

In the State of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court
Deborah Brooks Durden Admin. Law Judge
Case No 2019-0000227
19-ALJ-04-0006-AP

RECEIVED
MAY 24 2019
SC Court of Appeals

Tyrone Perry - - - - - Appellant

- vs -

SCDC - - - - - Respondent

Designation of Matter

This is my first time doing this and I don't totally understand what's required of me. I set forth the five attached exhibits and the statement of the case, facts and arguments of this appeal. The way the ALC dismissed the appellant's case in four days without allowing the appellant to submit an initial brief to relay his constitutional violations.

sv Tyrone Perry 307793

Tyrone Perry 307793
430 Oaklawn Rd QLA-122
Peltz S.C. 29664

This 22nd day of May 2019

DISCIPLINARY MENTAL HEALTH STATEMENT

INSTITUTION: KR+E-GPH

Inmate: Tyronne Perry

SCDC#: 307793

was assessed by Mental Health Counselor Andrew Hodge
(Print Name)

on 8/22/18 for a
(Date)

violation of the rules and regulations of the SCDC based on _____

SCDC 19-29

"Incident Report"

8/22/18
(Date of Incident/Date of Discovery)

at 9:25 AM
(Time of Incident)

by Reporting Official CO K. Jones
(Print Name)

Mental Health was asked to provide a statement regarding the inmate's mental status at the approximate time the charge of the offense occurred. An assessment is conducted within three business days after receiving the Incident Report.

A clinical correctional counselor has reviewed the following information: (Please initial each)

- JD medication compliance
- JD historical data and recent encounters and notes
- JD interview and assessment

After a completion of the above items listed and based upon an evaluation of inmates consistent history it is determined to the best of the clinical correctional counselor's opinion that:

 A. Offender has a mental illness which likely contributed to their inability to control his/her behavior. (Definition - Guilty but not accountable); **{Follow MH Procedure}**

 B. Offender suffers from a mental illness which may have contributed to behaviors. (Definition - Guilty with mitigating circumstances due to the offender lacking the capacity to understand the act committed). (See attachment for requested consideration of modified sanctions) **{Follow MH Procedure}** Request consideration of modified sanctions for the following reasons:

per Mr. Hodge's documentation, Inmate Perry was frustrated over the situation (as he reports the other inmate started the confrontation) but had been compliant with meds and is st
 C. Although classified as Mentally Ill, was able to understand the nature and quality of the act committed.

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

Counselor: J. Stone Dale for Andrew Hodge at extension: 260-3537

Regional Manager: _____ Date: _____
(Signature required by Regional manager only if A or B indicated)

Psychologist: _____ Date: _____
(Signature required by psychologist only if A or B indicated)

This document serves as a Mental Health Procedure under General Provisions # 700 Level 1 Offenses

EXHIBIT 1

WARDEN'S DECISION AND REASON:

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.

Grievant Signature

Date

IGC Signature

Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
 2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
 3. Only one (1) issue is to be addressed on each form.
 4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. 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, by placing your Step 2 appeal form in the Grievance Box at your institution.
-

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

Step 2 11/9/18

STEP 1

INMATE NAME: <u>Tyrone Perry</u>	OFFICE USE ONLY Grievance No. <u>PCI 0849-18</u> Code: <u>General</u> *36 Policy _____ 823 Disc. Hear. <u>✓ 9-20-18</u> Class. _____ PREA _____ Date Received <u>9/21/18</u> IGC Initials <u>JP</u>
SCDC NUMBER: <u>307793</u> <u>SEP 21 2018</u> ^{KK}	
INSTITUTION: <u>Perry Correctional Institute</u>	
HOUSING UNIT: <u>Q2A-121</u>	
WORK ASSIGNMENT: _____	

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) I'm appealing the DHO decision rendered on 9-20-18 of a (823) charge. The DHO abused his discretion by allowing an invalid mental health statement. Pursuant to mental health policy 19:04 section 9.1 any inmate who suffers from a serious mental illness regardless of classification who's to come before the DHO due to a level 1 or 2 offense will be assessed by a QMHP. The QMHP completing the disciplinary statement want whenever possible be the primary counselor assign to the inmate. Also section 9.2 of this same policy. Also mental health policy 19:06 section 1.1.1 within 3 business days after receiving SCDC form 19-29 A incident report the QMHP will assess the mentally ill inmate who's been charged through an in person interview. James Stoney Drake the hospital director wrote a mental health statement in which I never seen Mr Drake in person on behalf of my counselor Mr Hodge. Policy states im to be seen by a QMHP other than my assign one. So im appealing the decision rendered on 9-20-18 to this breach in policy.

