

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
CAROLYN C. MATTHEWS, ADMINISTRATIVE LAW JUDGE

CASE NO. 11-ALJ-04-00993-AP

Harold Mosley #137525 Appellant,

v

South Carolina
Department of Corrections Respondent.

Appendix to the
Record on Appeal

Harold Mosley #137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
SMU # 90
Kershaw, S.C. 29067

3 Hanika Kenyatta Johnson
OFFICE OF GENERAL COUNSEL
P.O. Box 21787
4444 Broad River Road
Columbia, S.C. 29221-1787

(803) 896-1943

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 83 Inmate Name: HAROLD MOSLEY SCDC#: 137525

Living Area: SML 7A Job: _____ Custody: ST2

Offense Date: 5/23/11 Offense Time: 7:45 AM/PM Institution: TYRCI

Offense Description:
801: Assault and/or Battery of an SCDC Employee or other Government Employee, Contract Employee, Volunteer, or Member of the Public with Means/and/or Intent to Kill or Injure: The willful hitting, striking, or unauthorized touching of an SCDC employee or other government (refer to OP-22.14)
Charging Officer/Employee: J. HOLSINGER Title: LT

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 *Fouled*

I WANT A COUNSEL SUBSTITUTE *Accused*

I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified: 6/12/11 8:56 AM/PM By (Print): Sgt McMorris

Inmate Signature: Harold Mosley SCDC#: 137525 Date: 6/12/11

HEARING INFORMATION:

Hearing Date: <u>6/13/11</u>	Hearing Time: <u>8:45</u> am/pm	Tape: <u>TR570</u>	Side: <u>RA</u>	Start: <u>490</u>	End: <u>450</u>
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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

6) If an accused all questions must be relevant to the charge and non repetitive in nature.

OFFENSE CODES	<u>801</u>			
INMATE PLEA (G, NG, None)	<u>None</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

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) (C) Testimony of Lt Holsinger that her report was true and correct that this was his investigation

HEARING LENGTH: _____ (MINUTES)

SANCTIONS: did support in issues, (0) photos of Lt Holsinger

Loss of Privileges (Days): _____

Reprimand: _____

Loss of Good Time (days): 1000

* Property (Days): _____

Extra Duty: _____

Restitution: \$750

* Canteen (Days): 1050 (00+360)

Visit Suspension Thru 1050 (00+360)

* Other 750 (Days) 1050 (00+360)

Cell Restriction (Days): _____

* Disciplinary Detention (Days): 720

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 2nd 801 conviction

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

DATE INMATE PLACED IN PHD _____

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: Harold Mosley DATE: 6/13/11

HEARING OFFICER (PRINT NAME) R. J. Turner

APPROVED/REVERSE/MODIFY Jim Kelly REASON _____

Warden _____

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 2

JUL 25 2011

TYRCI 0858-
JUL 7/17/11

INMATE NAME: Shango Damballah
SCDC NUMBER: 137525
INSTITUTION: Tyger River Coll. Inst.
HOUSING UNIT: SMU # 7
WORK ASSIGNMENT: N/A

REG. INMATE GRIEVANCE

Office Use Only
Grievance No. TYRCI 0858-11
Code: General _____
Policy _____
Disc. Hear. 801 #83 6.13.11
Class. _____
Date Received 7.19.11
IGC Initials CT

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): I Stand by all claims I made in my step 1 appeal and hereby incorporate each and every claim into this step 2 appeal by reference.

1) Procedural Error - Double Jeopardy - I was charged twice with two (2) 801 rules violations stemming from the same incident yet the DHO sanctioned me consecutively for each offense in violation of SCDC Policy OP-22.14 16.4 which states "IF AN INMATE IS CHARGED WITH MULTIPLE OFFENSES, THE INMATE CANNOT BE SANCTIONED SEPARATELY FOR EACH OFFENSE UNLESS THEY ARE TOTALLY

Grievant Signature Shango Damballah Date 7-13-11

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) on June 13, 2011, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of 1000 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] 11/03/2011
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.

Shango Damballah 11-22-11
Grievant Signature Date

[Signature] 11/22/11
IGC Signature Date

1) JERMIATE AND DISTRACT VIOLATIONS. SEE incident reports

2) Procedural Error - I WAS DENIED THE RIGHT TO CROSS-EXAMINE MY ACCUSER IN VIOLATION OF SCDC Policy 01-22.14 & 15.5. At my hearing I as counsel substitute my lawyer a list of questions to ask my accuser Holtsinger. Ms. Fowler refused to ask the questions stating that "the questions were not relevant." It is not the responsibility of a counsel substitute to decide whether or not a question is relevant, that is the responsibility of the Dto. Dto Turner refused to allow me to ask questions of my accuser at my hearing in violation of WOLFF V MEDAN

3) Procedural Error - I WAS DENIED THE RIGHT TO PRESENT WITNESSES. It is undisputed that I requested to have nurse Amy Spencer present at my hearing as a witness. SEE Exhibit "1" FROM DISCIPLINARY APPEAL GRIEVANCE NO. TYPICAL-0828-11. At the time I wrote my request to the Dto on June 2, 2011 I could not foresee that disciplinary hearing would be divided into two separate hearings. I requested said witness pursuant to SCDC Policy 01-22.14. And where that right was denied it is a violation of 01-22.14

4) Procedural Error - LACK OF EVIDENCE: At my hearing Lt. Holtsinger stated that she received bruises to her arms and ribs but stated nothing about having received an injury to her head for which I was accused. The APA establishes the "substantial evidence" standard and there is nothing in the hearing record to confirm that Lt. Holtsinger received an injury to her head for which I was charged and there is no evidence that she received any "injuries" whatsoever to constitute the charge of 801. SEE S.C. CODE ANN. § 1-23-300(C)(6)(D).

