

PROFF OF SERVICE
CERTIFICATE OF SERVICE

RECEIVED

OCT 30 2020

SC Court of Appeals

1. NOTICE OF APPEAL
2. APPLICATION to Proceed without PREPAYMENT of fees and AFFIDAVIT
3. LEGER SHEET
4. COPY of the U.S. DISTRICT COURT ORDER'S NOTICE DATED SEPTEMBER 3, 2020 PERMITTING indigent litigant to commence an action in Federal court without payment of the administrative costs of proceeding with the legal action.
5. ALC'S ORDER OF DISMISSAL.
6. ALC'S MOTION FOR RECONSIDERATION AND Prohibited

PREPAID AS follows:
THE S.C. COURT OF APPEALS
Jenna A. Kitching, clerk
P.O. Box 11629
Columbia, SC 29211

ADMINISTRATIVE LAW COURT
Judge D. B. Durden
1205 PENDLETON STREET, SUITE 234
Columbia, SC 29201

SCDC
GENERAL COUNSEL OFFICE
4444 Broad River Rd.
Columbia, SC 29201

Sworn or Affirmed to subscribed
before me this 28 day of October, 2020

Jamara Conwell
NOTARY Public

My Commission Expires

September 25, 2023

Comm.

EXP: RES

Troy Burks 760726

TROY BURKS
PERRY CORR INST
430 OAKLAWN RD.
PELZER, SC 29669

SOUTH CAROLINA COURT OF APPEAL

Troy Burks #160726
Plaintiff

v.

S.C. DEPT of CORRECTIONS
Defendants.

;

ADMINISTRATIVE LAW COURT
Defendants

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SC Court of Appeals

NOTICE OF APPEAL
APPELLATE CASE NO.
2020-001293

DOCKET NO. 20-ALJ-04-0298
AF

GRIEVANCE NO. PCZ 57-2

Notice is hereby given that Troy Burks #160726 does hereby appeal the final decision of the Administrative Law Court Honorable Judge D. B. Durden dated August 4, 2020 and received the ORDER TO Dismissal dated July 15, 2020. The Plaintiff replied with a Declaration IN OPPOSITION to ORDER OF Dismissal and Initial Brief on July 24, 2020. The ALC final order reached Plaintiff on August 4, 2020 with a Ruling that STATED MOTIONS FOR RECONSIDERATIONS ARE PROHIBITED. 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)).

Plaintiff now seeks to afford meaningful judicial review of S.C. DEPT of CORR. final STEP-2 decision and the Administrative Law Courts abuse of discretion and also its decision and ruling is BARRED by the RES JUDICATA and COLLATERAL ESTOPPEL clause.

Troy Burks 160726
Plaintiff
Perry Corp. Inst. 430 Oaklawn Rd.
Mailing Address

Pelzer, SC 29669

Ty Bhs

Signed

October 27, 2020

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SC Court of Appeals

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Troy Banks 160726, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Troy Banks
Applicant

SWORN or affirmed to and subscribed before me this

21st day of August, 2020.

Jamarc Conwell
Notary Public

My Commission Expires: Sept-25-2023

THE SOUTH CAROLINA COURT OF APPEALS

UNITED STATES DISTRICT COURT

District of SOUTH CAROLINA

TROY BURKS #160726
Plaintiff

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

v.

S-C-D-C
Defendant

CASE NUMBER: 2020-001293

I, TROY BURKS declare that I am the (check appropriate box)
[X] petitioner/plaintiff/movant [] other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? [X] Yes [] No (If "No," go to Part 2)
If "Yes," state the place of your incarceration PERRY CORR. INST. - 430 OAKHURST RD. PELZER, SC 29669
Are you employed at the institution? YES Do you receive any payment from the institution? NO

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed? [X] Yes [] No
a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. SALARY
b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer:

3. In the past 12 twelve months have you received any money from any of the following sources?
a. Business, profession or other self-employment [] Yes [X] No
b. Rent payments, interest or dividends [] Yes [X] No
c. Pensions, annuities or life insurance payments [] Yes [X] No
d. Disability or workers compensation payments [] Yes [X] No
e. Gifts or inheritances [] Yes [X] No
f. Any other sources [] Yes [X] No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have any cash or checking or savings accounts? Yes No

If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

N/A

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

N/A

I declare under penalty of perjury that the above information is true and correct. YES

10-1-20
Date

Ty BKA 160 726 Troy Burks
Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

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Q3A104

AUG 19 2020

FINANCIAL CERTIFICATE
FOR THE DISTRICT OF SOUTH CAROLINA

P.C. MAILROOM

(for use in § 1983, Bivens, and non-habeas civil actions filed by prisoners)

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds; complete this Certificate. If I have insufficient funds in my account that prohibit me from paying the full filing fee required by 28 U.S.C. § 1914 (currently \$350.00), I will send with my complaint an initial installment payment, required by 28 U.S.C. § 1915, equal to the amount calculated and entered on line four by the authorized officer signing this form.

