

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, S.C. 29211


JANUARY 31, 2013

RE: PETITION FOR A WRIT OF HABEAS CORPUS

TO SUPREME COURT,

ENCLOSED IS DOCUMENTS IN SUPPORT OF THIS PETITION AND
IN ORDER AS THE ARGUMENTS APPEAR. DUE TO THE TRANSFERRING OF THE INMATE,
AFTER DISMISSAL OF HIS CASE 12-ALJ-04-0279, TO ANOTHER PRISON WHERE HE WAS
THEN FROM THERE TRANSFERRED AGAIN, MADE IT HARD FOR HIM TO RESPOND
TO COURTS DISMISSAL BECAUSE HIS PROPERTY WAS LEFT BEHIND AT THOSE
PRISONS - HE LEGAL MAIL AND WORK AS WELL. THEREFORE HE ASK THAT MERCY
AND THE COURTS TO RESPECT AND PLEASE ACCEPT HIS PETITION BASED ON THAT.

RESPECTFULLY SUBMITTED:


TERRENCE HAGGINS #247777
BROAD RIVER CORR. INST SALUDA A-111
P.O. Box 4460
COLUMBIA, S.C. 29210

DATE: 1/31/2013

RECEIVED

FEB 04 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ADMINISTRATIVE LAW COURT
S. PHILLIP LEANSKI ADMINISTRATIVE LAW JUDGE

CASE NO. 12-ALJ-04-0279-AP

TERRENCE T. HAGGINS, PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDANT.

CASE NO. 2012- 21816

PETITION FOR A WRIT OF CERTIORARI

TERRENCE T. HAGGINS #247777
BROAD RIVER CORR. INST. SALUDA A - III
POST OFFICE BOX 4460
COLUMBIA, SOUTH CAROLINA, 29201

OTHER COUNSEL OF RECORD :
OFFICE OF GENERAL COUNSEL
POST OFFICE BOX 21787
COLUMBIA, S.C. 29221-1787
(803)896- 8555.

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FEB 04 2013

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

Counsel for petitioner Terrence Haggins who proceeds pro se certifies that the final order of dismissal was August 9, 2012

Terrence Haggins
~~Terrence Haggins~~
BROAD RIVER C.I. SALUDA A-III
P.O. Box 4460
COLUMBIA, SC. 29210

DATE 1/31/2013

QUESTIONS PRESENTED

DID COURT OF APPEALS ERROR IN DENYING PETITIONERS MOTION TO PROCEED
IN FORMA PAUPERIS

DID THE ADMINISTRATIVE LAW COURT ERROR IN DISMISSING PETITIONER CASE
BY MISCONSTRUING IT TO BE A CASE ADDRESSING GOOD TIME OR SENTENCE RELA-
TED APPEAL

DID REPORT AND EVIDENCE SHOW DOUBT AS TO PETITIONERS GUILT

STATEMENT OF THE CASE

ON NOVEMBER 17, 2011, AFTER APPELLANT CAME OFF SUICIDE WATCH NOV. 14, 2011, OF SMO-A CELL 125 AND PLACED IN CELL-135 SMO-B WITH INMATE OBEN MALDONADO #343494. WITHOUT CLOTHING AND MATTRESS AND HAVING TO SLEEP NUDE ON A STEEL BED WITH ONLY A TOWEL AROUND HIS BODY, AGENCY SEARCH TEAM CAME TO SPECIAL MANAGEMENT UNIT (SMU) B-SIDE AND BEGAN TO SEARCH CELLS IN A AREA CALLED "BEHIND THE WALL". THEY SEARCHED CELLS FROM CELL 127 ON AROUND TO CELL 134 AND 135 THAT WERE CELLS RIGHT NEXT TO THE WALL. CELL 135 IS ACTUALLY DIRECTLY IN FRONT OF THE WALL BLOCKING VIEW. THE SEARCH TEAM HAD CELLS 134 AND 135 TAKEN OUT THEIR CELLS FIRST REMOVING INMATE LAZARIUS WHO WAS IN A ONE MAN CELL AND THEN HAGGINS AND HIS CELLMATE MALDONADO AND HAD THEM TAKEN AWAY FROM THEIR CELL AND PLACED BEHIND WALL WHERE THEY COULD NOT SEE THEIR CELL OR WHAT WAS BEING DONE IN IT. HAGGINS AND HIS CELLMATE STOOD IN FRONT OF CELLS-129 AND 130 BEHIND WALL IN HALLWAY AREA. OFFICER LOPEZ CAME AROUND THE WITH SOMETHING IN HER HANDS AND ASKED ALL INMATES WHO'S CELL PHONE CHARGER IT WAS. NONE OF THE INMATES CLAIMED OWNERSHIP. AGENCY SEARCH TEAM MEMBERS HAD TO HOLD UP THE TOWEL AROUND HAGGINS WAIST TO KEEP FROM FALLING OFF HIS NUDE BODY AND ASK WHERE WAS HIS CLOTHES. HAGGINS STATED HE JUST GOT OFF SUICIDE WATCH BECAUSE OFFICIALS HE ASSAULTED IN 2006 WERE STILL THREATENING TO KILL HIM, HARM AND WORK AT THIS INSTITUTION. THAT PURSUANT TO S.C.D.C. POLICY OP-21.04 SECTION 18.2 HE IS SUPPOSED TO BE FLAGGED AND HOUSED BY ANOTHER INSTITUTION WHEN AN INMATE ASSAULT AN OFFICER. THAT HE ASKED OFFICERS EVERY DAY TO GIVE HIM HIS PROPERTY AND CLOTHES BY THEY PASS BY HIS CELL AS IF THEY DON'T HEAR HIM. LOPEZ HAD EACH OF THE INMATES CHARGE. EACH INMATE HAD THE NAME OF ALL INMATES CHARGED IN THEIR REPORT. ON DECEMBER 1, 2011, OFFICIALS CAME TO ESCORT THE INMATES CHARGE FOR THE CELL PHONE CHARGER. ALL THE INMATES WERE PLACED IN THE HOLDING CELL TOGETHER. LAZARIUS WENT TO THE DISCIPLINARY HEARING FIRST. HE CAME OUT WITH HIS CHARGE DISMISSED. HAGGINS WENT IN NEXT. HAGGINS ARGUED THAT LAZARIUS CHARGE WAS DISMISSED AND HIS SHOULD BE TOO PURSUANT TO S.C.D.C. POLICY PROCEDURES OP-22.14 SECTION 16.2. HE CONTENDED THAT SOME ERROR THAT CAUSED LAZARIUS CASE TO BE DISMISSED EXISTED IN HIS CASE. LOPEZ TESTIFIED THAT THE CHARGER WAS FOUND IN THE MIDDLE OF THE HENT BETWEEN BOTH CELLS. DHO ASK HAGGINS TO STEP OUT AND THEN CALLED HIM BACK IN AND TOLD HIM HE GOT TO TAKE THE CHARGE. HAGGINS FILED STEP-1 GRIEVANCE DECEMBER 2, 2011. HIS STEP-1 APPEAL DID NOT RETURN UNTIL 72 DAYS LATER WELL OVER THE 30 DAYS REQUIREMENT TO BE RETURNED BY POLICY. THE REPORT AND EVIDENCE WAS DEFECTIVE IN ITS FACTS TO POINT TO APPELLANT AS OWNER OF CELLPHONE CHARGER WHERE REPORT WAS UNCERTAIN AS TO WHO'S IT WAS. AT THE HEARING DHO DID NOT EVEN VIEW THE EVIDENCE BASED ON PREPONDERANCE OF CREDIBLE EVIDENCE PURSUANT TO SCDC POLICY PROCEDURE OP-22.14 SECTION 16.1

APPELLANT SPOKE WITH THE WARDEN (MCABE) ABOUT THE DISCIPLINARY CHARGE AND PROCEEDING AT THE HEARING. MCABE ASKED DID HE FILE AN APPEAL. HAGGINS STATED YES. MCABE STATED "I HAVEN'T SEEN IT YET. IT SHOULD HAVE BEEN DISMISSED AT DAO". LATER MARCH 15, 2012, STEP-1 CAME BACK DENIED. APPELLANT FILED STEP-2 APPEAL 3/15/2012, AND ON 4/23/12 IT WAS DENIED. APPELLANT FILED NOTICE OF APPEAL TO ADMINISTRATIVE LAW JUDGE (COURT). APPELLANT WROTE

THE APPEAL GROUNDS IN FORM SHOWING THE ACTUAL DUE PROCESS POLICY/PROCEDURE ERRORS JUST AS HE HAD ~~DO~~ HIS STEP-1 AND STEP-2 GRIEVANCE. ON MAY 10, 2012 HE RECEIVED A DOCKET NUMBER 12E0279. ON 7/3/12 APPELLANT SENT HIS BRIEF TO ALJ AND ONE TO THE RESPONDENT ARGUING DUE PROCESS VIOLATION UNDER UNITED STATE CONSTITUTIONAL AMENDMENT 14. RESPONDENTS REPLIED MOVING FOR DISMISSAL STATING APPELLANT IS STATING THE LOSS OF ONLY THE OPPORTUNITY TO EARN GOOD-TIME CREDITS (AUGUST 7, 2012). HOWEVER, THE CERTIFICATE OF SERVICE WAS STATING IT WAS SENT AUGUST 8, 2012. ON AUGUST 9, 2012, ALJ ORDERED DISMISSAL MISCONSTRUING APPELLANTS APPEAL TO BE STATING THE LOSS OF ONLY THE OPPORTUNITY TO EARN GOOD-TIME CREDITS. ON 8/20/2012 APPELLANT APPEALED TO THE SOUTH CAROLINA COURT OF APPEALS.

HE WAS SUPPOSED TO BE ABLE TO PROCEED IN FORMA PAUPERIS BECAUSE HE HAD IN THE ALJ COURT PURSUANT TO ALJ MEMORANDUM ALLOWING HIM TO BECAUSE HE MET QUALIFICATIONS. HOWEVER HE STILL SUBMITTED ANOTHER MOTION TO PROCEED IN FORMA PAUPERIS TO S.C. COURT OF APPEALS WITH HIS APPEAL. SEPTEMBER 4, 2012. ON DECEMBER 7, 2012, THE S.C. COURT DISMISSED HIS CASE FOR FAILURE TO PROVIDE HUNDRED DOLLAR FEE.

THE PETITIONER HAS BEEN TRANSFERRED BACK AND FORTH IN THE LAST MONTHS OR SO AND THROUGH MANY CHANGES AFTER HIS CASE WAS DISMISSED AND UNABLE TO GET MATERIAL HE NEEDED TO PROCEED. HIS PROPERTY WAS KEPT BY OFFICERS - ALSO LEGAL WORK, SEPARATED FROM HIM FOR A GOOD LONG TIME. HIS PROPERTY WAS ACTUALLY HELD AT ANOTHER INSTITUTION WHILE HE WAS AT ANOTHER PRISON.

ARGUMENT

THE COURT OF APPEALS SHOULD HAVE ALLOWED PETITIONER TO PROCEED
IN FORMA PAUPERIS

ON SEPTEMBER 4, 2012, PETITIONER SUBMITTED A MOTION TO PROCEED IN FORMA
PAUPERIS ALONG WITH HIS BRIEF TO THE SOUTH CAROLINA COURT OF APPEALS. See MOTION
TO PROCEED IN FORMA PAUPERIS

IN THIS MOTION HE CONSTRAINED THAT HE RECEIVED NO MONEY FROM FRIENDS, FAMILY,
BUSINESSES OR FROM ANY SOURCE WHATSOEVER. THAT HE HAD NOT RECEIVED ANY MONEY IN
YEARS. HE ALSO STATED THAT HE IS INCARCERATED AND WILL NOT BE ABLE TO PAY THE COURT.
See i.e., MOTION. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS NEITHER PAID HIM FOR WORK.
IN ADDITION, THE ADMINISTRATIVE LAW COURT MEMORANDUM STATED: "THERE ARE NO PRO-
VISIONS MADE IN THE PROVISO FOR INDIGENT INMATES OR IN FORMA PAUPERIS PETITIONS." See
MEMORANDUM OF ALJ COURT. AFFIXED.

THE PETITIONER HERE, CLEARLY FIT THE DESCRIPTION AND QUALIFICATION MENTIONED IN
THE ALJ MEMORANDUM. COURT SHOULD HAVE ALLOWED HIM TO PROCEED IN THE SOUTH
CAROLINA COURT OF APPEALS BASED ON THE ALJ COURT MEMORANDUM FOR INDIGENT INMATE-
ATES ALSO, AND ALSO BASED ON THE SUBSEQUENT MOTION TO PROCEED IN FORMA PAUP-
ERIS.

THE FAILURE OF THE SOUTH CAROLINA COURT OF APPEAL TO ^{ST. J. IS V.D.} ALLOW PETITIONER TO PROCEED,
ALSO DENIED HIM THE RIGHT TO PROCEED AS AN INDIGENT INMATE AND ACCESS
TO COURTS. U.S.C.A. CONST. AMEND. 1

ON DECEMBER 7, 2012, THE S.C. COURT OF APPEALS DISMISSED THE CASE FOR FAIL-
ING TO PROVIDE HUNDRED DOLLAR FILING FEE. See ORDER DATED 12/7/12

THE REMITTUR WAS SENT TO LOWER COURT.