5) Procedural Error - Per SCDC Policy 01-22.14 & 23.2 I wrote a request to Mayor Parrish on June 13, 2011 requesting to hear my disciplinary tapes & to this day I have not been allowed to hear it.

6) Procedural Error - The taking of my good-time without due process is a violation that is "capable of repetition, yet evading review" in violation of S.C. CODE ANN. § 24-13-210(c). Only the Commissioner/Director of the SCDC can take my good-time. By Statute that responsibility cannot be delegated to others.

7) Procedural Error - SCDC Policy 01-22.14 & 4.3-4.33. This incident that led to these charges are being investigated by the DDO so why were the disciplinary charges even brought before the Dto in the

#40

REC'D JUN 27 2011

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: SHANGO DAMBALLAH
Harold Mosley
SCDC NUMBER: 137525
INSTITUTION: TYGER RIVER CORRECTIONAL INST.
HOUSING UNIT: SM1 #7
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. TRC1 0858-11
Code: General DP
Policy 801 # 83
Disc. Hear. 6-13-11
Class. 8
Date Received 6-28-11
IGC Initials CT

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I HEREBY APPEAL
the disciplinary decision of JUNE 13, 2011 BECAUSE OF THE FOLLOWING PROCEDURAL
ERRORS,

1) PROCEDURAL ERROR - DOUBLE JEOPARDY - I WAS CHARGED TWICE WITH TWO (2)
801 RULES VIOLATIONS STEMMING FROM THE SAME INCIDENT. SCDC POLICY OF
22.149 16.4 DOES NOT ALLOW FOR AN INMATE TO BE CHARGED WITH
MULTIPLE OFFENSES WHEN THE INCIDENT CONSTITUTES ONLY ONE OFFENSE. AL
THE SANCTIONS EXCEED THE MAXIMUM PUNISHMENTS ALLOWED BY POLICY OF 22.1

2) PROCEDURAL ERROR - I WAS DENIED THE RIGHT TO CROSS EXAMINE MY ACCUSER
IN VIOLATION OF SCDC POLICY OF 22.149 15.5. AT MY HEARING I GAVE
ACTION REQUESTED: (1) THAT THE RECORD BE MADE TO REFLECT THAT COUNSEL SUBSTITUTED
MRS. LEWIS IN FORMED DHD TURNER AT MY FIRST HEARING THAT I REQUESTED NURSE
AMY SPENCER TO BE PRESENT AT MY HEARING AS A WITNESS; (2) THAT THE CHARGES BE
COMBINED B/C THEY STEM FROM THE SAME INCIDENT AND CONSTITUTE ONLY ONE CHARG
(3) THAT THE DISCIPLINARY DECISION OF JUNE 13, 2011 BE OVERTURNED.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Disciplinary Appeal of June 13, 2011.

Shango Damballah 6-23-2011
Grievant Signature Date

ACTION TAKEN BY IGC:

Forward to warden for Response

2 Level 1

1000 GT ✓
1720 DD ✓
Pris 360 ✓
Rest.
ok. per policy

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

C. Thompson 6/28/11
IGC Signature Date

N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

Inmate Harold Mosley:

This is in reference to grievance TRCI 0858-11

You have appealed the results of your disciplinary hearing conviction for charge 801 case 83 heard on 06/13/2011.

The issues you stated do not warrant a reversal of the charge. Pertinent documentation had been reviewed and an investigation of the hearing was conducted. No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on Lt. Holsinger's report, and evidence presented at the hearing. The sanctions imposed were not excessive and are in accordance with the Operational Procedure Policy (OP 22.14), Inmate Disciplinary System.

Therefore, your grievance is denied. If you wish to appeal this decision to the next level, you must submit a Step 2 grievance form within five (5) days of receipt.

Refer to instruction # 5 listed below.

Jim Deley 7/11/11
Warden Signature Date

C. Thompson 7/11/11
IGC 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.

Shango Damballah 7-12-11
Grievant 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.

12) - COUNSEL SUBSTITUTE MRS. FOWLER A LIST OF QUESTIONS TO ASK MY ACCUSER Lt. Holsinger. Mrs. Fowler REFUSED TO ASK THE QUESTIONS STATING THAT "THE QUESTIONS WERE NOT RELEVANT". IT IS NOT FOR A COUNSEL SUBSTITUTE TO DECIDE WHETHER A QUESTION IS OR IS NOT RELEVANT; THAT IS THE RESPONSIBILITY OF THE DHO. DHO TURNER REFUSED TO ALLOW ME TO QUESTION MY ACCUSER.