I recognize that by filing this case, I am required to pay the full filing fee (or the remaining unpaid portion of the filing fee by installments if necessary) under 28 U.S.C. § 1915(b) even though I am requesting to proceed *in forma pauperis*. I authorize and consent to collection of the filing fee in accordance with 28 U.S.C. § 1915 until the filing fee is paid in full.

Troy Burks
INMATE NAME (PRINTED)

160726
INMATE (PRISONER) NUMBER

[Signature]
INMATE SIGNATURE

Perry Core Trust
PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period.\$ 0
- ◆ (3) Current Balance\$ 0
- ◆ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ 0

SODC-FINANCIAL ACCTG
2020 AUG 20 PM 2:53

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

[Signature]
Authorized Officer's Signature

8/21/2020
Date

Reggy Caathan, Fiscal Analyst I
Authorized Officer's Name and Title

Mr Troy Burks #160726
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669

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SC Court of Appeals

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P.C.I. MAILROOM

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11692
Columbia, SC 29211

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Troy Burks,

Plaintiff,

vs.

South Carolina Department of
Corrections and Administrative
Law Court,

Defendants.

C/A No.: 1:20-3153-DCN-SVH

ORDER AND NOTICE

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OCT 30 2020

SC Court of Appeals

Troy Burks ("Plaintiff"), proceeding pro se and in forma pauperis, filed a document entitled "Notice of Appeal" that has been construed as a complaint in this court. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge.

I. Factual Background

Plaintiff states he is appealing the final decision of the South Carolina Administrative Law Court's decision dismissing his request for review of a disciplinary decision. [ECF No. 1; 1-1 at 9-10]. Plaintiff alleges he was unlawfully accused and convicted of possession of an illegal drug that he never

possessed. *Id.* He claims that in so convicting him, Defendants have violated his constitutional rights. *Id.*

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). In evaluating a pro se complaint, the plaintiff’s allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Troy Burks, #160726,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 20-ALJ-04-0292-AP

Grievance No. PCI 0057-20

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Troy Burks (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant seeks review of the Department's Step 2 Grievance decision in regards to a disciplinary matter. The SCDC decision indicates that Appellant was not sanctioned any accrued good time. Additionally, Appellant has not alleged the infringement of any other state-created liberty or property interest.

This Court reviews Department grievance decisions pursuant to the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Under the Al-Shabazz line of cases, this Court may only review matters related to a state-created liberty or property interest. See id., 338 S.C. at 368-69, 527 S.E.2d at 749-50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Specifically, the South Carolina Supreme Court has stated that summary dismissal of an otherwise properly perfected inmate appeal "may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." Slezak v. S.C. Dept. of Corrs., 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (citation omitted) (emphasis added). The Supreme Court has further stated that "there is a difference between an inmate's *forfeiture of accrued* sentence-related credits versus the *withholding of unearned, potentially available* sentence-related credits." Howard v. S.C. Dept. of Corrs., 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012) (emphasis in original). An inmate does not acquire a liberty interest in good time until it is earned. Id.

Because Appellant has not been sanctioned with the loss of any accrued good time, it is appropriate to dismiss this disciplinary appeal.

FILED

July 15, 2020

ORDER

THEREFORE, IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**

AND IT IS SO ORDERED.

A rectangular box containing a handwritten signature in cursive script, which reads "Deborah Brooks Durden".

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

July 15, 2020
Columbia, South Carolina

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TROY BURKS #160726,

Appellant,

OCT 30 2020

SC Court of Appeals

vs. SOUTH CAROLINA DEPT. of CORRECTIONS,

Respondent.

DOCKET NO. 20-ALJ-04-0292-AP

GRIEVANCE NO. PE:0052-20

DECLARATION IN OPPOSITION

TO ORDER TO DISMISS

Motions for Reconsideration

are Prohibited.

See ALC Rule 65.

INITIAL BRIEF

This matter is before SOUTH CAROLINA ADMINISTRATIVE LAW COURT (ALC OR COURT) PURSUANT TO THE NOTICE OF APPEAL BY APPELLANT ABOVE NAMED, WHO IS INCARCERATED WITH THE SOUTH CAROLINA DEPT OF CORRECTIONS (SCDC).

