

The Supreme Court of South Carolina

Stacy W Howard,

Appellant,

v

South Carolina Department of
Corrections,

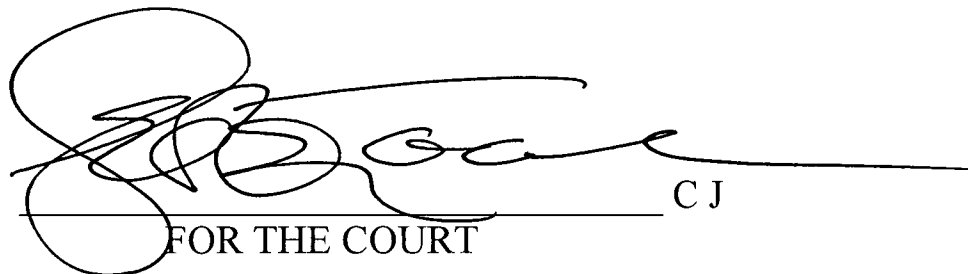
Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2009-AL-04-00122

ORDER

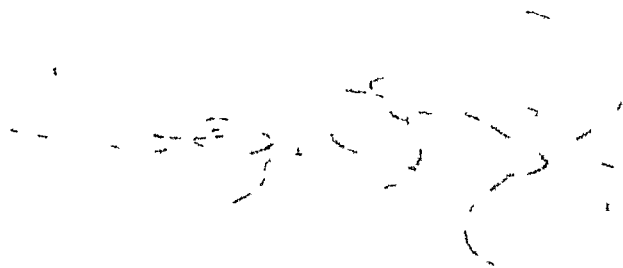
Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court

IT IS SO ORDERED


C J
FOR THE COURT

Columbia, South Carolina

August 29, 2011



cc Stacy W Howard
Christopher D Florian, Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

Stacy W Howard, Appellant,

v

South Carolina Department of
Corrections, Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2009-AL-04-00122

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
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C J
FOR THE COURT

Columbia, South Carolina

August 29, 2011

cc Stacy W Howard
Christopher D Florian, Esquire
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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August 23, 2011

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Christopher D Florian, Esquire
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787

Re Howard, Stacy W v SCDC

Dear Mr Howard and Mr Florian

The Court of Appeals has requested the South Carolina Supreme Court certify the Howard v SCDC appeal. The parties will be notified of what action is taken by the Supreme Court on the certification request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tanya A. Gee". Below the signature, the word "CLERK" is printed in a small, sans-serif font.

CLERK



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIKI ALLEN
DEPUTY CLERK

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March 25, 2010

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009-131247

Dear Mr Howard

Based on the March 19, 2010 letter from the Respondent, they are waiving the requirement that Appellant serve a final brief, accordingly your motion is moot You need to file one copy of your final brief with the court

Please be advised, the Record on Appeal, Appellant's and Respondent's Final Briefs have been received and accepted as filed and will be submitted to the Court for consideration

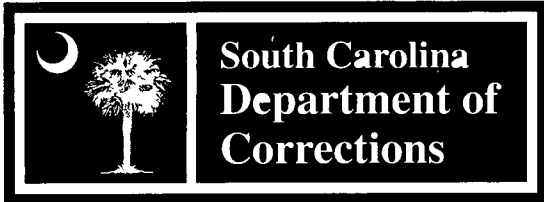
Very truly yours,

V Claike Allen, Deputy Clerk
CLERK

TAG/pd

cc Christopher D Florian, Esquire





MARK SANFORD Governor

JON OZMINT Director

March 19, 2010

Ms Tanya Gee
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29201

RECEIVED
MAR 23 2010
SC Court of Appeals

Re Stacy Howard, # 191458 v SCDC
Case Tracking No 2009131247

Ms Gee,

I am in receipt of appellant's Motion for an Order Compelling Legal Copies dated March 3, 2010 in this matter. In his motion, appellant requests the Court order the Department of Corrections to produce a copy of appellant's final brief so appellant can serve the Final Brief upon SCDC. Please accept this letter in lieu of a formal return.

Pursuant to SCDC policy, SCDC does not provide photocopies of documents entirely created by an inmate since the inmate can reproduce the document by hand. Consequently, appellant's request for a photocopy of his Final Brief was denied by SCDC.

SCDC has already received a copy of appellant's Initial Brief in this matter. Moreover, SCDC is able to review appellant's Final Brief filed with the Court. Therefore, in an effort to resolve this motion, SCDC hereby waives the requirement that appellant serve a copy of his Final Brief. Accordingly, there is no need for SCDC to provide appellant with an additional copy of his final brief.

Please do not hesitate to contact me with any questions. We greatly appreciate your assistance in this matter.

Sincerely,

Christopher D Florian
Attorney for Respondent

cc File

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED

MAR 08 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMIN LAW COURT
THE HON JOHN D MCLEOD, JUDGE

CASE NO 09-ALT-04-00122-11

STACY W HOWARD

APPELLANT,

VS

THE SOUTH CAROLINA DEPT OF CORRECTIONS

PETITIONER

MOTION FOR AN ORDER COMPELLING LEGAL COPIES

THIS HONORABLE COURT GRANTED APPELLANT'S MOTION TO RELAX APPELLATE RULES ON FEBRUARY 12, 2010, AND ADVISED APPELLANT THAT HIS FINAL BRIEF SHOULD BE SERVED AND FILED NO LATER THAN MARCH 4, 2010. SINCE THIS COURT'S ORDER SCDC PRISON OFFICIALS DESTROYED APPELLANT'S TYPEWRITER, WHICH HAD PRINTING FEATURES, ON JANUARY 29, 2010. (SEE FEBRUARY 16, 2010 MOTION FOR INJUNCTIVE RELIEF IN HOWARD V OZMINT, ET AL, 608-CV-03171-GRA-WMC) ALSO, PRISON OFFICIALS VERNON TUCKER AND ROBERT PEELE REFUSE TO MAKE ANY LEGAL COPIES FOR APPELLANT WITHOUT A COURT ORDER (SEE FEBRUARY 8, 2010 INMATE REQUEST)

APPELLANT CANNOT TYPE THE FINAL BRIEF AND PRODUCE COPIES FOR FILING BECAUSE PRISON OFFICIALS TORE THE CARTRIDGE DECK OUT OF HIS TYPEWRITER. MOREOVER, PRISON OFFICIALS REFUSE TO MAKE ANY LEGAL COPIES FOR APPELLANT, AND HAND DRAFTING NUMEROUS PAGES IS DRACONIAN. SEE JOHNSON V PARKE, 642 F.2d 377, 380 (1981). THEREFORE, APPELLANT

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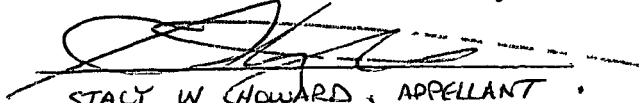
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ONLY HAS THE MEANS TO PROVIDE ONE (1) COPY FOR FILING WITH THIS COURT IF THIS COURT REQUIRES SERVICE OF THE FINAL BRIEF ON RESPONDENT, APPELLANT ASKS FOR AN ORDER REQUIRING RESPONDENT TO MAKE A COPY OF SAME SO THAT APPELLANT CAN EFFECT SERVICE,

WHEREFORE, APPELLANT ASKS THIS COURT TO COMPEL RESPONDENT TO MAKE ONE (1) COPY OF THE FINAL BRIEF FOR SERVICE, IF IT IS REQUIRED, SO THAT APPELLANT'S ACCESS TO THIS COURT IS NOT PURPOSELY FRUSTRATED BY RESPONDENT

MARCH 3, 2010
KERSHAW, SOUTH CAROLINA

RESPECTFULLY SUBMITTED,



STACY W. HOWARD, APPELLANT

KERSHAW CORR. INST

4848 GOLDMINE HIGHWAY

KERSHAW, SC 29067

CERTIFICATE OF SERVICE

I, STACY W. HOWARD, HAVE SERVED RESPONDENT WITH NOTICE OF MOTION FOR AN ORDER COMPELLING LEGAL COPIES BY PLACING A COPY OF SAME IN THE SCDJ AGENCY MAIL SYSTEM, PROPERLY ADDRESSED TO,

CHRISTOPHER D. FLOZAN
SCDC
4444 BROAD RIVER ROAD
COLUMBIA, SC 29221

The Hon Tanya A. Lee, Clerk
SC Court of Appeals
1015 Hunter Street
Columbia, SC 29201

March 3, 2010

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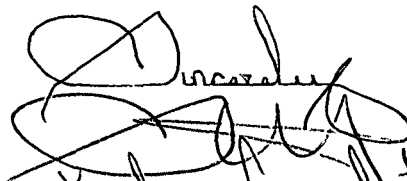
MAR 08 2010

SC Court of Appeals

RE: Howard v SCDC
2009-131247

Dear the Hon.,

Enclosed please find Appellant's Final
Brief and Motion for an Order Compelling Legal
Copies

Enclosed

Kershaw, SC
4848 Aldenine Hwy
Kershaw, SC 29067

10. 10. 1951 12.1

11. 10. 1951 12.1

—



The South Carolina Court of Appeals

TANYA A. CLE
CLERK

CLAIRE ALLEN
DEPUTY CLERK

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February 12, 2010

Stacy W. Howard
Kershaw Correctional Institute
4848 Goldmine Highway
Kershaw, SC 29067

Re: Howard, Stacy W. v. SCDC
Case Tracking Number 2009-131247

Dear Ms. Howard:

The following Order has been endorsed on your Motion to Relax Appellate Rules in the above entitled case on appeal:

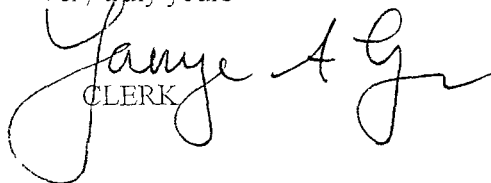
"GRANTED. Appellant may file one copy and serve one copy of the Record on Appeal and Final Briefs.

s/ John Cannon Few C.J.

February 12, 2010

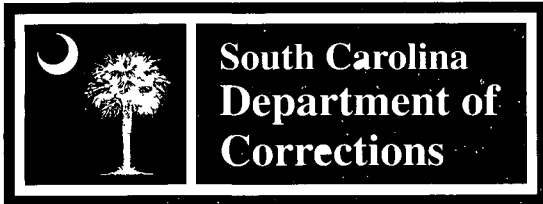
Please be advised Appellant's Final Briefs should be served and filed no later than March 04, 2010. Upon receipt of the Appellant's Final Briefs, this case will be submitted to the Court for consideration.

Very truly yours,


CLERK

TAG/pd

cc: Christopher D. Florian, Esquire



MARK SANFORD Governor
JON OZMINT Director

February 9, 2010

RECEIVED
FEB 10 2010
SC Court of Appeals

Ms Jeanette F Barber
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29201

Re Stacy Howard, # 191458 v SCDC
Case Tracking No 2009131247

Ms Barber,

Please find enclosed an original and fifteen copies of the following

- Respondent's Final Brief

Please stamp the extra copy "filed" and return it in the enclosed self-addressed stamped envelope Please do not hesitate to contact me with any questions We greatly appreciate your assistance in this matter

Sincerely,

Christopher D Florian
Attorney for Respondent

896 8508

cc File

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ADMIN. LAW COURT

CASE NO. 09-ALJ-04-00122-IJ

RECEIVED
JAN 28 2010
SC Court of Appeals

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

MOTION TO RELAX APPELLATE RULES

Appellant has served and filed a Reply Brief in reply to Respondent's Initial Brief and one (1) original and one (1) copy of the Record on Appeal. Due to Appellant's incarceration, and with consideration of the time it will take for a prison official to make the required copies, Appellant respectfully asks for this Honorable Court to relax the Appellate Court Rule 210 (a) at this point and upon filing of the Final Brief to relax the copy requirement of Rule 210 (b).

January 22, 2010

Kershaw, South Carolina

GRANTED. Appellant may file one copy and serve one copy of the Record on Appeal and Final Briefs.

Respectfully submitted,



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

FILED

2/2/10 

RECEIVED
JAN 28 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ADMIN. LAW COURT

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

CERTIFICATE OF MAILING

The undersigned hereby certifies that he has served Respondent with a copy of Motion to Relax Appellate Court Rules by placing same in the United States Postal Mail on January 22, 2010, with postage, properly addressed to:

Christopher D. Florian, Atty.

S.C. Dept. of Corrections

Post Office Box 21787

Columbia, SC 29221

January 22, 2010

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

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The Hon. Jeanette F. Barber, Clerk

January 22, 2010

South Carolina Court of Appeals

1015 Sumter Street

Columbia, SC 29201

RECEIVED

JAN 28 2010

SC Court of Appeals

RE: Howard v. SCDC

09-ALJ-04-00122-IJ

2009131247

Dear Ms. Barber,

Enclosed please find Appellant's reply to Initial Brief of Respondent, Record on Appeal, and Motion to Relax Appellate Rules with required Certificates for filing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stacy W. Howard', with a large, stylized initial 'S'.

Stacy W. Howard

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Clerk's Office

Dated 12-30-08

Admin Law Court

1205 Pendleton St , Suite 224

Columbia, S C 29201

RE Howard v SCDC

Dear Recipient,

Enclosed please find a copy of my records for this appeal This record is submitted pursuant to Rule 58, ALC The SCDC has a copy on file in the Kershaw Correctional Institution

Thank you for your time

Best Wishes,


Stacy W. Howard

Kershaw Corr Inst

4848 Goldmine Hwy

Kershaw, S C 29067

RECEIVED
JAN 28 2010
SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ADMIN. LAW COURT

RECEIVED
JAN 28 2010
SC Court of Appeals

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

VS

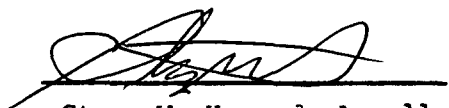
South Carolina Dept. of Corrections.....Respondent.

AFFIDAVIT OF SERVICE

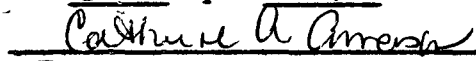
I, Stacy W. Howard, have served Respondent with Appellant's Brief in Reply to the Brief of Respondent and Record on Appeal on January 22, 2010, by placing a copy of same in the United States Postal Mail, with postage, properly addressed to.

Christopher D. Florian
S.C. Dept. of Corr.
Post Office Box 21787
Columbia, SC 29221

January 22, 2010
Kershaw, South Carolina


Stacy W. Howard, Appellant
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Sworn to and subscribed before me
this 22nd day of Jan, 2010


Notary Public for South Carolina

My commission expires. _____

My Commission Expires December 22, 2018

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JAN 28 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ADMIN. LAW COURT

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

APPELLANT'S REPLY TO INITIAL BRIEF OF RESPONDENT

January 22, 2010

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Other Counsel of Record

Christopher D. Florian, Atty.