ARGUMENT

THE ADMINISTRATIVE LAW COURT MISCONSTRUED PETITIONERS APPEAL AND BRIEF ARGUMENTS

PETITIONER APPEALED HIS DISCIPLINARY HEARING CASE (CASE 75) TO THE ALJ COURT 5/2/12. See i.e. NOTICE OF APPEAL

APPELLANT RECEIVES NO GOOD TIME AND IS SERVING A 19 YEAR SENTENCE 85% FOR A VIOLENT CRIME. THEREFORE, THE ONLY LIBERTY INTEREST HE POSSESSED IS THE "FREEDOM FROM IMPOSITION OF A MAJOR DISCIPLINE" AND FOR SOLITARY CONFINEMENT. See Woff v. McDonnell 418 U.S. 539, 581 also see MORRISSEY v. BREWER, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed. 2d 484

PETITIONER'S APPEAL TO ALJ IS CONSTRUCTED A WAY TO SHOW THE POLICY/PROCEDURE VIOLATIONS THAT LED TO THE DENIAL OF DUE PROCESS AND THE UNFAIR TREATMENT BY DISCIPLINARY HEARING OFFICER [DHO] WHO DISCRIMINATED AGAINST PETITIONER BY DISMISSING TWO OF THE INMATES CHARGE WHO WERE JOINTLY CHARGED WITH HIM BASED ON THE REPORT, TESTIMONY OF ACCUSER, AND EVIDENCE BUT CONVICTED PETITIONER.

(See i.e. NOTICE OF APPEAL) (BRIEF OF APPELLANT TO ALJ See page 1, p. 3, p. 5, and page 7.)

PETITIONER ARGUES THAT NOT ONCE IN HIS NOTICE OF APPEAL TO THE ALJ OR IN HIS BRIEF DID HE STATE ANYTHING ABOUT "THE LOSS OF THE OPPORTUNITY TO EARN GOOD TIME". See i.e. BRIEF OF APPELLANT also See NOTICE OF APPEAL

HE STATES THAT RESPONDENT'S BRIEF ADDRESSED THE ISSUE OF SENTENCE RELATED CREDITS FAR OFF OR IN TOTAL OPPOSITION AS TO WHAT HE ASSERTED AND ARGUED IN HIS BRIEF. See BRIEF OF RESPONDANT

PETITIONER ARGUES THAT THE ALJ COURT ALSO IN OPPOSITION AS TO HIS APPEAL AND BRIEF ARGUMENTS WHERE ALJ DISMISSED HIS CASE BASED ON WHAT RESPONDANT'S ARGUMENTS WERE - "THE LOSS OF OPPORTUNITY TO EARN GOOD TIME". See i.e. (ORDER OF DISMISSAL DATED AUGUST 9, 2012)

SENTENCE RELATED CREDITS WAS ABSOLUTELY NOT AN ISSUE IN PETITIONERS ARGUMENT. THE ALJ MISCONSTRUED HIS APPEAL AND BRIEF ARGUMENTS AND DECISION WAS CLEARLY ERRONEOUS.

7/1/12

ARGUMENT

THE REPORT AND EVIDENCE SHOW DOUBT AS TO PETITIONERS GUILT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS POLICY/PROCEDURE 09-22.14 "INMATE DISCIPLINARY SYSTEM" REQUIRE REPORTING OFFICIALS TO GIVE A FULL STATEMENT OF THE FACT UNDERLYING THE OFFENSE, TO INCLUDE WITNESSES, EVIDENCE, AND DISPOSITION OF EVIDENCE. See Section 3.2 of SCDC Policy/Procedure

SECTION 3.2 STATES: A DESCRIPTION OF THE FACTS OF THE OFFENSE(S) TO INCLUDE AT A MINIMUM:

- THE NAME AND SCDC NUMBER OF THE INMATE;
- THE NAME OF ALL WITNESSES;
- THE GENERAL LOCATION OF THE OFFENSE; AND
- A FULL STATEMENT OF THE FACTS UNDERLYING THE OFFENSE, TO INCLUDE WITNESSES, EVIDENCE, AND DISPOSITION OF EVIDENCE.

FIRST, REPORT EXHIBITED FACIAL DUE PROCESS VIOLATION. REPORT WAS UNCERTAIN AS TO WHO'S CELL PHONE CHARGER IT WAS AND WHAT WENT IT CAME OUT OF. See 19-29A report form THE REPORT INCLUDED THREE (3) INMATES IN THIS REPORT TO BE CHARGED (SEE REPORT). NOTHING IN REPORT STATED IT WAS PETITIONERS, THAT HE OCCUPIED BOTH CELLS 135 AND 134, THAT AN OFFICER OBSERVED PETITIONER WITH IT IN HIS HANDS, OR THAT IT WAS FOUND IN HIS PROPERTY, THAT IT WAS TAKEN OUT OF HIS AND HIS CELLMATE CELL, THAT ANOTHER INMATE TOLD THEM IT WAS HIS, OR THAT PETITIONER STATED IT WAS HIS, OR THAT HIS FINGER PRINTS WERE FOUND ON IT, OR THAT HE IS THE ONLY ONE NAMED IN THIS REPORT. See i.e., 19-29A FORM OF ACCUSER. See BRIEF OF PETITIONER TO ALJ PAGES 2, p.3, and p.5.

UNDERLYING FACTS OF THE REPORT CLEARLY SHOWED UNCERTAINTY.

PETITIONER ARGUED AT ALJ THAT NUMEROUS PRISONERS JOINTLY CHARGED WITH 898 HAD THEIR CASES DISMISSED BECAUSE OF THIS SAME ERROR IN REPORTS OF UNCERTAINTY AS TO WHO'S ITEM IT WAS AND THAT HOLES AND NENTS WERE CONSIDERED "A COMMON AREA", AND ON DECEMBER 1, 2011, THERE WERE OTHER INMATES WHO HAD THE SAME CHARGE BY THIS SAME OFFICIAL PETITIONER WAS ACCUSED OF AND HAD THEIR CASES DISMISSED BY THIS SAME DHO. See EXHIBIT # 1 See 2180 (BRIEF OF APPELLANT AT ALJ FORM.).

PROCEDURE SAFE GUARDS OF DUE PROCESS REQUIRE: (1) WRITTEN NOTICE OF THE DISCIPLINARY VIOLATION; (2) THE RIGHT TO CALL WITNESSES AT THEIR HEARING; (3) ASSISTANCE IN PREPARING FOR THE HEARING; (4) A WRITTEN STATEMENT OF THE REASONS FOR BEING FOUND GUILTY; AND (5) A FAIR AND IMPARTIAL DECISION-MAKER IN THE HEARING. HOFF V McDONNELL, 418 U.S. 539, 581

THE DHO DISMISSED THE TWO INMATES JOINTLY CHARGED IN THIS REPORT WITH PETITIONER BUT CONVICTED PETITIONER WHEN THE REPORT AND EVIDENCE CLEARLY WAS UNCERTAIN AS TO WHO'S IT WAS.

SCDC POLICY/PROCEDURE 09-22.14 SECTION 161 STATES: The Hearing Officer will then decide the inmate's guilt or innocence with respect to each charge on the SCDC form 19-69, "Disciplinary report and hearing Record", based on a preponderance of the credible evidence; in other words, the Hearing Officer must review all of the evidence presented during the hearing and, from the evidence that was submitted, must decide whether it is more likely that the inmate is guilty or not guilty.

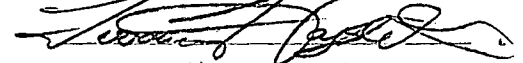
WHERE EVIDENCE DID NOT SHOW THAT IT WAS SEEN ON PETITIONER, TAKEN OUT OF HIS CELL, THAT OTHER INMATES SAID IT WAS HIS, THAT HE SAID IT WAS HIS, OR THAT HE WAS THE ONLY ONE THAT OCCUPIED BOTH CELLS 134 AND 135, THAT HIS FINGER PRINTS WAS FOUND ON IT, OR THAT THAT HE WAS THE ONLY INMATE NAMED IN THE REPORT WAS MORE THAN ENOUGH EVIDENCE OF FACTS TO SHOW DOUBT THAT ITEM FOUND WAS PETITIONERS.

CONCLUSION

Wherefore, petitioner respectfully ask that this Court grant this petition and dismiss disciplinary charge 898 "Possession of cell phone or cell phone charger case #75.

DATE: 1/31/2013

RESPECTFULLY SUBMITTED /



TERRENCE HAGGINS #247777
BROAD RIVER C.I. SALUDA A-III
P.O. Box 4460
COLUMBIA, S.C. 29210

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI ADMINISTRATIVE LAW JUDGE

CASE NO. 12-ALJ-04-0279-AP

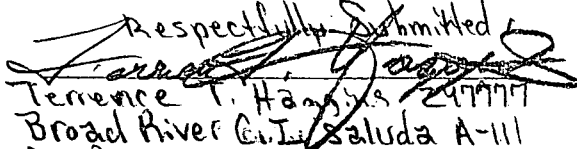
Terrence T. Haggins 247777 _____ petitioner,
v.
South Carolina Department of Corrections _____ Respondants.

CASE NO. 2012-212816

PROOF OF SERVICE

I, Terrence Haggins, certify that a copy of the petition was this _____ day
and month _____ 2013 sent to respondents by placing a copy of
same in U.S. mail postage pre-paid and sent to his/her last known address
as follows:

Office of General Counsel
P.O. Box 21787
Columbia, S.C. 29221

Respectfully Submitted

Terrence T. Haggins 247777
Broad River Co. Saluda A-111
P.O. Box 4460
Columbia, S.C. 29201

Date: 11 31 12013

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

TERRENCE HAGGINS, #247777,
APPELLANT,
V.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
RESPONDENT.

CASE NO. 2012-212816

MOTION TO PROCEED IN
FORMA PAUPERIS

I, TERRENCE HAGGINS, APPELLANT IN THE ABOVE CASE, IN SUPPORT OF MY MOTION TO PROCEED WITHOUT BEING REQUIRED TO PAY (PREPAY) FEES OR COSTS OR GIVE SECURITY THEREFORE, I STATE THAT BECAUSE OF MY POVERTY I AM UNABLE TO PAY THE COSTS OF SAID PROCEEDING OR TO GIVE SECURITY THEREFORE, AND THAT I BELIEVE I AM ENTITLED TO REDRESS.

I DECLARE THAT THE RESPONSES WHICH I HAVE MADE BELOW ARE TRUE.

1. IF YOU ARE PRESENTLY EMPLOYED, STATE THE AMOUNT OF YOUR SALARY WAGE PER MONTH, AND GIVE THE NAME AND ADDRESS OF YOUR EMPLOYER. I AM NOT
 2. IF YOU ARE NOT PRESENTLY EMPLOYED STATE THE DATE OF LAST EMPLOYMENT AND AMOUNT OF SALARY PER MONTH THAT YOU RECEIVED AND HOW LONG THE EMPLOYMENT LASTED. I AM INCARCERATED AND HAVE BEEN FOR 16 YEARS, I AM WITHOUT JOB AND DO NOT GET STATE PAY.
 3. HAVE YOU RECEIVED, WITHIN THE PAST TWELVE MONTHS, ANY MONEY FROM ANY OF THE FOLLOWING SOURCES:
 - (A). BUSINESS, PROFESSION OR FORM OF SELF-EMPLOYMENT? YES ___ NO
 - (B). RENT PAYMENTS, INTEREST OR DIVIDENDS? YES ___ NO
 - (C). PENSIONS, ANNUITIES, OR LIFE INSURANCE PAYMENTS? YES ___ NO
 - (D). GIFTS OR INHERITANCES? YES ___ NO
 - (E). ANY FORM OF PUBLIC ASSISTANCE? YES ___ NO
 - (F). ANY OTHER SOURCES? YES ___ NO

IF ANY ANSWER OF QUESTIONS (C) THROUGH (F) IS YES, DESCRIBE EACH SOURCE OF MONEY AND STATE THE AMOUNT RECEIVED FROM EACH DURING THE PAST MONTHS. NONE
- DO YOU OWN ANY REAL ESTATE, STOCK, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (INCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)? NO
- IF THE ANSWER IS YES, STATE THE TOTAL VALUE OWNED. NONE
7. IF YOU LIVE IN A RENTED APARTMENT OR OTHER RENTED BUILDING, STATE HOW MUCH YOU PAY EACH MONTH FOR RENT. DO NOT INCLUDE RENT CONTRIBUTED BY OTHER PEOPLE. I DO NOT
 8. STATE ANY SPECIAL FINANCIAL CIRCUMSTANCES WHICH THE COURT SHOULD CONSIDER IN THIS APPLICATION. I HAVE NONE

I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTIONS IN THIS DECLARATION WILL SUBJECT ME TO THE PENALTIES OF PERJURY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

NOTE: [SEE ATTACHED FINANCIAL SHEET THAT VERIFY I AM WITHOUT AND HAVE BEEN WITHOUT MONEY FOR YEARS. THIS DOCUMENT IS NOT AN ACTION IN FEDERAL COURT BUT ONLY TO SHOW I AM WITH FINANCES.]

Terrence Haggins

Terrence Haggins

TERRENCE HAGGINS 247777
LIEBER C.I. CA-50
P.O. Box 205
RIDGEMILL, S.C. 29472

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 4th DAY OF Sept, 2012.

NOTARY: Sylvia Jones
~~NOTARY EXPIRE:~~
COMMISSION EXPIRE: 1/24/2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

TERRENCE HAGGINS, #247777, APPELLANT,
v.
SOUTH CAROLINA DEPARTMENT OF CORRECTION, RESPONDENT.