Tyrone Perry 9-21-18
Grievant Signature Date

ACTION REQUESTED: That this charge be removed from my record and my privileges reinstated I havent had a violent disciplinary my entire incarceration and I want this charge vacated and expunged from my record so it wont effect my hardship

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

*See reverse for
Wardens Response*

L. Harrison
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Tyrone Perry

SCDC# 307793

PCI-0849-18

Your appeal from the outcome of your Major Disciplinary Hearing on 09/20/18 in which you were convicted of 823: **Fighting Without a Weapon**: case #36, has been reviewed. In your grievance you stated that you are appealing due to the fact the DHO Officer used discretion by allowing an invalid mental health statement to be used on record in this case. You also stated a QMHP must assess an inmate prior to going before a DHO hearing with a level 1 or level 2 offense. You also stated that a QMHP must see the inmate within 3 days of receiving the Incident Report and interview the inmate in person. You stated Mr. Drake, the hospital Director, signed the mental health statement and you never spoke to Mr. Drake. You are requesting to have the charge removed from your record and your privileges reinstated. I have reviewed the Incident Report, listened to the hearing tape and reviewed all other evidence supplied in this case. You are correct in your statement that a QMHP must see an inmate within 3 days of receiving the Incident Report however, the mental health statement itself can be filled out by another qualified individual if the QMHP is not available to do so at that time. A qualified staff member fills out the statement based off of the QMHP's documentation that was input into the system after the inmate was evaluated. Mr. Drake filled out the form and used the documentation from the QMHP, Mr. Hodge who saw you after the incident. The mental health statement was valid. I found no discrepancies or misinterpretation of the facts that would warrant a reversal of this charge. The testimony and evidence presented is sufficient to uphold a conviction for this charge.

Therefore, your grievance is **denied**.

If you disagree with this Warden's Decision, you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you with this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

[Signature] 11-2-18
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.

Tyrone Perry 307793 11-5-18
Grievant Signature Date

[Signature] 11/5/18
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
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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, by placing your Step 2 appeal form in the Grievance Box at your institution.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

Due: 11/9/18

INMATE NAME: Tyrone Perry
 SCDC NUMBER: 307793
 INSTITUTION: Perry Correctional Institute
 HOUSING UNIT: Q2A-105
 WORK ASSIGNMENT: Dorm

NOV 07 2018

RECEIVED

NOV 15 2018

Office Use Only
 Grievance No. PCI-0849-18
 Code: General _____
 Policy _____
 Disc. Hear. 9-20-18
 Class. _____
 Date Received 11/7/18
 IGC Initials LH

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I'm appealing the Warden's decision in the step one grievance because it's clearly erroneous and arbitrary to SCDC superseded policy and procedure for mental health inmates. The grievance coordinator acknowledges the fact that im right, but states however a mental health statement can be filled out by another qualified individual if a QMHP is not available. The language in the superseded policy does not substantiate that and when I asked was the other party punished the DHO stated that question was irrelevant. So a mental health inmate can be attacked by a non mental health inmate defend himself and be charged for defending himself. My QMHP Mr Hodge who was NOT to assess me stated I was struck first. I have every right to defend myself. But Policy clearly states some QMHP other than the one assigned to you MUST interview you in person to see what impact mental health had to do with it. Due to all these discrepancies I ask that this charge be vacated and removed from my record due to this breach of duty on behalf of SCDC staff

Tyrone Perry 11-5-18
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Fighting without a Weapon (823), case #36, level 3 Offense, held on September 20, 2018. The conviction was consistent SCDC Policy OP-22.14, Inmate Disciplinary System, dated February 2, 2015. The sanctions 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 forty-eight (48) hour notice prior to the hearing. You were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

Therefore, your grievance is denied.