S.C. Dept. of Corrections

Post Office Box 21787

Columbia, SC 29221-1787

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



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1

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RULE

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1971-72

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REPLY

The Respondent has argued in its Initial Brief that the issues raised in Appellant's Initial Brief before this Honorable Court were not addressed by the May 21, 2009 ALC order and that this Court should not consider those issues. Upon review of Appellant's April 10, 2009 Brief to the ALC, this Court will find that Appellant has raised the issues presented to this Court in the ALC. First, this Court will find that the first issue that Appellant raised in the ALC is the inadequacy of the K.C.I. and SCDC law libraries.(R.p.37). Argument one (1) in said brief sets out that Appellant has a liberty interest in his appeal to the ALC.(R.p.38-39). Argument two (2) sets out that the administrative findings and conclusions are in violation of constitutional provisions and are arbitrary, capricious, and characterized by an abuse of discretion and/or clearly unwarranted exercise of discretion.(R.p.40-41). Argument three (3) sets out that section 1-23-600 (D) is being construed to such an extent that an iron curtain is drawn between Appellant and the Court. (R.p.41-42). For this reason, Appellant has properly raised due process and equal protection violation and that section 1-23-600 (D) is unconstitutional to the ALC, and these issues should be reviewed.

The reason why Appellant's issues have not been ruled upon is because it is a general routine that orders regarding inmate's litigation exclude issues that are viable to prevent review. The Special Appeal rules for the ALC does not afford Appellant with an opportunity to submit a Motion for Reconsideration when an issue has not been ruled upon. Therefore, if the ALC chooses not to rule on issues that are capable of reaching review, there is no way to obtain a ruling. Rule 65, ALC reads as follows:

The Administrative Law Judge shall render a decision in a written order which shall be served on all parties and filed with the clerk of the Division. The decision of the Administrative Law Judge is a final decision and "motions for reconsideration" will not be considered. Judicial review of any decision of the Division shall be as provided in S.C. Code Ann. 1-23-610 (1976).

The above stated rule on its face evinces that, if an ALC order does not contain a ruling on the issues that are raised by Appellant, there is no way of obtaining a ruling where said rule prevents a motion for reconsideration. Therefore, Appellant is now being prevented from appellate review on his issues because of said rule and the order, which excluded his issues, and this is a deprivation of Appellant's constitutional right to due process where he is being denied a meaningful opportunity to be heard, a fair and impartial tribunal, and judicial review of his issues.

Procedural due process contemplates notice, a reasonable opportunity to be heard, and a fair hearing before a legally constituted impartial tribunal. Blanton v. Stathos, 570 S.E.2d 565 (2002). Due process also requires judicial review. Universal Benefits, Inc. v. McKinney, 561 S.E.2d 659 (2002). At this juncture, there is no way to obtain a ruling from the ALC unless this Court remands this case back for a ruling on Appellant's issues that were raised, because the ALC order excluded Appellant's issues, and Rule 65, ALC prohibits motions for reconsideration. See Arnal v. Fraasier, 641 S.E.2d 419 (2007)(A party can always seek a remand from an appellate court if the circumstances

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of the particular case requires it).

Respondent argues next that Appellant's argument regarding the unconstitutionality of S.C. Code section 1-23-600 (D) may not be preserved. Appellant has standing to challenge the statute where it not only infringes upon his right to due process and equal protection of the law, but it also prejudices him in that it causes Appellant significant hardship where he can be carted into a disciplinary hearing by prison officials and erroneously sanctioned repeatedly with the failure to earn good-time without judicial review. See Kirk v. Douglas, 3 S.E.2d 536 (1939). This obviously would deny Appellant access to the courts and redress of his grievances, as shown by this case. A denial of constitutionally protected rights demands judicial protection. Reginald v. Sims, 377 U.S. 533, 84 S.Ct 1362 (1964).

Respondent argues further that section 1-23-600 (D) withstands analysis under the due process and equal protection clause. The statute denies Appellant due process in that he is being denied access to the courts and judicial review of an erroneous disciplinary conviction and extension of his maxout date. Moreover, the statute denies Appellant equal protection of the law where it mandates selective treatment of a class of inmates under the same situation and circumstances to be treated differently where some inmates are allowed review of their disciplinary convictions and others are not, and there is no reasonable basis for doing so. Respondent has stated in its brief that there is a reasonable basis, but it has not explained how the enforcement of the statute and selective classification rests on some reasonable basis. It is Respondent's duty to come forward with a reasonable explanation where the burden has now shifted on Respondent to demonstrate how the statute is constitutional. See State v. White, 560 S.E.2d 420 (2002).

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Due process requires 1) adequate notice, 2) adequate opportunity for a hearing, 3) the right to introduce evidence, 4) the right to confront and cross-examine witnesses, 5) a fair hearing before a legally constituted impartial tribunal, and 6) judicial review. S.C. Dept. of Labor Licensing and Regulation v. Girgis, 503 S.E.2d 490 (1998), Clear Channel Outdoor v. City of Myrtle Beach, 642 S.E.2d 565 (2007), In re Vora, 582 S.E.2d 413 (2003) and Brown v. Malloy, 546 S.E.2d 195 (2001).

Equal protection clause commands that no state shall deny to any person within its jurisdiction the equal protection of the law. The concept of the equal protection clause has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct 1362 (1964). It is essentially a direction that all persons similarly situated should be treated alike. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 87 L.Ed.2d 313, 105 S.Ct. 3279 (1985).

Lastly, Appellant concedes that since the ALC was created by the legislature that it retains power to dictate the ALC's jurisdiction. However, although the legislature may delegate its authority to create rules and regulations to carry out a law, the legislature may not delegate its power to make the law. See Joytime Distrib. v. State, 528 S.E.2d 647 (1999). Moreover, the legislature is not allowed to make a law that abridges fundamental rights and runs afoul of the state and federal constitution. Therefore, section 1-23-600 (D) should be reviewed by this Honorable Court, as well as all of his appeal arguments that have been raised.

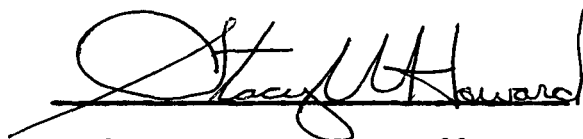
CONCLUSION

Appellant agrees with Respondent that the majority of the inmate population exhibits a devil may care attitude with regard to prison rules and the law, and that most prisoners should have been hung from a limb in the courtroom before the judge, however, this is an issue in which Appellant has been erroneously convicted in a disciplinary hearing and his sentence has been extended as a result. Therefore, Appellant is without option other than to argue his cause.

January 22, 2010

Kershaw, South Carolina

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stacy W. Howard". The signature is written in a cursive, flowing style with a large initial 'S' and 'H'.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

ИЗДАНИЕ



The South Carolina Court of Appeals

JEANETTE J. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 21, 2010

Stacy W. Howard
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Re: Howard, Stacy W. v. SCDC
Case Tracking Number 2009-131247

Dear Ms. Howard:

Enclosed is an Order for your Motion for Enlargement of Time to File Reply.

Herewith enclosed are two motions pertaining to other cases not filed with this Court.

Very truly yours,

V. Claire Allen, Deputy
CLERK

IFB/pd

cc: Christopher D. Florian, Esquire

The South Carolina Court of Appeals

Stacy W Howard,

Appellant,

v

South Carolina Department of
Corrections,

Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2009-AL-04-00122

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Reply Brief and Designation of Matter in the above entitled matter is hereby extended until February 04, 2010

IT IS SO ORDERED

THOMAS E HUFF, ACTING CHIEF JUDGE

For the Court

BY V. Claire Allen, Deputy Clerk
CLERK

Columbia, South Carolina

1/21/2010

cc Stacy W Howard
Christopher D Florian, Esquire

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 21 2010

SC Court of Appeals

CASE NO 09-ALJ-04-00122-IJ

Stacy W Howard

Appellant,

vs

South Carolina Dept of Corrections

Respondent

MOTION FOR ENLARGEMENT OF TIME TO FILE A REPLY

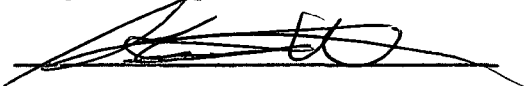
The Respondent filed its Initial Brief on January 13, 2010 Appellant moves this Honorable Court for an Enlargement of Time beyond the ten (10) days provided by Rule 208 (a)(3) based upon three (3) grounds First, Appellant is being transported to Georgetown County for a remand hearing in State v. Howard, 384 S C 212, 683 S E 2d 42 (2009) on January 19, 2010 Secondly, Appellant has a deadline in Howard v Ozmint, et al, 6 08-cv-031/1-GRA-WMC Thirdly, Appellant has a deadline in Howard v Cecelia Reynolds, 6 09-cv-02088-PBn-WMC

Based upon the foregoing, Appellant asks for this Court to enlarge the ten (10) days provided by Rule 208 (a)(3) to a time this Court deems just under Rule 263 (b) for Appellant to file his Reply

January 18, 2010

Kershaw, South Carolina

Respectfully submitted,


Stacy W Howard, Appellant
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

AIRB/Dom
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 15 2010

APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

COMES NOW, respondent, South Carolina Department of Corrections, and proposes the following be included in the Record on Appeal

- (1) Incident Report of Mr Vernon Tucker dated June 24, 2008 regarding appellant
- (2) Disciplinary Report and Hearing Record for appellant's case number 30
- (3) Step One Inmate Grievance Form for Grievance Number KRCI 0892-08
- (4) Step Two Inmate Grievance Form for Grievance Number KRCI 0892-08
- (5) Appellant's Notice of Appeal in the Administrative Law Court for KRCI 0892-08
- (6) May 21, 2009 Order of Dismissal by Administrative Law Judge John D McLeod

I certify that this designation contains no matter that is irrelevant to this appeal

Dated January 13, 2010

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Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
(803) 896-8508

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 15 2010

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's
Designation of Matter by depositing a copy of same in the United States Mail, postage
prepaid, on January 13, 2010, addressed to the Appellant as follows

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067


Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
Attorney for Respondent

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JAN 15 2010
SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, on January 13, 2010, addressed to the Appellant as follows

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
Attorney for Respondent



MARK SANFORD Governor
JON OZMINT Director

January 13, 2010

Ms Jeanette F Barber
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29201

RECEIVED
JAN 15 2010
SC Court of Appeals

Re Stacy Howard, # 191458 v SCDC
Case Tracking No 2009131247

Ms Barber,

Please find enclosed an original and a copy of each of the following

- Respondent's Initial Brief
- Respondent's Designation of Matter

Please stamp the extra copy of each "filed" and return the copies in the enclosed self-addressed stamped enveloped Please do not hesitate to contact me with any questions We greatly appreciate your assistance in this matter

Sincerely,

Christopher D Florian
Attorney for Respondent

cc File

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JAN 15 2010
SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

INITIAL BRIEF OF RESPONDENT

January 13, 2010

South Carolina Department of Corrections

Christopher D Florian
Staff Attorney
S C Dept of Corrections
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Columbia, South Carolina 29221
(803) 896-8508

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STATEMENT OF THE ISSUES ON APPEAL

- I DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS
THE APPEAL OF APPELLANT'S DISCIPLINARY CONVICTION?**

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Stacy Howard ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC") Appellant was convicted of unauthorized services / piddling, offense number 845 under SCDC Policy OP-22 14, Inmate Disciplinary System following a disciplinary hearing (R p ____) Appellant lost no good time due to the disciplinary conviction (R p ____) Appellant filed a Step One Grievance on July 21, 2008, challenging his conviction His grievance was investigated and denied (R p ____) Appellant filed a Step Two Grievance on September 29, 2008 This grievance was also investigated and denied Appellant received the final agency determination on November 14, 2008 (R p ____)

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S C 354, 527 S E 2d 742 (2000), claiming his convictions should be overturned because of due process violations (R p ____) By way of an order dated May 21, 2009 the ALC summarily dismissed the appeal, ruling that SCDC's actions did not implicate a state-created liberty interest (R p ____)

Appellant now seeks review of the ALC's decision He argues his convictions were obtained in violation of due process For the reasons that follow, SCDC respectfully requests that the ALC's decision in be affirmed

STANDARD OF REVIEW

S C Code Ann § 1-23-610(B) provides the applicable standard of review

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings, or it may *reverse* or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is

- (a) in violation of constitutional or statutory provisions,
- (b) in excess of the statutory authority of the agency,
- (c) made upon unlawful procedure,
- (d) affected by other error of law,
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

(Emphasis added), see also S C Code Ann § 1-23-380(5), Lake v Reeder Constr Co., 330 S C 242, 498 S E 2d 650, 653 (Ct App 1998)

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S C Code Ann § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC

reached DuRant v S C Dep't of Health & Environmental Control, 361 S C 416, 420, 604 S E 2d 704, 706 (Ct App 2004) The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence Id

ARGUMENT AND CITATION OF AUTHORITY

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE APPEAL OF APPELLANT'S DISCIPLINARY CONVICTION

The ALC's jurisdiction to hear inmate appeals from SCDC's final agency decisions is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v State, 338 S C 354, 527 S E 2d 742 (2000) Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v S C Dep't of Corrections, 355 S C 437, 586 S E 2d 124 (2003) In Sullivan, the Supreme Court held that the ALC's jurisdiction was limited to cases in which inmates contend that prison officials have erroneously calculated their sentences, sentence-related credits, or custody status, cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings, or cases in which inmates' confinement implicates a state-created liberty interest Id at 443, 586 S E 2d at 127

In 2007, the South Carolina Supreme Court expanded the scope of the state-created liberty interest in Furtick v S C Dept of Corrections, 374 S C 334, 649 S E 2d 35 (2007) In Furtick, the Court held that following an SCDC disciplinary conviction, an inmate's failure to earn good time for a given month, even in the absence of the loss of previously earned good-time credits, implicated a state-created liberty interest Id at 340,

649 S E 2d at 38 As a result, inmates who were eligible to earn good time generally appealed to the ALC disciplinary convictions that caused them to fail to earn good time credits for a given month, even though no previously earned good time was taken from them as a result of the SCDC disciplinary conviction This expanded the caseload of the ALC, as well as the caseload of this Honorable Court

However, due to a recent amendment to S C Code Ann § 1-23-600, the ALC may no longer hear appeals pursuant to Furtick The amended statute provides

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)

S C Code Ann § 1-23-600(D)

