refusal.

8.) Wherefore, due process was clearly violated by the refusal to call key witness Sgt. Robertson who's testimony would fully corroborate appellants.

9.) Moreover, the appellant wanted his accuser to be present but the official who served appellant the charge on 5/30/12 (Mrs. Harris) checked he did not want his accuser present but the appellant did not initial the box checked as required. The appellant is an seriously mental health inmate and may have overlooked that deficiencies when he signed the for 19-69 but he "NEEDED" his accuser present.

10.) Also, appellants counsel substitute was ineffective by not requesting an continuance to speak with the witnesses and get the accuser present as requested by the accused. This is also a violation of the appellants due process rights.

11.) The appellant's due process rights were also violated by the DHO carrying on an hearing with such technicalities as the 19-29A form not being signed off by an Major / responsible authority as required by SCOC policy / procedure DP-22.14 section 4.1 & 4.2. (Example: Michael Gains # 302385; Case # 88; charge 854. thrown out by DHO Turner for the same technicality).

12.) Appellants due process rights were clearly violated by the IGC and warden failing to properly investigate the grievance per SCOC policy DP-22.14.

13.) Per SCOC policy / procedure GA-DI.12 Title "Inmate Grievance System" the IGC, upon receipt of the grievance, has a duty to interview all affected employees and inmates, conduct such complete investigation into the situation and make recommendations to the warden. In this case, the IGC breached this duty by not reviewing Sgt. Robertson nor did IGC comment on the fact that appellant was denied to confront his accuser nor the fact that no Major / responsible authority signed off on the 19-69 form. The warden upon review of the recommendations could have seen this but failed to take proper corrective action.

14.) This challenge is not to the grievance system, but rather, is a challenge to the method and procedures ignored by the respondents, when they failed to act per policy. Pursuant to Furtrick v. S.C. Dept. of Probation, Parole, and Pardon Services, 576 S.E. 2d 116 (2003), this claim and/or challenge raises a sufficient liberty interest to trigger due process requirements of judicial review by this court. If respondents fails to act as mandated by policy, it has the effect of rendering relief thro the grievance system is non-existent.

14.) therefore, Appellants due process rights were violated by the Refusal to call his witnesses, the denial to confront and/or cross-examine his accuser as well as the DHS proceeding in a hearing with technicalities such as no major responsible authority signing off on the 1969 form.

CONCLUSION

Since it is undisputed that the hearing was conducted with such technicalities as listed above, Appellants procedural due process rights have been violated. Appellant asks that the disciplinary conviction be remanded, reversed & vacated as all sanctions should be lifted also.

- Constitutional Law § 251

Due process rights may be sometimes postponed, but they need not and should not be eliminated. --- U.S.C.A. Const. Amend. 14 ---

* Appellant hereby affirms under penalty of perjury 28 U.S.C. § 1746 and 18 U.S.C. § 1621, that the above is true and correct.

Pelzer, South Carolina
September 13th, 2013

Respectfully Submitted,
Michael D. Gains
Mr. Michael D. Gains #302385
430 Oaklawn Rd.
Pelzer, S.C. 29669

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Michael Goins, # 302385,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

) Docket No.: 13-ALJ-04-00476-AP

)
) RESPONDENT'S BRIEF

)
) Honorable John D. McLeod

)

)

)

)

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Michael Goins ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on June 7, 2012, challenging his disciplinary conviction for Exhibitionism and Public Masturbation, 854 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 17, 2012. This grievance was also investigated and denied. Appellant now appeals, claiming his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests the disciplinary conviction be upheld.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to cases

in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest.¹ See Sullivan at 443, 586 S.E.2d at 127.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Service Commission of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, Due Process in prison

¹ As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

disciplinary hearings is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

These requirements were complied with in this appeal. The Disciplinary Report and Hearing Record shows Appellant had notice of the charges (Exhibitionism and Public Masturbation), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on June 7, 2012), a neutral and detached hearing body (hearing officer), and a written statement of findings (Major Disciplinary Report and Hearing Record).

There was ample evidentiary support for the disciplinary conviction. Suzanne Smith, the inmate grievance coordinator, reported that as she was serving Appellant with his grievances, she observed him masturbating in his cell with his right hand. Grievant subsequently submitted correspondence (Request to Staff) acknowledging what he had done and asked if he could be forgiven and have the charge dropped. Additionally, although Appellant claims he was denied his accuser, the record contains the Disciplinary Report and Hearing Record which Appellant signed stating he did not want his accuser present at the hearing. After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based on the incident report and the Request to Staff. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) ("The relevant question is whether there is any evidence in

the record that could support the conclusion reached by the disciplinary board.”)²

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the “substantial evidence on the whole record” supports SCDC’s final agency decision. The hearing officer found Appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm’n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: 
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1943

September 25, 2013
Columbia, SC

² In Hill, the Court further elaborated, “The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.” Id. (citations omitted).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Gains,
Appellant.

V.

South Carolina Department
of Corrections,
Respondents.

Docket No.: 13-ALJ-04-0476-AP

APPELLANT'S REPLY TO
RESPONDENT'S BRIEF

Honorable Judge John D. McLeod

The Pro se Appellant hereby replies to the respondents brief
pertaining to Grievance No.: PCI-1544-12 and states the following:

ARGUMENT

Respondents claim that Appellant's Due process were not infringed
upon according to Wolff v. McDonnell 418 U.S. 539, 546 (1974) which states
that: Due process required that prisoners in procedure resulting in loss of
good time or in imposition of solitary confinement be afforded the following:
(A) Notice of charges; (B) disclosure of evidence against defendant (may be limited);
(C) Opportunity to be heard; (D) no right to confront and cross-examine adverse
witnesses; (E) Neutral and detached hearing body; (F) Aid of counsel substitute
or other substitute aid where inmate is illiterate or complex case (not Attorney);
(G) Written statement by the fact-finder as to the evidence relied upon.

The Appellants due process rights were violated in this case whereas
he was not afforded the right to confront and cross-examine adverse witnesses.
nor was he afforded the right to the Aid of counsel substitute.

NOTE: The liberty interest at stake in this hearing are, of course, of serious
magnitude, and the right to call witnesses is integral to assuring the fairness
and accuracy of these hearings. The right to call witnesses at disciplinary
hearings may not be abrogated simply because witness testimony might later
be found unpersuasive. U.S.C.A. Const. Amends. 5. 14

the respondents did not reply to any of the Appellants issues and/or questions raised in his brief. It looks as if the Respondents are looking to have this conviction upheld by the "some evidence" standard set in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445-56 (1985).

To uphold this conviction would be truly unfair, unjust and absurd. The respondents have specific rules to follow and so does the Appellant per SCRC policies / procedures. SCRC policy / procedure DP-22.14 "Inmate Disciplinary System" sections 4.1 & 4.2 clearly set the stipulations of Major's / responsible authority attending to the 19-29(A) form of the section labeled "Major / Responsible Authority". They had 9 days from the incident to sign & check a box on the 19-29(A) form. The Appellant attached a copy of this form to his brief which shows no one signed it or checked a box. This hearing should not have made it to this point if it were to reach a just and fair decision. Should procedural due process ~~be~~ of the 14th U.S. Constitution be ignored by a "some evidence" standard?