APPELLANT CASE NO. 2012-212816

MOTION FOR LEAVE TO FILE

MOTION TO PROCEED IN FORMA PAUPERIS

APPELLANT REQUEST LEAVE TO FILE MOTION TO PROCEED In forma Pauperis. See *Foman v. Davis*, 371 U.S. 178, 182 (1962)
APPELLANT RECEIVED THE ORDER FROM THE SOUTH CAROLINA COURT OF APPEALS OCTOBER 29, 2012,
ASSERTING APPELLANT HAS FIFTEEN DAYS FROM THE DATE OF ORDER DATED 10-26-12 TO PAY
THE FILING FEE AND DENYING HIS MOTION TO PROCEED IN FORMA PAUPERIS. HEREIN
THIS MOTION TO PROCEED IN FORMA PAUPERIS HE ASSERT: HIS INABILITY TO PAY
THE FILING FEE IS BECAUSE APPELLANT RECEIVES ABSOLUTELY NO MONEY FROM HIS
FAMILY NOR ANY SOURCE AND HAVE NOT RECEIVED MONEY WITHIN TWELVE MONTHS
AND MORE. See i.e., AFFIXED AFFIDAVIT FINANCIAL CERTIFICATE.

IN THE CASE OF MARTIN v. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 471 S.E.2d
AT 135, THE COURT NOTED, "WHERE CERTAIN FUNDAMENTAL RIGHTS ARE INVOLVED,
THE CONSTITUTION REQUIRES THAT AN INDIGENT BE ALLOWED ~~TO ACCESS TO THE~~
ACCESS TO THE COURT.")

LIKE WISE, AS IN THIS CASE, APPELLANT IS ALLEGING VIOLATION OF HIS CON-
STITUTIONAL DUE PROCESS RIGHTS WHICH PRESUMABLY WOULD REQUIRE ACCESS
TO THE COURTS AND ALLOW HIM TO PROCEED WITHOUT PAYING THE FEE.

CONCLUSION

THIS COURT SHOULD GRANT THIS MOTION TO PROCEED IN FORMA PAUPERIS,
AND THE MOTION FOR LEAVE.

Terrence Haggins
TERRENCE HAGGINS #247777
LIEBER C.I. CA-50
P.O. Box 205
RIDGEMOUNT, S.C. 29472

DATE: 11-2-12

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 2nd DAY OF November 2012.

NOTARY: Lucretia Bryant

EXP: May 26, 2020

Memorandum

To: APPELLANT
From: Clerk's Office, Administrative Law Court
Re: Filing Fee

The number of administrative appeals an inmate may file in a calendar year before they are required to file a filing fee has been changed pursuant to Proviso 55.3 of the FY 07-08 Appropriations Act. The Proviso reads in part:

"No filing fee shall be required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Pardon and Parole. **However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee.**" (Emphasis added)

The Proviso became effective July 1, 2007. However, the Administrative Law Court will not implement the Proviso until January 1, 2008. After that time, the ALC will return any fourth and subsequent filing by an individual that is not accompanied by the \$25 filing fee.

PLEASE NOTE: THERE ARE NO PROVISIONS MADE IN THE PROVISO FOR INDIGENT INMATES OR IN FORMA PAUPERIS PETITIONS.

The South Carolina Court of Appeals

Terrence Haggins, #247777, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2012-212816

The Honorable S. Phillip Lenski
Trial Court Case No. 2012ALJ040279AP

ORDER

Appellant has failed to provide the one hundred dollar notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

FILED

12/7/12 LKF

Columbia, South Carolina

cc:

Terrence Haggins, 00247777

Christopher D. Florian

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terrence T. Haggins 247777,)

Appellant,)

vs.)

South Carolina Department of Corrections,)

Respondent.)

NOTICE OF APPEAL

DOCKET NO. ----ALJ-04----
GRIEVANCE NO.: -----

Notice is hereby given that Terrence T. Haggins 247777 does hereby appeal the final decision of the South Carolina Department of Corrections dated 4/23/12 and received on 5/2/12, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. DHO did not take into consideration penalties given to other inmates for the same or similar violations pursuant to SCDC (South Carolina Department of Corrections) Policy Procedure "Inmate Disciplinary System" OP-22.14 section 16.2.
2. Klarden did not review appeal in compliance with policy/procedure pursuant to SCDC OP-22.14 Section 19.2 and 19.3. Had he reviewed it in compliance with policy/procedures and reviewed disciplinary hearing tape of all inmates involved in this incident report he would have known that DHO did not comply with SCDC Policy OP-22.14 sect. 16.2 of penalties given to other inmates for same or similar violation where both Lazarus Brannon in smu cell-134 and inmate Maldonado Banezas who was my cell mate were not found guilty.
3. The time of return of step 1 grievance had expired and was given back to me 72 days later after 30 day time frame to return it.

Appellant's Name

Signed

Mailing Address

Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, _____ (your name), on the ____ day of _____, 20____, in _____ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

City, State, Zip Code: _____

Print your name Sign your name
(See reverse side for instructions)

Dear Appellant:

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case Number	Inmate Number	Inmate First Name	Inmate Last Name	Grievance No	Respondent	Filing Date	Date Assigned	Judge Last Name
12C0279	247777	TERRENCE	HAGGINS	LCI 1662-11	DOC	5/4/2012	5/16/2012	LENSKI

FILED

MAY 16 2012

SC ADMIN. LAW COURT

DEAD LINE 

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

ADMINISTRATIVE LAW COURT DIVISION

TERRENCE T. HAGGINS #247777,

APPELLANT,

vs.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
RESPONDENT.

Docket No.: 12C0279

Case No.: LC11662-11

BRIEF OF APPELLANT

STATEMENT OF THE CASE

ON NOVEMBER 17, 2011, AFTER COMING OFF CRISIS INTERVENTION (C.I.) WITHOUT PROPERLY PACKING AND OUT OF SMU A-125 TO SMU B-135 AND WITHOUT ANYTHING BUT A TALL AROUND MY BODY, AND WITHOUT MATTRESS AND HAVING TO SLEEP ON STEEL BUNK IN A CELL WITH MEXICAN INMATE NAMED ERIN MALDONADO BANEAS #343494, THE AGENCY SEARCH TEAM CAME TO THE SPECIAL MANAGEMENT UNIT ON SMU-B SIDE AND BEGAN SEARCHING CELLS AT CELL-128 - WHICH IS BEHIND A WALL AND ON UP TO CELL 134 AND 135. THE SEARCH TEAM CAME TO BOTH CELL 134 AND 135 AND HAD THEM - THE INMATES ROLLED OUT OF THEIR ROOMS AND AWAY FROM THE ROOM TO WHERE THE INMATES COULD NOT SEE WHAT WAS GOING ON. TERRENCE HAGGINS AND HIS CELLMATE WAS ORDERED TO GO STAND BEHIND THE WALL THAT WAS IN FRONT OF THEIR CELL. THEY STOOD IN FRONT OF CELL-129 BEHIND THE WALL. OFFICER LOPEZ CAME FROM BEHIND THE WALL WITH AN AGENCY SEARCH TEAM MEMBER AND ASKED ALL INMATES IN CELLS 134 AND 135 IF THE CELL PHONE CHARGER WAS THEIRS. ALL INMATES DENIED AND CLAIMED NO OWNERSHIP OF THE CHARGER. OFFICER LOPEZ WROTE AN INCIDENT REPORT UP ON ALL INMATES - ALL THREE (3) INMATES, CHARGING CELL-134 INMATE LAZARUS BRANNON #227847, MALDONADO BANEAS #343494, AND TERRENCE HAGGINS #247777 WHO WAS IN CELL-135. ON DECEMBER 1, 2011, ALL INMATES WERE TAKEN TO THE PRISON ADJUSTMENT COMMITTEE. ALL INMATES PLEAD NOT GUILTY. THE SAME DAY THERE WERE OTHER PRISONERS CHARGED WITH SAME EXACT OR LIKE OFFENSE AND THEIR CASE WERE DISMISSED. INMATE LAZARUS BRANNON #227847, WHO WAS IN SMU B-134, ONE OF THE INMATES IN TERRENCE HAGGINS #247777, AND MALDONADO BANEAS #343494 CASE, CASE #75, CHARGE WAS DISMISSED. TERRENCE HAGGINS #247777, WHO LIVED IN CELL-135 WITH CELLMATE MALDONADO, WAS CONVICTED. HAGGINS' CELLMATE WAS NOT HEARD THAT DAY BUT THE FOLLOWING WEEK AFTER HAGGINS WAS SENT BACK TO GENERAL POPULATION AND HIS CASE TOO WAS DISMISSED, AND HE WAS SENT TO LEE CORRECTIONAL INSTITUTION. HAGGINS FILED STEP ONE GRIEVANCE AND A WEEK LATER SPOKE WITH THE WARDEN ABOUT THIS MATTER WHILE IN HOLDING CELL IN OPERATIONS. HAGGINS CONSTRUCTED TO WARDEN THE INCIDENT THAT OCCURRED NOV. 17, 2011, AND TOLD HIM LAZARUS BRANNON #227847 HAD HIS CHARGE EXPUNGED AND THE FOLLOW WEEK HIS CELLMATE (APPELLANT'S CELLMATE) CHARGE WAS DISMISSED. HE TOLD THE WARDEN HE FILED A STEP-1. WARDEN STATED HE HAVEN'T RECEIVED IT AND THAT WHO SHOULD HAVE EXPUNGED THIS ALSO IF THAT'S THE CASE. APPELLANT'S STEP ONE TIME OF RETURN - 30 DAYS - HAD EXPIRED AND WENT WAY BEYOND LIMITATION.

STATEMENT OF THE ISSUE ON APPEAL

PAGE

1. DISCIPLINARY HEARING OFFICER DID NOT TAKE INTO CONSIDERATION PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS. 1
2. WARDEN DID NOT REVIEW APPEAL IN COMPLIANCE WITH SCDJCS (SOUTH CAROLINA DEPARTMENT OF CORRECTIONS) POLICY / PROCEDURE. 4
3. ~~THE WARDEN DID NOT REVIEW THE APPEAL IN COMPLIANCE WITH SCDJCS (SOUTH CAROLINA DEPARTMENT OF CORRECTIONS) POLICY / PROCEDURE.~~ FAILURE TO TIMELY RESPOND TO DISCIPLINARY HEARING APPEAL STEP-1 6
4. ~~THERE WAS NO EVIDENCE CONDUCTED IN THIS CASE.~~

ARGUMENT

DISCIPLINARY HEARING OFFICER DID NOT TAKE INTO CONSIDERATION PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS.

APPELLANT #247777, HIS CELLMATE MALDONADO #343444 OF CELL-135 SMO-B, AND INMATE LAZARUS BRAHMIN #227847 CELL-134 OF SMO-B, ARE ALL CHARGED TOGETHER IN THIS ONE INCIDENT REPORT BY OFFICER LOPEZ. NONE OF THEM CLAIMED OWNERSHIP. See incident report dated 11-17-11.

AT HEARING DECEMBER 1, 2011, APPELLANT AGREED HE HAD MOVED INTO SMO-B CELL-135 WITH INMATE MALDONADO ON NOVEMBER 14, 2011, AFTER HAVING COME OFF SUICIDE STRIP - CELL WATCH OUT OF SMO-A CELL-125, THAT HE WAS NUDE WITHOUT CLOTHING OR PROPERTY AND HAD TO SLEEP ON STEEL BED FOR THREE (3) DAYS IN PAIN. THAT HIS CELLMATE GAVE HIM A TOWEL TO WRAP AROUND HIS WAIST. THAT ON NOVEMBER 17, 2011, SEARCH TEAM HAD TO HOLD UP THE TOWEL AROUND HIS WAIST AS HE WAS PLACED IN HAND CUFFS AND ESCORTED AWAY FROM CELL AND HAD TO STAND BEHIND WALL THAT BLOCKED HIM AND HIS CELLMATE FROM SEEING WHAT WAS BEING DONE IN THEIR CELL AS THEY BOTH STOOD IN FRONT OF CELLS 129 AND 130. THAT IT WASN'T UNTIL AFTER SEARCH TEAM LEFT HE WAS GIVEN ANY PROPERTY, 1/23/11 WHEN PROPERTY WAS GIVEN.

ARGUING ASKED OFFICER LOPEZ WAS THE CHARGER FOUND IN THE MIDDLE BETWEEN THE TWO CONNECTED WENTS. OFFICER LOPEZ STATED "YES". IN FACT, OFFICER LOPEZ AND AGEN C-2 SEARCH TEAM WROTE SEVERAL OF THESE REPORTS ON NUMEROUS INMATES ABOUT THE SAME THING WHICH ON DECEMBER 1, 2011, WERE ALL EXPUNDED. See Disciplinary docket chart of all charges heard December 1, 2011 for possession of cell phone charger in vents. See disciplinary docket chart of the conclusion reached in cases of possession of cell phone charger on Dec 1/2011 on SMO. Also see 14-69 forms for the conclusion reached in these case of possession of cell phone chargers in vent. See Log Book of SMO for inmates take out their cells to DHO hearing December 1, 2011 - all inmates.

EXHIBIT #1

APPELLANT AGREED THAT LAZARUS #227847 IS PART OF THIS CHARGE WHO LIVED IN SMO-B-134 AND HAS HAD THIS CHARGE EXCHANGED PURSUANT TO SOUTH CAROLINA DEPARTMENT OF CORRECTION "INMATE DISCIPLINARY SYSTEM" POLICY / PROCEDURE 09-22.14, APPELLANT'S SHOULD BE ALSO. THAT HIS CELLMATE AND HIM HAD HEARD ITEMS BEING THROWN IN VENT. DHO ASKED APPELLANT TO STEP OUT AND THEN CALLED HIM BACK IN AND BEFORE TAPE CAME ON, TOLD HIM HE GOT TO TAKE THE CHARGE. APPELLANT WAS CONDUCTED. ~~See tape of Maldonado and Lazarus hearing~~

DHO DID NOT ACT IN SUBSTANTIAL (SUBSTANTIAL) COMPLIANCE WITH POLICES / PROCEDURES. DHO'S REASON FOR GUILTY TIPS TO THE LEFT. THE ACCUSER TESTIMONY, REPORT, ALONG WITH CELLPHONE CHARGER COULD NOT HAVE GAVE WAY TO THE SLIGHTEST DETERMINATION OF GUILTY WHERE NIT THEIR TESTIMONY OF ACCUSER, THE REPORT, OR CELLPHONE CHARGER COULD IN NO WAY MAKE A TRUE CONNECTION WITH APPELLANT BETWEEN ALL THREE (3) INMATE IN THIS REPORT AS THE POSSESSOR OF THE CELLPHONE CHARGER.