THE APPELLANT APPEALS FROM THE DECISION IN THE STEP 2 GRIEVANCE WHICH AFFIRMED HIS CONVICTION FOR (903) THE TRAFFICKING SCDC POLICE DP-22-14 DISCIPLINARY SYSTEM.

HE WAS NOT SANCTIONED WITH THE LOSS OF ANY GOOD TIME CREDITS, BUT HE DID MAKE CLAIMS FOR THE LOSS OF OTHER STATE CREATED LIBERTY OR PROPERTY INTEREST AND CONTENTS HIS SENTENCE RELATED POINTS OR CREDITS OR CUSTODY STATUS HAS BEEN UNJUSTLY RECALCULATED. THERE IS CLEARLY SIGNIFICANT STATE CREATED LIBERTY INTEREST IMPLICATED HERE.

NOW APPELLANT MOVES HONORABLE COURT THAT SCDC AND RESPONDENT'S ORDER TO DISMISS WITH PREJUDICE AND CLAIMS FROM THEIR NEW POST LITIGATION PROMULGATIONS IS OVER REACHING. THE RESPONDENT IS NOT ENTITLED TO ANY DISMISSAL ORDER SIMPLY BECAUSE ALL OF THE STATED DEFENSE ARE INAPPLICABLE IN THIS CASE. THE COURT HAS MISAPPLIED THESE RULES 12(B)(1-5). THIS ACTION NO LESS THAN ANY OTHER COMPLAINT FILED IN COURTS MAY NOT BE DISMISSED ON THE PLEADING UNLESS IT APPEARS TO A CERTAINTY THE APPELLATE WOULD NOT BE ENTITLED TO RECOVER UNDER ANY STATE OF FACTS WHICH COULD BE PROVEN IN SUPPORT OF HIS CLAIM. COOK v. Nichol Inc. v. Pinesol Club (5 CIR. 1971) 458 F.2d 505; HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2nd 659; Conlay v. Gibson, 355 U.S. 4178 S.Ct. 99, 2 L.Ed. 2nd 80; CRUZ v. Beto, 405 U.S. 139(B) MOTION TO DISMISS THE WELL PLEADED ALLEGATION OF THE COMPLAINT MUST BE ACCEPTED AS TRUE. COOPER v. PATE, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed. 2nd 1030. THE APPELLANT ASSERTS HE WAS NOT ONLY DENIED ELEMENTS OF

DBD

Fundamental Fairness, Constitutional Due Process of Right and Liberty interest, when a STATE law require a substantive factual predicate for a typical restricted confinement, when the procedure were invoked in my case, it was not treated with the consideration that was contemplated either the statute's SCDC Policy OP-2214 Inmate Disciplinary system or due process clause.

The Powers and duties of the Administrative Law Judge upon assignment of the case the Judge shall Rule on all motions, preside at the contested case hearing, Rule on the admissibility of evidence, require the parties to submit briefs when appropriate, issue orders and rulings to ensure the orderly conduct of the proceeding and issues presented and the types of proof likely to be introduced so that the matter be fully and fairly presented. The Appellant challenges the sufficiency of the court's order, based on the argument that the criteria used were in violation. The court did not apply ALC Rule 58 on record after final decision which should consist of:

- A. All documents filed.
- B. All evidence received or considered, including copies of all relevant sentencing sheets, copies of specific policies relied upon by agency:
- C. A statement of matters judicially notice:
- D. All proffers of proof of excluded evidence:
- E. The final order.
- F. Any transcript taken of the testimony.

An individual has a right to ALC review of a final decision of the Agency when that decision affects liberty interest for which due process is required. See Furtick v. SC. Dept. of Probation, Parole 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003).

Appellant contends the STATE acted ARBITRARILY and CAPRICIOUSLY when it MOVED to DEPRIVE him of LIFE, LIBERTY, and PROPERTY without due PROCESS of LAW and will CAUSE IRREPARABLE INJURY when it MOVED to IMPED HIS APPEAL ON July 9, 2020.