The Appellant has also brought forth facts that he never checked nor initiated the box "I do not want my accuser present" which denied me the right to confront the accuser. The Respondents have not disputed the fact that The Appellant did not put his initials by that check indicating he checked it so it is unargued and undisputed.

The Respondents also did not argue or dispute with facts that the Appellant wasn't afforded his key witness Sgt. Robertson (Now a Lieutenant) to testify in his behalf. Therefore, this fact also is unargued and disputed.

The right to present evidence is basic to a fair hearing, but the inmates right to present witnesses and confront his/her accuser is necessarily circumstances by the penological need to provide swift discipline in individual cases....

Prison authorities are now under a constitutional obligation to provide an inmate with a fair procedural hearing. In addition, an inmates due process rights are violated when a prison hearing officer refuses to interview witnesses without assigning a reason "logically related to prevent undue hazards to institutional safety or correctional goals." Ponte v. Real 471 U.S. 491, 497 (1995).

CONCLUSION

Since it is undisputed that appellant was neither allowed to present witnesses in his own behalf, confront his accuser nor was the Major / Responsible Authority acting in the scope of their duties by referring the case to a Disciplinary hearing or handling it informally. Appellants procedural as well as substantive due process rights were violated. (Procunier v. Navarette 434 U.S. 555 (1978)). The Appellant asks that the conviction be reversed, & vacated and all sanctions be lifted.

September 30, 2013
Pelzer, South Carolina

Respectfully Submitted,
Mr. Michael D. Goins
Mr. Michael D. Goins #302385

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

DOCKET No.: 13-ALJ-04-0476-AP

GRIEVANCE No.: PCI 1544-12

INMATE NAME: Michael Goins

SCDC No.: 302385

INSTITUTION: Perry Correctional Institution

DATE: June 7, 2012

CHARGE: 854-Exhibitionism and Public Masturbation

DHO: State your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, the purpose behind this hearing is to treat the matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so would result in removal. Do you understand?

I/M: Yes sir.

DHO: You're appearing before this Disciplinary Hearing which is being held at, uh,

Perry Correctional Institution; approximately 10:27 a.m. on 6-7-12. I am Mr. Turner, Disciplinary Hearing Officer. Uh, Inmate Goins is being represented by Counsel Substitute McCarthy. Counsel Substitute McCarthy, are you and the accused ready to proceed?

C/S: Yes sir.

DHO: With that understanding, I'll read the charges into the record. Inmate Goins, I have before me Case Number 90; it reads: Michael Goins, 302...excuse me, uh...30...yes, 302385; uh, inmate charged with 854-Exhibitionism and Public Masturbation; uh, the Charging Officer in this case is IGC McClendon. Uh, it's my understanding when you served notice of this charge on 5-30-12, 10:27 a.m., by Sergeant

DHO: Disciplinary Hearing Officer

I/M: Inmate

C/S: Counsel Substitute

20

Harris, that you waived the presence of your accuser at the hearing. Is this your signature here?

I/M: Yeah, but I ain't waive my accuser...

DHO: Yes sir, you did.

I/M: No I didn't.

DHO: Oh. Counsel, I ask you to verify for content, that is a check on the block, I do not want my accuser present. Is that correct?

C/S: Yes sir.

DHO: We are proceeding absent the accuser. Um, with that understanding, the following Incident Report, uh, is, uh, supporting the charge: Perry Correctional Institution; Date of the Report: 5-24-12; uh, Reporting Official: Suzanne McClendon; uh,

~~Time of the Report: uh, 12:17 p.m.; Employee ID Number: 052016; Date of the Incident:~~

~~5-24-12; Location of the Incident: B-X-5; Time of the Incident: Approximately 8:50 a.m.;~~

~~Inmate in Question: Michael Goins; 302385; On the Above Date and Approximate Time:~~

I, Suzanne McClendon, IGC, was serving two (2) grievances to Inmate, uh, Michael Goins, 302385, at his cell door of B-X-5. Inmate Goins was served with PCI 0805-12,

which he signed and returned to IGC McClendon. As Inmate Goins was reviewing the second grievance, PCI 1163-12, he was taking much longer to sign. I, IGC McClendon

asked the inmate if he had any questions, if not to sign and return the original. I, IGC

McClendon looked in his Cell, B-X-5 to retrieve the grievance and observed Inmate

Goins holding the grievance paper up on the wall with his left hand to appear as if he was

writ...signing and had his penis in his right hand masturbating. Due to Inmate Goins

behavior, he has abandoned grievances PCI 0805-12 and PCI 1163-12, per GA-01:12, uh,

16.3. Signature is that of IGC McClendon. Also, I have a ...a repor...a Request to Staff that was sent to IGC McClendon. It reads as follows: Uh, To: uh, IGC Ms. McClendon; uh, Date: 5-30-12; Inmate Name: Michael Goins, uh, 302385; Perry Correctional Institution; Living Quarters: A-Y-9; uh, Ms. McClendon, I was just, uh, served with the charge you wrote me up for today. I just want to speak my mind and hopefully you'll listen to me. I know and understand that what I was doing was wrong and I apologize sincerely. If you don't mind, please take these facts into consideration: Ms. Mack, I'm 9 months disciplinary free. Ms. Mauney told me to give her 12 months without an...a conviction and she'd give me my visits back. I only have 3 more months left. I haven't seen my mother since Christmas 2010. I haven't seen my son since April 2008. I know it's my own fault and I take full responsibility for my actions, but let's deal with the harsh reality of...at hand-I'm in prison. I know that, uh, has nothing to do with you, uh, but you know what I'm saying. I now understand that you will not tolerate it and I respect that. Ms. Mack, I really didn't need this charge. I learned my lesson. I won't do it again. I apologize. I just want to get rid of this charge and forget it ever happened. I read the part of the write up where you stated the grievances are abandoned because of my actions. I don't care about the grievances. I'll loose a lot of valuable merchandise behind these grievances, but don't forget your grievances. Uh, let's do away with this charge. It won't happen again. I promise. We could put this all behind us and forget it ever happened. I won't even look at, uh, you wrong again and I'll write an essay on why not to do what I was doing and I'll write, "I'd never do it again, Ms. Mack" a lot of times. I haven't, uh, been convicted of one of these charges in about five years. Ms. Mack, cut me a break, uh, just this one time. Just go tell Ms. Harris, charge lady, to dismiss the

charge and we've informally resolved the incident. I hope you understand where I'm coming from. This is not soliciting, uh, or none of the other stuff, just an sincere apology. I promise it won't happen never again no more. Please just, uh, leave me with this charge. Uh, I hope we have an understanding. Give me three days from the date we get our new pen and paper and I'll have you a good clean whole page essay and a lot of "I'll never do it again, Ms. Mack". Uh, just drop the charge and I'll learn my lesson. It'll never, uh...it'll never happen again. I promise. And I'll apologize to your face so you can see the sincerity in me. Written with a whole bunch of sincerity, Michael Goins. Inmate Goins, 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 loose visitation privileges, canteen privileges, telephone privileges, you could be assigned disciplinary detention, and there could be further loss of good time in the case. Do you understand this?

I/M: Yes sir.

DHO: To the offense of 854-Exhibitionism and Public Masturbation, how do you plead?

I/M: I plead not guilty.

DHO: This is your opportunity to tell us why you feel you're not guilty.

I/M: Alright. Uh, for one, I wanna say that, uh, I read in my request from my, uh, my witnesses.