IT WASN'T FOUND ON APPELLANT NOR HIS CELLMATE OR IN THEIR CELL-135, BUT IN THE MIDDLE BETWEEN THE VENT THAT CONNECTED THE TWO CELLS - 134 AND 135. See report dated 11-17-11. See also tape of hearing. THE REPORT IS VOID OF CERTAINTY AS TO WHICH INMATE IS THE OWNER OF THE CELLPHONE CHARGER. See 14-29 report. THE REPORT STATES: "WHILE CONDUCTING A ROUTINE SEARCH OF SMO B-WING ROOM 134 AND 135 THE FOLLOWING WAS CONFISCATED IN A VENT THAT CONNECTED THE TWO ROOMS". See report. ACCUSER NEVER TESTIFIED OR INDICATED THAT CELLPHONE CHARGER WAS APPELLANT'S. See TAPE OF HEARING. NOR WAS APPELLANT'S FINGER PRINTS FOUND ON IT, THERE WAS NO REPORT OF INVESTIGATION THAT ASSEPT THIS. NOR DID APPELLANT INDICATE TO THE COMMITTEE HEARING OFFICER THAT IT WAS HIS. See TAPE.

PURSUANT TO SDC POLICY / PROCEDURE 09-22.14 SECTION 16.7, THE HEARING OFFICER WILL THEN DECIDE THE INMATE'S GUILTY OR INNOCENCE WITH RESPECT TO EACH CHARGE ON THE SDC FORM 14-69, "DISCIPLINARY REPORT AND HEARING RECORD", BASED ON A PREPONDERANCE OF THE CREDIBLE EVIDENCE; IN OTHER WORDS, THE HEARING OFFICER MUST REVIEW ALL OF THE EVIDENCE PRESENTED DURING THE HEARING AND, FROM THE EVIDENCE THAT WAS SUBMITTED, MUST DECIDE WHETHER IT IS MORE LIKELY THAT THE INMATE IS GUILTY OR NOT GUILTY.

THE RECORD WAS TOTALLY VOID OF ANY THING THAT COULD CONNECT APPELLANT TO THE CELLPHONE CHARGER, ALTHOUGH APPELLANT STILL RECEIVED IT AT HEARING. PURSUANT TO SCDC POLICY PROCEDURE OR-22.14 SECTION 15.7 :

THE FAILURE OF THE ACCUSED INMATE TO PRESENT NON-FRIVOLOUS EVIDENCE TO CONTRADICT THE STAFF MEMBER'S REPORT WILL PERMIT THE REPORT TO BE THE ONLY EVIDENCE USED AGAINST THE INMATE. IF, ON THE OTHER HAND, THE ACCUSED INMATE PRESENTS NON-FRIVOLOUS EVIDENCE WHICH, IF TRUE, WOULD CONTRADICT THE FACTS ALLEGED IN THE STAFF MEMBER'S REPORT, THE HEARING OFFICER MUST TAKE AT LEAST OF THE FOLLOWING STEPS AT THE HEARING PRIOR TO THE FINAL DISPOSITION OF THE CASE :

- 15.7.1 QUESTION THE CHARGING EMPLOYEE;
- 15.7.2 EXAMINE ADDITIONAL DOCUMENTARY EVIDENCE (BY AND THROUGH INVESTIGATION REPORTS AND/OR WRITTEN STATEMENTS BY THE CHARGING EMPLOYEE OR WITNESSES); OR
- 15.7.3 QUESTION OTHER WITNESSES.

APPELLANT AT THE TIME OF FILING GRIEVANCE WAS GIVEN ONLY A TWO (2) PAGE POLICY SHEET THAT DID NOT HAVE THE WHOLE POLICY PROCEDURES AND IT ALSO WAS FROM THE YEAR 2007. THE ONLY COPY OF OR-22.14 INMATE DISCIPLINARY POLICE IS LOCATED IN LAW LIBRARY. UPON ARRIVAL INMATES BROUGHT TO AN INSTITUTION ARE TO RECEIVE A PERSONAL COPY OF SCDC POLICY SO THAT THEY WILL KNOW THE RULES, BECAUSE POLICY CHANGES.

THE CASE WAS SO SELF EXPLANATORY THAT THERE WAS NO NEED TO ARGUE. ALTHOUGH APPELLANT DID, THE REPORT WAS VOID OF WHAT INMATE IT WAS. THE REUSER DID NOT STATE THAT IT WAS APPELLANT'S, THE CELLPHONE CHARGER DID NOT HAVE APPELLANT'S FINGER PRINTS ON IT, NONE OF THE INMATES IN THE CHARGE EVER STATE THAT IT WAS APPELLANT'S, AND NOW DID APPELLANT STATE THAT THE CELLPHONE CHARGER WAS HIS. THIS WAS MORE THAN ENOUGH NON-FRIVOLOUS EVIDENCE TO ASSIST DAB TO A DETERMINATION OF APPELLANT'S INNOCENCE.

Doubt as to Evidence being appellants

I THINK IT SIGNIFICANT TO GIVE A BRIEF AND COMPREHENSIVE HISTORY OF APPELLANT AT THIS TIME SO THAT THIS COURT IS FULLY AWARE OF THE PERSISTENT CIRCUMSTANCE OR SITUATION IN THIS MATTER AND POSSIBLY WHY HAGGINS IS FINGER POINTED BUT WITHOUT EVIDENCE CONNECTING HIM TO CHARGE AS POSSESSOR OF CELLPHONE CHARGER FROM THE OTHER TWO (2) INMATES IN THIS CASE WHO HAD THEIR CHARGE EXCHANGED. THE FOLLOWING INFORMATION CAN BE OBTAINED BY THIS COURT FROM SCDC REGIONAL HEAD QUARTERS OR GENERAL COUNSEL. THE HISTORY OF HAGGINS AT LIEBER C.I. IS THIS :

HAGGINS ARRIVED AT LIEBER C.I. IN JUNE/JULY 6/2006 FROM BRAD RIVER C.I. AND HOUSED IN ASHLEY UNIT. AROUND NOVEMBER/DECEMBER 2006 HAD AN ALTERCATION WITH THREE (3) OFFICIALS: SERGEANT VONMANTUIS, OFFICER RODGERS AND ANOTHER OFFICER WHICH LED TO ASSAULT. ON JANUARY 2007 HE WAS CONVICTED OF ASSAULT ON STAFF. WHILE ON SMU A-121 SERGEANT MANGALUI TOLD HIM THAT THE OFFICERS HE HAD ASSAULTED SAID THEY WERE GOING TO GET THEIR GET BACK AND DOE HIM HARM OR USE INMATES TO DO IT FOR THEM. HAGGINS FILED GRIEVANCE ON IT. IN FEBRUARY 20, 2007 (OFC. RODGERS), ONE OF THE ASSAULTED OFFICIALS, CAME TO WORK ON SMU. CLASSIFICATION APPARENTLY FAILED TO PUT A SEPARATION FLAG IN COMPUTER. HAGGINS HAD NOTIFIED VERBALLY AND ON PAPER ALL LIEBER C.I. STAFF ABOUT THE MATTER AND SHOWED THEM THE 19-69 CONVICTION FORM HE RECEIVED FROM THE ASSAULT ON STAFF CHARGE HEARD IN JANUARY AND SCDC POLICY PROCEDURE "INMATE CLASSIFICATION PLAN" OR-21.04 SECTIONS 18 AND 18.2. THAT STATES "WHEN AN INMATE HAS THREATENED IN OR PHYSICALLY ASSAULTED AN SCDC EMPLOYEE HE IS TO BE TRANSFERRED AND SEPARATION CAUTION FLAG INTO COMPUTER. APPELLANT NOTIFICATION OF THE MATTER TO WAS SENT TO GENERAL COUNSEL, WARDEN BURT OF LIEBER, MAJOR NETTLES, CLASSIFICATION MS. BOND AT LIEBER C.I., MICHAEL R. MATTHEWS BRANCH CHIEF INSTITUTIONAL CLASSIFICATION, INTERNAL AFFAIRS, AND FILED GRIEVANCE. ON FEBRUARY 20, 2007, APPELLANT RECEIVED ASSAULT CHARGE FOR STABBING OFFICER WHO TOLD HIM BEFORE THE ASSAULT IT WAS NOT OVER. APPELLANT WAS CONVICTED AROUND MARCH 2007. ON AROUND ABOUT AUGUST SEPTEMBER 2007, HAGGINS RECEIVED ANOTHER CHARGE OF ASSAULT ON SGT. MANGALUI, AND ANOTHER FOR THREATENING CORPORAL JORDAN WILLIAMS ON AROUND ABOUT 2008. ON AROUND ABOUT APRIL APPELLANT RECEIVED CHARGE ON OFFICER JOHNSON. PETER WON HIS CRIMINAL CASE IN SUPREME COURT AND LEAVING LIEBER C.I. ON MAY 5, 2008. DAB BACK HELD A HEARING AND PETER CONSIDERING HIM THREATENED HIM SAYING "YOU BETTER NOT COME BACK HERE BECAUSE IF YOU DO NO MATTER WHAT CHARGE YOU GET OR INNOCENT YOU ARE I'M GIVING YOU THE MAX ON EVERYTHING FOR WHAT YOU DID TO MY OFFICERS."

ON MARCH 16/2010, APPELLANT ARRIVED BACK AT LIEBER C.I. AND PLACED ON SMU. HE CONSISTED TO LIEUTENANT STEVENS THAT HE WAS NOT BY POLICY PROCEDURE TO BE AT THE LIEBER C.I. DUE TO ASSAULT ON STAFF. THAT CLASSIFICATION FAILED TO PUT THE SEPARATION CAUTION ON HIS RECORD. HAGGINS WAS AT THAT TIME IN SMU A-121. HE LATER WAS PLACED ON THE YARD IN ASHLEY A-13. HE WAS THREATENED BY OFFICER AND REPORTED TO ALL SERGEANTS, LIEUTENANTS, CAPTAIN ANN SHEPARD, THE ASSOCIATE WARDEN THOMPSON, AND WARDEN, ALSO THE MAJOR MA NETTLES. SERGEANT MANGALUI WRITE AN INCIDENT REPORT UP ABOUT IT, LATER HE DID NOT WORK ANY MORE IN THE UNIT. APPELLANT FILED GRIEVANCE WHICH NEVER CAME BACK. SGT. VONMANTUIS APPARENTLY TOLD APPELLANT'S ROOMMATE SOMETHING

THAT CAUSED HIM TO PULL A KNIFE ON APPELLANT AND ATTEMPT TO STAB HIM. APPELLANT CELLMATE TOLD HIM SGT. DONM-UTIS SAID HE HAD TOLD SOMETHING. OCTOBER 13, 2011, APPELLANT INTENTIONALLY LEFT ASHLEY UNIT BECAUSE OF THE THREATS BY OFFICIALS TO HAVE SOMEONE TO HARM HIM. AFTER RECEIVING 2060'S THREATENING CHARGE BY OFC. T. COOPER MAY 2011, WHO APPELLANT WAS TOLD BY THAT IT WAS GET BACK FOR OFFICIAL ASSAULTED IN 2006, WHO APPELLANT HAD IN COURT (ADMINISTRATIVE LAW COURT) 2011 (See i.e., CASE NUMBER 11C1033-13), APPELLANT WENT TO LOCK-UP INTENTIONALLY. NOTE: TIME GIVEN TO ~~THE~~ APPELLANT BY DHO MAY 31, 2011, FOR THREAT ON OFC. T. COOPER, IS UP ON MAY 29, 2012. THAT ON MAY 28, 2012, COOPER ALONG WITH SGT. CRABT, CAME TO THE UNIT APPELLANT WAS HOUSED IN (UNIT COOPER-A CELL-50) AND SHOOK DOWN AND 6141/2 IN 2007. AFTER ASSAULT ON SGT. MANIGAULT, IN SMU, APPELLANT SLEEP (SLEPT) NUDE ON CONCRETE FLOOR IN STRIP-CELL FOR A TOTAL OF 52 DAYS STRAIGHT. POLICY PROCEDURE OP-22.12 ONLY REQUIRES STRIP-CELL UP TO 72 HOURS - THREE (3) DAYS. ANY AND EVERY OFFICER THAT PASSED BY HIS CELL HE ASKED TO GET HIS PROPERTY BUT THEY DENIED HIM. HE ASKED LIEUTENANT MCGHEE, WHO ALSO DENIED HIM. HAGGINS HAD ANOTHER INMATE TO WRITE AGENCY DIRECTOR ABOUT THE MATTER. HE LIVED ON SMU-A CELL-210 AT THAT TIME. ASSOCIATE WARDEN THOMPSON HAD HIM BROUGHT TO HIS OFFICE. I.T. MCGHEE AND OFC. JOHNSON WAS PRESENT. ASSOCIATE WARDEN TOLD HIM THE DIRECTOR TOLD HIM TO HANDLE THE MATTER. THOMPSON ASKED MCGHEE WAS THE MATTER TRUE. MCGHEE STATED HE REMEMBER THE MATTER. THOMPSON ASKED OFC. JOHNSON ALSO. JOHNSON ASSERTED "YES. HE DON'T HAVE NO MATTRESS OR CLOTHING". HAGGINS TOLD THOMPSON EVERY DAY ALL DAY ASKED EVERY OFFICER THAT PASSED BY HIS CELL FOR MATTRESS, CLOTHING, AND PROPERTY. THOMPSON ORDERED THEM TO GET HIM A MATTRESS AND NEW CLOTHING. ON OCTOBER 13, 2011, APPELLANT WENT TO HOLDING CELL TO BE PLACED ON PROTECTIVE CUSTODY DUE TO THREATS BY OFFICERS. HE SET IN HOLDING CELL AND SLEPT ON CONCRETE FLOOR IN PAIN TILL OCTOBER 17, 2011. CAPTAIN ANN SHEPARD HAD HIM PLACED ON P.C. OFFICERS PLACED HIM IN SMU-A CELL-107 WITH GANG MEMBER WHO WAS NOT ON P.C. APPELLANT FILED GRIEVANCE AND WAS PLACED ON SMU-B IN CELL-137 WITH INMATE NATHAN RAY. ASSOCIATE WARDEN THOMPSON AND CLASSIFICATION MS. BAILEY BROUGHT HIM UP BEFORE P.C. REVIEW BOARD. THOMPSON AND CLASSIFICATION MS. BAILEY TOLD HIM THAT ONCE HIS D.D TIME WAS UP, HE WILL NOT BE ABLE TO GO BACK TO LIEBER C.I. YARD. THIS REVIEW WAS 10126111. IN NOVEMBER 2011, APPELLANT WENT TO SUICIDE STRIP-CELL ON SMU-A CELL-125. HE SPOKE TO COUNSELOR WHO TOOK HIM OFF NOVEMBER 07, 2011, BUT HELD HIM IN SUICIDE CELL NUDE TILL NOVEMBER 14, 2011. OFFICERS LONDON AND CORPORAL TURBINE CAME TO ESCORT HIM TO CELL-136. HAGGINS REFUSED BECAUSE THE INMATE IN THAT CELL WAS SOMEONE HE GOT INTO IT WITH ON THE YARD. OFFICERS LONDON ATTEMPTED TO MAKE TO FORCE HIM TO GO. APPELLANT REQUESTED TO SEE A SERGEANT. SGT. JOHNSON CAME AND TOLD HIM HE HAD TO GO. HAGGINS WAS FORCED IN THE CELL-136 OF SMU-B BY CORP. TURBINE AND TOLD TO WAIT THERE FOR A MINUTE TILL HE GOT BACK. HAGGINS WAS ALSO IN HAND-CUFFS WHILE IN THE CELL. OFFICERS CAME BACK AND MOVED HIM TO SMU-B CELL-135 RIGHT IN BETWEEN CELL-134 AND 136 WHO HE HAD PROBLEMS WITH - THOSE INMATES IN THOSE CELLS. ON NOVEMBER 17, 2011, THREE (3) DAYS LATER, SEARCH TEAM CAME AND FOUND A CELLPHONE CHARGER IN THE VENT OF BOTH ROOMS.