3) PROCEDURAL ERROR - THE RIGHT TO PRESENT WITNESSES: I WROTE AN INMATE REQUEST TO STAFF MEMBER TO DHO TURNER ON JUNE 2, 2011 REQUESTING NURSE AMY SPENCER TO BE PRESENT AT MY HEARING AS A WITNESS. SEE EXHIBIT 3 RESPONSE OF SGT. POOLE. I WAS INFORMED BY MY FIRST COUNSEL SUBSTITUTE MRS. BARBARA LEWIS THAT I WOULD BE GOING TO THE DISCIPLINARY HEARING ON JUNE 6, 2011. HOWEVER, DHO TURNER COULD NOT REACH THE ACCUSING OFFICIAL Lt. Holsinger AND CONTINUED THE HEARING. AT MY HEARING OF JUNE 1, 2011, DHO TURNER DENIED RECEIVING MY INMATE REQUEST REQUESTING NURSE SPENCER TO BE PRESENT AT MY HEARING AS A WITNESS. THIS IS IN VIOLATION OF SDC POLICY OP-22.14815.3. AN SDC EMPLOYEE IS OBLIGATED TO PROVIDE INFORMATION TO A DHO WHEN AN INMATE CALLS THEM AS A WITNESS. LET THE RECORD REFLECT THAT I TRIED TO SECURE MY RIGHT TO CALL WITNESSES TO MY HEARING UNDER WOLFF V MCDONNELL, AND AL-SHABAZZ V STATE, ACCORDING TO SDC POLICY OP-22.14882.4 AND WAS ARBITRARILY AND CAPRICIOUSLY DENIED THAT RIGHT. SEE SDC POLICY OP-22.14815.3.

4) PROCEDURAL ERROR - LACK OF EVIDENCE: AT MY HEARING Lt. Holsinger STATED THAT SHE RECEIVED BRUISES TO HER ARMS AND RIBS BUT STATED NOTHING ABOUT HAVING RECEIVED AN INJURY TO HER HEAD FOR WHICH I WAS ACCUSED. THE ADA ESTABLISHES THE "SUBSTANTIAL EVIDENCE" STANDARD AND THERE IS NOTHING IN THE HEARING RECORD TO CONFIRM THAT Lt. Holsinger RECEIVED AN INJURY TO HER HEAD AND THERE IS NO EVIDENCE THAT SHE SUSTAINED ANY "INJURIES" WHATSOEVER TO CONSTITUTE THE CHARGE OF 801. SEE S.C. CODE ANN. §1-23-380(A)(6)(D)

5) PROCEDURAL ERROR - HEARING TAPE - I WAS DENIED A MEANINGFUL JUDICIAL REVIEW WHERE I WAS NOT ALLOWED TO HEAR MY DISCIPLINARY TAPE TO PREPARE MY APPEAL AFTER HAVING WRITTEN AN INMATE REQUEST TO MAJOR PARRISH ON JUNE 13, 2011 PER SDC POLICY OP-22.14823.2 REQUESTING TO HEAR MY DISCIPLINARY TAPE. THIS IS ALSO IN VIOLATION OF THE INMATE GRIEVANCE POLICY AND THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.

6) PROCEDURAL ERROR - THE TAKING OF MY GOOD TIME WITHOUT DUE PROCESS IS A VIOLATION THAT IS "CAPABLE OF REPETITION, YET EVADING REVIEW" IN VIOLATION OF S.C. CODE ANN. §24-13-210(C). ONLY THE COMMISSIONER/DIRECTOR OF THE SDC CAN TAKE MY GOOD TIME. BY STATUTE, THAT RESPONSIBILITY TO TAKE GOOD TIME CANNOT EVEN BE DELEGATED TO OTHERS.

7) PROCEDURAL ERROR - SDC POLICY OP-22.1484.3 - 4.3.3 - THIS INCIDENT IS BEING INVESTIGATED BY THE DDO SO WHY WERE THE DISCIPLINARY CHARGES EVEN

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the administrative law court
Carolyn C. Matthews, Administrative Law Judge

CASE NO. 11-ALJ-04-00993-AJ

HAROLD MOSLEY #137525 Appellant,

v

South Carolina
Department of Corrections Respondent.

CERTIFICATE OF SERVICE

I CERTIFY that I have sent a copy of the record on appeal w/
the appendix to the record on appeal to Administrative Law Court Judge
Carolyn C. Matthews as well as serving a copy of the same on Shanika Kromer
Johnson, Respondent, by placing it in the Vershaw Correctional SMI mailbox with
postage affixed and addressed to the office of General Counsel at 8,
O. Box 21787, 4444 Broad River Road, Columbia, S.C. 29221-1787, this
8th day of January, 2013.

January 8th, 2013

CC: Carolyn C. Matthews, ALJ Judge
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

Harold Mosley
Shangya Damba Allah
HAROLD MOSLEY #137525
Vershaw Correctional Institution
4848 Gold Mine Hwy
SMI #98
Vershaw, S.C. 29067