DHO: I have no wi... Witness Requests on your behalf, sir.

I/M: And two, uh, I didn't...I didn't...I didn't...I didn't sign for not having my accuser present. I wanted my accuser present...present.

DHO: Well, sir, this is clearly checked. We're not revisiting that issue.

I/M: I ain't check that though, sir.

DHO: Do you have another issue?

I/M: Na. That's it. That's it.

DHO: Counsel, do you have anything on behalf of the accused?

C/S: Not at this time.

DHO: With that understanding, the information that will be used to support the charge against you is: the Incident Report, previously read into the record; the, uh, Request to Staff that was submitted as evidence. Um, 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. If you'll step acrossed, I'll be with you shortly. Restate your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, I have found you guilty of the offense that was brought against you today. The information that was used to arrive at this decision is: the Incident Report, previously read into the record; the Request to Staff stating that, uh, you were responsible for this act. Uh, it was signed Michael Goins with your SCDC Number. The, um, sanctions that have been imposed: 180 days disciplinary detention; 360 days canteen; 360 days telephone; 360 days visitation; 36 days loss of good time. You do have the right to appeal the sanctions portion of the charge and the determination of guilt. The manner in which you do so, is you file an SCDC Form 10-5. That's a Step One Grievance Form

with the Grievance Coordinator. If you're going to appeal this case, it must be done within fifteen days. That is fifteen 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 appeal rights?

I/M: Yes sir.

DHO: That concludes this hearing.

EXHIBIT
A

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

#370

Page 1 of 1

Institution/Center: PCI				Date of Report: 05/24/12	
Reporting Official (Full Name): Suzanne McClendon				Time of Report: 12:17PM	
Employee ID #: C052016				Date of Incident: 05/24/12	
Location of Incident: B-X-5				Time of Incident: Approximately 8:50 AM	
Inmate(s)/Resident: SCDC#		Age	Sex	Race	Employee(s)/Witnesses Involved:
1. Michael Goins 302385					1.
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: I, Suzanne McClendon, IGC, was serving two (2) grievances to inmate Michael Goins 302385 at his cell door of B-X-5. Inmate Goins was served with PCI-0805-12 which he signed and returned to IGC McClendon; as inmate Goins was reviewing the second grievance PCI-1163-12 he was taking much longer to sign; I, IGC McClendon asked the inmate if he had any questions, if not to sign and return the original. I, IGC McClendon looked in cell B-X-5 to retrieve the grievance and observed inmate Goins holding the grievance paper up on the wall with his left hand, to appear as he was signing, and had his penis in his right hand masturbating.

Due to inmate Goins behavior he has abandoned grievances PCI-0805-12 and PCI-1163-12; per GA-01.12 16.3.

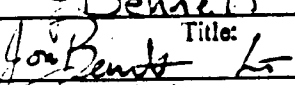
Signature:  Title: IGC

Evidence:

Disposition of Evidence:

Supervisor's Comments: (854) Public Masturbation

Printed Name: Bennett

Signature:  Title: Lt Date/Time: 1255 05-24-12

Major/Responsible Authority:

Printed Name:

Signature: Title: Date:

STG Related – Refer to STG Committee

() Yes (X) No () Unknown

This incident is DRUG related

() Yes (X) No () Unknown

Responsible Authority Action Taken

() Informal Resolution

() Administrative Resolution

() Refer to Disciplinary Hearing

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Disciplinary Mental Health Statement

Institution: Perry, C. I

Inmate Michael Gains, SCDC Number 302385 was charged
with the following offense: 854, on 5/24/15
(date)

at 12:17pm
(time)

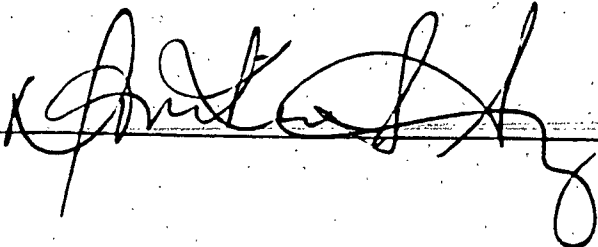
Mental Health was asked to provide a statement regarding the Inmate's mental status at the time the offense occurred. After researching the incident and the inmate's mental health functioning, it has been determined that the inmate:

 A. Lacked the capacity to appreciate the wrongfulness of his/her actions at that time, for the following reason(s):

X B. Although classified as mentally ill, he/she was able to understand the nature and quality of the act committed.

If you require additional information, please contact me using the information below:

Counselor: Donkia Gray at Extension: 1162 Date: 6/1/12
(print name)

s/ 

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

page 1 of 2

TO: NAME: <u>Ms. McClendon</u>	TITLE: <u>TCC</u>	DATE: <u>5/30/12</u>
INMATE'S NAME: <u>Michael Gains</u>		SCDC #: <u>302385</u>
INSTITUTION: <u>Permy. C. I.</u>		LIVING QUARTERS: <u>A-9</u>

Ms. McClendon,

I was just served with the charge you wrote me up for today. I just want to speak my mind and hopefully you'll listen to me. I know and understand what I was doing was wrong and I apologize sincerely. If you don't mind, please take these facts into consideration: Ms. Mack, I'm 9 months disciplinary free. Ms. Houny told me to give her 12 months w/o an conviction and she'd give me my visits back. I only have 3 more months left. I haven't seen my mother since Christmas 2010 and haven't seen my son since April 2008. I know it's my own fault and I take full responsibility for my actions but let's deal with the harsh reality of hard - I'm in prison. I know that has nothing to do with you but you know what I'm saying. I now understand that you will not tolerate it and I respect that. Ms. Mack, I really don't need this charge. I learned my lesson. I won't do it again. I ~~and~~ Apologize. I just want to get rid of this charge and forget it ever happened.

DISPOSITION BY STAFF MEMBER:

DATE:	SIGNATURE:
--------------	-------------------

I read the part of the write up where you stated that the grievances are check
ble of my actions. I don't care about the grievances, I'll lose a lot of valuable merch
behind those grievances but forget the grievances. Lets do away with this charge. I
won't happen again, I promise. We can put this all behind us and forget it ever hap
I won't even look at you wrong again. And I'll write an essay on why not do to do
what I was doing and I'll write, "I'll never do it again, Ms. Mock" ~~that's~~ a lot
times. I haven't been convicted ~~as~~ of one of these charges in about 5 years Ms. Mock.
Cut me a break. Just this one time. Just go tell Ms. Harris the charge lady, ~~and~~ to c
miss the charge and we've informally resolved this incident. I hope you can under
where I'm coming from. This is not soliciting or none of that other stuff just
sincere apology. I promise it won't happen never ever again no more. Please just don't
me with this charge. I hope we have an understanding. Give me 3 days from the date
get our new pen and paper and I'll have you a good, clean, whole page essay and a lot
I'll never do it again Ms. Mock's. Just drop the charge and I've learned my lesson. I'll never be
again, I promise. And I'll apologize to your face so you can see the sincerity in me.

Written with an whole bunch of sincer

Michael Heims

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No: 2013-002277

Michael Gons #302385-----Appellant

v.

South Carolina Department of Correction-----Respondents

CERTIFICATE OF COUNSEL

The pro se Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: December 9, 2013

Pro se Appellant,
Michael Gons
Mr. Michael Gons #302385
430 Oaklawn Road
Pelzer, S.C. 29669

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No: 2013-002277

Michael Goins #302385-----Appellant,

v.