Pursuant to the recently amended version of § 1-23-600, the ALC may not hear appeals in which an inmate was convicted of an SCDC disciplinary offense for which SCDC took no previously accrued good time away from the inmate, but the inmate failed to earn good time or other sentence related credits for the month of their disciplinary infraction In the case at bar, appellant did not lose any previously accrued statutory good-time as a result of his SCDC disciplinary conviction (R ____) However, appellant failed to earn statutorily created good time for the month of the disciplinary infraction¹ Therefore, when appellant sought to appeal his disciplinary conviction, Administrative

¹ Pursuant to S C Code Ann § 24-13-210(A) certain inmates, including the Appellant, earn twenty days of good-time for each month they are free from SCDC disciplinary violations

Law Judge John D McLeod dismissed appellant's case, citing the amended version of S C Code Ann § 1-23-600 (R ____)

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature See Hodges v Rainey, 341 S C 79, 85, 533 S E 2d 578, 581 (2000) All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute See Broadhurst v City of Myrtle Beach Election Comm'n, 342 S C 373, 380, 537 S E 2d 543, 546 (2000)

The language of newly amended § 1-23-600, as well as the timing of the introduction of the amendment indicate a clear legislative intent for the ALC to no longer hear these appeals The bill containing this amendment was presented to the legislature in the 2007-2008 session, within months of the Supreme Court's decision in Furtick The title of the newly passed amendment indicates that it is an amendment of the state Administrative Procedures Act, "so as to conform the procedures to other procedural provisions regarding the court and to prohibit the hearing of certain inmate appeals by the court " See S C Code Ann § 1-23-600, H B 3575, Rat # 0413 (emphasis added) Therefore, it is apparent the legislature intended to remove a category of inmate appeals from cases to be heard by the ALC

Because the amended statute specifies appeals involving the loss of the opportunity to earn good-time credits, it is unmistakable the legislature intended to exclude from the ALC's jurisdiction cases that would have been heard pursuant to Furtick A literal reading of the amendment could remove all inmate disciplinary appeals

from the ALC's jurisdiction because all major disciplinary appeals are appeals "involving" the failure to earn good-time credits, even if the case also involve the loss of previously earned good-time credits

However, SCDC submits that this reading would preclude the ALC from hearing inmate appeals involving any disciplinary conviction in which an inmate lost previously earned good-time credits. This result is likely too absurd to have been intended by the legislature. It follows that such a literal reading would not be permissible under the rules of construction. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.")

In addition, SCDC's reading of the statute comports with the legislative intent underlying South Carolina's statutory law concerning good-time credits, S.C. Code Ann. § 24-13-210 and S.C. Code Ann. § 24-13-230. Chief Justice Toal, in her dissenting opinion in Furtick, stated that the majority's decision ignored the legislature's intent to reward inmates with good-time credits only after they exhibit good behavior. Furtick, 374 S.C. at 343, 649 S.E.2d at 40 (Toal, C.J., dissenting).

Acknowledging that this is a dissenting opinion, SCDC nevertheless agrees with Chief Justice Toal's interpretation of legislative intent as to the purpose of the statutorily created good time credits. Rewarding inmates for good behavior is a fundamental tool used by SCDC to control inmate populations. It enables SCDC to function efficiently with fewer resources than would be required with an unruly population of inmates.

exhibiting a devil may care attitude with regard to prison rules

Furthermore, in Chief Justice Toal's dissent in Furtick, she referred to the court's "long-standing 'hands-off' approach to judicial supervision of internal prison disciplinary matters which do not amount to a violation of constitutional dimensions " Id at 341, 649 S E 2d at 39 (Toal, C J , dissenting) Clearly, the amendment to S C Code Ann § 1-23-600 is consistent with this long-standing approach to internal prison disciplinary matters

In the instant case, Appellant argues his disciplinary conviction should be overturned However, Appellant lost no good time due to this conviction, instead he did not earn good time for the month of the infraction and earned reduced his work credits for that month and subsequent months (R p _____) As shown throughout this brief, the legislature intended to prohibit the ALC from hearing cases such as this one In doing so, the legislature has prevented the squandering the limited judicial resources of the state of South Carolina Therefore, pursuant to the newly amended S C Code Ann § 1-23-600, the ALC correctly dismissed this appeal

As to the remaining issues raised in appellant's brief that were not addressed by the ALC's order, this Court should not consider these issues It is a well-settled principle of South Carolina law that, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal Brown v S C Dep't of Health & Environmental Control, 348 S C 507, 560 S E 2d 410 (2002) ("[I]ssues not raised to and ruled upon by the ALJ are not preserved for appellate consideration ") An issue may not be raised for the first time on appeal, but must have been properly preserved for appellate review See

State v. Walker, 366 S C 643, 623 S E 2d 122 (Ct App 2005), State v. Carlson, 363 S C 586, 611 S E 2d 283 (Ct App 2005)

Assuming, without conceding, that appellant's argument about the constitutionality of amended S C Code Ann § 1-23-600 is preserved for review, on the merits, the statute is constitutional. Specifically, § 1-23-600 withstands analysis under the equal protection clause because the legislature had a rational basis for treating inmate appeals involving only the loss of the opportunity to earn good time differently from other appeals in order to conserve scarce judicial resources. See In re Lasure, 379 S C 144, 666 S E 2d 228 (2008) ("A statute is presumed constitutional and will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt"), In re Luckabaugh, 351 S C 122, 568 S E 2d 338 (2002) (explaining a statute that does not implicate a suspect class will be upheld against an equal protection challenge if the classification bears a reasonable relation to the legislative purpose sought to be effected, the members of the class are treated alike under similar circumstances and conditions, and the classification rests on some reasonable basis). Similarly, § 1-23-600 does not contravene the due process clause since it simply removes a class of cases from the ALC's jurisdiction. Dove v. Gold Kist, Inc., 314 S C 235, 238-39, 442 S E 2d 598, 600 (1994) (explaining subject matter jurisdiction refers to the a court's "power to hear and determine cases of the general class to which the proceedings in question belong"), S C Code Ann § 1-23-500 (providing for the creation of the ALC). Because the ALC was created by the legislature, the legislature retains the power to dictate the ALC's jurisdiction.

Therefore, because the ALC correctly dismissed appellant's appeal of his disciplinary conviction pursuant to S C Code Ann § 1-23-600(D), SCDC respectfully requests that this Court affirm the ALC's decision

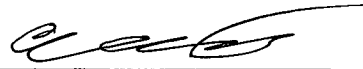
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the ALC's decision in this case. Moreover, pursuant to Rule 220(b) SCACR, Respondent requests that this Honorable Court affirm the Respondent's decision based on any ground(s) appearing in the Record on Appeal²

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221
(803) 896-8508

Columbia, SC
January 13, 2010

² Respondent reserves the right to request all available remedies pursuant to S C Code Ann § 24-27-200 (2006), as well as Rule 240, SCACR, to be assessed against the Appellant for the filing of this frivolous appeal

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JAN 07 2010
SC Court of Appeals

APPEAL FROM THE ADMIN. LAW COURT
THE HON. JOHN D. McLEOD, JUDGE

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept of Corrections.....Respondent.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal.

1. May 21, 2009 Order of Admin. Law Judge;
2. June 24, 2008 Incident Report;
3. June 24, 2008 Memorandum/Suspension of Library Services,
4. June 25, 2008 Informal Resolution form (Refused),
5. July 9, 2008 Disciplinary Report and Hearing Record;
6. Note of Johnson v. Avery presented in hearing;
7. KRCI-0892-08 Step 1 Grievance,
8. KRCI-0892-08 Step 2 Grievance,
9. June 30, 2008 letter to DHO;
10. June 30, 2008 letter to Counsel Substitute;
11. June 30, 2008 letter to Vernon Tucker,

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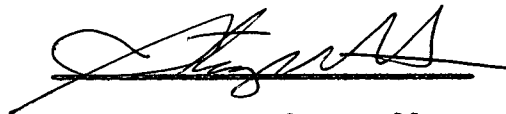
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12. December 29, 2008 Inmate Request to Staff Member;
13. April 6, 2009 Respondent's Brief and Motion to Dismiss;
14. April 10, 2009 Appellant's Brief in Opposition to Respondent's Brief and Motion to Dismiss.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 31, 2009

Kershaw, South Carolina

A handwritten signature in black ink, appearing to read 'Stacy W. Howard', is written over a horizontal line.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

[illegible][illegible]

Christopher D. Florian
S.C. Dept. of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

December 31, 2009

RE Howard v. SCDC
09-ALJ-04-00122-IJ

Dear Mr. Florian,

I am in receipt of your Entry of Appearance as Counsel. Please find Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal.

This letter is also a request for a printout for computer data that is stored in the Offender Management System that reflects any and all data entries, modifications, deletions, etc. regarding the structure of my current sentences. This information is required for this appeal, and it is requested in accordance with SCDC policy OP-21.09 § 7.3.6.

In addition to the information that is sought, I would also like to purchase a copy of the disciplinary hearing transcript, which should be no more than ten (10) pages. Please write and advise me what the cost will be to obtain a printout of the structure of my sentence and a copy of the disciplinary hearing transcript and tape of the hearing.

I wish you the best in your future endeavors.

Sincerely,



Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

The Hon. Jeanette F. Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29067

December 31, 2009

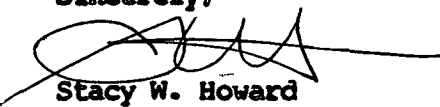
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JAN 07 2010
SC Court of Appeals

RE: Howard v. SCDC
09-ALJ-04-00122-IJ
2009131247

Dear Ms. Barber,

Enclosed please find Appellant's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Affidavit of Service for filing.

Sincerely,



Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

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JAN 07 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMIN. LAW COURT
THE HON. JOHN D. McLEOD, JUDGE

CASE NO. 09-ALJ-04-00122-LJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

INITIAL BRIEF OF APPELLANT

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Other Counsel of Record

Christopher D. Florian

S.C. Dept. of Corrections

Post Office Box 21787-1787

Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE ALC ERRED BY FINDING THAT APPELLANT'S GRIEVANCE AND APPEAL TO THE ALC DID NOT IMPLICATE A STATE CREATED LIBERTY INTERST?

2. WHETHER THE LEGISLATIVE ENACTMENT OF SECTION 1-23-600 (D) THAT AN ADMINISTRATIVE LAW JUDGE SHALL NOT HEAR AN APPEAL FROM AN INMATE IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS INVOLVING THE LOSS OF THE OPPORTUNITY TO EARN SENTENCE RELATED CREDITS PURSUANT TO SECTIONS 24-13-210 (A) AND 24-13-230 (A) IS UNCONSTITUTIONAL?

3. WHETHER THE DISCIPLINARY HEARING OFFICER (DHO) ERRED IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTION AND JOHNSON V. AVERY BY ENFORCING A POLICY RULE THAT PROHIBITS INMATE ASSISTANCE TO AN ILLITERATE INMATE EVEN WHEN NO LEGAL ASSISTANCE PROGRAM FOR ILLITERATE INMATES IS AVAILABLE, AND BY FINDING APPELLANT GUILTY OF A RULES INFRACTION FOR HELPING AN ILLITERATE INMATE FILL OUT A "PRESCRIBED" PCR APPLICATION AND BY FAILING TO OBSERVE MINIMAL DUE PROCESS STANDARDS?

4. WHETHER THE SCDC HAS PROVIDED AN AVAILABLE ALTERNATIVE TO ASSISTANCE PROVIDED BY INMATES AND IS SCDC LAW LIBRARIES CONSTITUTIONALLY ADEQUATE TO

JUSTIFY PUNISHING APPELLANT FOR HELPING AN ILLITERATE INMATE FILL OUT A "PRESCRIBED" PCR APPLICATION?

5. IF APPELLANT IS PREVENTED FROM OBTAINING ALC AND PCR REVIEW OF THE DISCIPLINARY CONVICTION PURSUANT TO SECTION 1-23-600 (D) AND AL-SHABAZZ V. STATE, THEN WHAT IS THE APPROPRIATE AVENUE FOR SEEKING REVIEW OF THE DISCIPLINARY CONVICTION IN ORDER TO DETERMINE WHETHER IT COMPORTS WITH MINIMAL DUE PROCESS STANDARDS?

STATEMENT OF THE CASE

This Appeal is from a May 21, 2009 ALC Order which originated from an institutional disciplinary conviction that was obtained on July 9, 2008. Appellant's July 21, 2008 step 1 and September 29, 2008 step 2 grievances indicate his reasons for appealing the SCDC's decision to the ALC. These grievances are the gist of Appellant's appeal to the ALC and his April 10, 2009 brief, which is the subject of this appeal.

FACTS

On June 24, 2008 Appellant was charged with an 845 SCDC policy OP-22.14 offense for Unauthorized Services/Piddling Handicrafts for helping an illiterate inmate, who had no other alternative, fill out a prescribed PCR application. In doing this, Appellant relied upon a United States Supreme Court decision in Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969). Based upon this decision, Appellant should not have been charged, convicted, and

punished for helping an illiterate inmate fill out a "prescribed" PCR application, where no legal assistance program or an alternative source exists within the South Carolina Department of Corrections.

In Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969) the United States Supreme Court found that a state prison regulation barring inmates from assisting other prisoners in preparation of petitions for post-conviction relief was invalid as in conflict with federal right of Habeas Corpus, despite state's claim that requirement was necessary to maintain prison discipline, where state did not provide available alternative to assistance provided by other inmates.

ARGUMENTS

1. THE ALC ERRED BY FINDING THAT APPELLANT'S GRIEVANCE AND APPEAL TO THE ALC DID NOT IMPLICATE A STATE CREATED LIBERTY INTEREST.

Appellant has a liberty interest in his grievance and appeal to the ALC. Upon Appellant's immurement to the SCDC on March 1, 2007, prison officials advanced him good-time and reduced his sentence of 20 years and 6 months to 12 years, 4 months, and 12 days in accordance with S.C. Code Ann. section 24-13-210 (A) and SCDC policy OP-21.09.

The SCDC computes goodtime from the date of arrest. On December 11, 2006 Appellant was arrested for an alleged ABHAN and was held in state custody up to his immurement to the SCDC. At that time prison officials deducted Appellant's good-time from the aforesaid sentence by computing it from the date of his arrest, which is Appellant's sentence start date. From this,

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Appellant was given a projected sentence maxout date of May 12, 2019, which is 12 years, 4 months, and 12 days.

Appellant was transferred from the Kirkland Correctional Institution Reception and Evaluation Center on May 8, 2007. At that time Appellant was given a job/school assignment and a CRT entry of employment was made on June 13, 2007, and Appellant began earning (EWC) earned work credits in accordance with section 24-13-230 (A), SCDC policy OP-21.07, and OP-21.09 at the rate of .3571482 credit per day, 10.7142 days per month, and 128.5704 days per year or 10.864285 days per month and 130.37142 days per year, which is consistent with S.C. Code Ann. section 24-13-175. After the advancement of EWC/EEC, Appellant was given a new projected maxout date of March 28, 2017, which is 10 years, 2 months, and 28 days.