FOR THE RECORD, APPELLANT CELLMATE OF CELL-135 SMU-B MALDONADO 34344, IS NAMED AS ONE OF THE INMATES IN THE CHARGE THAT LED TO THIS CASE AS AN ACCUSED INMATE. HE HAD HAD HIS CHARGE DISMISSED THE FOLLOWING WEEK AND TRANSFERRED TO LEE CORRECTION INSTITUTION. BOTH LAZARUS AND INMATE MALDONADO CHARGE WAS DISMISSED BASED ON THE SAME FINDINGS THE DHO AND WARDEN BASED THEIR DECISION ON - THE REPORT AND EVIDENCE.

THE EVIDENCE WAS INSUFFICIENT AND COULD NOT CONNECT APPELLANT TO ~~THE~~ VIOLATION WHERE THERE WERE NO REPORT BY OFFICER STATING THEY SAW HIM WITH IT IN HIS HANDS, INMATES STATING IT WAS HIS, REPORT STATING IT WAS FOUND ON HIM OR IN HIS PROPERTY, OR THAT HIS FINGER PRINTS WERE RECOVERED FROM THEM. PURSUANT TO (CDC POLICY) PROCEDURE ~~OP-22.14~~ SECTION 24.5 EVIDENCE:

ANY EVIDENCE PRESENTED AT THE INITIAL HEARING MAY BE PRESENTED AT THE REHEARING. HOWEVER, IF THE DISCIPLINARY CONVICTION WAS OVERTURNED DUE TO INSUFFICIENT EVIDENCE, ADDITIONAL EVIDENCE MUST BE PRESENTED AND CONSIDERED AT THE REHEARING IN ORDER TO FIND THE INMATE GUILTY.

THE EVIDENCE PRESENTED HERE IN THIS CASE WAS AT THE INITIAL HEARING. INSUFFICIENT EVIDENCE. EVIDENCE DIDN'T TEND TO PROVE ANYTHING. THIS IS WHY THE TWO INMATES NAMED IN THIS AS ACCUSED INMATES ALSO CASE WAS DISMISSED. See Evidence form case No. 11-11-39

THE DISMISSAL OF BOTH INMATES CHARGE CHARGED IN THIS CASE WITH APPELLANT EXPOSED DHO ULTERIOR MOTIVE TO DEPRIVE APPELLANT OF HIS DUE PROCESS RIGHT AND CRUEL AND UNUSUAL WHICH INFERENCE CAN BE DRAWN THAT DHO KNEW THAT WHAT HE WAS DOING VIOLATED APPELLANT CONSTITUTIONAL RIGHT WHERE NO REPORT STATED OFFICER SAW HIM WITH IT IN HIS HANDS, INMATE STATING IT WAS HIS, REPORT STATING IT WAS FOUND IN HIS PROPERTY, THAT HE WAS THE ONLY INMATE THAT OCCUPIED BOTH CELLS-134 AND 135, ESPECIALLY WHERE THERE WAS NO FINGER PRINTS RECOVERED FROM CELLPHONE CHARGER INDICATING IT WAS APPELLANTS.

Petitioner NOT ON LOCK-UP

Doubt as to Evidence

EVIDENCE

ARGUMENT

WARDEN DID NOT REVIEW APPEAL IN COMPLIANCE WITH SCDC POLICY / PROCEDURE

APPELLANT MET WITH WARDEN TWICE; ONCE IN DECEMBER 2011, AND ONCE AFTER COMING OFF SUICIDE WATCH IN FEBRUARY 23, 2012. APPELLANT SPOKE TO WARDEN FROM THE HOLDING CELL BY OPERATION. APPELLANT TOLD WARDEN MCCABE HE HAD BEEN HOUSED ON SAID B-WING WITH APELLMATE IN CELL 135. THAT AGENCY SEARCH TEAM CAME AND SEARCHED CELLS 134 AND 135 AND FOUND WHAT APPEARED TO BE A CELLPHONE CHARGER; THAT ALL INMATES IN BOTH THE CELLS WERE CHARGED WITH 898, POSSESSION OF CELLPHONE CHARGER. MCCABE ASKED WHAT ELSE HAPPENED AND DID APPELLANT GET CONVICTED AND DID HE APPEAL. HAGGINS TOLD HIM THAT INMATE LAZARUS BIRANIMAN #227947, IS INCLUDED IN THIS CHARGE, AND ON DEC 1, 2011, HAD HIS CHARGE DISMISSED. HE CONSIDERED THAT HE WAS CONVICTED AND THE FOLLOWING WEEK HIS CELLMATE MALDAMANO 343494, HAD HAD HIS CHARGE TOO DISMISSED.

THE WARDEN TOLD HIM IT WAS MILDAMANO AND HE TOO SHOULD HAVE HAD HIS CHARGES EXTINGUISHED ALSO. MCCABE ASKED DID HE APPEAL THE DECISION AND HE ASSERTED, "YES". THE WARDEN SAID HE DON'T OR DIDN'T RECEIVE IT YET AND DON'T THINK HE SEEN IT. ON MARCH 12, 2012, THE WARDEN RESPONDED AND DENIED HIM RELIEF. WARDEN STATED NO TECHNICALITIES / PROCEDURAL ERRORS, OR MISINTERPRETATIONS OF EVIDENCE WAS NOTED AND THE DECISION OF THE DISCIPLINARY HEARING OFFICER WAS BASED ON SUBSTANTIAL (SUBSTANTIAL) EVIDENCE AND LOVE REPORT. THAT BASED ON THIS INFORMATION HIS APPEAL IS DENIED. See Step-1 grievance LCI-1662-11

FIRST, ANY REASONABLE RESPONSIBLE AUTHORITY OFFICIAL WOULD HAVE KNOWN THAT THIS CASE AND THE PROCEDURES TAKEN IT, DID NOT AFFORD APPELLANT ADEQUATE TIME TO PREPARE.

APPELLANT RECEIVED NOTICE OF CHARGE NOV. 23, 2011. See i.e. 19-69 form Disciplinary report and Hearing Record. PURSUANT TO SCDC POLICY / PROCEDURE 09-22.14 4.2; THE MAJOR / RESPONSIBLE AUTHORITY WILL REVIEW THE INMATE'S DISCIPLINARY HISTORY AND THE SCDC FORM 19-29A. AFTER THIS REVIEW, THE MAJOR / RESPONSIBLE AUTHORITY WILL USE THE SPACE PROVIDED ON THE SCDC FORM 19-29A, TO INDICATE HIS / HER DECISION AND THEN WILL SIGN AND DATE THE SCDC FORM 19-29A. THE INMATE WILL BE CONSIDERED FORMALLY CHARGED ON THE DATE THE DISCIPLINARY IS ENTERED INTO THE OFFENDER MANAGEMENT SYSTEM.

THE DATE MAJOR SIGNED OFF ON HAGGINS CHARGE WAS 11/21/11. HOWEVER, HAGGINS DID NOT RECEIVE NOTICE OF CHARGES UNTIL NOVEMBER 23, 2011. See 19-69 form. ~~and~~ **NOVEMBER** PURSUANT TO SCDC POLICY / PROCEDURE 09-22.14 SECTION 7.2:

ONCE THE INMATE IS FORMALLY CHARGED (AND ENTERED INTO THE OFFENDER MANAGEMENT SYSTEM), THE HEARING WILL BE HELD WITHIN 21 CALENDAR DAYS. HAGGINS TIME WHEN FORMALLY CHARGE APPARENTLY WAS NOV 21, 2011. AGAIN, HOWEVER, HE DIDN'T RECEIVE NOTICE OF CHARGE UNTIL NOVEMBER 23, 2011. SINCE WEEKENDS ARE EXCLUDED PURSUANT TO POLICY / PROCEDURE 09-22.14, ON NOVEMBER 30, 2011, INMATE REPRESENTER HAD CAME TO HIS CELL FIVE DAYS LATER. ON THE NEXT DAY, DECEMBER 1, 2011, THE HEARING FOR THIS CHARGE WAS HELD. FROM NOVEMBER 23, 2011, TO DECEMBER 1, 2011, EXCLUDING WEEKENDS PURSUANT TO POLICY / PROCEDURE 09-22.14, THE TOTAL ACCRUAL (AMOUNT) OF TIME WAS SEVEN (7) DAYS. WITHOUT PROPERTY OR CLOTHING UNTIL ~~and~~ **AROUND** ABOUT NOVEMBER 26, 2011, APPELLANT WAS UNPREPARED - ALTHOUGH USED SUPPLIES FROM OTHER INMATES.

NEVER THELESS, APPELLANT ARGUE, COMMONSENSE TELL US THE REPORT IS CLUELESS AS TO WHO CELLPHONE CHARGER IT IS. See 19-29 incident report dated 11-17-11

THE WARDEN'S REASON AND DECISION WAS BASED ON THE SAME THING AS DHO'S - THE EVIDENCE AND THE REPORT. THE WARDEN STATED "NO TECHNICALITIES / PROCEDURAL ERRORS, MISINTERPRETATIONS OF THE EVIDENCE."

THE REPORT INCLUDED THREE (3) INMATES CHARGED WITH 898: LAZARUS BRANNON, MALDONADO DAN-EGAS, AND TERRENCE HAGGINS. See incident report dated 11-17-11

LAZARUS BRANNON CHARGE WAS DISMISSED, AND LATER MALDONADO'S CHARGE ALSO. WHATEVER PROMPTED THE DHO TO DISMISS THEIR CHARGE WAS THE SAME ERROR IN TERRENCE'S CHARGE, BECAUSE ALL INMATES NAMED IN THIS CHARGE HAS THE SAME CASE AND/OR ERROR FOUND IN THEIR CHARGE IS ALSO PRESENT IN TERRENCE'S CHARGE.

THE REPORT NEVER STATED THE CELLPHONE CHARGER WAS TAKEN OFF APPELLANT, FOUND IN HIS PROPERTY THAT HE OCCUPIED BOTH CELLS 134 AND 135, OR WAS THE ONLY INMATE NAMED IN THIS REPORT AS ACCUSED OF 898, OR THAT FINGER PRINTS OF APPELLANT WAS FOUND ON IT. See 19-29 report dated 11-17-11.

PURSUANT TO SDC POLICY / PROCEDURE 09-22.14 SECTION 19 APPEALS AND SECTION 19.3:

THE FOLLOWING FACTORS MUST BE CONSIDERED WHEN REVIEWING AN APPEAL:

- WHETHER THE HEARING OFFICER ACTED IN SUBSTANTIAL COMPLIANCE WITH POLICY / PROCEDURES.
- WHETHER THE DECISION OF THE HEARING OFFICER WAS BASED ON ANY EVIDENCE.
- WHETHER, UNDER THE CIRCUMSTANCES, THE SENTENCING IMPOSED WAS PROPORTIONATE TO THE VIOLATION.