South Carolina Department of Corrections-----Respondents.

PROOF OF SERVICE

COMES NOW, Appellant, Michael Goins #302385, certifying that he did on December 9, 2013 serve a copy of Record On Appeal & Proof of Service on the below agencies by depositing the same into the U.S. Mail, postage prepaid to the following addresses:

- 1) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221

SWORN to and subscribed before me
this 9 day of December 2013.

Tommie Connell (L.S.)

Notary Public For South Carolina

My commission expires: September-25-2023

Is/ Michael Goins

Michael Goins #302385

430 Oaklawn Rd.

Pelzer, S.C. 29669

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. MCLEDD

CASE No: 2013-002278

Michael Goins # 302385 ----- Appellant.

V.

South Carolina Department of Corrections ----- Respondents.

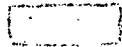
RECORD ON APPEAL

Dated: December ⁹~~10~~ 2013

Pro se Appellant,
Mr. Michael Goins # 302385
430 Oaklawn Road
Pelzer, S.C. 29669

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ORDER

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DECISIONS

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Step One Grievance-----7

MH

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

GT-3

Case#: 95 Inmate Name: GOINS, MICHAEL SCDC#: 302385
Living Area: B4.14 Job: LOCK-UP Custody: DD2Offense Date: 11/27/12 Offense Time: 8:00 AM PM Institution: PCI
Offense Description: **10B: The trafficking, use and/or possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants:** The actual or constructive trafficking, use or possession of drugs of any description (except those prescribed by an authorized physician as authorized amounts, expiration dates, e.g. barbiturates, narcotics, valium, veronal, and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. an inmate is punitive for any unauthorized drug, refusing tests, or failing to produce a specimen. This rule violation encompasses the "hearing" of prescribed application.Charging Officer Employee: B. EICH Title: SGT.
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:

- 10.8
- ☐ 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
- ☒ SM/SEGREGATION ONLY
- ☒ I WANT A COUNSEL SUBSTITUTE Brody
- ☐ I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 12/11/12 12:35 AM (M) By (Print): L. W. Golden
Inmate Signature: Michael Goins SCDC#: 302385 Date: 12/11/12

HEARING INFORMATION:

Hearing Date: 12/20/12	Hearing Time: 9:30 am/pm	Tape:	Side:	Start:	End:
------------------------	--------------------------	-------	-------	--------	------

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.

(1) I am assigned C/S (MH) Mental Health - Outpatient
 reflect situation I am not able to understand
 the nature of the act committed

OFFENSE CODES	903			
INMATE PLEA (G, NG, None)	NG			
FINDINGS (G, NG, DS)	G			

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILTY: (A) ADMISSION OF GUILTY (B) OFFICER'S REPORT (C) WITNESS TESTIMONY (D) OTHER. EXPLAIN IN DETAIL: (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z) (AA) (AB) (AC) (AD) (AE) (AF) (AG) (AH) (AI) (AJ) (AK) (AL) (AM) (AN) (AO) (AP) (AQ) (AR) (AS) (AT) (AU) (AV) (AW) (AX) (AY) (AZ) (BA) (BB) (BC) (BD) (BE) (BF) (BG) (BH) (BI) (BJ) (BK) (BL) (BM) (BN) (BO) (BP) (BQ) (BR) (BS) (BT) (BU) (BV) (BW) (BX) (BY) (BZ) (CA) (CB) (CC) (CD) (CE) (CF) (CG) (CH) (CI) (CJ) (CK) (CL) (CM) (CN) (CO) (CP) (CQ) (CR) (CS) (CT) (CU) (CV) (CW) (CX) (CY) (CZ) (DA) (DB) (DC) (DD) (DE) (DF) (DG) (DH) (DI) (DJ) (DK) (DL) (DM) (DN) (DO) (DP) (DQ) (DR) (DS) (DT) (DU) (DV) (DW) (DX) (DY) (DZ) (EA) (EB) (EC) (ED) (EE) (EF) (EG) (EH) (EI) (EJ) (EK) (EL) (EM) (EN) (EO) (EP) (EQ) (ER) (ES) (ET) (EU) (EV) (EW) (EX) (EY) (EZ) (FA) (FB) (FC) (FD) (FE) (FF) (FG) (FH) (FI) (FJ) (FK) (FL) (FM) (FN) (FO) (FP) (FQ) (FR) (FS) (FT) (FU) (FV) (FW) (FX) (FY) (FZ) (GA) (GB) (GC) (GD) (GE) (GF) (GG) (GH) (GI) (GJ) (GK) (GL) (GM) (GN) (GO) (GP) (GQ) (GR) (GS) (GT) (GU) (GV) (GW) (GX) (GY) (GZ) (HA) (HB) (HC) (HD) (HE) (HF) (HG) (HH) (HI) (HJ) (HK) (HL) (HM) (HN) (HO) (HP) (HQ) (HR) (HS) (HT) (HU) (HV) (HW) (HX) (HY) (HZ) (IA) (IB) (IC) (ID) (IE) (IF) (IG) (IH) (II) (IJ) (IK) (IL) (IM) (IN) (IO) (IP) (IQ) (IR) (IS) (IT) (IU) (IV) (IW) (IX) (IY) (IZ) (JA) (JB) (JC) (JD) (JE) (JF) (JG) (JH) (JI) (JJ) (JK) (JL) (JM) (JN) (JO) (JP) (JQ) (JR) (JS) (JT) (JU) (JV) (JW) (JX) (JY) (JZ) (KA) (KB) (KC) (KD) (KE) (KF) (KG) (KH) (KI) (KJ) (KK) (KL) (KM) (KN) (KO) (KP) (KQ) (KR) (KS) (KT) (KU) (KV) (KW) (KX) (KY) (KZ) (LA) (LB) (LC) (LD) (LE) (LF) (LG) (LH) (LI) (LJ) (LK) (LM) (LN) (LO) (LP) (LQ) (LR) (LS) (LT) (LU) (LV) (LW) (LX) (LY) (LZ) (MA) (MB) (MC) (MD) (ME) (MF) (MG) (MH) (MI) (MJ) (MK) (ML) (MN) (MO) (MP) (MQ) (MR) (MS) (MT) (MU) (MV) (MW) (MX) (MY) (MZ) (NA) (NB) (NC) (ND) (NE) (NF) (NG) (NH) (NI) (NJ) (NK) (NL) (NM) (NO) (NP) (NQ) (NR) (NS) (NT) (NU) (NV) (NW) (NX) (NY) (NZ) (OA) (OB) (OC) (OD) (OE) (OF) (OG) (OH) (OI) (OJ) (OK) (OL) (OM) (ON) (OO) (OP) (OQ) (OR) (OS) (OT) (OU) (OV) (OW) (OX) (OY) (OZ) (PA) (PB) (PC) (PD) (PE) (PF) (PG) (PH) (PI) (PJ) (PK) (PL) (PM) (PN) (PO) (PP) (PQ) (PR) (PS) (PT) (PU) (PV) (PW) (PX) (PY) (PZ) (QA) (QB) (QC) (QD) (QE) (QF) (QG) (QH) (QI) (QJ) (QK) (QL) (QM) (QN) (QO) (QP) (QQ) (QR) (QS) (QT) (QU) (QV) (QW) (QX) (QY) (QZ) (RA) (RB) (RC) (RD) (RE) (RF) (RG) (RH) (RI) (RJ) (RK) (RL) (RM) (RN) (RO) (RP) (RQ) (RR) (RS) (RT) (RU) (RV) (RW) (RX) (RY) (RZ) (SA) (SB) (SC) (SD) (SE) (SF) (SG) (SH) (SI) (SJ) (SK) (SL) (SM) (SN) (SO) (SP) (SQ) (SR) (SS) (ST) (SU) (SV) (SW) (SX) (SY) (SZ) (TA) (TB) (TC) (TD) (TE) (TF) (TG) (TH) (TI) (TJ) (TK) (TL) (TM) (TN) (TO) (TP) (TQ) (TR) (TS) (TT) (TU) (TV) (TW) (TX) (TY) (TZ) (UA) (UB) (UC) (UD) (UE) (UF) (UG) (UH) (UI) (UJ) (UK) (UL) (UM) (UN) (UO) (UP) (UQ) (UR) (US) (UT) (UU) (UV) (UW) (UX) (UY) (UZ) (VA) (VB) (VC) (VD) (VE) (VF) (VG) (VH) (VI) (VJ) (VK) (VL) (VM) (VN) (VO) (VP) (VQ) (VR) (VS) (VT) (VU) (VV) (VW) (VX) (VY) (VZ) (WA) (WB) (WC) (WD) (WE) (WF) (WG) (WH) (WI) (WJ) (WK) (WL) (WM) (WN) (WO) (WP) (WQ) (WR) (WS) (WT) (WU) (WV) (WW) (WX) (WY) (WZ) (XA) (XB) (XC) (XD) (XE) (XF) (XG) (XH) (XI) (XJ) (XK) (XL) (XM) (XN) (XO) (XP) (XQ) (XR) (XS) (XT) (XU) (XV) (XW) (XX) (XY) (XZ) (YA) (YB) (YC) (YD) (YE) (YF) (YG) (YH) (YI) (YJ) (YK) (YL) (YM) (YN) (YO) (YP) (YQ) (YR) (YS) (YT) (YU) (YV) (YW) (YX) (YZ) (ZA) (ZB) (ZC) (ZD) (ZE) (ZF) (ZG) (ZH) (ZI) (ZJ) (ZK) (ZL) (ZM) (ZN) (ZO) (ZP) (ZQ) (ZR) (ZS) (ZT) (ZU) (ZV) (ZW) (ZX) (ZY) (ZZ)