Abuse of discretion occurs when there's NO EVIDENCE to SUPPORT the JUDGE'S factual conclusions OR when ruling is based ON ERRORS of LAW. APPELLANT HAS NOT BEEN OFFERED ANY EVIDENCE showing that the STATE violated his due PROCESS rights. While the 14th Amendment does not confer a LIBERTY interest in PAROLE itself, it DOES PROTECT a LIBERTY interest in PAROLE ELIGIBILITY conferred by STATUTE. WILKINSON v. DOTSON, 544 U.S. 74 (2005). Even if a PAROLE STATUTE creates a LIBERTY interest an inmate is ENTITLED to minimal PROCEDURE. VAN v. ANGELONE, 73 F.3d 519, 522 (4th Cir. 1996). A finding of INNOCENCE can be made where the STATE'S ORDER LACKS AN ARGUABLE BASIS EITHER in LAW OR in FACT. DENTON v. HERNANDEZ, 504 U.S. 25, 31 (1992). A ORDER BASED ON MERITLESS legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). SEE NEITZKE v. WILLIAMS, 490 U.S. 319, 327 (1989).

APPELLANT brings this ACTION challenging the STATE AND RESPONDENT have violated his CONSTITUTIONAL RIGHTS, STATE STATUTES, POLICIES, LIBERTY INTERESTS, due PROCESS of RIGHTS, AND INMATE'S ACCESS TO COURT. This unlawful conviction by the STATE would NOT PROTECT his LIBERTY interest in being hired to work in the PRISON INDUSTRY to receive the much needed minimal WAGE of \$7.00 A HOUR.

SOME PRISON CONDITIONS EXCEED THE SENTENCE IN SUCH AN UNEXPECTED MANNER AS TO GIVE RISE TO PROTECTION BY THE DUE PROCESS CLAUSE OF ITS OWN FORCE. THEY ARE SO SEVERE IN KIND OF DEGREE OR SO REMOVED FROM THE ORIGINAL TERM OF CONFINEMENT THAT THEY AMOUNT TO DENIATION OF LIBERTY REGARDLESS OF THE TERM OF STATE LAW.

THIS CASE MUST BE GUIDED BY PRINCIPLES ARTICULATED BY THE SUPREME COURT AND SCDC POLICY DP-22.14 THAT PROHIBIT INMATES FROM BEING DEPRIVED OF PROTECTED PROPERTY RIGHTS AND DEPRIVATION IS CONSTITUTIONALLY IMPROPER. IN ACCORDANCE WITH AGENCY POLICY DP-22.14 INMATE DISCIPLINARY SYSTEM THERE ARE RULES AND FACTORS MUST BE CONSIDERED AND FOLLOWED. THE DUE PROCESS CLAUSE OF 14TH AMENDMENT PROHIBITS A STATE FROM DEPRIVING ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS LAW. THERE ARE TWO PARTS OF THIS CLAUSE⁽¹⁾ SUBSTANTIVE DUE PROCESS AND PROCEDURAL DUE PROCESS IT HAS TWO PARTS. FIRST, YOU HAVE TO SHOW LIBERTY INTEREST: (2ND) MUST SHOW I SHOULD HAVE GOTTEN MORE PROCEDURE THAN I RECEIVED. INMATES HAVE A LIBERTY INTEREST WHEN PRISON ACTIONS INTERFERE WITH OR VIOLATE HIS CONSTITUTIONALLY PROTECTED RIGHTS OR RESULTS IN CONDITIONS OF CONFINEMENT THATS MUCH WORSE THAN NORMAL FOR INMATES, OR SUBJECT HIM TO TREATMENT OR CONDITIONS THAT ARE AN ATYPICAL AND SIGNIFICANT HARSHNESS IN RELATION TO THE ORDINARY INCIDENT OF PRISON LIFE, THEN THEY MUST PROVIDE HIM WITH SOME FULL AND FAIR LEVEL OF PROCESS.

ON 11/11/20 THE SCDC'S DISCIPLINARY HEARING OFFICIAL MR. TURNER CONDUCT AND ACTIONS NOT ONLY DENIED THE APPELLANT HIS DUE PROCESS OF LAW BUT HE ALSO WILLFULLY AND INTENTIONALLY VIOLATED SECTIONS 19.2 AND 19.3 AND 16. AND 8.2.2 AND 14 WITHOUT OBSERVING THE

The safeguards of due process in Wolff v. McDonnell, 44 S.Ct. 1963 (1974).
The DHO's refusal to call Appellant's witness denied due process
calling his witness was not unduly hazardous to institutions safety
or correctional goals. Wolff witness was not unnecessary or irrelevant,
witness with personal knowledge of incident in question denies due
process and violates Appellant's liberty interest by violating constitutional
protected right. — A week before the day of the hearing
the Appellant's room mate, MARK Wingo #269107 had given the coun-
sel substitute MR. MCCLARTY a written and verbal statement ad-
mitting he owned the illegal drug and had placed it in my boots
while I was out in the church service for a KIROAS BELLNION.
The D.H.O would not allow the Appellant's witness at the hearing nor would
be allow the written evidence and documentation at the hearing.
The reason the DHO violated rule 8.2.4 and 14.3 relating to Appellant's
witness was because the D-H-O did not want a white inmate take
a guilty charge to help have the charges dismissed on a black inmate.
If Appellant's witness or any evidence is denied by the D-H-O the
official must write his/her reasons for the denial on the SCDC
form 19-69.