A REASONABLE PERSON, WHEN REVIEWING APPEAL, WOULD HAVE KNOWN WHEN REVIEWING APPEAL TO REVIEW APPEAL REVIEWING APPEAL TO REVIEW DISPOSITIONS BY DHO GIVEN TO ALL INMATES AT HEARING INCLUDED IN REPORT WHEN REPORT IN FACT NAMED THREE (3) INMATES CHARGE WITH 898 POSSESSION OF CELLPHONE CHARGER TO SEE WHY THEY HAD CHARGE DISMISSED AND WHY APPELLANT WAS CONVICTED WHEN SAME ERROR THAT IS IN THEIR CHARGE EXISTED ALSO IN APPELLANT'S CHARGE. ESPECIALLY WHERE APPELLANT POINTED OUT IN STEP-1 APPEAL THOSE INMATES INCLUDED IN REPORT AS ACCUSED INMATES CHARGES WERE DISMISSED, AND WHERE EVIDENCE COULDN'T LINK APPELLANT TO CHARGER (CELLPHONE CHARGER) AND REPORT WAS NOT CERTAIN AS TO WHO'S CELL PHONE CHARGER IT WAS, AND WHERE DHO DISMISSED TWO OF THE INMATES INCLUDED IN CHARGE AS ACCUSED INMATES AND CONVICTED APPELLANT WAS ERROR THAT VIOLATES HIS CONSTITUTIONAL DUE PROCESS RIGHT.

APPARENTLY THE WARDEN'S MIND SET IS "WHAT EVER MY OFFICERS SAY I'LL GO ALONG WITH NO MATTER IF THE INMATE IS INNOCENT OR RIGHT." THIS IS PART OF WHY MOST OF US FIND OURSELVES IN SITUATIONS WE HATE OR DON'T LIKE TO BE IN. THE WARDEN SHOULD HAVE KNOWN TO REVIEW THE DISPOSITIONS OF ALL INMATES INCLUDED IN THIS CHARGE ~~BY DHO~~ GIVEN THEM BY DHO TO SEE THE ERROR THAT WARRANTS DISMISSAL OF CHARGE. FURTHERMORE, WHEN REVIEWING APPEAL, SHOULD HAVE KNOWN DHO DID NOT ACT IN SUBSTANTIAL COMPLIANCE WITH POLICY / PROCEDURE WHERE REPORT NEVER STATED OFFICERS FOUND CELLPHONE CHARGE ON HIM OR IN HIS PROPERTY, THAT APPELLANT OCCUPIED BOTH CELLS 134 AND 135 BY HIMSELF, THAT OFFICERS SAW HIM WITH IT IN HIS HAND, THAT INMATES POINTED HIM OUT, WHERE THERE WERE NO FINGER PRINTS TO CONNECT APPELLANT TO CHARGER, THAT HE WAS OR IS THE ONLY ONE NAMED IN CHARGE, AND WHERE DHO CONVICTED HIM BASED ON ~~INADEQUATE~~ REPORT AND INSUFFICIENT EVIDENCE.

See i.e. 14-69 form of appellant. See Step-1 appeal.

Doubt as to Evidence

FAILURE TO TIMELY RESPOND TO DISCIPLINARY APPEAL STEP-1

THE DEPARTMENT OF CORRECTIONS CREATED A STATE-CREATED LIBERTY INTEREST IN ACCORDANCE WITH THE 1ST AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN IT ELECTED A GRIEVANCE PROCEDURE TO AFFORD INMATES RELIEF THROUGH EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE PROCEEDING TO COURT. SCD C POLICY/PROCEDURE "INMATE GRIEVANCE SYSTEM" GA-01.12 PURPOSE: "TO ESTABLISH GUIDELINES FOR THE DEVELOPMENT AND IMPLEMENTATION OF AN INMATE GRIEVANCE SYSTEM WHEREBY INMATES MAY SEEK FORMAL REVIEW OF COMPLAINTS RELATIVE TO DISCIPLINARY HEARING APPEALS, CLASSIFICATION APPEALS, DEPARTMENT POLICIES/PROCEDURES, DIRECTIVES, OR CONDITIONS WHICH DIRECTLY AFFECT AN INMATE."

GA-01.12 POLICY STATEMENT: "THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ADVOCATES TIMELY AND EFFICIENT RESOLUTION OF COMPLAINTS AND GRIEVANCES BROUGHT TO THE ATTENTION OF ADMINISTRATORS BY INMATES. TO THIS END, THE DEPARTMENT WILL DEVELOP, ADMINISTER, AND IMPLEMENT AN INMATE GRIEVANCE SYSTEM ACCESSIBLE TO ALL INMATES REGARDLESS OF THEIR CUSTODY LEVEL, CLASSIFICATION, DISCIPLINARY STATUS/DISABILITIES, OR OTHER ADMINISTRATIVE OR LEGISLATIVE MATTERS AFFECTING INMATES. AT A MINIMUM, THE GRIEVANCE SYSTEM WILL BE DESIGNED TO PROVIDE INMATES WITH A MECHANISM BY WHICH THEY MAY SEEK FORMAL REVIEW OF THEIR COMPLAINTS; PROVIDE A VEHICLE FOR INTERNAL SOLUTIONS AT THE LEVEL HAVING MOST DIRECT CONTACT WITH THE INMATE; AND PROVIDE A MEANS OF MANAGEMENT REVIEW OF STAFF DECISIONS AND POLICY/PROCEDURES THAT MAY BE THE SOURCE OF A COMPLAINT, NOTIFICATION OF THIS POLICY/PROCEDURE WILL BE MADE IN COMPLIANCE WITH THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSON ACT."

APPELLANT ARGUES THAT ON DECEMBER 2, 2011, DISCIPLINARY APPEAL STEP-1 WAS SENT TO GRIEVANCE OFFICE. THAT THERE ARE TWO DATES ON STEP-1 GRIEVANCE: DECEMBER 8, 2011, AND DECEMBER 12, 2011, EXCLUDING WEEKENDS THE TOTAL AMOUNT OF DAYS TO BE RECEIVED BY INMATE GRIEVANCE COORDINATOR WAS SIX (6) DAYS. THE DATE RECEIVED IS ASSUMED TO BE THE DATE IGC JENKINS ENTERED STEP-1 INTO THE OMS SYSTEM. THE PROCESS TOOK 6 DAYS TO RECEIVE STEP-1. See Step-1 disciplinary System Number LCI-1662-11 See also

FROM DATE IGC JENKINS RECEIVED STEP-1 DISCIPLINARY APPEAL TILL DATE OF MARCH 7, 2012, WHEN IGC WROTE "SEE WARDEN'S RESPONSE" AND SIGNED AND DATED IT WAS A TOTAL OF 60 DAYS. See i.e. disciplinary hearing appeal Step-1 Number LCI-1662-11

A STEP-1 DISCIPLINARY HEARING APPEAL IS NEVER TO TAKE 60 DAYS TO RESPOND TO IT. HOWEVER, STEP-2 GRIEVANCE CAN.

IGC HELD DISCIPLINARY HEARING APPEAL STEP-1 IN POSSESSION FOR 60 DAYS. WITHIN THAT TIME NOTHING WAS DONE TO RESOLVE THE MATTER. THE 30 AND 40 DAY TIME FOR WARDEN'S RESPONSE EXPIRED. PURSUANT TO SCD C POLICY/PROCEDURE "INMATE DISCIPLINARY SYSTEM" DP-22.14 SECTION 19.2 LAST PARAGRAPH: "THE WARDEN WILL RESPOND TO DISCIPLINARY HEARING APPEALS WITHIN 30 CALENDAR DAYS FROM THE INITIAL FILING OF THE GRIEVANCE."

WARDEN RESPONDED TO DISCIPLINARY HEARING APPEAL STEP-1 3/12/12, WELL OVER 30 OR 40 DAYS TIME LIMIT. SCD C "INMATE GRIEVANCE SYSTEM" POLICY/PROCEDURE GA-01.12 SECTION 13.4 STATES: "THE WARDEN WILL RESPOND TO GRIEVANT IN WRITING IN THE STEP-1 INDICATING IN DETAIL THE RATIONALE FOR THE DECISION RENDERED AND ANY RECOMMENDED REMEDIES. THE WARDEN WILL RESPOND TO THE GRIEVANT NO LATER THAN 40 DAYS FROM THE DATE THE GRIEVANCE WAS FORMALLY ENTERED INTO THE OMS SYSTEM BY THE IGC (WITH THE EXCEPTION OF A DISCIPLINARY HEARING APPEAL, WHICH WILL BE RESPONDED TO WITHIN 30 DAYS.)"

ASSUMING IGC JENKINS ENTERED THE DISCIPLINARY HEARING APPEAL STEP-1 INTO OMS SYSTEM DEC 12, 2011. STILL YET 63 DAYS HAD PASSED WHEN WARDEN DECIDED TO RESPOND TO APPELLANT'S APPEAL STEP-1.

THE LIEBER ADMINISTRATION OFFICIALS ARE UNDER THE IMPRESSION THAT THEY DON'T HAVE TO INFORM INMATES ABOUT CERTAIN THINGS AND/OR HAVE TO RESPOND AND RETURN GRIEVANCES OR INMATES REQUEST TO STAFF RESPONDED TO. MANY CASES HAVE COME TO THE AIC AND OTHER JUDICIAL BRANCHES CONCERNING THESE ISSUES. THE JUSTIFICATION OF A BACK-UP OR BACK-LOG IN GRIEVANCES IS AS A ONE CENT PILE OF BUBBLE GUM - STALE. IT'S NOT THE BACK-UP IN GRIEVANCES SUBMITTED BY INMATES THATS THE PROBLEM. BUT THE IGC WHO HAS CONTINUOUSLY FOR YEARS TOOK ADVANTAGE OF THE BACK-LOG JUSTIFICATION TO CONCEAL AN ULTERIOR MOTIVE OF CONSPIRACY TO DEPRIVE INMATES THEIR RIGHT OF DUE PROCESS SUCH AS TO APPEAL AND OTHER COMPLAINTS BY WITHHOLDING TO CAUSE INMATES TO FAIL IN EXHAUSTING ADMINISTRATIVE REMEDIES, CAUSE A HOPELESSNESS OF DISCOURAGEMENT IN THE INMATE'S QUEST FOR RELIEF, ETC. APPELLANT FILED STEP-1 GRIEVANCE IN OCTOBER 2010 ABOUT THREATS HE RECEIVED BY OFFICIALS WHO WERE ASSAULTED BY HIM IN 2006 AND ON CLASSIFICATION FOR FAILURE TO PUT A SEPARATIONAL CAUTION IN HIS RECORD AFTER CONVICTED OF ASSAULTING AND THREATENING STAFF AND HAS NOT RECEIVED IT BACK, NOR HAS THERE BEEN AN INVESTIGATION INTO THE MATTER. IN ADDITION, FOR FAILURE TO RESPOND TIMELY TO THOSE STEP-1 GRIEVANCE OR TAKE APPROPRIATE MEASURES TO ALLEVIATE THE MATTER, APPELLANT SUFFERED ASSAULT BY INMATES AND BODILY CHARGES BY THESE OFFICIALS WHO RETALIATED AND ARE STILL RETALIATING AGAINST APPELLANT.

A STATUTE OF LIMITATION EXISTS IN LAW AND IN POLICY/PROCEDURE. NOTHING IN SDC POLICY/PROCEDURE DEALING WITH STEP'S IN GRIEVANCE PROCEDURE PROCESS ALLOWS A DISCIPLINARY HEARING APPEAL STEP-1 TO EXCEED 30 OR 40 DAYS RESPONSE. UNLESS, HOWEVER, AN INVESTIGATION WAS BEING CONDUCTED WHILE THE DISCIPLINARY HEARING APPEAL STEP-1 WAS IN PROCESS, THERE IS NOTHING THAT INDICAT THAT AN INVESTIGATION HAD BEEN CONDUCTED. OBVIOUSLY THERE WASN'T BECAUSE APPELLANT HAS NO DOCUMENTATION THAT I WAS. A STEP-2 CAN BE HELD FOR 60 DAYS - NOT A STEP-1.

THE DISCIPLINARY HEARING APPEAL STEP-1 SHOULD NOT HAVE EXCEEDED THE STEP-1 APPEAL PROCESS.

FURTHERMORE, A STEP-2 TIME FRAME IS 60 DAYS OR MORE, AND IF EXTENSION IS NEEDED THE INMATE GRIEVANCE BRANCH APPRAISE THE INMATE. FOR STEP-2'S SDC POLICY/PROCEDURE GA-01.12 SECTION 13.5 APPEALS TO THE RESPONSIBLE OFFICIAL :

" IF GRIEVANT IS NOT SATISFIED WITH THE DECISION OF THE WARDEN, THE GRIEVANT MAY NEXT APPEAL TO THE DIVISION OF OPERATION FOR A FINAL RESOLUTION OF THE GRIEVANCE."

SDC POLICY/PROCEDURE GA-01.12 SECTION 13.6 APPEAL PROCESS : " THE GRIEVANT MAY APPEAL BY COMPLETING STEP-2, AND SUBMITTING THIS, AS WELL AS THE STEP-1 TO THE IGC WITHIN FIVE (5) DAYS OF THE RECEIPT OF THE RESPONSE BY THE GRIEVANT. IF AN INMATE NEEDS ADDITIONAL SPACE TO COMPLETE THEIR STEP-2, ONLY ONE ONE-SIDED PAGE WILL BE PERMITTED. THE INSTITUTIONAL GRIEVANCE COORDINATOR WILL FORWARD THE STEP-2 AND 1 TO THE INMATE GRIEVANCE BRANCH WITHIN FIVE (5) DAYS. THE INMATE GRIEVANCE BRANCH WILL CONFIRM RECEIPT OF APPEAL, CONDUCT ANY FURTHER INVESTIGATION NECESSARY, PREPARE A REPORT, AND PRESENT ALL AVAILABLE INFORMATION TO THE RESPONSIBLE OFFICIAL. THE RESPONSIBLE OFFICIAL WILL RENDER THE FINAL DECISION ON THE GRIEVANCE WITHIN 60 DAYS FROM THE DATE THAT THE INSTITUTIONAL INMATE GRIEVANCE COORDINATOR RECEIVED THE APPEAL OF THE WARDEN'S DECISION."