HEARING LENGTH: (MINUTES) 15

SANCTIONS: Reprimand: Loss of Good Time (days): 3

Loss of Privileges (Days):

* Adm. Property (Days):

* Canteen (Days): 113 (00:36)

* Other (Days): 103 (00:36)

* Disciplinary Detention (Days): 222

Reprimand:

Extra Duty:

Visit Suspension Thru: 12/31/12 (00:36)

Cell Restriction (Days):

SPECIFIC FACTS AND REASONS FOR PARTICULAR PUNISHMENT IMPOSED: 103 days

CREDIT FOR TIME SERVED: YES NO IF YES DAYS

DATE INMATE PLACED IN PHD

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Michael Goins DATE: 12/11/12

HEARING OFFICER (PRINT NAME): L. W. Golden

APPROVED BY SUPERVISOR: [Signature] REASON:

CONVEYED TO INMATE AND EXPLAINED TO INMATE BY HEARING OFFICER AND SUPERVISOR

Date: 12/11/12

APR 30 2013 Max out 10-14-11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

APR 16 2013

STEP 21
RECEIVED

INMATE NAME: Michael Grims
SCDC NUMBER: 302385
INSTITUTION: Perry C.I. ✓
HOUSING UNIT: D-X-22
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. 3427-12
Code: General
Policy
Disc. Hear. ☒
Class.
Date Received APR 17 2013
IGC Initials GA
95, 903, HD 13/12

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I'm appealing the wardens decision due to the fact that I was convicted of 903 for possession of drugs (High Blood Pressure Medication). I tried to explain that there was a technicality in the case because my High Blood Pressure meds (Lopressor, ~~Novase~~ Lisinipril & HCTZ) are not Dose by Dose meds they are KOP meds that I am suppose to keep in my cell. they were out of the KOP bag because every morning I take one pill out of each bag (unless I'm suppose to take two a day) and sit it on my sink or window seal to remind me to take them during the day. I don't take all that medication at one time, I take two at a time. I'm human so I will forget to take the meds so I do that each day to remind me to take them. I was sanctioned to 120 days DD time, 1030 days Telephone, canteen and visitation restriction & 3 days loss of good time. For a misunderstanding.

Michael Grims 4/15/13
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of the Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants (903) on December 20, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated July 1, 2012, and the sanctions imposed, which included the loss of -3- days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received forty-eight (48) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

[Signature] 7/5/13
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(URGENCY)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

Office Use Only

INMATE NAME: Michael Gans

SCDC NUMBER: 302385

INSTITUTION: Perry, C. I.

HOUSING UNIT: B-4-14

WORK ASSIGNMENT: N/A

Grievance No. PCI-3427-12

Code: General

Policy

Disc. Hear. ✓

Class.

Date Received DEC 21 2012

IGC Initials

#95, 903, HD 12/20/12

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) On 12/20/12 I went to ~~my~~ my disciplinary hearing being represented by Counsel substitute Ms. Gray. I went for case #95; 903. On 12/18/12 Ms. Gray came to my cell door to discuss the charge and I showed her my KOP medication in its labeled KOP sitting in my window seal. She can verify that the same KOP meds that are in my window seal "RIGHT NOW" are the same blood pressure meds that I got charged for. These same 4 blood pressure pills are KOP'S and I keep them in my window seal each and every day. I believe that this was an retaliation and Harassment act done by Lt. Horne; Sgt. Eich. I've written several grievances on Lt. Horne for different things and I ~~do~~ believe he conspired with Sgt. Eich to search my cell that morning in retaliation/harassment. They found nothing else so my own KOP meds was all they could charge me with. Some-thing needs to be done immediately.

ACTION REQUESTED: I'm requesting that the charge be dismissed because medical made an mistake stating that my blood pressure meds are dose by dose but in all actuality they are KOP meds meaning I'm allowed to keep them in my cell with me to take as needed. I need this charge dropped and all sanctions lifted.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: I showed my counsel substitute Ms. Gray the KOP meds described in the incident report. I've written medical for them to verify that all of these meds are my KOP blood pressure meds. I have the KOP meds in my cell right now.

Michael Gans 12/20/12
Grievant Signature Date

ACTION TAKEN BY IGC:

See Wardens Response

C. H. [Signature] 3-26-17
IGC Signature Date

UA
Grievant 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

7

PLEADINGS

Appellant's Brief-----9

Michael Goins # 302335,
Appellant,

v.