The July 9, 2008 845 conviction for Unauthorized Services/Piddling Handicrafts drastically extended Appellant's sentence. First, the 845 level 5 "minor" offense wrongfully treated as a "major" offense by Respondent. As a result, Appellant's 2 for 5 EWC level was reduced to a 3 for 5 EWC level, which decreased his monthly work credits by 3.6214279 days credit per month in addition to the withholding of good-time for the month of the infraction. This extended Appellant's maxout date from March 28, 2017 to November 2, 2017, which is a 217 days difference in the length of time that Appellant must serve to reach his maxout. Because of this erroneous extension of Appellant's sentence for an 845 level 5 "minor" offense, Appellant has a liberty interest in his grievance and appeal to the ALC. Therefore, the ALC erred in finding that Appellant's grievance and appeal to the ALC did not implicate a state created liberty interest, which is an error of law amounting to an abuse of discretion, and by finding that the ALC was without jurisdiction according to S.C. Code section "1-23-560 (D)", which is an incorrect statement of the law.

See Cook v. Eller, 380 S.E.2d 853 (1989)(In a law case tried by the judge without a jury the standard of appellate review is limited to a correction of errors of law and determination if there is any evidence to support the factual findings of the trial judge).

2. THE LEGISLATIVE ENACTMENT OF SECTION 1-23-600 (D) THAT AN ADMINISTRATIVE LAW JUDGE SHALL NOT HEAR AN APPEAL FROM AN INMATE IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS INVOLVING THE LOSS OF THE OPPORTUNITY TO EARN SENTENCE RELATED CREDITS PURSUANT TO SECTIONS 24-13-210 (A) AND 24-13-230 (A) IS UNCONSTITUTIONAL.

S.C. Code Ann. section 1-23-600 (D) denies Appellant and SCDC inmates judicial review of an institutional disciplinary hearing when there is only a loss of the opportunity to earn sentence related credits. This permits a deprivation of Appellant's liberty without due process or equal protection of the law, which is a direct violation of Amendment 14 of the United States Constitution and Article I § 3 of the South Carolina Constitution. The statute also gives disciplinary hearing officers (DHO's) unchecked power by shielding their actions from being subjected to judicial scrutiny when good-time is not revoked. This obviously allows prison officials to trump up institutional charges and the holding of Kangaroo disciplinary hearings simply because they cannot be reviewed. As a result, Appellant and SCDC inmates can be tried in a "hang the man" setting without notice on trumped up charges before empowered partial DHO's and denied the right to introduce evidence, to confront and cross-examine witnesses, and a meaningful opportunity to be heard, without any form of judicial review, when no good-time is revoked. This substantially prejudices Appellant, as shown by this case, because his sentence can be continuously and erroneously extended by prison officials

without judicial review when there is only a loss of good-time for the month of the infraction.

Due process and equal protection clause protects individuals from sanctions which are downright irrational. Hudson v. U.S., 522 U.S. 93, 139 L.Ed 2d 450, 118 S.Ct. 488 (1998). Core of due process is right to notice and meaningful opportunity to be heard. Lachance v. Erickson, 522 U.S. 262, 139 L.Ed 2d 695 (1998). The requirement of due process not only includes notice, but also includes the right to introduce evidence, to confront and cross-examine witnesses, a fair hearing before an impartial tribunal, and judicial review. See S.C. Dept. of Labor Licensing and Regulation v. Girgis, 503 S.E.2d 490 (1998), Clear Channel Outdoor v. Myrtle Beach, 642 S.E.2d 565 (2007), In Re Vora, 582 S.E. 2d 413 (2003), Blanton v. Stathos, 570 S.E.2d 565 (2002), Brown v Mallory, 546 S.E.2d 195 (2001) and Universal Benefits, Inc. v. McKinney, 561 S.E.2d 659 (2002).

In establishing the minimal due process requirements of due process in a prison disciplinary proceeding involving "serious misconduct", our Supreme Court has relied on precedent from the U.S. Supreme Court decision in Wolf v. McDonnell, 418 U.S. 539, 563-72 (1974). In Al-Shabazz v. State, 338 S.C. at 371, 527 S.E.2d at 751 (1999), the S.C. Supreme Court outlined as follows

(1) That advance written notice of the charges be given to the inmate at least twenty-four (24) hours before the hearing, (2) that fact finders must prepare a written statement of the evidence relied on and reasons for the disciplinary action, (3) that the inmate should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals, (4) that counsel substitute (a fellow inmate or prison employee) should be allowed to help illiterate inmates

or in complex cases an inmate cannot handle alone, and (5) that the person hearing the matter, who may be "prison officials" or "employees", must be impartial.

In confirming the above in Shabazz, the S.C. Supreme Court also stated that placing review of institutional disciplinary cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing, and "judicial review". Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 750 (2000). Furthermore, in Wolf v. McDonnell, 418 U.S. at 557, 94 S.Ct at 2975, the U.S. Supreme Court found that the prisoner's interest in good-time credits has real substance and is sufficiently embraced within the Fourteenth Amendment liberty to entitle him to those minimum procedures appropriate under the circumstances and required by the due process clause to ensure that the state-created right is not arbitrarily abrogated.

The denial of review by the implementation of section 1-23-600 (D) against Appellant and SCDC inmates who have only lost good-time for the month of the infraction is unconstitutional, where it violates Appellant's and inmates' right to due process and equal protection of the law. First, the statute is an iron curtain which prevents review to determine from the judiciary whether the aforementioned minimal due process standards outlined in Wolf and Shabazz have been met. This not only abrogates Appellant's due process right to judicial review when there is only a failure to earn good-time, it also abrogates his minimal due process protections and his state created liberty interest found in S.C. Code Ann. sections 24-13-210 (A) and 24-13-230 (A). See Cipollone v. Liggit Group, Inc., 505 U.S. 504, 120 L.Ed.2d 407, 112 S.Ct. 2608 (1992)(State law that conflicts with federal law is without effect).

Section 1-23-600 (D) not only violates the substantive and procedural components of the federal and state due process clause, it also denies Appellant and SCDC inmates equal protection of the law. The ALC order before this Court is a perfect example of how section 1-23-600 (D) denies Appellant and SCDC inmates, who fail to earn good-time for the month of the infraction, equal treatment as compared to those similarly situated whose goodtime is revoked. SCDC inmates who are found guilty of a disciplinary offense, whether the conviction is rightfully or wrongfully obtained by a DHO, enjoy judicial review by the ALC when good-time is "revoked" as a sanction. However, Appellant, who has also "lost" good-time for the month of the infraction, and been subjected to a demotion in EWC, is disparately treated different than inmates who are permitted review of disciplinary convictions that resulted in revocation of good-time where he is prevented from obtaining judicial review.

Equal protection clause requires that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed. Skyscraper Corp. v. County of Newberry, 475 S.E.2d 764 (1996). Compliance with equal protection clause requires that any classification be not arbitrary and that it bear reasonable relation to legislative purpose sought to be effected and that all members of each class be treated alike under similar circumstances. U.S. Fidelity & Guaranty Co. v. City of Newberry, 186 S.E.2d 239 (1972). Application of valid statute may be violative of equal protection clause. American Trust Co., Inc. v. S.C. State Bd. of Bank Council, 381 F.Supp. 313 (D.S.C. 1974). At its essence, equal protection clause requires that all persons similarly situated be treated alike. Greenville Women's Clinic v. Bryant, 222 F.3d 157 (4th Cir. 2000). Also see City of Clayburne, Tex v. Cleburne Living Center, 473 U.S. 432, 87 L.Ed.2d 313, 105 S.Ct. 3249 (1985) and Wenzler v. Warden of G.R.C.C., 999 F.Supp. 399

4. The fourth part of the document outlines the consequences of failing to maintain accurate records, including the potential for fines and penalties, and the risk of reputational damage.

(E.D.Va 1996); Seabrook v. Knox, 631 S.E.2d 907 (2006) and Murray v. Kaple, 66 F.Supp.2d 745 (D.S.C. 1999).

Appellant and SCDC inmates are denied access to the courts and redress of grievances by S.C. Code Ann. section 1-23-600(D) (2008). For example, an inmate is wrongfully convicted in a disciplinary hearing and then placed in administrative segregation (lock-up) by a DHO, but only good-time is taken for the month of the infraction. In such a case, an inmate does not have a right to appeal his grievance to the ALC, and this gives Respondent unchecked power to decide an inmates fate, irregardless of whether its wrong. This not only denies an inmate access to the Court, but also redress of his grievance for the time spent in lock-up as a result of the wrongful disciplinary conviction. The reasoning behind what has just been explained is that even a disciplinary conviction has to be invalidated by a judge before redress by civil action can be obtained. See Edwards v. Balisok, 520 U.S. 641, 137 L.Ed.2d 906, 117 S.Ct. 1584 (1997). The same would also apply in Appellant's case at bar. However, at this juncture section 1-23-600 (D) prevents ALC review when there is only a failure to earn good-time for the month of the infraction, and at the cross road Al-Shabazz prevents PCR review. This denies Appellant access to the courts and redress of his grievance, which is a deprivation of his constitutional rights protected by the first and fourteenth amendments of the U.S. Constitution and Article I § 2 and 3 of the S.C. Constitution. Also see Mayer v. City of Chicago, 404 U.S. 189, 30 L.Ed.2d 372, 92 S.Ct. 410 (1971)(Once states have established avenues of appellate review, these avenues must be kept free of unreasoned distinction that can only impede open and equal access to the courts).

The prevention of an appeal to the ALC is overly intrusive on Appellant's

right to access the courts and redress of his grievance, which is an Ex Post Facto violation. See Griffin v. State, 433 S.E.2d 862 (1993)(Where procedural rule is so overly intrusive that it substantially affects review standard, it becomes Ex Post Facto violation). Moreover, the statutory prevention of judicial review severely disadvantages Appellant, which subjects him to atypical and significant hardships, where his sentence can be extended by a disciplinary hearing officer, whose employed by Respondent, without any form of judicial review.

Section 1-23-600 (D) conflicts with federal and state court decisions which already announced that Appellant has a due process and liberty interest in sentence related credits voluntarily established by the state and a right to review when those credits are arbitrarily taken. The U.S. Supreme Court noted in Wolf v. McDonnell, 418 U.S. 539, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974), that punishment in the form of forfeiture or "withholding" of good-time credits affects the term of confinement. In Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 454 (1985), the U.S. Supreme Court stated that when a prisoner has a liberty interest in good-time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus the inmate has a strong interest assuring that the loss of good-time is not imposed arbitrarily. In Al-Shabazz v. State, 527 S.E.2d 742 (2000), the S.C. Supreme Court stated that an inmate is entitled to judicial review of an administrative matter, including a disciplinary hearing. 527 S.E.2d at 754. The S.C. Supreme Court also explained that judicial review must be available to determine whether prison officials have acted arbitrarily, capriciously, or from personal bias. 527 S.E.2d at 756-757. Also see Dent v. West Virginia, 129 U.S. 114, 9 S.Ct. 231, 233, 32 L.Ed.2d 623 (1989) and Wolf v. McDonnell, 418 U.S. at 558 (1974)(The

touchstone of due process is protection of the individual against arbitrary action of Government). Lastly, in Greenholtz v. Nebraska Penal Inmates, 99 S.Ct. 2100 (1979), the U.S. Supreme Court stated that if a prisoners term of imprisonment can be shortened or modified by rights conveyed to him under state law, those rights cannot be denied without due process.

Finally, the S.C. Supreme Court should strike down the act of the General Assembly, where it is unconstitutional. In order to strike down act of General Assembly, there must be finding that act offends constitutional provision which limits and circumscribes legislative action in that area. Anderson v. Baehr, 217 S.E.2d 43 (1975). Where there is conflict between statute and state constitution, constitution overrides statute. Anton v. S.C. Coastal Council, 469 S.E.2d 604 (1996). When a statute is challenged as unconstitutional, court must lay appropriate provisions of constitution and of statute side by side and decide whether latter is prohibited by former. Scroggie v. Bates, 48 S.E.2d 634 (1948). The Supreme Court can review the actions of the General Assembly when the actions are unconstitutional. S.C. Public Interest Foundation v. Judicial Merit Selection Com'n, 632 S.E.2d 277 (2006). Also see Taylor v. Medenica, 503 S.E.2d 458 (1998) and Gardner v. S.C. Dept. of Revenue, 577 S.E.2d 190 (2003).

3. THE DISCIPLINARY HEARING OFFICER (DHO) ERRED IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTION AND JOHNSON V. AVERY BY ENFORCING A POLICY RULE THAT PROHIBITS INMATE ASSISTANCE TO AN ILLITERATE INMATE EVEN WHEN NO LEGAL ASSISTANCE PROGRAM FOR ILLITERATE INMATES IS AVAILABLE, AND BY FINDING APPELLANT GUILTY OF A RULES INFRACTION FOR HELPING AN ILLITERATE INMATE FILL OUT A "PRESCRIBED" PCR APPLICATION AND BY FAILING TO OBSERVE MINIMAL DUE

PROCESS STANDARDS.

Appellant was wrongfully convicted and punished by the DHO for helping an illiterate inmate fill out a "prescribed" PCR application in a proper location. First, the Respondent nor the Kershaw Correctional Institute have adequate law libraries or legal assistance programs for illiterate inmates. Therefore, Appellant's compassionate action in helping an illiterate inmate access the Courts is protected by clearly established law, and the Respondent cannot rightfully enforce the 845 policy rule against him. This is shown in Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969) in which the U.S. Supreme Court found that state prison regulation barring inmates from assisting other prisoners in preparation of petitions for post-conviction relief was invalid as in conflict with federal right of Habeas Corpus, despite state's claim that requirement was necessary to maintain prison discipline, where state did not provide available alternative to assistance provided by other inmates. Also see Wolf v. McDonnell, 94 S.Ct. at 2985-86 and R.p.1-47 of Record on Appeal.

The DHO denied Appellant minimal due process. The disciplinary hearing record contains substantive and procedural errors and SCDC policy violations, which would require vacation of the disciplinary report and sanction, if reviewed. (R.p.1-23). First, Appellant was not allowed an opportunity in the disciplinary hearing to present witnesses and documentary evidence or to question his accuser, and the exclusion was not indicated on the SCDC form 19-69, Disciplinary Report and Hearing Record. (R.p.5, 11-23). This is a violation of SCDC policy OP-22.14 sections 15.2, 15.3, 15.5, 18.1.3, 18.1.4, 18.2.6 and the Wolf and Shabazz requirements. Therefore, the DHO's finding was not only in violation of minimal due process and SCDC policy, it was also based upon insufficient evidence. (R.p.5-10). Also see Superintendent, Mass.