THE INMATE GRIEVANCE BRANCH OBVIOUSLY TOO DID NO INVESTIGATION OR REVIEW AT THE STEP-2 LEVEL. HAD THERE BEEN, A REASONABLE PERSON WOULD HAVE KNOWN TO OBTAIN THE DISCIPLINARY HEARING TAPES OF ALL THE INMATES INCLUDED IN THE INCIDENT REPORT AND ON APPELLANTS STEP-1 GRIEVANCE WHO WERE ALSO ACCUSED AND HAD THEIR CHARGE MISSED, FOR THE PURPOSE OF SEEING WHY WHO DISMISSED THE OTHER INMATES INCLUDED IN THIS CHARGE CASE AND CONVICTED APPELLANT. BECAUSE A REASONABLE PERSON WOULD HAVE KNOWN THAT THE SAME ERROR THAT IS IN THEIR CASE WAS IN APPELLANTS CASE (CHARGE).

THE LIMIT FOR RESPONSE IN DISCIPLINARY HEARING APPEAL STEP-1 WAS VIOLATED, RELIEF ~~AND~~ SHOULD HAVE BEEN GRANTED.

CONCLUSION

WHEREFORE, APPELLANT RESPECTFULLY ASK THAT CASE 15
BE EXTINGUISHED.

RESPECTFULLY SUBMITTED,

TERRENCE T. HAGGINS

TERRENCE T. HAGGINS 247777

LIEBER C.I. COOPER A-50

P.O. BOX 205

RIDGEVILLE S.C. 29472

DATE: 7/3/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I, TERRENCE HAGGINS, ON THE 3 DAY OF JULY
2012, SERVED A COPY OF THE BRIEF OF APPELLANT ON ALL PARTIES-GENERAL
COUNSEL - TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES
MAIL, POSTAGE PRE-PAID, AND/OR IN THE MAIL ROOM OF THE UNDERSIGNED
INSTITUTION AND SENT TO HIS/HER LAST KNOWN ADDRESS AS FOLLOWS:

OFFICE OF GENERAL COUNSEL
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
P.O. BOX 21787
COLUMBIA, S.C. 29221.

RESPECTFULLY SUBMITTED,

TERRENCE T. HAGGINS

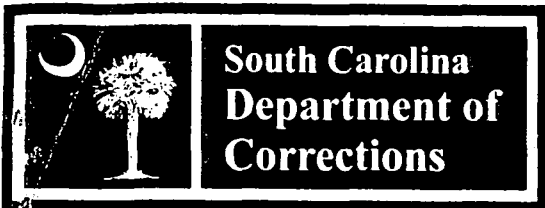
TERRENCE T. HAGGINS 247777

LIEBER C.I. CA-50

P.O. BOX 205

RIDGEVILLE, S.C. 29472

DATE: 7/3/12



NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 8, 2012

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

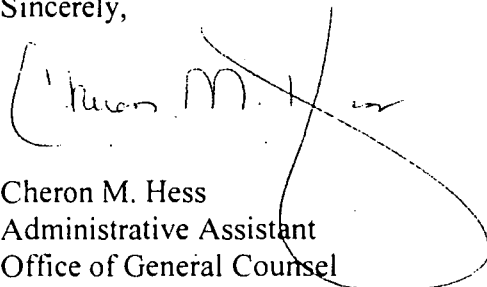
Re: Terrence Haggins, #247777 vs. SCDC
Docket No. 12-ALJ-04-0279-AP

Dear Judge Lenski:

Find enclosed an original and one copy of the *Respondent's Brief and Motion To Dismiss* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed envelope.

If you have any questions, please do not hesitate to contact me at (803) 896-3922.

Sincerely,



Cheron M. Hess
Administrative Assistant
Office of General Counsel

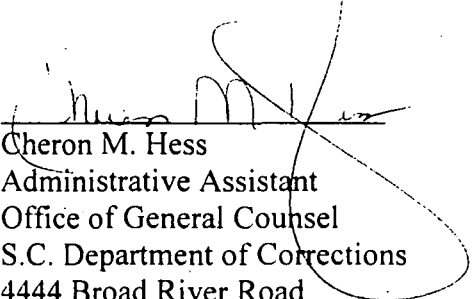
cc: Inmate Terrence Haggins, #247777
Lieber Correctional Institution

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terrence Haggins, #247777,)
)
 Appellant,)
)
 vs.) **Certificate of Service**
)
 South Carolina Department of Corrections,) Docket# 12-ALJ-04-0279-AP
)
 Respondent.)

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Terrence Haggins, #247777
Lieber Correctional Institution


Cheron M. Hess
Administrative Assistant
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922

August 8, 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terrence Haggins, # 247777,)	Docket No.: 12-ALJ-04-0279-AP
)	
Appellant,)	
)	
v.)	RESPONDENT'S BRIEF AND MOTION TO DISMISS
)	Honorable Phillip Lenski
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	
)	
)	

STATEMENT OF FACTS

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Terrence Haggins ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC").⁽²⁾ Appellant filed a Step One Grievance on December 8, 2011, challenging his conviction for the Possession of Any Cell Phone or Other Type of Communication Device, 898, under SCDC Policy OP-22.14, Inmate Disciplinary System.⁽³⁾ This grievance was investigated and denied.⁽⁴⁾ Appellant filed a Step Two Grievance on March 23, 2012.⁽⁵⁾ This grievance was also investigated and denied.⁽⁶⁾

⁽⁶⁾ Appellant filed his Notice of Appeal on May 2, 2012.⁽⁷⁾ In his Notice of Appeal, Appellant claims his conviction is a result of due process violations.

⁽⁸⁾ Loss of good time is not an issue in the present case.⁽⁹⁾ However, Appellant failed⁽¹⁰⁾ to earn good time for the month of the disciplinary infraction.⁽¹¹⁾ Pursuant to S.C. Code Ann. § 24-13-210, inmates convicted of crimes against the State may earn good-time credits. These credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior.⁽¹²⁾ Inmates convicted of offenses

Should have been indicated on 12-09 for m that good time was taken

Attack

Attack

other than "no-parole" offenses are eligible to earn 20 days of good time each month, and inmates convicted of no-parole offenses are eligible to earn three days of good time for each month.¹ Therefore, SCDC, through SCDC Policy OP-21.11, Loss of Statutory Good Time, provides for an inmate's failure to earn good time for a given month upon the inmate's violation of a rule.² In addition, pursuant to SCDC Policy OP-22.14, Inmate Disciplinary System, an inmate's violation of certain rules can result in the deduction of good-time credits the inmate has earned in past months.

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 361 S.C. 327; 605 S.E.2D 506 (2004), SKIPPER V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S.C. 267; 633 S.E.2D 910 (Ct. App. 2006), AND IN LIGHT OF THE LEGISLATURE'S RECENT AMENDMENT TO THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT

The ALC's jurisdiction to hear this matter is derived 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 Slezak v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2004). The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate's state-created liberty or property interest. SCDC reads Slezak as encouraging, for the sake

Admission of ALC's jurisdiction to hear appeals of SCDC decisions is not a state-created liberty or property interest.

¹ "[N]o prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to S.C. Code Ann. § 16-3-20 is entitled to credits under this provision. No prisoner convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in § 24-13-125 or 24-13-150. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed." S.C. Code Ann. § 24-13-210(B).

² A rule violation may be determined through informal resolution or following a disciplinary hearing. If the inmate does not accept informal resolution, the incident may be referred to a disciplinary hearing, where the inmate may plead guilty to the infraction, or be found guilty of the infraction following the hearing.

of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest.

Recently, the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, the "ALJ should" dismiss the appeal. Skipper v. SCDC, 370 S.C. 267; 633 S.E.2d 910 (Ct. App. 2006). In 2007, the South Carolina Supreme Court expanded the scope of the state-created liberty interest in Furtick v. SCDC, 374 S.C. 334. In Furtick, the Court held that following a disciplinary conviction, an inmate's failure to earn good time for a given month, even in the absence of the loss of previously earned good-time credits, implicated the state-created liberty interest. 374 S.C. at 340. As a result, inmates who were eligible to earn good time appealed to the ALC disciplinary convictions that caused them to fail to earn good time credits for a given month, even though no previously earned good time was lost.

Saying they want it dismissed

to be held

However, due to a recent amendment to the South Carolina Administrative Procedures Act, SCDC submits that the ALC no longer should hear appeals pursuant to Furtick. The amendment provides that:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A). S.C. Code 1-23-600(D). (H4328, Rat. # 0413).

However, this does not mean they can't hear Constitutional Claims or credit taken.

South Carolina Governor Mark Sanford signed the amendment on June 16, 2008.

SCDC submits that pursuant to the amendment, this court cannot hear inmate appeals in which inmates have not lost good time, but have failed to earn good time for the month of their disciplinary infraction. South Carolina recognizes several rules of statutory construction, the most fundamental rule being that legislative intent prevails.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

A reading of the language of the amendment, the language of the original bill presented to the legislature, and the timing of the bill indicate legislative intent for the ALC to no longer hear these appeals. The bill was presented to the legislature in the 2007-2008 session, within months of the Supreme Court’s decision in Furtick. The bill originally proposed an amendment of the state Administrative Procedures Act, “so as to conform the procedures to other procedural provisions regarding the court *and to prohibit the hearing of certain inmate appeals by the court ...*” H 3575, Rat. #0413 (emphasis added). Clearly, the legislature intended to remove a category of inmate appeals from cases to be heard by the ALC. Because the amended statute specifies appeals involving the loss of the opportunity to earn good-time credits, SCDC concludes that the legislature intended to exclude from the ALC’s jurisdiction cases that would have been heard in light of Furtick.

A literal reading of the amendment could remove all inmate disciplinary appeals from the ALC’s jurisdiction because all major disciplinary appeals are appeals “involving” the failure to earn good-time credits, even if the cases also involve the loss of previously earned good-time credits. However, SCDC submits that this reading would preclude the ALC from hearing inmate appeals involving any disciplinary conviction in which an inmate lost previously earned good-time credits. SCDC submits this result is

likely too absurd to have been intended by the legislature. It follows that such a literal reading would not be permissible under the rules of construction as the South Carolina Supreme court defined them in Unisun Insurance Co. v. Schmidt, 529 S.C. 362 (2000). “We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun at 368.

In addition, SCDC’s reading of the statute comports with the legislative intent behind South Carolina’s statutes on good-time credits, S.C. Code Ann. 24-13-210 and 230. Chief Justice Jean Toal, in her dissenting opinion in Furtick, stated the majority’s decision ignored the legislature’s intent to reward inmates with good-time credits only after they exhibit good behavior. Acknowledging that this is a dissenting opinion, SCDC nevertheless agrees with Justice Toal’s interpretation of legislative intent as to the scope of the state-created liberty interest. Furthermore, Justice Toal referred to the Court’s “long-standing ‘hands-off’ approach to judicial supervision of internal prison disciplinary matters which do not amount to a violation of constitutional dimensions.” Id. at 341. *This goes back to page 1 paragraph 7* SCDC’s reading of the amended APA is consistent with this long-standing approach to internal prison disciplinary matters.

* In the instant case, Appellant states his conviction for possession of a cell phone or other type of communication device should be overturned. Appellant lost 360 days of canteen, phone and visitation privileges. However, Appellant lost no good time due to this conviction but only failed to earn good time for the month of the infraction. Therefore, the ALC should dismiss this appeal.

CONCLUSION

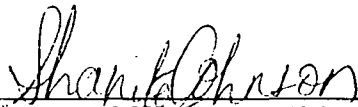
Based on the foregoing reasons and legal authorities, SCDC respectfully requests

that this matter be dismissed pursuant to the newly amended South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-600(D), Rule 12(b)(1), and Slezak v. SCDC, 361 S.C. 327; 605 S.E.2d 506 (2004).

Respectfully submitted,

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: 
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August 7, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terrence Haggins, 247777,

) Docket No. 12-ALJ-04-0279-AP
)
)

Appellant,

vs.

) ORDER OF DISMISSAL
)
)

South Carolina Department of Corrections,

Respondent.
)
)
)
)
)
)
)

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by the Appellant above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

The Appellant appeals the decision of the Department denying his grievance in which the Appellant complains he was wrongfully disciplined for possession of any cell phone or other type of communication device. The Appellant did not lose any accrued good-time as a result of his discipline but he did lose the opportunity to earn good-time credit for the month of disciplinary infraction. On August 9, 2012 the Department filed a Motion to Dismiss on the grounds that S.C. Code § 1-23-600(D) prohibits administrative law judges from hearing appeals involving the loss of the opportunity to earn sentence-related credit.

DISCUSSION

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 cases involving denial of state created liberty interests¹ 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.

Al-Shabazz, id., has been underscored by Furtick v. SCDC, 374 S.C. 334, 649 S.E.2d 35

¹ The Court does have limited jurisdiction in some property matters, the authority for which need not be cited here.

FILED

AUG 09 2012

SC ADMIN. LAW COURT

(2007).

SCDC v. Mitchell, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008), cites Furtick, *id.*, as follows:

Furtick holds that when an inmate's grievance to an ALC does not implicate a state created liberty or property interest, the ALC may summarily dismiss the appeal at its discretion. Thus, the ALC clearly had subject matter jurisdiction to hear Mitchell's appeal. Although the ALC could have addressed whether Mitchell's claim implicated a liberty or property interest, and thus could have summarily dismissed the case if it determined Mitchell's claim did not, the ALC chose not to, and heard the appeal. Under Furtick, this was in the ALC's discretion.