South Carolina Department
of Corrections,
Respondents.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No.: 13-ALJ-04-0530-AP

APPELLANT'S BRIEF

The pro se appellant, Michael Goins, hereby brief grievance No.: PCI 3427-12 and states as follows:

HISTORY

- 1) This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the notice of appeal filed by the appellant per grievance No.: PCI 3427-12.
- 2) Appellant states that his clearly established Due Process rights have been violated. Appellant stated to the Disciplinary Hearing Officer (DHO) that the medication confiscated from his cell were all Keep On Person (KOP) medication and the Counsel substitute notified the DHO of the same but he was so deliberately impartial towards the ~~defendant~~ Appellant, he could not see the facts of the case.
- 3) Moreover, the Inmate Grievance Coordinator (IGC) and Warden failed to properly investigate the grievance as requested by appellant and required by SCOC Policy/Procedures DP-22.14 "Inmate Disciplinary System".

QUESTIONS PRESENTED

- I. Did the respondents violate appellants due process right to a fair and impartial hearing?
- II. Did the respondents violate appellants due process rights by the IGC & Warden failing to properly investigate the grievances?
- III. Did the Counsel substitute clearly state at the hearing (page 4, line 5 of the transcript) that when she came to appellants cell clear to interview him about the charge, the appellant showed her the alleged Dox by Dox pills that were present in his window (meaning the appellant had them on his person in KOP bags)?

- IV. Can the respondents prove that the medications confiscated from the appellant were dose by dose medication instead of KOP meds? If not, why?
- V. Is it true that the evidence relied upon to convict the appellant of hoarding medications is the SCDC 19-79 form signed by RN Jennifer Nations that the medication was administered dose by dose? Is it also true that RN J. Nations is human and could have made an slight "pen error" on the SCDC 19-79 form?
- VI. Did the accuser ever state in his 19-29(A) form that the alleged medication was hidden or un-bagged on the window?

ARGUMENT.

5.) I. The Respondents violated Appellants clearly established due process rights by not affording him a fair and impartial hearing to discover the facts of the case.

II. Appellants due process rights were violated by respondents failure to investigate the facts of the case in discovering that all of the appellants blood pressure medications (as described on the 19-29(A) form and the 19-79 form as Lisinopril, Lopressor, Norvasc & Hydrochlorothiazide) are KOP medication.

6.) In Porter v. Public Service Commission, 333 S.C. 12 (S.C. 1998), the Appellant failed to show that the decision of the agency was clearly erroneous, or arbitrary or capricious, or an abuse of its discretion, in view of the substantial evidence on the whole record. In this case it is different. The appellant in this case can prove that the substantial evidence on the whole record (the 19-79 form) is clearly erroneous without doubt. Attached to this Brief is Exhibit A attached by the appellant. The Exhibit is an SCDC Request to Staff Member written by the appellant to the "Health Care Authority" (HCA) Mr. Matthew Harper at Perry C.I. about the appellants KOP medications. Mr. Harper answered back by stating which all medications are KOP on my medical charts. In which he listed all 4 medications the appellant was charged with (Lopressor, Lisinopril, Norvasc & Hydrochlorothiazide) as KOP medications. This evidence alone proves that the evidence used to convict the appellant was clearly erroneous, namely the 19-79 form.

7.) In Wolff v. McDonnell, 418 U.S. 539, 566 (1974), the Supreme Court stated as part of Due process that the accused must be given "a written statement by the fact-finder as to the evidence relied upon" to convict him/her. Indeed, this was accomplished by the fact-finder but the evidence relied upon to convict the appellant was clearly erroneous. In Pearson v. JPS Converter & Industry Corporation, 327 S.C. 393, 489 S.E. 2d 219 (S.C. App. 1997) the Supreme Court viewed "substantial evidence" as evidence which, considering the record as a whole, would allow

a reasonable mind to reach the same conclusion that administrative agency reached. See also, Hendley v. South Carolina State Budget and Control Board, 325 S.C. 413 (S.C. App. 1996) which states the same. This ALC agency cannot reach the same conclusion as the SCAC agency with the evidence being relied upon to convict the appellant shown as clearly erroneous.

8.) Walt v. McDannell 418 U.S. 539, 70-71 (1974) made it clear that a prisoner has a procedural due process right to an impartial examiner at prison disciplinary proceedings (or at least those proceedings in which a constitutionally significant interest of the prisoner is at stake).

9.) Wherefore, the due process of the appellant was clearly violated by having an unfair and impartial hearing as well as using clearly erroneous substantial evidence to convict the appellant with.

10.) Appellants due process rights were also violated by the IAC and the Warden failing to properly investigate the grievance per SCAC policy DP-22-14 and GA 12.01.

11.) Per SCAC Policy/procedure GA 01.12 Titled "Inmate Grievance System" the IAC Upon receipt of the grievance has a duty to interview all affected employees and conduct such complete investigation into the situation then make recommendations to the warden. In this case, the IAC breached this duty by not interviewing medical staff to determine the facts of the case.

12.) This challenge is not completely to the Grievance system, but rather is a challenge to the method and procedures ignored by respondent when they failed to act per policy. Pursuant to Furtrick v. S.C. Dept. of Probation, Parole and Pardon Services, 576 S.E. 2d 146 (2003), this challenge raises a sufficient liberty interest to trigger due process requirements of judicial review by this court. If respondent fails to act as mandated by policy, it has the effect of rendering relief thus the grievance system is non-existent.

13.) Wherefore, Appellants due process rights were clearly violated by the respondents convicting him with clearly erroneous evidence. The charge should be dismissed.

CONCLUSION

Since it is undisputed that appellant was convicted with the upholding of clearly erroneous evidence, namely the 1979 form signed by RN Jennifer Nations, Appellants procedural due process rights have been violated. Appellant asks that the disciplinary conviction be remanded, reversed and vacated, as all sanctions should be lifted also.

- Constitutional Law → 251

Due process rights may be sometimes postponed, but they need not and should not be eliminated... U.S.C.A. Const. Amend. 14...

* Appellant hereby affirms under penalty of perjury 28 U.S.C. § 1746 and 18 U.S.C. § 1621, that the above is true and correct.

Pelzer, South Carolina
September 13, 2013

Respectfully Submitted,
Mr. Michael D. Gans
Mr. Michael D. Gans # 302385
430 Oaklawn Rd.
Pelzer, S.C. 29669

TRANSCRIPT

Transcript of the Disciplinary Hearing-----14

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

DOCKET No.: 13-ALJ-04-0530-AP

GRIEVANCE No.: PCI 3427-12

INMATE NAME: Michael Goins

SCDC No.: 302385

INSTITUTION: Perry Correctional Institution

DATE: December 20, 2012

**CHARGE: 903-The Trafficking, Use and/or Possession of Narcotics, Marijuana, or
Unauthorized Drugs, Including Prescription Drugs or Inhalants**

DHO: State your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, the purpose behind this hearing is to treat the matters before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so would result in removal. Do you understand?

I/M: Yes sir.

DHO: You're appearing before this Disciplinary Hearing which is being held at, uh, Perry Correctional Institution; approximately 9:33 a.m. on 12-20-12. I am Mr. Turner, Disciplinary Hearing Officer and Inmate Goins is being represented by Counsel Substitute Gray. Counsel Substitute Gray, are you and the accused ready to proceed?

C/S: Yes.