Corr. Inst. v. Hill, 472 U.S. at 455, 105 S.Ct. at 2774 (Where good-time credits constitute a protected liberty interest, decision to revoke the credits must be supported by some evidence).

Appellant could have proven that he did not commit an offense against institutional policy if the DHO would have observed minimal due process standards. Inmate Micael Thrift, the illiterate inmate that Appellant helped (see tabe test scores of Thrift) was housed on a totally separate institutional yard than where Appellant was housed, and Appellant never had any contact with inmate Thrift prior to June 24, 2008. The law library log sheets, which Appellant requested prior to the disciplinary hearing, would have proven that inmate Thrift had never utilized the K.C.I. law library. These log sheets would have proven two (2) points. One, that inmate Thrift had never received legal assistance due to his illiteracy, and that he and Appellant had never had any communication prior to June 24, 2008. Two, that there is no law library log sheet for illiterate inmates, because no legal assistance program exists in the K.C.I. or within the prisons of the SDC.

If the DHO would have permitted inmate witnesses testimony and the law library log sheets (documentary evidence), Appellant could have shown that he did not commit an 845 offense. First, the policy prohibits inmates from offering "professional services", not "help" to an illiterate inmate. In any event, the inmate witnesses, which Appellant requested prior to the disciplinary hearing, would have established that inmate Thrift was unable to read and write; that he was denied help in filling out his PCR application by prison officials, inmates, and inmate law clerks, and that inmate Thrift's only alternative was obtaining help from Appellant. Inmate witnesses and the documentary evidence would have also shown that the K.C.I. law library is

inadequate and that it does not have a legal assistance program for illiterate inmates. Moreover, inmate witnesses would have established that there is no person, who is trained in the law, available to assist illiterate inmates.

If the DHO would have allowed Appellant an opportunity to question his accuser, he could have established that the K.C.I. and SCDC law libraries are inadequate and that no legal assistance programs are available to assist illiterate inmates. Vernon Tucker is the charging official that is shown in the incident report. (R.p.1-3). Mr. Tucker is responsible for the education department of the K.C.I., however, he has not established a legal assistance program to help illiterate inmates access the courts, nor is he trained in the law. If Appellant would have been allowed to question Mr. Tucker in the disciplinary hearing, the record would evince that the K.C.I. law library is inadequate and that inmate Thrift had no other alternative in accessing the courts other than by the help provided by Appellant. Therefore, the K.C.I. law library log sheets, written inventory of its law book holdings, the disciplinary transcript, and a statement from the fact finder (DHO) as to whether the law library is adequate and whether it has a legal assistance program should be ordered by this Court so that the record will indicate whether Appellant was rightfully convicted for the 845 offense of Unauthorized Services/Piddling Handicrafts. Finally, if there is no finding that the law library is adequate and that a legal assistance program for illiterate inmates, or persons trained in the law exists in the K.C.I., the disciplinary conviction and sanction should be vacated as a matter of law.

4. THE SCDC HAS NOT PROVIDED AN AVAILABLE ALTERNATIVE TO ASSISTANCE PROVIDED BY INMATES AND SCDC LAW LIBRARIES ARE INADEQUATE, THEREFORE,

APPELLANT WAS WRONGFULLY PUNISHED FOR HELPING AN ILLITERATE INMATE.

The SCDC nor the K.C.I. have a legal assistance program or persons who are trained in the law to assist illiterate inmates. Moreover, the SCDC law libraries are inadequate, where the law books are behind and because illiterate inmates are the law clerks. The following resources are required to be held in the SCDC prison law libraries according to the outdated 2004 SCDC policy GA-01.03, Inmate Access to Courts.

United States Code Annotated

Titles

28 U.S.C.A 2253

28 U.S.C.A. 2254

28 U.S.C.A. 2255-2460

28 U.S.C.A. 2461-End

42 U.S.C.A 1982

42 U.S.C.A. 1983-1984

42 U.S.C.A. 1985-2000d

42 U.S.C.A. 2000e-2000e4

42 U.S.C.A. 2000e5-2010

West's Federal Practice Digest 4th edition (current holdings)

U.S. Supreme Court Reporters-volumes 80 to present

Federal Reporter 2nd series-volumes 859 to 999

Federal Reporter 3rd series-volumes 1 to 320

Federal Supplement-volumes 302 to 999

Federal Supplement 2nd series-volumes 1 to 244

Code of Laws of South Carolina

S.C. Digest 2nd edition (current holdings)

South Eastern Reporter 2nd series-volumes 374 to 576

Soft bound S.C. Rules of Court-State and Federal (current holdings)

Criminal Law Reporter

Shepard's Citations-U.S., Federal, and State citations (current holdings)

Corpus Juris Secundum-volumes 14A, 22, 22A, 23, 23A, 24 and 28A

The Kershaw Correctional Institution's law library is inadequate where it holds old law, missing volumes, and numerous law books that have pages torn out due to prison officials gross negligence and failure to supervise the law library. The following is a glance at the inadequate condition of the K.C.I. law library.

1. The statutes that are found in the bound volumes of the United States Code Annotated are not current law, and there are no current pocket part supplements,

2. The Wests Federal Practice Digest 4th edition does not have current pocket part supplements. Some volumes have 2002 supplements and other volumes have none,

3. The U.S. Supreme Court Reporter is missing volumes 117A, 103, 97A, 96A, 89 and 85A,

4. The Federal Reporter 2nd series is missing the following volumes from the required holding. 875, 889, 897, 903, 904, 905, 906, 907, 908, 909, 910, 911, 913, 914 and 915,

5. The Federal Reporter 3rd series is missing the following volumes from the required holding. 5, 35, 41, 44, 45, 46, 47, 50, 51, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 104, 132, 134, 139, 140, 147, 175, 176, 177, 178,

179, 180, 181, 182, 183, 184 and 185.

6. The Federal Supplement is missing the following volumes from the required holding: 302, 306, 307, 308, 309, 310, 311, 313, 314, 315, 316, 317, 318, 320, 321, 322, 323, 340, 341, 342, 343, 344, 345, 346, 347, 350, 351, 389, 442, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 553, 597, 641, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 800, 813, 816, 852, 853, 854, 855, 864, 868, 869, 873, 874, 875, 876, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 907, 908 and 934

7. The required holdings for the Federal Supplement 2nd series are volumes 1-244, however, the following volumes are missing: 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57, 58, 61 pgs 1382-end, 62 pgs 1185-end, 76 pgs 1382-end, 77 pgs 1359-end, 78 pgs 1381-end, 79 pgs 1383-end, 80 pgs 1383-end, 81 pgs 1383-end, 82 pgs 1386-end, 83 pgs 1381-end, 84 pgs 1360-end, 85 pgs 1382-end, 86 pgs 1359-end, 87 pgs 1357-end, 88, 89, 90 pgs 1299-end, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244,

8. The Code of Laws of South Carolina does not have current pocket part supplements,

9. The S.C. Digest 2nd edition is current,
10. The South Eastern Reporter 2nd series ends at volume 576,
11. The soft bound S.C. Rules of Court, State and Federal, is not current,
12. The Modern Criminal Law is not current,
13. The Shepard's citations, U.S., Federal, and State do not go beyond the year 2001, and
14. The Corpus Juris Secundum volumes 14A, 22, 22A, 23, 23A, 24 and 28A does not have current supplements.

NOTE 1

The Respondent does not permit inmate requests for legal resources that go beyond what is held by the prison law libraries. Therefore, Appellant nor inmates can read anything beyond the year 2003, because prison officials will not provide any current law.

The K.C.I. law library and SCDC law libraries are obviously inadequate, where state actors rely upon an outdated access to courts policy, and because current law is not provided, even upon request. This represses Appellant's and inmates research and complaints to the courts, which is a direct violation of the Bounds v. Smith, 430 U.S. 817, 52 L.Ed.2d 72, 97 S.Ct. 1491 (1977) requirement that prison officials must provide inmates with adequate, effective, and meaningful access to the Courts.

To place Respondent on notice, law libraries without federal cases or with many missing volumes are inadequate. Ramos v. Lamm, 639 F.2d 559, 584

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(1980). For access to the Courts to be meaningful, post filing needs, such as the research tools necessary to effectively rebut authorities cited by an adversary in responsive pleadings, should be met. Morrow v. Harwell, 768 F.2d 619 (1985). Based upon the foregoing facts, Appellant did not violate SCDC rules, where Respondent is a violator of its own policy, and the DHO's conviction and sanction should be vacated due to the inadequacy of the law library and because no legal assistance program is available for illiterate inmates.

5. IF APPELLANT IS PREVENTED FROM ALC AND PCR REVIEW OF THE DISCIPLINARY CONVICTION PURSUANT TO SECTION 1-23-600 (D) and AL-SHABAZZ V. STATE, THEN WHAT IS THE APPROPRIATE AVENUE FOR SEEKING REVIEW OF A DISCIPLINARY CONVICTION IN ORDER TO DETERMINE WHETHER IT COMPORTS WITH MINIMAL DUE PROCESS STANDARDS?

The S.C. Supreme Court found in Al-Shabazz v. State, 527 S.E 2d 742 (2000) that credits related issues and other conditions of imprisonment are administrative matters and cannot be raised in a post-conviction relief proceeding, but an inmate is entitled to "judicial review" of a final decision of the Department of Corrections in non-collateral or administrative matter, which includes a "disciplinary hearing." However, in the year 2008, the General Assembly arbitrarily abrogated this authority by the enactment of section 1-23-600 (D), which prevents ALC review of a disciplinary conviction in which an inmate fails to earn good-time for the month of the infraction. Therefore, at this juncture there is no form of review, because Habeas Corpus is not proper, and a 1983 also is not proper until the disciplinary conviction is invalidated. Lastly, because of this deprivation, the legislature's intent should be sought, and if found to be contrary to constitutional law, section

1-23-600 (D) should be stricken by the S.C. Supreme Court.

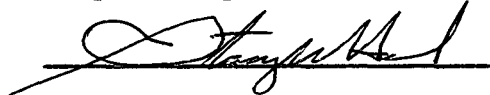
CONCLUSION

For the foregoing reasons, section 1-23-600 (D) (2008) should be stricken, the ALC's May 21, 2009 Order should be reversed, and Appellant's disciplinary conviction should be vacated.

December 31, 2009

Kershaw, South Carolina

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Stacy W. Howard", is written over a horizontal line.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

RECEIVED

JAN 07 2010

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMIN. LAW COURT
THE HON. JOHN D. McLEOD, JUDGE

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

AFFIDAVIT OF SERVICE

I, Stacy W. Howard, have served and filed Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal on December 31, 2009, by placing an original and a copy of same in the United States Postal Mail properly addressed to the following destinations.

The Hon Jeanetter F. Barber, Clerk
S.C. Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Christopher D. Florian
S.C. Dept. of Corr.
Post Office Box 21787
Columbia, SC 29221-1787

December 31, 2009

Kershaw, South Carolina

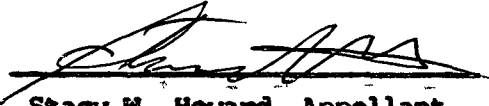
Sworn to and subscribed before me

this 31 day of Dec, 2009.

Florence M. Kline

Notary Public for South Carolina

My Commission expires. 1/31/18


Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

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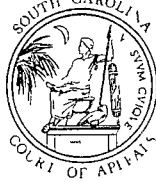
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The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA, SOUTH CAROLINA 29911
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29901
TELEPHONE (803) 734-1890
FAX (803) 734-1831
WWW.SCCOURTS.ORG

December 7, 2009

Stacy W. Howard
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Re: Howard, Stacy W. v. SCDC
Case Tracking Number 2009-131247

Dear Ms. Howard:

We are in receipt of your Reply to Respondent's Return to Motion to Compel.

Your reply was received after the Court had issued an order; therefore, it will not be considered. Your Appellant's Initial Brief and Designation of Matter is due no later than January 4, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/pd

cc: Christopher Florian, Esquire



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DEC 03 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corr.,.....Respondent.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO MOTION TO COMPEL

NOW COMES, Appellant, and replies to Respondent's Return as follows.

1. The Respondent has indicated that the only issue presented in this appeal is whether the ALJ correctly dismissed Appellant's appeal on the basis that the appeal did not implicate a liberty interest, and asserts that issues that are not raised to and ruled upon by the AIC are not preserved for appellate review.

2. Appellant respectfully submits that according to the due process standard of review, he has to first establish in this appeal that he is entitled to the protections of the due process clause by showing that he has a constitutionally protected liberty interest and that he has been deprived of that protected liberty by some form of state action. Flemming v. Rose, 526 S.E.2d 732 (2000), Kearse v. State Health & Human Services' Finance Com'n, 456 S.E.2d 892 (1995). If, or when this is met, the Appellant also has to show how he was substantially prejudiced. Felder v. Charleston County School Dist., 489 S.E.2d 191 (1997), Tall Tower, Inc. v. S.C. Procurement Review Panel, 363 S.E.2d 683 (1987). In order to prove the state action that infringed upon Appellant's liberty interest, the information in his Motion to Compel is required, not only to establish the infringement, but the resulting prejudice from the arbitrary and capricious action that was taken against law.

3. The Motion to Compel should not be denied. The purpose of Appellant's Motion to Compel and the information that is sought is based upon the fact that, more than likely, this Court will

not only inquire into whether Appellant has a protected liberty interest, but for judicial economy, will also inquire into whether there is any procedural errors in the disciplinary hearing record to determine if minimal due process requirements were met, or if there is an error that even falls within the provision of S.C. Code Ann. § 1-23-380 (A)(6), which may or may not have prejudiced Appellant, before even considering whether reversal is warranted. The reasoning behind this is, even if it is found that Appellant has a protected liberty interest, reversal of the ALJ's order would be futile if the disciplinary record is error free. See Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach, 366 S.E.2d 15 (1988)(If litigant is provided full and fair hearing on the merits, due process clause of the Fourteenth Amendment does not mandate appellate review).