SCDC v. Mitchell, 659 S.E.2d at 235. 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.

Under Slezak v. S.C. Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004), the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but "Summary dismissal may be appropriate where the inmate's grievance does not implicate a state created liberty or property interest." In Furtick, the Court held that following a disciplinary conviction, an inmate's failure to earn good time for a given month, even in the absence of the loss of previously earned good-time credits, implicated a state-created liberty interest. 374 S.C. at 340. However, in response to the holding in Furtick, the South Carolina Legislature amended the South Carolina Administrative Procedures Act on June 16, 2008 to provide that:

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A).

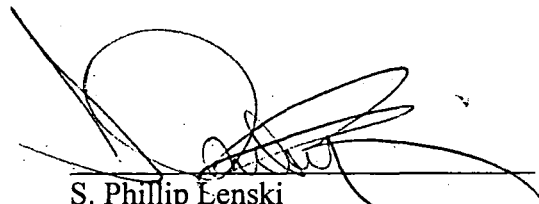
S.C. Code § 1-23-600(D). Therefore, pursuant to the South Carolina Administrative Procedures Act, the loss of the opportunity to earn sentence-related credits does not fall under the umbrella of state created liberty interests contemplated in Al-Shabaz.

It is undisputed that this case does not involve the loss of any accrued good-time credits, the calculation of the Appellant's sentence, or the Appellant's custody status. Because the Appellant only complains of the loss of an opportunity to earn good-time credit and S.C. Code §

1-23-600(D) specifically prohibits administrative law judges from hearing cases involving the loss of only the opportunity to earn good-time credit, it appears that this case should be dismissed.

Based on the foregoing, it is hereby **ORDERED** that the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

August 9, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland
Judicial Law Clerk

August 9, 2012
Columbia, South Carolina

FILED

AUG 09 2012

SC ADMIN. LAW COURT

INCIDENT REPORT

11/20/11 (PM) Page 1 of 1

Institution/Center: <u>Lieber</u>	
Date of Report: <u>11-17-11</u>	Time of Report: <u>Approx 11:05am</u>
Reporting Official: <u>Off. Lopez</u>	Date of Incident: <u>11-17-11</u>
Location of Incident: <u>SMU Bowling Room 134 and 135</u>	Time of Incident: <u>Approx 11:00am</u>
Inmate(s)/Resident: <u>SCDC#</u> Age Race Sex	Employee(s) Involved:
1. <u>Lazarus Brannon # 227847</u>	1. <u>Agency Search Team</u>
2. <u>Maldonado Banegas # 343494</u>	2.
3. <u>Terrence Haggins # 247777</u>	3.
4. <u>DD3/MB-134/11-19-21 / DD3/MB-135/12-7-44</u>	4.
5. <u>DD3/MB-135/14/24/14</u>	5.

TS

On the above date and approximate time: While conducting a routine search of SMU Bowling Room 134 and 135 the following was confiscated in a vent ~~located~~ that connected the two rooms: A Samsung cell phone charger. The item was confiscated from the room by an Agency Search Team member and Off. Lopez of Lieber Contraband. All inmates will be charged: Lazarus Brannon # 227847, Maldonado Banegas # 343494, and Terrence Haggins # 247777. NONE claimed ownership.

- 898 -

Signature: [Signature]

Evidences: Samsung cell phone charger.

Witness(es): [Signature] MIN# 11-11-0421-0074

Supervisor's Comments: The above inmates will be charged for the above incident.

Signature: [Signature] Title: Officer Date/Time: 11-17-11

Major / Responsible Authority: Refer to DHO All (3) inmates charged with 398.

Signature: [Signature] Title: Officer Date: 11/17/11

STG Related - Refer to STG Committee
 Yes No Unknown

This Incident is DRUG related
 Yes No Unknown

Action Taken: 398

Informal Resolution
 Administrative Resolution
 Refer to Disciplinary Hearing

EVIDENCE

Case No. 11-11-39

Evidence Description Samsung cell phone charger

Place Evidence Found SMY B ROOM VERH Connecting Room 134+135

Date & Time of Recovery 11-17-11 Approx 11:00AM

Suspect Lazarus Brown # 227842 Offense 898

Victim Maldonado Barera # 343494 / Terrence Haggins

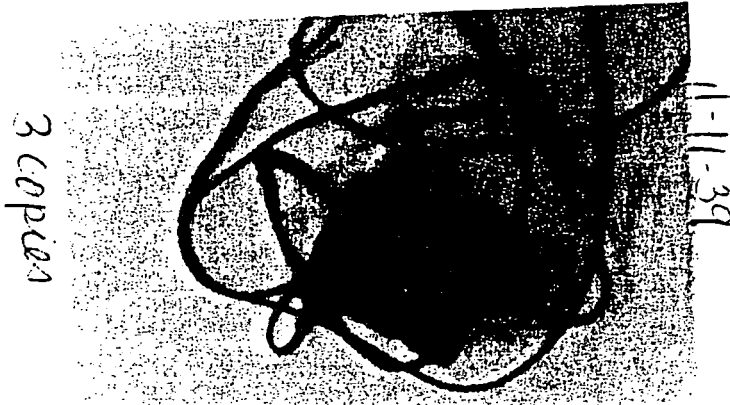
Evidence Recovered By [Signature] # 247777
Signature, Rank

CHAIN OF POSSESSION OF EVIDENCE

Signatures Required

From	To	Date	Time
<u>[Signature]</u>	<u>Drop box</u>	<u>11/17/11</u>	<u>1:00 PM</u>

SCDC S-23 (Rev. October, 1996)



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD**

Case#: 75 Inmate Name: Haggins, Terrence SCDC#: *24777*

Receiving Area: MB-135 Job: _____ Custody: DD3

Hearing Date: 11/17/11 Offense Time: 11:00 AM/PM Institution: Lieber - SMU B-Wing, Room 134 & 135

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

Hearing Officer/Employee: Sherry Lopez Title: OFC (Contraband)

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

INMATE WAIVERS:

- I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
- I DO NOT WANT TO BE PRESENT AT MY HEARING
- I DO WANT MY ACCUSER PRESENT AT THE HEARING
- I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- I WAIVE MY RIGHT TO A HEARING
SMU/SEGREGATION ONLY
- I WANT A COUNSEL SUBSTITUTE
- I DO NOT WANT A COUNSEL SUBSTITUTE

CS-Bachman Assigned (Reading Level 05.6)

Date & Time Notified: 11/23/11 4:17 PM By (Print): OFC Sherry Lopez
Inmate Signature: Terrence Haggins SCDC#: 24777 Date: 11/23/11

HEARING INFORMATION:

Hearing Date: <u>12/11/11</u>	Hearing Time: <u>10:30 am</u> am/pm	Tape: <u>61-11</u>	Side: <u>B</u>	Start: <u>059</u>	End: <u>131</u>
-------------------------------	-------------------------------------	--------------------	----------------	-------------------	-----------------

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

OFFENSE CODES	<u>398</u>				
INMATE PLEA (G, NG, None)	<u>NG</u>				
FINDINGS (G, NG, DS)	<u>C</u>				

Maxout
04-24-14

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: The officer's report contained all the testimony of the accused.

HEARING LENGTH: 7 (MINUTES)

SANCTIONS:

Loss of Privileges (Days) _____ Reprimand: _____ Loss of Good Time (days): _____
 * Property (Days) _____ Extra Duty: _____ Restitution: \$ _____
 * Canteen (Days) 30 Visit Suspension Thru 361/1
 * Other (Days) 30 Cell Restriction (Days): _____
 * Disciplinary Detention (Days): _____

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: This is the maximum sentence for this offense.

CREDIT FOR PHD TIME SERVED? YES/NO _____ IF YES, DAYS _____

DATE INMATE PLACED IN PHD 1/1/11

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: _____ DATE: 12-1-11

HEARING OFFICER (PRINT NAME) Sherry Lopez

APPROVED/REVERSE/MODIFY Warden REASON _____

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

White - Institutional Record Canary - Inmate (Service of Disciplinary Report)

Red - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

When there is restitution, a copy of this form should be forwarded to Financial Accounting.)

CA11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: TERRENCE T. HARGRENS
SCDC NUMBER: #247777
INSTITUTION: LIEBER CORR. INST.
HOUSING UNIT: SMU-B-135
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. LCI 1662-11
Code: General _____
Policy _____
Disc. Hear. 12-1-11
Class. 398
Date Received 12/12/11
IGC Initials VA
1678

DEC 0 8 11
9

Pos. related to Piv

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I APPEAL DAD'S DECISION OF 12-1-11, ON CHARGE OF 398 "POSSESSION OF CONTRABAND" ON THE FOLLOWING GROUNDS: INCIDENT REPORT STATES "WHILE CONDUCTING ROUTINE SEARCH OF SMU-B WING ROOM 134 AND 135 THE FOLLOWING WERE COMPLETED IN A HEAT THAT CONNECTED THE TWO ROOMS". INCIDENT REPORT INCLUDES THREE (3) INMATES WITH SAME CHARGE. INMATE LAZARUS BRANNON #22787 WAS FOUND MOST GUILTY WHILE I WAS. SCDC POLICY OF 22.14 SECT. 19.2 "SENTENCING GUIDELINE 3" MANDATES: "WHEN SENTENCING AN INMATE, THE HEARING OFFICER WILL TAKE INTO CONSIDERATION: PENALTIES GIVEN TO OTHER INMATES FOR THE SAME OR SIMILAR VIOLATIONS." THERE WERE SEVERAL OTHER INMATES WITH SIMILAR CHARGES 12-1-11 WHO ALL WERE DISMISSED, CASES DISMISSED.

ACTION REQUESTED: THAT CHARGE BE EXPUNGED.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
AFTER BEING ADVISED BY DAD DAD I WANT TO APPEAL DECISION OF 12-1-11 BY SUBMITTING GRIEVANCE TO IGC.

TERRENCE T. HARGRENS 12/2/11
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

[Signature] 3/7/12
IGC Signature Date

[Signature] _____
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.

WARDEN'S DECISION AND REASON:

Inmate Haggins:

This is in response to LCI-1662-11 In accordance with Agency Policy OP-22.14, "Inmate Disciplinary System", section 19.2 and 19.3, inmates may appeal the decision of the Hearing Officer within 15 days of receiving written decision by the Disciplinary Hearing Officer. The following factors must be considered when reviewing an appeal: (1) whether the Hearing Officer acted in substantial compliance with policies/procedures. (2) whether the decision of the Hearing Officer was based on substantial evidence. (3) whether, under the circumstances, the sentence imposed was proportionate to the violation.

On December 1, 2011 you were convicted of 898 Possession of Any Cell Phone. All time frames and procedures were followed. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence and Officer Lopez report.

Based on this information, your appeal is without merit and therefore denied. If not satisfied with my response, see Step 5 below.

Wagner C. M. 42 3-12-12
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Terence T. Haggins 3/15/12
Grievant Signature Date

[Signature] 3/15/12
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

MAR 23 2012

Office Use Only

INMATE NAME: Terrence T. Higgins
SCDC NUMBER: # 247777
INSTITUTION: LEBER C.I.
HOUSING UNIT: CA-11
WORK ASSIGNMENT: MIA

INMATE GRIEVANCE

MAR 18 2012

Grievance No. LC2-11-02-11
Code: General
Policy
Disc. Hear. [checked]
Class.
Date Received 3/19/12
IGC Initials [signature]

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

Issue 1: Same Disciplinary Policy 09-22.14 Sect. 16.2 Mandates: Hearing officer "Will" take into consideration: The Penalties Given to other inmates for the same or similar violations. Hearing officer dismissed Lazarus Brannon #227847 (227847) case who was included in report with me that convicted me. The report specifically asserted: While conducting a routine search of Smu B-wing Room 134 and 135 the following was confiscated in a vent that connected the two rooms: A Samsung Cell Phone Charger. The item was confiscated from the room by an Agency Search team member and Ofc. Lopez of Leber Correctional. All inmates will be charged: Lazarus Brannon #227847, Maldonado Banegas #343444, and Terrence Higgins #247777. None claimed ownership. Therefore, Hearing officer was not in compliance with policies/procedure when he dismissed Lazarus case and convicted me. See SCDC Policy 09-22.14 Sect. 16.2. The report does not state what specific cell it came out of. See report. Issue 2: [crossed out text] Issue 3: The Warden's review would have revealed that nothing in the report established that it came out of my cell or knew it was in the vent because report does not state that. That report is clueless as to what vent it actually was taken out of with accuracy as a fact as stated by Policy 09-22.14 3.2. There was no witnesses called which leaves the report the only thing to be used against me to accuse. The Warden's review would have revealed that regardless what an office states later, the report is not certain or sure if the item found came from cell-135. The facts alleged in the report are insufficient and charge should have been expunged.

TERRENCE T. HIGGINS 3/15/12
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Possession or Attempt to Possess a Cell Phone (898) on December 1, 2011, under SCDC OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of -0- 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 twenty-four (24) 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] 3/15/2012
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

(SEE REVERSE SIDE FOR INSTRUCTIONS)

TERRENCE T. HAGGINS # 247777
BROAD RIVER CORRECTION INSTITUTION SALUDA A-III
POST OFFICE BOX 4460
COLUMBIA, SOUTH CAROLINA, 29210



UNITED STATES POSTAGE
EAGLE
BETNEY BOWES
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0008003534 JAN 31 2013
MAILED FROM ZIP CODE 29210

JAN 31 2013

TO: THE SUPREME COURT OF SOUTH CAROLINA
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA, 29211

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JAN 31 2013
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THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

WARDEN
BROAD RIVER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



9 x 12



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