DHO: With that understanding, I'll read the charge into the record. Inmate Goins, I have before me Case Number 95; it reads: Michael Goins, 3028...excuse me, 302385; uh, inmate charged with 903-The Trafficking, Use and/or Possession of Narcotics, Marijuana, Unauthorized Drugs, uh. Including Prescription Drugs, or Inhalants; uh, Charging Official in this case is Sergeant B. Eich. We do have Sergeant Eich present by

DHO: Disciplinary Hearing Officer

I/M: Inmate

C/S: Counsel Substitute

OFC: Accuser

sp...uh, in the Hearing Room at the request of the accused. Sergeant Eich, would you verify your presents by stating your name and rank?

OFC: Sergeant Eich.

DHO: Thank you. In support of the charge against the accused, the following Incident Report: Perry Correctional Institution; Date of the Report: 11-27-12; Time of the Report: um, 11:07 a.m.; Reporting Official: Sergeant Eich, 049055; Date of the Incident: 11-27-12; Location of the Incident: SMU III, B-Y-14; Time of the Incident: Approximately 8:50 a.m.; Inmate in Question: Michael Goins; 302385; Employees Involved: Lieutenant Horne; On the Above Date and Approximate Time: I, Sergeant Eich, along with Lieutenant Horne, while conducting a random cell search of B-Y-14 housing, um, Michael Goins, uh, 302385, discovered on the window sill underneath several envelopes, four different pills described as follows: One round in shape, pink in color, pill-labeled with RE 75 on one side; and one round in shape, peach in color, pill labeled with West-Ward, uh, 257 on one side; uh, one round in shape, gold in color, pill labeled with WW 270 on one side; one round in shape, white in color, pill labeled with, uh, 209 on one side. Evidence was turned into contraband. End of the Report. Signature is that of Sergeant Eich. In evidence in the case, I do have a 19-79 in the name of the accused. It reads as follows: 11-29-12...Pharmacy Prescription/Medication Verification: 11-29-12; Examination Results: one yellow round tablet-Lisinopril-40-milligrams; one pink round tablet-uh, Metoprazol; one peach tablet round-HCTZ 500 milligrams...uh, 50 milligrams; uh, one Amloda...um, Amlo...depine...I'm sorry. I...I know I mispronounced that. Uh, 10 milligrams, a white round tablet. All meds are dose by dose. Uh, signature is that of LPN, uh, Natros. In evidence in the case, I do have a photograph

of the meds that is blurry, but, uh, you can make out the medications. Do you agree Counsel?

C/S: Yes.

DHO: It does appear to be as described. Inmate Goins, 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 November 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 disciplinary detention, there could be additional loss of good time in this case. Do you understand this?

I/M: Yes sir.

DHO: Uh, to the offense of 903-The Trafficking, Use and/or Possession of Narcotics, Marijuana, Unauthorized Drugs, Including Prescription Drugs or Inhalants, how do you plead?

I/M: I plead not guilty.

DHO: This is your opportunity to tell me why you feel you're not guilty in this case.

I/M: I'm not guilty because those pills right there are my KOP pills...uh, medication.

DHO: According to your mental health...uh, excuse me, the Medical Statement says they are all dose by dose medications, sir.

I/M: Na. That's...that's...that's...that's a KOP medication. I don't...there must be a misprint or somein'.

DHO: This isn't a misprint. This is filled out by hand by medical, sir.

I/M: And you said that was per who, ma'am...sir. Um...

DHO: Uh, LPN Natros.

I/M: Okay. Alright. Well...

DHO: Counsel, do you have anything on behalf of the accused in this case?

C/S: No. He just showed me the dose by dose pills that was present in his window when I spoke with him.

DHO: With that understanding, the information that will be used to support the charge against you will be: the Incident Report, previously read into the record; testimony of the accused...excuse me. Did you have any questions for the accuser in this case? You requested his presents.

I/M: No sir.

DHO: Any questions for the accuser, Counsel?

C/S: No sir.

DHO: Sergeant Eich, is the content of your report true and correct?

OFC: Yes sir.

DHO: Do you have anything else that's relevant to the charge?

OFC: No sir.

DHO: Thank you. Again, the information that will be used to support the charge against you will be: the Incident Report, uh, previously read into the record; testimony of Sergeant Eich; the 19-79 indicating that you were hording dose by dose medications; and the photograph of the evidence. I have provided you to make a statement, present evidence, call witnesses on your behalf and I am prepared now to recess this re...uh.

hearing and arrive at a decision. If you'll step acrossed, I'll be with you shortly. Restate your name and SCDC Number, please.

I/M: Michael Goins, 302385.

DHO: Inmate Goins, I have found guilty of the offense that was brought against you today. The information used to arrive at this decision was: the Incident Report, previously read into the record; the testimony of Sergeant Eich that his report was true and correct as written; the photograph of the evidence; and the 19-79 indicating you were hording dose by dose medications. Uh, sanctions that have been imposed: 720 days disciplinary detention; uh, 1,080 days canteen; 1,080 days telephone; 1,080 days visitation; 3 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's a Step One Grievance Form with the

Grievance Coordinator. If you're going to appeal the case, it must be done within fifteen days. That's fifteen days from the time I give 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 appeal rights?

I/M: Yes sir.

DHO: Do you need a copy of a...a Grievance Form?

I/M: Yes sir.

DHO: Okay. I'll give you one here in a second. That concludes this hearing.

CHARGES

SCDC Form 19-29A "Incident Report"-----20

#95 104

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

11-27-12-36

4412 (12/24)

Page 1 of 1

Institution/Center: <u>PERCY C.I.</u>	
Date of Report: <u>11-27-12</u>	Time of Report: <u>1107 AM</u>
Reporting Official: <u>Sgt. EICH # 049055</u>	Date of Incident: <u>11-27-12</u>
Location of Incident: <u>SMU III B-Y-14</u>	Time of Incident: <u>Approx 350 AM</u>
Inmate(s)/Resident: <u>SCDC#</u> <u>Age</u> <u>Race</u> <u>Sex</u>	Employee(s) Involved:
1. <u>SCDC# 302385</u> <u>B</u> <u>M</u>	1. <u>LT. HORNE</u>
2. <u></u>	2. <u></u>
3. <u></u>	3. <u></u>
4. <u></u>	4. <u></u>
5. <u></u>	5. <u></u>

On the above date and approximate time: I Sgt. EICH ALONG WITH LT. HORNE
WHILE CONDUCTING A RANDOM CELL SEARCH OF B-Y-14 HOUSING 1/M
SCDC# 302385 DISCOVERED ON WINDOW SILL UNDERNEATH
SEVERAL ENVELOPES FOUR DIFFERENT PILLS DESCRIBED AS FOLLOWS:
ONE ROUND IN SHAPE, PINK IN COLOR PILL LABELED WITH RE 75 ON ONE SIDE
ONE ROUND IN SHAPE, PEACH IN COLOR PILL LABELED WITH WEST-WARD 257 ON ONE SIDE
ONE ROUND IN SHAPE, GOLD IN COLOR PILL LABELED WITH WW 270 ON ONE SIDE
ONE ROUND IN SHAPE, WHITE IN COLOR PILL LABELED WITH 209 ON SIDE.
EVIDENCE TURNED INTO CONTRABAND. END OF REPORT

Signature: Sgt. EICH

Evidence:

Witness(es):

Supervisor's Comments: Charge 903Signature: LT. HORNE Title: LT Date/Time: 11-27-12/350

Major/Responsible Authority:

223-7585516 / 155

STG Related - Refer to STG Committee
() Yes (☒) No () UnknownThis Incident is DRUG related
(☒) Yes () No () Unknown