3. To cover all points that are an issue, the Appellant's objective in this appeal is to establish. 1) that he has a liberty interest in "advanced" good-time and earned work credits provided by S.C. Code Ann. § 24-13-210 (A) and 24-13-230 (A), and that good-time, whether it is revoked or whether he fails to earn it due to an infraction, he still has a liberty interest involved if it was arbitrarily taken by either some form of error, or in violation of minimal due process standards, 2) that his liberty interest is furthered by the director of SDC's implementation of SDC policies OP-21.07 and OP-21.09, 3) that the DHO's finding was arbitrary, capricious, and characterized by an abuse of discretion and/or unwarranted exercise of discretion, 4) the resulting prejudice to Appellant, and 5) that the S.C. legislature has arbitrarily abrogated Appellant's liberty interest in administrative review by enacting S.C. Code Ann. § 1-23-560 (D) and 1-23-600 (D) (2008), which prevents review of of the liberty interest provided by S.C. Code § 24-13-210 (A) and 24-13-230 (A), it disrupts previous state court precedents, and it is in violation of the United States Constitution.

4. Appellant respectfully submits that a liberty interest does exist, and that the only issue that is before this Court is whether there is error in the disciplinary hearing record that

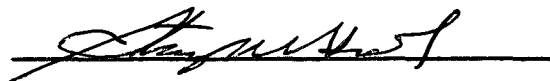
would even require reversal and review by the ALC. As to Appellant's protected liberty interest in good-time credits, the United States Supreme Court noted in Wolf v. McDonnell, 418 U.S. 539 (1974), that punishment in the form of the forfeiture or "withholding" of good-time credits affects the term of confinement. In Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 454 (1985), stated that when a prisoner has a liberty interest in good-time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus the inmate has a strong interest assuring that the loss of good-time credits is not imposed arbitrarily. In Alshabazz v. State, 527 S.E.2d 742 (2000), the South Carolina Supreme Court stated that an inmate is entitled to judicial review of an administrative matter, including a disciplinary hearing. 527 S.E.2d at 754. The S.C. Supreme Court also explained that judicial review must be available to determine "whether prison officials have acted arbitrarily, capriciously, or from personal bias. 527 S.E.2d at 756-57. Lastly, in Greenholtz v. Nebraska Penal Inmates, 99 S Ct 2100 (1979), the U.S. Supreme Court stated that if a prisoner's term of imprisonment can be shortened or modified by rights conveyed to him under state law, those rights cannot be denied without due process.

Based upon the foregoing, the Appellant asks that this Court grant his Motion to Compel

November 25, 2009

Kershaw, South Carolina

Respectfully submitted,



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

RECEIVED
DEC 03 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CASE NO. 09-ALJ-04-00122-IJ

Stacy W Howard.. Appellant,

VS

South Carolina Dept of Corr , ... Respondent

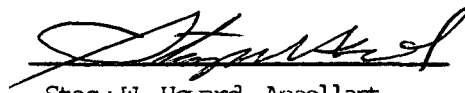
CERTIFICATE OF SERVICE

I, Stacy W Howard, have served the Respondent with Appellant's Reply to Respondent's Return to Motion to Compel on November 25, 2009, by placing a copy of same in the U.S Postal Mail or inter-agency mail, properly addressed to

Christopher D Florian, Staff Atty
S.C Department of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

November 25, 2009

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr Inst.

4848 Goldmine Highway

Kershaw, SC 29067

11. 11. 1911

My dear Mr. [unclear]

The Hon Jeanette F. Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29067

November 25, 2009

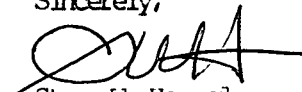
RE Howard v. SCDC
Case Tracking No 2009131247

RECEIVED
DEC 03 2009
SC Court of Appeals

Dear Ms. Barber,

I received the Respondent's Return to Motion to Compel on November 23, 2009. In response, please find Appellant's Reply to Respondent's Return to Motion to Compel for filing

Sincerely,



Stacy W. Howard

Kershaw Corr Inst.
4648 Goldmine Highway
Kershaw, SC 29067



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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December 2, 2009

Stacy W Howard
Kershaw Cori Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009-131247

Dear Ms Howard

Enclosed is a copy of an Order of the Court pertaining your Motions in the above case

Be advised, Appellant's Initial Brief and Designation of Matter should be served and filed no later than January 04, 2010

Very truly yours,

A handwritten signature in black ink, appearing to read "J Barber", is written over the typed name.

CLERK

JFB/pd

cc Christopher Florian, Esquire

The South Carolina Court of Appeals

Stacy W Howard,

Appellant,

v

South Carolina Department of
Corrections,

Respondent

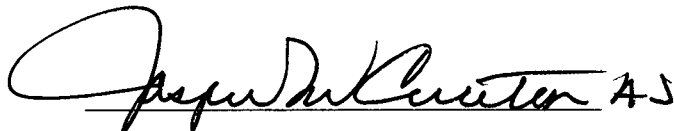
The Honorable John McLeod
Richland County
Trial Court Case No 2009-AL-04-00122

ORDER

Appellant filed a motion to compel the Department of Corrections to produce a transcript of the disciplinary hearing, an inventory of the law library, and a written statement regarding whether legal assistance for illiterate inmates is provided. The Department of Corrections maintains these items were not presented to the Administrative Law Court and, therefore, are not properly included in the record on appeal. See Rule 210, SCACR. After consideration, we agree with the Department of Corrections and deny the motion.

Appellant also filed a motion seeking an extension of time in which to file his initial brief. The motion is granted. Appellant has thirty days from the filing date of this order to serve and file an initial brief.

AND IT IS SO ORDERED

 45

Columbia, South Carolina

December 1, 2009

cc Stacy W Howard
Christopher Florian, Esquire
The Honorable Jana E Shealy

FILED
12/2/09

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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NOV 20 2009

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO COMPEL

COMES NOW, Respondent, South Carolina Department of Corrections, and respectfully requests that this Honorable Court DENY appellant's October 21, 2009 Motion to Compel in the above referenced case. In support of this request, respondent shows this Honorable Court the following

- 1 This matter is before the Court pursuant to appellant's appeal of his inmate disciplinary conviction for unauthorized services/piddling. Appellant lost no earned good time credits as a result of the disciplinary conviction.
- 2 The Administrative Law Court (ALC) dismissed appellant's appeal pursuant to S C Code Ann § 1-23-560(D) (prohibiting the ALC from hearing appeals by inmates where the loss of the opportunity to earn sentence related credits is the liberty interest

upon which jurisdiction in the ALC is asserted) and Slezak v. SCDC, 361 S.C. 327, 605 S.E.2d 506 (2004) (explaining summary dismissal may be appropriate where an inmate's grievance does not implicate a state-created liberty or property interest. See Order of Dismissal, attached as Exhibit 1

- 3 On October 21, 2009, appellant filed a document titled Motion to Compel. The motion requests that respondent be compelled to produce a transcript of the July 7, 2008 disciplinary hearing, a written inventory of Kershaw Correctional Institution's law library holdings, and a statement of whether Kershaw Correctional Institution has a legal assistance program for illiterate inmates.
- 4 In order to conserve scarce resources, the Department of Corrections does not produce transcripts in appeals of inmate disciplinary cases where the inmate did not lose earned good time credits since the ALC is prohibited by S.C. Code Ann. § 1-23-560(D) from hearing those appeals.
- 5 None of the materials requested in appellant's Motion to Compel were presented to the ALC. Therefore, they cannot properly be included in the Record on Appeal. See 210(c), SCACR (stating the record on appeal shall not include matter which was not presented to the lower court or tribunal).
- 6 Moreover, the ALC summarily dismissed this appeal solely on the basis that the appeal did not implicate a liberty interest. Therefore, the only issue presented in this appeal is whether the ALC correctly dismissed the appeal on that ground. See Brown v. S.C. Dep't of Health & Environmental Control, 348 S.C. 507, 560 S.E.2d 410 (2002) ("[I]ssues not raised to and ruled upon by the ALJ are not preserved for

appellate consideration ") The materials requested in appellant's motion are not relevant to that issue

WHEREFORE, for the foregoing reasons, respondent respectfully requests that this Honorable Court DENY appellant's Motion to Compel

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Christopher Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
(803) 896-8508

Columbia, South Carolina
November 19, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Return to Appellant's Motion to Compel by depositing a copy of same in the United States Mail, postage prepaid, on November 19, 2009, addressed as follows

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
Attorney for Respondent

4/5/09
Duck

Exhibit " 1 "

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MAY 26 2009

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GENERAL COUNSEL

Stacy Howard #191458

Appellant,

vs

South Carolina Department of Corrections

Respondent

Docket No 09-ALJ-04-00122-IJ

ORDER OF DISMISSAL

FILED

MAY 21 2009

SC ADMIN LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC)

Inmate appeals his conviction of Unauthorized Services/ Piddling (handicrafts) (845) SCDC Policy OP-22 14 Inmate Disciplinary System

He (a) was not sanctioned with the loss of any good time credits (b) made no claim for the loss of any other state created liberty or property interest and, (c) made no contention that his sentence, sentence related credits or custody status has been erroneously calculated He did fail to earn good time for the month in which he was convicted

His failure to earn good time credits because of the conviction, if any, is not a basis upon which jurisdiction in this Court can be founded See S C Code Ann § 1-23-560 (D) amended by Act 334 (2008)¹ (prohibiting the Administrative Law Court from hearing appeals by inmates of the S C Department of Corrections where the loss of the opportunity to earn sentence related credits is the 'liberty interest' upon which jurisdiction in this Court is asserted) This statute applies not only to the loss of the right to earn good time for the month but to the loss of the right to earn other credits such as

¹ An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence related credits pursuant to Section 24 13 210(A) or Section 24 13 230(A)

2000

earned work credits

The loss of earned work credits is governed, tangentially, by Skipper v S C Department of Corrections, 370 S C 267 633 S E 2d 910 (Ct App 2006) in which the Court held that an inmate had no state created liberty interest in a work release program

More recently, the United States Supreme Court took the opportunity to clarify the law with respect to state-created liberty interests in prison systems that are protected by the Due Process Clause Sandin v Conner, 515 U S 472 115 S Ct 2293, 132 L Ed 2d 418 (1995) The Court noted that these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life ” Id at 484, 115 S Ct 2293 (citations omitted) In ruling on Conner's case, the Court established directives for future cases Specifically, the Court held that “Conner's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest ” Id at 486, 115 S Ct 2293

Applying the above-outlined principles, we find Skipper's participation in the Prison Industries program is not a right but a privilege Not all prisons provide this opportunity to inmates, and those that do provide this option are inundated with inmate requests and forced to maintain long waiting lists This employment program does not meet the test for a state-created liberty interest as outlined in Sandin because it does not present an atypical, significant hardship on inmates who are not permitted to participate Consequently, Skipper, in being terminated from his prison employment, did not suffer an infringement upon his liberty interests

Skipper, 633 S E 2d at 914-15

Applying the same rationale here, there is clearly no liberty interest in an institutional job assignment which is clearly of lesser dignity than employment in a work release program authorized by state statute and its denial is clearly not an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life Since there is no right to the job assignment, there is no liberty interest in credits that may be earned in the job

Under Slezak v S C Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004) the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but Summary dismissal may be appropriate where the inmate's

grievance does not implicate a state created liberty or property interest " Such is the case here

Therefore for the foregoing reasons this appeal is hereby **DISMISSED, WITH PREJUDICE**

May 21, 2009
Columbia, SC



John D. McLeod Judge
S.E. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 21 day of May, 2009
By Anthony R. Baldwin
S.E. Administrative Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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NOV 20 2009

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

South Carolina Department of Corrections

Respondent

ENTRY OF APPEARANCE

COMES NOW, Christopher D Florian and enters his name as counsel in the above-styled case Please forward any correspondence including court notices to my office

Dated November 19, 2009



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
NOV 20 2009
SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge John D McLeod

Case No 09-ALJ-04-00122-IJ

Stacy Howard, # 191458

Appellant,

v

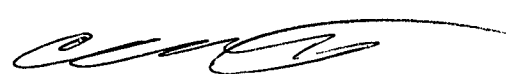
South Carolina Department of Corrections

Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of the foregoing Entry of Appearance to Appellant by depositing a copy of same in the United States Mail, postage prepaid, on November 19, 2009, addressed as follows

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067



Christopher D Florian
Staff Attorney
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787
Attorney for Respondent



MARK SANFORD Governor

JON OZMINT Director

November 19, 2009

Ms Jeanette F Barber
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29201

RECEIVED
NOV 20 2009
SC Court of Appeals

Re Stacy Howard, # 191458 v SCDC
Case Tracking No 2009131247

Ms Barber,

Please find an original and a copy of each of the following enclosures

- Entry of Appearance
- Respondent's Return to Appellant's Motion to Compel

Please stamp the extra copy of each "filed" and return the copies in the enclosed self-addressed stamped enveloped Please do not hesitate to contact me with any questions We greatly appreciate your assistance in this matter

Sincerely,

Christopher D Florian
Attorney for Respondent

cc File

Stacy Howard, # 191458
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLLN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 9 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

November 13, 2009

David Tatarsky, Esquire
S C Dept of Corrections
P O Box 21787
Columbia, SC 29221-1787

Re Howard, Stacy W v SCDC
Case Tracking Number 2009 131247

Dear Mr Tatarsky

You are requested to file a Return to Appellant's Motion to Compel within ten (10) days from the date of this correspondence. Any motion or petition filed with this Court must be in compliance with Rule 240 of the South Carolina Appellate Court Rules.

Upon receipt of the return, the matter will be taken under consideration and all parties will be notified as soon as action has been taken.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Barber", written over the typed name "JEANETTE F BARBER".

CLERK

JFB/pd

cc Stacy W Howard
The Honorable Jana E Shealy



RECEIVED
OCT 22 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-00122-AP

Stacy W Howard Appellant,

vs

South Carolina Dept of Corrections Respondent

MOTION TO COMPEL

The motion is made pursuant to Rule 240, SCACR, for an order requiring the Respondent to produce the transcript of the July 7, 2008 disciplinary, a written inventory of the K C I institute's law library holdings, and a written statement whether the K C I has a legal assistance program for illiterate inmates. Said motion is based upon the following grounds

This appeal is taken from a disciplinary hearing where Appellant was found guilty and punished for helping an illiterate inmate fill out a prescribed PCR application for filing with the Court of Common Pleas. In the disciplinary hearing Appellant testified that the K C.I law library was inadequate and that the inmate that he helped had no alternative source of help where the Kershaw institute does not have a legal assistance program for illiterate inmates. The Appellant was not allowed to present documentary evidence to prove the same, to present witnesses, or to question his accuser.

One of the issues in this appeal is that the DHO's finding is arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion by finding Appellant guilty for a policy provision

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DEPARTMENT OF AGRICULTURE

that is inapplicable and which cannot be rightfully enforced according to a United States Supreme Court decision. According to Johnson v Avery, 393 U S 483, 89 S Ct 747 (1969), a state prison regulation that bars inmates from assisting other prisoners in the preparation of petitions for post-conviction relief is invalid if state does not provide available alternative to assistance provided by other inmates. In order for Appellant to establish that he has been wrongfully convicted and that the DHO acted arbitrarily, and abused her discretion in doing so, the Appellant has to provide this Court with a copy of the transcript, a written inventory of the holdings in the K C I law library, and a written statement from the Kershaw Institute that indicates whether it has a legal assistance program for illiterate inmates. This will supply this Court with an adequate record to review.

