

The state of South Carolina
In the Supreme Court

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JUL 25 2019

S.C. SUPREME COURT

Appeal from Administrative Law Court
Deborah Brooks Durden Admin. Law Judge
Case No: 2019-000227
19-ALJ-04-0006-AP

Tyrone Perry - - - - - Appellant

- vs -

SCDC - - - - - Respondent

[initial] Brief of Appellant

sr Tyrone Perry 307293
430 oaklawn rd Q3A-204
Pelzer s.c. 29669

Table of Contents

- Table of Authorities
- statements of issues on appeal
- statement of the case
- Facts
- Argument
- Conclusion

Table of Authorities

Sandin - v - Connor	515 U.S. 472
Wolf - v - McDonnell	418 U.S. 539
Al-Shabazz - v - State	527 SE2d 742
Slezacek - v - SCDC	605 SE2d 506
Howard - v - SCDC	733 SE2d 211
P&A - v - SCDC	2005-CP-40-02925

statutes

- S.C. Code Ann § 44-22-50
- S.C. Code Ann § 44-22-90
- S.C. Code Ann § 44-22-220

SCDC Policy

- SCDC policy HS 19.04
- SCDC policy HS 19.06

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 impartial 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 Correctional 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 statutory mandate exercise was done fraudulently and produced an unconstitutional conviction. Also the DHO abused his discretion by refusing to call a witness the other party to call 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 I 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 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 asked the cadre worker why didn't he stop the mailroom lady the cadre worker 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 charge of striking and the other inmate got no charge at all. The appellant was defending himself and still got punished for doing nothing wrong. In 15 years of incarceration the appellant has no violent disciplinary, 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. These procedures were violated and the appellants 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 relation to ordinary life of inmates in population. so the appellant was 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 abuse his discretion in not following these requirements and the Administrative Law Court failed to give the appellant any time to file an type of brief. The appellant is serving a day to day sentence and does not receive work credits, but due process was violated in this illegal conviction. The the ALJ's reliance on *Al-Shabazz*, *Slezacek*, and *Howard* is misplaced. The appellant's case was dismissed in four days with no initial briefs.

II. Per S.C.D.C. policy due process for mentally ill inmates required in policy HS 19.04 section 9.1 states when an inmate suffering from a serious mental illness come before a DHO date to a level one or two offense he will be assessed by a QMHP. The QMHP completing the statement want whenever possible be the primary counselor assign to the inmate. Also policy HS 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. There policy 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 2015-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. And assigned counselor's Hodge notes 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 appellants 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 did not. 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 I section 15 of the S.C. constitution. So policies put in place to keep mentally ill inmates off lock-up 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 has to do with it. The 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 ALC and SCDC and vacate this charge and conviction from the Appellant's record.

Respectfully submitted

s. Tyburn Perry

430 Oakland Rd Q3A-204

Pelzer S.C. 29669

This 22nd day of July 2019

DISCIPLINARY MENTAL HEALTH STATEMENT

INSTITUTION: KR+E-GPH

Inmate: Tyrone 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)

- JKS medication compliance
- JKS historical data and recent encounters and notes
- JKS 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 meals 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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Tyrone Perry</u> SCDC NUMBER: <u>307793</u> INSTITUTION: <u>Perry Correctional Institute</u> HOUSING UNIT: <u>Q2A-121</u> WORK ASSIGNMENT: _____	OFFICE USE ONLY Grievance No. _____ Code: <u>General</u> _____ Policy _____ Disc. Hear. _____ Class. _____ PREA _____ Date Received _____ IGC Initials _____
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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.) *This is an emergency grievance that should be forwarded to the Grievance Branch chief. I want to allege criminal activity on Hospital Director James Stoney Drake. Today Mr McCarthy showed me a falsified mental health statement signed by James Stoney Drake. This constitutes fraud and is of criminal nature. Policy states Mental Health 19.04 section 9.1 a inmate who suffers from a serious mental illness regardless of classification to go to the DHO for a level 1 or 2 offense will be assessed by a QMHP. The QMHP completing the statement went whenever possible be the primary counselor assign to the inmate. Mental health policy 19.06 section 1.1.1 within 3 business days after receiving SCDC form 19-29A the QMHP will assess the mentally ill inmate who's been charged through an in person interview. I WAS NEVER SEEN and Mr Hodge my QMHP was on vacation all this week. Mr Drake committed fraud and I report this under Section 15 of policy GA 01.12. Mr Drake works at GPH. Under Section 13.2 of policy GA 01.12 no informal resolution is needed*

Tyrone Perry 9-12-18
 Grievant Signature Date

ACTION REQUESTED: *That Mr James Stoney Drake be reprimanded and terminated for falsifying documents which constitute fraud.*

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Tyrone Perry</u>	OFFICE USE ONLY
SCDC NUMBER: <u>307793</u> <u>SEP 21 2018</u> ^{KK}	Grievance No. <u>PCI 0849-18</u>
INSTITUTION: <u>Perry Correctional Institute</u>	Code: General _____
HOUSING UNIT: <u>Q2A-121</u>	* <u>26</u> Policy _____
WORK ASSIGNMENT: _____	<u>83</u> Disc. Hear. <input checked="" type="checkbox"/> <u>9-20-18</u>
	Class. _____
	PREA _____
	Date Received <u>9/21/18</u>
	IGC Initials <u>JH</u>

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)

**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

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NOV 15 2018

Office Use Only
 Grievance No. PC-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): Im 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] 11/14/18
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

GT: 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 [X] AM [] PM 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: 8/12/18 245 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: [Handwritten Name]

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... Charge reduced to 810 Fighting without a weapon

Table with 3 columns: OFFENSE CODES, INMATE PLEA (G, NG, None), FINDINGS (G, NG, DS) (NGMI) (GMI). Contains handwritten entries: 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: [Handwritten explanation]

SANCTIONS:

Sanctions form with fields: Loss of Privileges (Days), Property (Days), Canteen (Days), Disciplinary Detention (Days), Reprimand, Extra Duty (Hours), Visit Suspension (Days), Phone (Days), Loss of Good Time (Days), Restitution (\$), Cell Restriction (Days), Other (Days).

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED:

[Handwritten text for specific factual reasons]

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. [Handwritten Name]

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

w/10 12/1/18

The State of South Carolina
In the Supreme Court

Appeal from the Administrative Law Court

Deborah Brooks Durden Admin. Law Judge

Case No: 2019 - 000 227

19 - ALJ - 0006 - Ap

RECEIVED

JUL 25 2019

S.C. SUPREME COURT

Tyrone Perry - - - - - Appellant

- vs -

SCDC - - - - - Respondent

Proof of Service

I certify that I have served this initial brief by Appellant by depositing a copy of it in the U.S. mail postage prepaid to the following:

S.C. Supreme Court
P.O. Box 11330
Columbia S.C. 29211

Office of General Counsel
Christian Catoe Bigelow
P.O. Box 21787
Columbia S.C. 29221

s/ Tyrone Perry

This 22nd day of July 2019