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

[Signature] 11/13/2018
 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

[Signature] 1/14/19
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

EXHIBIT 4

97: Q

DISCIPLINARY REPORT AND HEARING RECORD

Case#: 36 Inmate Name: PERRY, TYRONE SCDC#: 307793

Living Area: Q2A121 Job: UNEMP Custody: M12

Offense Date: 8/22/2018 Offense Time: 09:25 AM Institution: Kirkland Reception and Evaluation Center

Offense Description: 825 Fighting without a Weapon

810 Striking an Inmate With or Without a Weapon: The willful hitting, striking, throwing of any substance at, or unauthorized touching of one inmate by another inmate with or without a weapon, whether or not such hitting, striking, or unauthorized touching causes bodily injury.

CHARGED WHILE AT GPH. CASE ENTERED 8/28/18. I/M RELEASED FROM GPH 9/5/18. 21 DAYS FROM 9/5/18 IS 9/25/18 ORIGINAL CHARGE PAPERS EN ROUTE FROM KIRKLAND.

Charging Officer/Employee: K. JONES SEE ATTACHED COPIES Title: OFC

INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 48 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

Form with checkboxes: I GIVE UP MY RIGHT TO 48-HOUR NOTICE... I DO NOT WANT TO BE PRESENT AT MY HEARING... I DO WANT MY ACCUSER PRESENT AT MY HEARING... I DO NOT WANT MY ACCUSER PRESENT AT MY HEARING... Date & Time Notified: 8/22/18 245 AM/PM By (Print): HUGER

HEARING INFORMATION:

Hearing Date: 9/20/18 Hearing Time: 946 am/pm Medclass: MH3 Reading Level: 10.5

DD: Assigned Counsel Substitute: McArthur

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...

1. Counsel substituted for McArthur at hearing. 2. Accused excluded from hearing. 3. Witnesses: none. 4. Documentation: none. 5. Evidence excluded: none.

Table with columns: OFFENSE CODES, INMATE PLEA (G, NG, None), FINDINGS (G, NG, DS) (NGMI) (GMI). Values: 825, NG, G.

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: (B) Officer's report was correct and not disputed by inmate.

SANCTIONS: Loss of Privileges (Days): Reprimand: Loss of Good Time (Days): Property (Days): Extra Duty (Hours): Restitution: \$ Canteen (Days): 30 Visit Suspension (Days): Cell Restriction (Days): 60 Disciplinary Detention (Days): Phone (Days): 30 Other: (Days):

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st 810 charge since 2008!

CREDIT FOR PHD TIME SERVED? YES NO N/A IF YES, DAYS: DATE INMATE PLACED IN PHD: DATE INMATE RELEASED FROM PHD:

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Tyrone Perry DATE: 9/20/18

HEARING OFFICER (PRINT NAME): R.L. Turner

APPROVED/DD MODIFICATION ONLY 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) Golden Rod - Inmate (Service of Disciplinary Hearing Disposition) Pink - Central Record

EXHIBIT 5

M/O: 12/21/18

The State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court
Deborah Brooks Durden Admin Law Judge

Case No: 2019-000227

19-AW-04-0006-AP

RECEIVED
MAY 24 2019
SC Court of Appeals

Tyrone Perry ----- Appellant

- vs -

SCDC ----- Respondent

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:

S.C. Court of Appeals

Pro-Box 11629

Columbia S.C. 29211

Office of General Counsel

Christine Ceter Bigelow

Pro-Box 21787

Columbia S.C. 29221

This 22nd day of May 2019

S> Tyrone Perry 3-7203
430 Oakleaf Rd. Q114 116
Rt. 2669

RECEIVED

MAY 22 2019

P.C.I. MAILROOM

Tyrone Perry #307793

Perry Corr. Institute

430 Oaklawn Rd Q2A-122

Pelzer S.C. 29669

RECEIVED

MAY 22 2019

P.C.I. MAILROOM

"Inter Agency mail"

RECEIVED

MAY 24 2019

SC Court of Appeals

South Carolina Court of Appeals

Jenny Abbott Kitchings, clerk

P.O. Box 11629

Columbia S.C. 29211

LEGAL MAIL