

The state of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court

Deborah Brooks Durden Admin. Law Judge

Case No 2019-000227

19-ALJ-04-0006-AP

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MAY 24 2019

SC Court of Appeals

Tyrone Perry - - - - - Appellant

- vs -

SCDC - - - - - Respondent

[Initial] Brief of Appellant

vs Tyrone Perry 307793

Tyrone Perry 307793

430 Oaklawn Rd Q2A-122

Pelzer S.C. 29669

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statement of issues on appeal

1. Did the Adm. Law Court err in failing to allow the appellant to file any type of brief
2. Did the Appellant's rights to due process get violated by SCDC
3. Did the Appellant's right to call witnesses be infringed upon by an unimpartial decision maker
4. Did the Appellant get all the rights due to him on the basis he has a serious mental illness

Statement of the Case

On August 22, 2018 the appellant was assaulted while at Gilliam Psychiatric Hospital. The incident occurred in the laundry room out of sight of the camera or any officers. On August 31, 2018 the appellant was given his 24 hour notice. The appellant at this time was still housed at GPH at Kirkland. The appellant was scheduled to go to the Adjustment hearing on September 6, 2018 at 10:00 AM. The night of September 5, 2018 at 6:00 PM the appellant was transferred from Kirkland C.I. at GPH to Perry Corr. Institute. On September 20, 2018 the appellant went to the adjustment hearing for a major disciplinary offense. For mental health patients to receive due process after an incident which leads to a major disciplinary a Qualified Mental Health Professional QMHP is to assess the appellant to see what effect mental health played. This statutorily mandated exercise was done fraudulantly and produced an unconstitutional conviction. Also the DHO abused his discretion by refusing to call a witness (the other party) to ask if they received a charge as well. The DHO said this witness is irrelevant. It takes two to fight and I was the only one charged

Facts

On 1-16-18 the appellant was involuntarily committed to Gilliam Psychiatric Hospital (GPH) located on Kirkland yard. I am a mentally ill inmate diagnosed with schizo-affective disorder which is a serious mental illness.

Cadre workers are non mental health workers at GPH who clean up feces, blood, and water when mental health inmates act out. They also pass out the food. On 8-22-18 the appellant was approached by the mailroom designee who slid general mail under his door and walk away. It was recreation time so the appellant door got open. The appellant cut through the laundry room to attempt to catch the mailroom designee, but she had left. The appellant ask the Cadre worker why didn't he stop the mailrooms lady and the Cadre struck the appellant. When security arrived the appellant and other party were exchanging blows. It was broken up and the appellant was charged a serious disciplinary charge of striking an inmate and the other inmate (Cadre) got no charge at all. The appellant was defending himself and still got punished for doing nothing wrong. In the 15 years of incarceration the appellant has no violent disciplinaries, now he was given one for simply defending himself. Per SCDC policy which is bound by Title 44 for mental health more procedures are in place to satisfy due process. Those procedures were violated and the appellant's rights to due process were violated.

Arguments

I. The administrative law court erred in dismissing the appellant's case due to the fact the case was given a docket number on January 31, 2019 and on February 4, 2019 this same case was dismissed. On the small appeal form provided the appellant stated that his constitutional rights at a major disciplinary hearing were violated. Being that this was a major disciplinary the appellant could be subjected to administrative or disciplinary segregation which would impose atypical and significant hardship on the appellant in relations to ordinary life of inmates in population. So the appellant was to be afforded a minimal of due process as required by Wolf-v-McDonnell 418 U.S. 539 a notice, a hearing, the right to be heard and call witnesses and if witnesses are denied the right to have the fact finder tell me why they were denied. The DHO abused his discretion in not following these requirements and the Administrative Law Court failed to give the appellant any time to file any type of brief. The appellant is serving a day for day sentence and does not receive work credits, but due process was violated in this illegal conviction. The ALJ's reliance on Al-Shabazz, Slezacek, and Howard is misplaced. The appellant's case was dismissed in four days with no initial brief.

II. Per SCDC policy due process for mentally ill inmates requires in policy 4.S. 19.04 section 9.1 states when an inmate suffering from a serious mental illness come before a DHO due to a level one or two offense he will be assessed by a QMHP. The QMHP completing the statement wont whenever possible be the primary counselor assign to the inmate. Also policy 4.S. 19.06 section 1.1.1 states within 3 business days after receiving SCDC form 19-29A

incident report the QMHP will assess the inmate in person. These policies are bound to state law by Title 44 section 22. So an additional requirement is added to due process for mentally ill inmates per case 2005-CP-40-02925. The appellant was seen by his assigned counselor which policy prohibits and then another person James Drake makes the mental health statement. The appellant did not see James Drake in person. An assigned counselor Hodge's note does not state what part mental health had to do with the incident. So we have an inadequate mental health statement made by a person who didn't see the appellant in person nor did the note he referred to speak of the appellant's condition at the time of the incident.

III. Under due process and the right to be heard the appellant has a constitutional right to be able to call witnesses. And if those witnesses are not called a reason is to be provided on the fact finder as to why not. The appellant called for the testimony of inmate Henry McKenzie at the DHO hearing. The DHO abused his discretion and was unimpartial by not calling this witness and failing to provide in the fact finder the reason why he didn't. It takes two people to fight. The appellant was charged with striking an inmate which is a major level 2 charge. The altercation happen on 8-22-18 out of sight of any cameras and no security was around. So it can not be substantiated who began the altercation. But I being an African American male was charged the most serious charge against a caucasian male who received NO charge. It takes two to fight, but the appellant was the only one charged. This is a 14th amendment racial discrimination situation.

III Under case 2005-CP-40-02925 SCDC was found guilty of cruel and unusual punishment in violation of Article 1 section 15 of the

S.C. constitution. So policies were put in place to keep mentally ill inmates off lock-up for so long and restricted movements and equal protections at DHO hearings which are bound by Title 44 section 22 10-220. The appellant was initially seen by his assigned QMHP the day of the incident. Although policy states he's to be seen by someone not assign to him. The QMHP writes a note, but in that note does not state what part mental health had to do with the incidents. Then James Drake who did not see the appellant made an egregious statement without never seeing the appellant. These irregularities along with the fact the DHO was unimpartial and failed to provide to the fact finder why he didn't call requested witnesses violate due process. Being that the appellant has a serious mental illness more protections and process was due.

Conclusion

FOR THE REASONS STATED, this Court should reverse the judgment of the ALJ and SCDC and vacate this charge and conviction from the appellant and his record

This 22nd day of May 2019

Respectfully Submitted
s/ Tyrone Perry 307793
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Proof of Service

I certify that I have served this Designation of matter and Appellant's Initial brief by depositing a copy of it in the U.S. mail postage prepaid to the following:

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MAY 22 2019

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