Action Taken

☐ Internal Resolution☐ Administrative Resolution☐ Refer to Disciplinary Hearing

20

EXHIBITS

Agreement to Debit E. H. Cooper Account	22
Proof of Service	23
SCDC Form 19-11 Request to Staff Member	24
Disciplinary Mental Health Statement	25
Photograph of Evidence	26
Controlled Substance and Disposition Form	27

EXHIBIT
A

Inmate's Name: <i>Michael Cans</i>	SCDC #: <i>302385</i>	Housing Unit: <i>B-41</i>	Date: <i>11/3/14</i> <i>11/3/14</i>
---------------------------------------	--------------------------	------------------------------	--

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount
Envelope	
Pen	
Paper	
Postage	<u>A2</u>
Tape	
Box	
Electronic Repair	
Other	

[illegible]

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount
Envelope	
Pen	
Paper	
Postage	2
Other	

ALL
1205 Pendleton St Ste 224
Columbia SC 29201
Off. of General Counsel
P.O. Box 21157
Columbia S.C. 29221
Zorrock

[illegible]

•• Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount
Photocopies	

Cost
~~0~~
TOTAL

TOTAL

Michael Carter
Inmate's Signature

Signature (Request filled by)

2/11/22

Country - Maldives (Antenn Employee)

² See DOE Order 1045-B (November 1998).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Goins # 302385,
Appellant,

Docket No.: 13-ALS-04-0530-AP

v.

PROOF OF SERVICE

South Carolina Department of
Corrections,

Respondents.

I, Michael Goins, as a prose litigant, certify under penalty of perjury that I did on September 13, 2013 serve a copy of Appellants Brief with an exhibit upon the following agencies:

1.) Administrative Law Court 1205 Pendleton St., ste 224 Colo, S.C. 29201; And

2.) SCDC Office of General Counsel P.O. Box 21787 Colo, S.C. 29221-1787

by depositing the above stated documents in the U.S. Mail, postage prepaid.

Pelzer, South Carolina

SWORN to and Subscribed before me this
13th day of September, 2013.

Dany C. Murchad (C.L.S.)
Notary Public of South Carolina

My Commission expires: 1-23-2020

By Michael Goins

Mr. Michael Goins # 302385

430 Oaklawn Road

Pelzer, SC 29160-9

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

**EXHIBIT
A**

TO: NAME: Mr. Harper	TITLE: HLA	DATE: April 30th, 2013
INMATE'S NAME: Michael Goins		SCDC #: 302385
INSTITUTION: Perry C.I.		LIVING QUARTERS: D-4-22
Mr. Harper, You sent my request back last week when I asked you to verify by request that I was taking Lisinopril, Novasc, Hydrochlorothiazide & Lopressor for High blood pressure and that they were all "KOP" (Keep On Person) medications. You responded back that all you seen that were KOP's were the Novasc & Lopressor. You couldn't have looked good. I've been on Lopressor, Novasc, Hydrochlorothiazide & Lisinopril for about 2 years and it's always been a KOP medication. All I'm asking you to do is look in the computer and verify on this request what are my KOP medications so my meds will stop being taken by security because someone in medical is telling them its not KOP. I want to be able to show this request the next time it happens. Thank You!		
DISPOSITION BY STAFF MEMBER: Your Kops are: - methimazole - Lisinopril - HCTZ - FiberLax - Miltex MAS - Pillulac Norvasc Methocarbamol Lopressor		
DATE: APR 02 2013	SIGNATURE: [Signature] 24	

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY MENTAL HEALTH STATEMENT
INSTITUTION: Perry CI**

Inmate: Michael Johns SCDC #: 302385
was charged with the following offense: # 903

Use / Possession
on 11-27-12 (date) at app. 8:50A (time). Based on SCDC
19-24, "Incident Report" dated at 11-27-12 at 11:07am (time)
by Reporting Official Sgt. Rich
(Print Name)

~~Mental Health was asked to provide a statement regarding the inmate's mental status at the time the offense occurred. An assessment will be conducted within three business days after receiving the Incident Report. This assessment will serve a period of 15 working days should the inmate receive additional charges.~~

~~After researching the incident and the inmate's mental health functioning, it has been determined that the inmate:~~

~~A. Lacked the capacity to appreciate the wrongfulness of their actions at the time for the following reason(s):~~

☒ B. Although classified as Mentally Ill, was able to understand the nature and quality of the act committed.

If you require additional information, please contact me using the information below:

Counselor: M. Harris at extension: 1163

This document serves as a Mental Health Procedure under General Provisions 4 500.3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
CONTROLLED SUBSTANCE AND DISPOSITION FORM

RECEIPT CONTROL NUMBER: _____

CONTROL/LOG NUMBER: _____

Institution: PCT

Date: 11-29-12

Inmate Name: Michael Goins SCDC #: 302385

Inmate Name: _____ SCDC #: _____

Inmate Name: _____ SCDC #: _____

DRUG/ALCOHOL ANALYSIS

Quantity/Weight: _____ Date Analyzed/Weighed: _____

Type of Test: ☐ Valtox Drug ☐ Sight and Smell ☐ Other: _____

Test Results: ☐ Marijuana ☐ Cocaine ☐ Heroin ☐ Alcohol Con

☐ Other: _____

Sr: _____

PHARMACY PRESCRIPTION/MEDICATION VERIFICATION

Date Examined: 11-29-12 Quantity/Weight: _____

Examination Results: one yellow round tablet - Lisinopril 40mg, one pink round tablet - M
one peach tablet round - HCTZ 50mg, Amlodipine 10mg - white round

Prescription Medications: ☒ Are ☐ Are not ☒ Were ☐ Were not
issued by SCDC all med issued to inmate are dose dose

Sr [Signature]

DISPOSITION OF CONTRABAND/EVIDENCE BY CONTRABAND CONTROL OFFICER

Disposition Date: _____ Place: _____

☐ Destroyed ☐ Turned into S id ☐ Held for Display

☐ Turned into Inmate Welfare Fund ☐ Returned to: _____

Disposition Witness Signature: _____ 27 _____

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. MCLEOD

CASE NO: 2013-002278

Michael Goins #302385 ----- Appellant,

v.

South Carolina Department of Corrections ----- Respondents.

CERTIFICATE OF COUNSEL

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

December 9, 2013

Pro Se Appellant,
Michael Goins
Mr. Michael Goins #302385
430 Oaklawn Road
Pelzer, S.C. 29669

RECEIVED

DEC 20 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No: 2013-002278

Michael Grins # 302385 ----- Appellant.

V.

South Carolina Department of Corrections ----- Respondents.

PROOF OF SERVICE

COMES NOW Appellant, Michael Grins # 302385, certifying that he did on December 9, 2013 serve a copy of Record On Appeal & Proof of Service on the following agencies by depositing the same into the U.S. Mail, postage prepaid to the following addresses:

- 1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2.) SCOC Office of General Counsel P.O. Box 21787 Columbia S.C. 29221

SWORN to and subscribed before me

this 9 day of December, 2013.

Tamara Conwell (L.S.)

Notary Public For South Carolina

My Commission expires September 25 2023

By Michael Grins

Michael Grins # 302385

430 Dahlbom Rd.

Pelzer, S.C. 29669

RECEIVED

DEC 20 2013

SC Court of Appeals