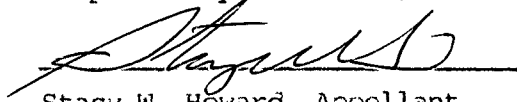
Based upon the foregoing, the Appellant moves this Court for an order compelling the following:

- 1 That the SCDC furnish the Appellant with a copy of the July 7, 2008 disciplinary hearing transcript,
- 2 That the SCDC furnish the Appellant with a written inventory of the holdings in the K C I. law library, and
- 3 That the SCDC furnish the Appellant with a written statement from the responsible authority of the Kershaw Institute which indicates whether said institute has a legal assistance program for illiterate inmates.

October 16, 2009

Kershaw, South Carolina

Respectfully submitted,



Stacy W Howard, Appellant
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

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The Hon Jeanette F Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

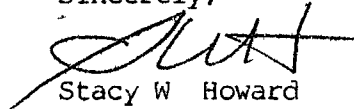
October 16, 2009

RE Howard v SCDC
09-AJ-04-00122-AF

Dear Ms Barber,

Enclosed please find Appellant's Motions for Extension of Time and to
Compel for filing Please inform me when this Court reaches a disposition
Thank you for your attention to this matter

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine highway
Kershaw, SC 29067

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OCT 22 2009

SC Court of Appeals

FILED

OCT 19 2009

SC ADMIN LAW COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-00122-AP

FILED

OCT 19 2009

SC ADMIN LAW COURT

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent

MOTION FOR EXTENSION OF TIME

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OCT 22 2009

SC Court of Appeals

This motion is made pursuant to Rule 240, SCACR, and legal authorities in Conran v. Joe Jenkins Realty, Inc., 210 S.E.2d 309 (1974) and Bowker Fertilizer Co. v. Woodward, 19 S.E. 498 (1894) for an order extending the time to file the Initial Brief of Appellant. Said motion is based upon the following grounds.

The Respondent has not prepared a transcript of record of the July 7, 2008 disciplinary hearing. As indicated in the Appellant's brief to the Administrative Law Court, the transcript of record was not included in the appeal, which is a violation of ALC Rules 58 F., 59 C., and 61. As a result, the Appellant was denied due process where he could not point out by transcript how his testimony established that there was no rule violation, that the law library is inadequate, and that the rule which was used against him could not be rightfully enforced. See Johnson v. Avery, 89 S.Ct. 747 (1969). Also, Appellant could not point out by transcript how the DHO was partial in the hearing by not providing Appellant with an opportunity to present witnesses and documentary evidence, or to question his accuser.

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The Appellant seeks for an extension of time from this Court in filing his Initial Brief. It is practically impossible to show error and resulting prejudice without first obtaining and reviewing the transcript of the disciplinary hearing, which is required for an adequate review. Moreover, it would be virtually impossible to set out Appellant's arguments in the Initial Brief without a copy of the transcript. In addition to the transcript, it will be impossible to demonstrate to this Court how the K.C.I. law library is inadequate and how the Appellant was justified by helping an illiterate inmate fill out his PCR application without a written inventory of what is held in the institution's law library, or written proof that there is no assistance program for illiterate inmates.

Based upon the foregoing, the Appellant asks for an extension of time to enable him to obtain a written transcript of the disciplinary hearing, a written inventory of the holding in the K.C.I. law library, and written proof that there is no legal assistance program for illiterate inmates.

October 16, 2009

Kershaw, South Carolina

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stacy W. Howard", written over a horizontal line.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

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OCT 21 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-00122-AP

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections. Respondent.

AFFIDAVIT OF SERVICE

I, Stacy W. Howard, have served Motion for Extension of Time and Motion to Compel on the officials named below by placing a copy of same in the United States Postal Mail or agency mail properly addressed to the following.

The Hon John D. McCleod

Admin. Law Court

Edgar A. Brown Bldg., Suite 224

1205 Pendleton Street

Columbia, SC 29201

Robert M. Peele, Staff Atty

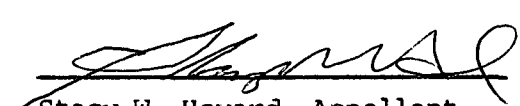
General Counsel

4444 Broad River Road

Columbia, SC 29211

October 16, 2009

Kershaw, South Carolina

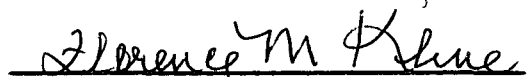

Stacy W. Howard, Appellant

4848 Goldmine Highway

Kershaw, SC 29067

Sworn to and subscribed before me

this 19 day of Oct, 2009



Notary Public for South Carolina

My commission expires. 1/31/18

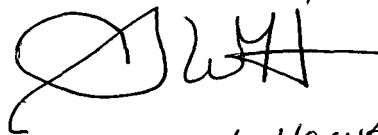
MS. BARBER,

10/19/09

ENCLOSED PLEASE FIND AFFIDAVITS OF SERVICE
IN 07-CP-16-935 AND 09-ALT-04-00122-AP FOR
FILING, THIS IS IN REFERENCE TO MY OCTOBER 16,
2009 CORRESPONDENCE I COULD NOT SEND THIS WITH
THOSE MOTIONS BECAUSE THIS INSTITUTION HAS
BEEN ON LOCK-DOWN SINCE LAST THURSDAY AND I
COULD NOT GET TO A NOTARY.

THANK YOU FOR YOUR ATTENTION TO THIS
MATTER.

SINCERELY,



STACY W. HOWARD
KERSHAW CORR. INST
4878 GOLDMINE HIGHWAY
KERSHAW, S.C. 29067

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OCT 21 2009
SC Court of Appeals

11-11-11

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OCT 20 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-00122-AP

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

MOTION FOR EXTENSION OF TIME

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ל' אדר

ה'תשנ"ח

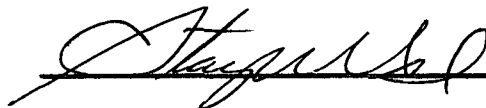
The Appellant seeks for an extension of time from this Court in filing his Initial Brief. It is practically impossible to show error and resulting prejudice without first obtaining and reviewing the transcript of the disciplinary hearing, which is required for an adequate review. Moreover, it would be virtually impossible to set out Appellant's arguments in the Initial Brief without a copy of the transcript. In addition to the transcript, it will be impossible to demonstrate to this Court how the K.C.I. law library is inadequate and how the Appellant was justified by helping an illiterate inmate fill out his PCR application without a written inventory of what is held in the institution's law library, or written proof that there is no assistance program for illiterate inmates.

Based upon the foregoing, the Appellant asks for an extension of time to enable him to obtain a written transcript of the disciplinary hearing, a written inventory of the holding in the K.C.I. law library, and written proof that there is no legal assistance program for illiterate inmates.

October 16, 2009

Kershaw, South Carolina

Respectfully submitted,

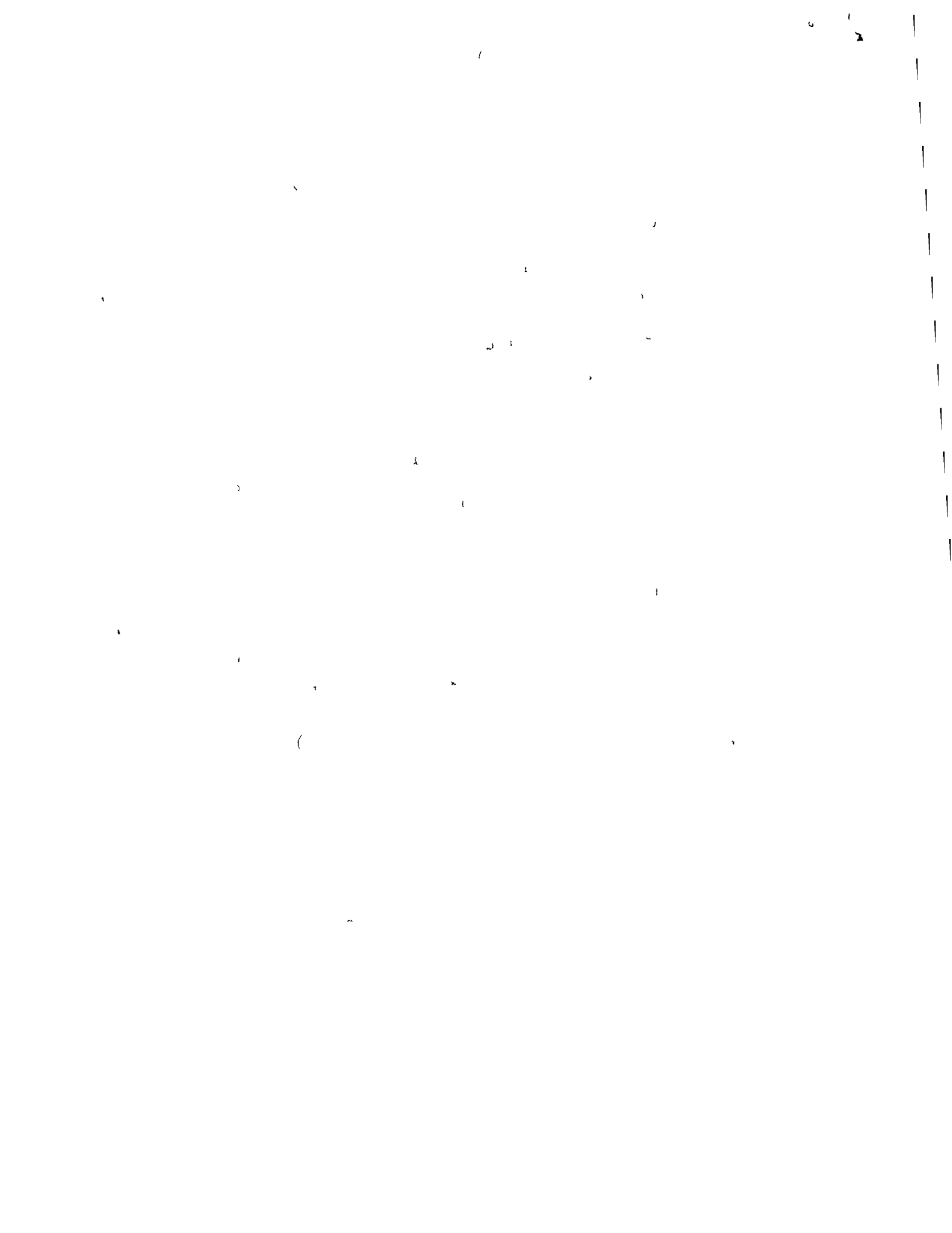
A handwritten signature in cursive script, appearing to read "Stacy W. Howard", written over a horizontal line.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-00122-AP

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections... Respondent.

MOTION TO COMPEL

The motion is made pursuant to Rule 240, SCACR, for an order requiring the Respondent to produce the transcript of the July 7, 2008 disciplinary, a written inventory of the K.C.I. institute's law library holdings, and a written statement whether the K.C.I. has a legal assistance program for illiterate inmates. Said motion is based upon the following grounds:

This appeal is taken from a disciplinary hearing where Appellant was found guilty and punished for helping an illiterate inmate fill out a prescribed PCR application for filing with the Court of Common Pleas. In the disciplinary hearing Appellant testified that the K.C.I. law library was inadequate and that the inmate that he helped had no alternative source of help where the Kershaw institute does not have a legal assistance program for illiterate inmates. The Appellant was not allowed to present documentary evidence to prove the same, to present witnesses, or to question his accuser.

One of the issues in this appeal is that the DHO's finding is arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion by finding Appellant guilty for a policy provision

that is inapplicable and which cannot be rightfully enforced according to a United States Supreme Court decision. According to Jonsson v. Avery, 393 U.S. 483, 89 S.Ct.747 (1969), a state prison regulation that bars inmates from assisting other prisoners in the preparation of petitions for post-conviction relief is invalid if state does not provide available alternative to assistance provided by other inmates. In order for Appellant to establish that he has been wrongfully convicted and that the DHO acted arbitrarily and abused her discretion in doing so, the Appellant has to provide this Court with a copy of the transcript, a written inventory of the holdings in the K.C I. law library, and a written statement from the Kershaw institute that indicates whether it has a legal assistance program for illiterate inmates This will supply this Court with an adequate record to review.

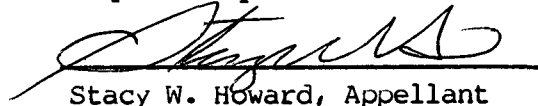
Based upon the foregoing, the Appellant moves this Court for an order compelling the following.

1. That the SCDC furnish the Appellant with a copy of the July 7, 2008 disciplinary hearing transcript,
2. That the SCDC furnish the Appellant with a written inventory of the holdings in the K.C.I. law library, and
3. That the SCDC furnish the Appellant with a written statement from the responsible authority of the Kershaw institute which indicates whether said institute has a legal assistance program for illiterate inmates.

October 16, 2009

Kershaw, South Carolina

Respectfully submitted,



Stacy W. Howard, Appellant
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

The Hon Jeanette F. Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

October 16, 2009

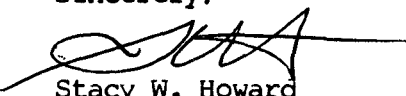
RE Howard v. SCDC
09-ALJ-04-00122-AP

Dear Ms. Barber,

Enclosed please find Appellant's Motions for Extension of Time and to
Compel for filing. Please inform me when this Court reaches a disposition.

Thank you for your attention to this matter.

