

TROY BURKS #160726,
APPELLANT,

RECEIVED

APR 28 2021

DOCKET NO. 20-ALJ-04-0292-AP
GRIEVANCE NO. PCF:0057-20

SOUTH CAROLINA DEPT. of CORRECTIONS,
RESPONDENT.

S.C. SUPREME COURT 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 MASTODY STATUS HAS BEEN UNJUSTLY RECALCULATED. THERE IS CLEARLY SIGNIFICANT STATE CREATED LIBERTY INTEREST IMPLICATED HERE.

NOW APPELLANT MOVES HONORABLE COURT THAT SCDC AND RESPONDENTS ORDER TO DISMISS WITH PREJUDICE AND CLAIMS FROM THEIR NEW POST LITIGATION PROMULGATION IS OVER REACHING. THE RESPONDENT IS NOT ENTITLED TO ANY DISMISSAL ORDER SIMPLY BECAUSE ALL OF THE STATED DEFENSE ARE IN APPLICABLE IN THIS CASE. THE COURT HAS MISAPPLIED THESE RULES 12(A)(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. Pinnacol Club, (5 Cir. 1971) 451 F.2d 505; HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2nd 659; Conley v. Gibson, 355 U.S. 417, 8 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

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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 PROCEDURES WERE INVOKED IN MY CASE, IT WAS NOT TREATED WITH THE CONSIDERATION THAT WAS CONTEMPLATED EITHER THE STATUTES 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 PROFF 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 TAPERS 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, PARAG 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 implead his APPEAL ON July 9, 2020.

Abuse of discretion occurs when there's NO EVIDENCE to support the Judges 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 frivolity can be made where the STATES 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 inmates 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 OR DEGREE OR SO REMOVED FROM THE ORIGINAL TERM OF CONFINEMENT THAT THEY AMOUNT TO DENIAL OF LIBERTY REGARDLESS OF THE TERM OF STATE LAW.

THIS CASE MUST BE GUIDED BY PRINCIPLES ARTICULATED BY THE SUPREME COURT AND SCDC POLICY OP-22.14 THAT PROHIBIT INMATES FROM BEING DEPRIVED OF PROTECTED PROPERTY RIGHTS AND DEPRIVATION IS CONSTITUTIONALLY IMPROPER. IN ACCORDANCE WITH AGENCY POLICY OP-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 11/21/20 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. 2963 (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. McCARTY 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 DHO would not allow the Appellant's witness at the hearing nor would
he 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 Appellants 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 ~~own 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 WL 367581; STATE V. DWENS 553 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.

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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, KIROAS 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 (1985) 458 U.S. 421.