

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge, S. Phillip Lenski

ALC Case No. 14-ALJ-04-0927-AP

Appellate Case No. 2015-001761

RECEIVED

DEC 16 2015

SC Court of Appeals

John Alexander, 194748

V.

Appellant,

South Carolina Department of Corrections

Respondent.

FINAL BRIEF

John Alexander
Department of Corrections
386 Redemption Way
McCormick, South Carolina
29899

Pro se

MOORE JAMES
JAMES MOORE

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STATEMENT OF THE ISSUE ON APPEAL

That the Respondent denied and deprived the Appellant Due Process and Equal Protection of Law. As well as denied and deprived Appellant the Federal and State right under the Confrontation Clause of the Sixth and Fourteenth Amendments, S.C. Const. Art. 1 Sections Three and Fourteen, and SCDC Policy and Procedure.

STATEMENT OF THE CASE

The Appellant asserts that the complete Procedural History is contained in the Appellant's Initial Brief.

ARGUMENT

The Petitioner asserts that the Respondent is knowingly, intelligently and willfully attempting to commit a fraud upon the Court by way and through suborning perjury. Specifically, the Respondent have falsely and deceitfully declared to this Honorable Court that the Disciplinary Hearing Officer confirmed with Dr. McRee, a physician at Appellant's institution, that "none of Appellant's prescription medications affected the results of a THC test"; and 2) "the external lab to which Appellant's sample was sent checked to be sure none of Appellant's prescriptions could have interfered with the results of the test."

Indisputably, the Respondent never has, and cannot for this Court, produce to this Court any written statement, audio or video recorded testimony of Dr. McRee testifying during the Appellant's Disciplinary Hearing. Likewise, the Respondent has never, and cannot for this Court, produce any written statement, audio or video recorded testimony or Drug Analysis Form alleging receipt and testing of Appellant's urine sample. The Appellant claim that the Respondent were saddled with the below non-discretionary obligations:

SCDC Policy And Procedure OP-22.14 "Inmate Disciplinary System." February 2, 2015:

Section 10 and 10.1: "Each warden will assign two (2) employees as a recorder. The Recorder will be responsible for the following: Notify accusers/witnesses of their need to be available for the hearing; Ensure all hearing recordings are accounted for and secure for future use."

Section 11. Recording: "All disciplinary hearings will be recorded. The recording will not be turned off at any time during the taking of evidence, regardless of the Hearing Officer's opinion concerning the relevancy of the testimony." However, "if an inmate becomes assaultive or disruptive, the Hearing Officer may stop the recording to regain security and control of the inmate." "When the recording is started again, the Hearing Officer will state the reasons for the interruption and continue the hearing."

Section 11.2: "The recording will be maintained after the hearing according to the Agency's Retention Schedule."

Section 14.3 "If an employee has been called as a witness and has information that is relevant to the case, then he/she is obligated to provide said information."

Section 14.5: "The Counsel Substitute or inmate may

question all witnesses who appear at the hearing." "The Hearing Officer will ask the inmate whether there are any questions for the witness. Written statements from witnesses other than the accusing employee may be presented as evidence when the witnesses are unable to attend the hearing. Any witness who is unable to attend the hearing "may be interviewed by a speaker telephone during the hearing" and "the answers of the witness must be recorded."

Under the above specified SCDC Policy And Procedure, there are no reasonable or Justifiable reasons why the Respondent has never produced to the Appellant and, will not produce to this Court upon request, the fraudulent alleged existence of testimony by Dr. McRee or the mystery external lab technician.

Furthermore, pursuant to SCDC Policy and Procedure GA-03.03 Section 5.5 "To ensure quality results and 'consistency with procedures,' if an inmate tests positive on both the initial and second field test stick for the first time since he/she has been incarcerated, 'the SCDC will send that urine sample to an outside laboratory for testing.'"

Here again, the Respondent has never, and cannot at the present, produce a scintilla-of-evidence that any

outside laboratory Accessionist ever received or tested Appellant's urine sample.

DUE PROCESS, EQUAL PROTECTION OF LAW, AND CONFRONTATION CLAUSE VIOLATION

The Petitioner leans upon the authority of the Sixth Amendment U.S.C.A., S.C. Const. Art. 1 Sections Three and Fourteen and SCDC Policy and Procedure OP-22.14 Sec. 14.5 to establish his right to confront and cross-examine all witnesses who testified at his Disciplinary Hearing. See State v. Young, 2015 WL 4275973 "Due process considerations apply in contested cases or hearings which affect an individual's property or liberty interests as contemplated by the federal and State Constitution."

In the present case, it was the Petitioner who requested the presence of Dr. McRee as his witness. Also, it was the Appellant who requested the testimony of any Lab Accessionist to deny receipt and testing of Appellant's urine sample. And, it was the Petitioner who requested the Drug Form establishing a chain of custody of his urine sample analysis. The Respondent provided none of the above during the Appellant's hearing.

Consequently, absent any evidentiary support, the Respondent employing deception and dishonesty seeks to mislead this Court to believe that the Appellant's prospective witnesses appeared at his Disciplinary

Hearing and testified adversely. The Appellant pray that this Court does not condone the Respondent establishing as a common practice simply notifying an inmate that he has been accused of an institution infraction; 2) denying him the right to present witnesses at the hearing; convicting and sentencing the inmate based on "mere allegations" that the inmate's witnesses testified against, rather than for the accused; and never allowing the accused to confront or cross-examine any adverse witness or evidence the Disciplinary Hearing Officer bases his decision. See S.C. Code Ann. Sec. 1-23-610 (B) (a) (b) (c) (d) (e) (f); also see S.C. Code Ann. Sec. 1-23-380 Sec. 5 (a) (b) (c) (e) and (f).

Dated 12/10/15.

Respectfully Submitted,

John Alexander

CONCLUSION

Wherefore, it is prayed that this Honorable Court Reverse the Administrative Law Court's Decision. Vacate Appellant's conviction and sentence. And Dismiss the institutional charges.

Dated 12/10/15.

Respectfully Submitted,
John Alexander