Moreover in violation of section 14.7 and 14.3, the D-H-O allowed
an inadmissible witness a DFC-MILLER give detailed and false testi-
mony at hearing. He was allowed to lie about questioning the
Appellant on the day of the incident and that he found the drugs
in Appellant's boots but Policy and rules only allow the search
team officer to search or question any inmate, not DFC MILLER.

The D-H-O was so determined to illegally convict the Appellant he would not allow the Counsel substitute, MR McCarty, assist the Appellant although the complexity of the issue would make it unlikely the Appellant could collect or present the evidence necessary for an adequate comprehension of the case. The Appellant shows the D-H-O has also willfully violated sections 8.1.4, 8.2.4, and 13.2.14.7 and 18.1.3. Fox v. Coughlin, 893 F2d 475 (1990). The Appellant's room mate MARK WINGO 269107 admitted the Counsel substitute and the D-H-O, MR Turner told him they did not want to see a white inmate to come up to charge and help a Black inmate.

UNFAIR PREJUDICE AS USED IN RULE 403 RELEVANCY 1.6 ALLOWING THE EXCLUSION OF EVIDENCE IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE MEANS AN UNDUCE TENDENCY TO SUGGEST DECISION ON AN IMPROPER BASIS. SEE: STATE v. STOKES (SC 2009) 2009 INL 367581; STATE v. DUVENS 552 S.E. 2d 745.

THE APPELLANT'S INTEREST IN DEMONSTRATING HIS INNOCENCE WITH THIS NEW EVIDENCE PROVIDED A LIBERTY INTEREST, AS REQUIRED TO RAISE A DUE PROCESS CHALLENGE TO THE STATES REFUSAL TO GIVE HIM ACCESS TO HIS ROOM MATE WINGO'S WRITTEN STATEMENTS ADMITTING HIS OWNERSHIP OF THE ILLEGAL DRUG.

THE APPELLANT HAS NOT FAILED TO SHOW THE STATE AND RESPONDENTS HAVE VIOLATED CLEARLY ESTABLISHED CONSTITUTIONAL OR STATUTORY RIGHTS. APPELLANT HAD LIBERTY INTEREST VIOLATED WHEN PRISON INTEREST VIOLATED CONSTITUTIONAL PROTECTED RIGHTS.

V.C.

Conclusion

It can be proven the SCDC employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm or a crime involving moral turpitude. This illegal conviction will not only stop and interfere with his eligible to work in the Prison Industry for minimal wages but it also will add to the length of his sentence by stopping and interfering with his parole, it also stopped his being reclassified to a level-2 institute, TIGER RIVER, who have two Prison Industry plants paying minimal wages, but it also resulted in conditions of confinement that are much worse by ordering him to be restricted to cell restriction with sanctions against his visitation privileges and ineligible to be a part of institution programs like JUMP START, AA, Christian Fellowship, KIRBAS SERVICES, etc.

A failure to provide a meaningful explanation of the finding of guilty denies due process. The only evidence at hearing was the false inadmissible testimony of SCDC officer MILLER, no further explanation. Superintendent v. Hill, 105 S. Ct. 2768 (1985).

THE HONORABLE COURT SHOULD VACATE THE ORDER OF DISMISSAL BECAUSE APPELLANT'S CLAIM IS NOT BARRED BY ISSUE PRECLUSION AND BECAUSE GENUINE ISSUES OF MATERIAL FACT APPEAR IN THE RECORD AS TO THE REMAINING APPELLANT

FOR THE GOING REASONS THE COURT SHOULD NOT GRANT RESPONDENT'S ORDER. THE AMOUNT OF INJURY DUE APPELLANT MUST BE DETERMINED AT TRIAL.

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

SIGNED THIS 24th DAY OF JULY 2020

Troy Bliss

CC:
SCDC
OFFICE OF GENERAL COUNSEL
4444 BROAD RIVER RD.
COLUMBIA, SC 29201

TROY BLISS #160726
PERRY CORR-INST.
430 DAKINSON RD.
PELZER, SC 29669