Sincerely,



Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED

OCT 20 2009

SC Court of Appeals

20 Count of Address

001 5 0 5000

RECEIVED

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The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 18, 2009

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009 131247

Dear Mr Howard

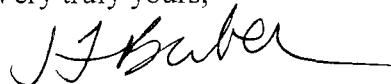
The following Order has been endorsed on your Petition for Rehearing in the above entitled case on appeal

"Granted

s/ Kaye G Hearn C J

September 18, 2009 "

Very truly yours,


CLERK

JFB/pd

cc David Tatarsky, Esquire
The Honorable Jana E Shealy



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 18, 2009

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009-131247

Dear Mr Howard

The following Order has been endorsed on your Motion to Proceed in Forma Pauperis in the above entitled case on appeal

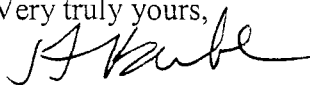
"GRANTED

Kaye G Hearn C J
For the Court

By s/ Ieanette F Barber
Clerk

September 18, 2009 "

Please be advised Appellant's Initial Brief and Designation of Matter is due to be served and filed no later than October 19, 2009

Very truly yours,

CLERK

JFB/pd

cc Christopher Florian, Esquire

AGREEMENT TO DEBIT E H COOPER ACCOUNT

RECEIVED

AUG 26 2009

SC Court of Appeals

| | | | |
|-----------------|--------|--------------|---------|
| Inmate's Name | SCDC # | Housing Unit | Date |
| STACY W. HOWERS | 191458 | OB-40 | 6/19/09 |

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials

To be completed by
SCDC staff

| Item | Amount |
|-------------------|--------|
| Envelope | |
| Pen | |
| Paper | |
| Postage | |
| Tape | |
| Box | |
| Electronic Repair | |
| Other | |

Sub-Total

| Cost |
|------|
| |
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LEGAL MATERIAL

* Inmate is not required to have the funds in his/her account to pay for the materials however his/her account must be debited for all materials s/he elects to receive

To be completed by
SCDC staff

| Item | Amount |
|----------|--------|
| Envelope | |
| Pen | |
| Paper | |
| Postage | 3 |
| Other | |

Sub-Total

| Cost |
|------|
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PHOTOCOPIES

Inmate may be required to have funds in his/her account See SCDC Procedure GA 01 03(OP) Inmate Access to the Courts to determine if inmate may receive copies with/without funds

To be completed by
SCDC staff

| Item | Amount |
|-------------|--------|
| Photocopies | |

| Cost |
|------|
| |
| |
| |

TOTAL

Inmate's Signature _____
_____ *Keine*
Mailroom/Canteen Signature (Request filled by)

6/19/09
Date

White Inmate
Canary Mailroom/Canteen Employee

Jeanette F Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

June 19, 2009

RE Howard v SCDC
09-ALJ-04-00122-IJ

Ms Barber,

Enclosed please find Notice of Appeal, Motion to Proceed In Forma
Pauperis, and Proof of Service for filing in the above reference matter

Thank you for your time

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

David M Tatarsky
General Counsel
S C Dept of Corr
4444 Broad River Road
Columbia, SC 29221-1787

June 19, 2009

RE Howard v. SCDC
09-ALJ-04-00122-IJ

Dear Mr Tatarsky,

Enclosed please find Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service that is filed with the Clerk of the South Carolina Court of Appeals. This letter serves as notice that the latter motion is before said Court.

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon. John D. McLeod, Judge

Docket No. 09-ALJ-04-00122-IJ

Stacy W. Howard,.....Appellant,

V.

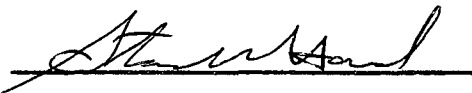
South Carolina Department of Corrections,.....Respondent.

NOTICE OF APPEAL

Stacy W. Howard, the above named Appellant, hereby appeals from the order of the Honorable John D. McLeod dated May 21, 2009. Appellant received a copy of said order on May 25, 2009.

June 19, 2009

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Other Counsel of Record.

David M Tatarsky

General Counsel

Robert M Peele, III

Staff Attorney

S C. Dept of Corr

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon John D McLeod, Judge

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard, ... Appellant,

V

South Carolina Department of Corrections,.. Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

This is an appeal which will raise constitutional, statutory, and SCDC policy questions that deal with due process, equal protection of the law, the cruel and unusual punishments clause, access to the courts, and the unconstitutionality of S.C Code section 1-23-600(D).

Because this appeal is dealing with constitutional matter that is provided by the protection of the United States Constitution, Appellant hereby applies for leave to proceed in forma pauperis, or at the least, to make four (4) \$25 00 payments during the course of this appeal under the condition that the appeal will be dismissed if the payments are not made before the initial brief is filed

Based upon the foregoing, the Appellant prays for leave to proceed without cost, or at the least, to make four (4) installment payments before or when the initial brief is filed, where this is a constitutional matter

June 19, 2009

Kershaw, South Carolina

Respectfully Submitted,

Stacy W Howard
Stacy W Howard, Appellant

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

GRANTED

**KAYE G. HEARN, C.J.
FOR THE COURT**

By JA Weber
(Clerk) (Deputy Clerk)

September 18, 2009

FILED
9/18/09

SECRET
NO FORN DISSEM
EXCLUDED FROM AUTOMATIC
DOWNGRADING AND DECLASSIFICATION

(S) (U) (F) (C) (E) (X)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon. John D McLeod, Judge

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard, ... Appellant,

V.

South Carolina Department of Corrections,..... ..Respondent.

PROOF OF SERVICE

I, Stacy W. Howard, certify that I have served the Notice of Appeal on the officials named herein, by depositing a copy of same in the U.S. Postal Mail, postage prepaid, on June 19, 2009, properly addressed to the following

David M. Tatarsky
General Counsel
Robert M. Peele
Staff Attorney
S.C Dept. of Corr.
4444 Broad River Road
Columbia, SC 29221-1787

June 19, 2009
Kershaw, South Carolina

Sworn to and subscribed before me
this 19 day of June, 2009

Florence M. Kline
Notary Public for South Carolina
My commission expires 1/31/18

Stacy W. Howard
Stacy W. Howard, Appellant
Kershaw Corr. Inst
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED

SC Court of Appeals

| Inmate's Name | SCDC # | Housing Unit | Date |
|-----------------|--------|--------------|--------|
| STACY W. HOWARD | 191458 | OR-40 | 7/2/09 |

**** Inmate must have the funds in his/her account to pay for the materials**

| Item | Amount |
|-------------------|--------|
| Envelope | |
| Pen | |
| Paper | |
| Postage | |
| Tape | |
| Box | |
| Electronic Repair | |
| Other | |

Sub-Total

[illegible]

** Inmate is not required to have the funds in his/her account to pay for the materials however his/her account must be debited for all materials s/he elects to receive

| Item | Amount |
|----------|--------|
| Envelope | 105 |
| Pen | 1 |
| Paper | 50.20 |
| Postage | 3 |
| Other | |

Sub-Total

| | COST | |
|------|------|---|
| 50 | | |
| 40 | | |
| 90 | | |
| 78 | | 1 |
| 1,80 | | |

* Inmate may be required to have funds in his/her account See SCDC Procedure GA 01 03(OP) Inmate Access to the Courts to determine if inmate may receive copies with/without funds

| Item | Amount |
|-------------|--------|
| Photocopies | |

TOTAL

Inmate's Signature _____

Mailroom/Canteen Signature (Request filled by) _____

7/2/09
Date

SCDC Form 10 14 (November 1998)





The Hon Jeanette Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

July 2, 2009

RE Howard v SCDC
09-ALJ-04-00122-IJ
Case Tracking No 2009-131247

Dear Ms Barber,

I am in receipt of your letters dated June 29, 2009 In response, please find the following for filing

- 1 July 2, 2009 Motion to Amend Notice of Appeal and Proof of Service,
- 2 July 2, 2009 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service
- 3 July 2, 2009 Proof of Service
- 4 July 2, 2009 proposed Amended Proof of Service
- 5 Exhibits #1 and #2 consisting of seven (7) pages,
- 6 June 19, 2009 Notice of Appeal,
- 7 May 21, 2009 Order
- 8 July 2, 2009 letter to Judge McLeod, and
- 9 July 2, 2009 letter to Mr Tatarsky

Thank you for your time, patience, and understanding

Sincerely,


Stacy W Howard

Kershaw Corr Inst
4848 Coldmine Highway
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON JOHN D MCLEOD, JUDGE

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard, ... Appellant,

v

South Carolina Department of Corrections, . . . Respondent

MOTION TO AMEND NOTICE OF APPEAL AND
PROOF OF SERVICE

The Appellant served and filed Notice of Appeal and Proof of Service from his appeal from the Administrative Law Court on June 19, 2009 As indicated by the proof of service and letter to David M Tatarsky, the Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service was served on the Respondent However, due to an inadequate law library in the Kershaw Correctional Institute (see exhibit #1), and the ambiguity of the law set forth in Appellant's Affidavit in Support of this Motion, the administrative law court has not been served with the notice of appeal, proof of service, or motion to proceed in forma pauperis until the date indicated on Appellant's Amended Notice of Appeal and Proof of Service

Based upon the foregoing, Appellant asks for this Court to permit the following

1 The filing of the Amended Notice of Appeal and Proof of Service with this Court and the Administrative Law Court,

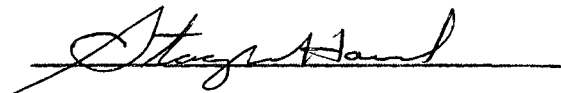
2 The filing of the proof of service of Motion to Proceed In Forma Pauperis, which indicates that the Respondent and the Administrative Law Court have been served, and

3 That the amended Notice of Appeal and Proof of Service stated in the above paragraphs, and Motion to Proceed In Forma Pauperis relate back to the June 19, 2009 service and filing of the Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service, so that service and filing is deemed proper

July 2, 2009

Kershaw, South Carolina

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Stacy W. Howard", is written over a horizontal line.

Stacy W Howard, Appellant

Kershaw Corr Inst

4848 Goldmine Highway

Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON JOHN D. MCLEOD, JUDGE

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard,. .. . Appellant,

v

South Carolina Department of Corrections, ... Respondent

APPELLANT'S AFFIDAVIT IN SUPPORT OF MOTION
TO AMEND NOTICE OF APPEAL AND PROOF OF SERVICE

I, Stacy W Howard, under oath, state the following in support of my Motion to Amend Notice of Appeal and Proof of Service

1 I was wrongfully convicted for Unauthorized Services/Piddling by an institutional disciplinary hearing officer on July 9, 2008. The sanction for this charge was a reprimand However, I lost twenty (20) days for the month of the infraction, and the charge was treated as a "major" offense As a result, my earned work credits (EWC) was reduced from a level 2 for 5 to a level 3 for 5 This drastically extended my sentence maxout by approximately ten (10) months, where my EWC monthly credit changed from 10 7142 days a month to 7.1428 days a month, which is a 3 1428 difference in time, and due to this drastic extension of my sentence, there is a fourteenth amendment liberty interest at stake

2 I filed and served the Notice of Appeal from the Administrative Law

on June 19, 2009, however, I only served the Respondent with the Notice of Appeal, and this was done because the Kershaw Correctional Institute's law library is inadequate. The second excuse for this mistake is that the law library just received the 2008 supplements to the Code of Laws of South Carolina, and this prevented Appellant from reading and following statute section 1-23-610 subsection (A)(1), which was amended by 2008 Act No. 334, § 8. The third excuse is the ambiguity in state law and court rules regarding service of the Notice of Appeal in inmate appeals from the Administrative Law Court. The uncertainty has arisen by the lack of clarity in the following changes in section 1-23-610 of the S.C. Code and Rule 66 of the Administrative Law Court Rules:

Revised 2005 Bound Volume 1 of Titles 1-2, S.C. Code

History: 1993 Act No. 181 § 19

1-23-610

(B) For judicial review of any final decision of an administrative law judge of cases involving departments governed by the single director, a petition by an aggrieved party must be filed with the "Circuit Court" and served on the "opposing party" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. 1-23-610 (Supp. 2007)

2006 Act No. 387, § 5

(B) For judicial review of a final decision of an administrative law judge of cases in which review is not governed by subsection (A), including cases involving the Department of Natural Resources and the Department of

Health and Environmental Control, a notice of appeal by an aggrieved party served and filed with the "court of appeals" as provided in the South Carolina Appellate Court Rules in civil cases and served on the "opposing party" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S C. Code Ann 1-23-610 (Supp 2008)

2008 Act No 334, § 8

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the "court of appeals" as provided in the South Carolina Appellate Court Rules in civil cases and served on the ²"opposing party" and the ³administrative law court" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right

Note ² The opposing party was timely served according to S C. Code Ann 1-23-610 (B) (Supp 2007), which was the only available supplement at the time service was made. This statute does not indicate that the Administrative Law Court has to be served. Also see Rule 66, Administrative Law Court Rule, which indicates the "clerk of court", but does not designate what clerk of court. [amended April 30, 2007]

Note ³ It is unclear whether inmate special appeals (V Special Appeals) is governed by Rule 203, SCACR, governs service of the notice of appeal. Rule 51, ALC, states that the Rules in this section shall apply "exclusively" in matters heard on appeal from final decisions pursuant to *Al-Shabazz v State*, 527 S E 2d 742 (2000). The note to the 2007 Amendment of the ALC Rule 66 references Act No 387, supra, which does not indicate service on the administrative law court.

Rule 66 Appeal of Final Order

2006 & 2007 Administrative Rules (V Special Appeals)

Effective May 1, 2001

The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the clerk of the Division. Upon receipt of the notice of appeal, the clerk of the division shall transmit the record of the proceedings which were the subject of the appeal to the reviewing authority. A certified copy of the record may be substituted for the original. The court receiving the record shall acknowledge transmission of the record by signing and returning the Statement of Contents of the Record to the Division.

Amended April 30, 2007

Rule 66 Appeal of Final Order

The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the "clerk of court ". Also see note to 2007 amendment. Notice that the note references Act No. 387, which does not indicate that the Administrative law Court has to be served, and that the note says nothing about the South Carolina Appellate Court Rules govern the filing of the notice of appeal, but states that the SCACR now governs the procedure for appealing a final order of an administrative law judge. Therefore, Appellant has interpreted the note to mean in the filing of briefs and the record on appeal, because the statute and the rule is ambiguous concerning service of the notice of appeal, ² and both the statute and the rule is ambiguous at this time.

Note ² Even section 1-23-610 (A)(1) (Act No. 334, § 8, does not specify that this section applies to inmate appeals from the SCDC, it only indicates "aggrieved party ".

3. Appellant respectfully submits that he should be excused from his failure to serve the administrative law court with notice of appeal and motion to proceed in forma pauperis, where the statute and rule is unclear about filing and service. In recap of the aforementioned, Rule 66, ALC (2007 amendment), says that the Appellant shall file a copy of the notice of appeal from the decision of the administrative Law Judge with the clerk of court, but does not indicate which clerk of court. The Appellant relied on the only available 2007 supplement in effecting filing and service of the notice of appeal, which does not indicate that the administrative law court has to be served, and the statute and rule is unclear whether section 1-23-610 applies to inmate filing and service of notice of appeal, where the statute says "aggrieved party", not inmate, and where rule 66, ALC, nor its note indicates that the SCACR governs notice of appeals. Lastly, Appellant respectfully submits that the administrative law judge should have advised him in its final order of his right to appeal and that filing the notice of appeal must be made with the clerk of the administrative law court, where the statute and rule is unclear.

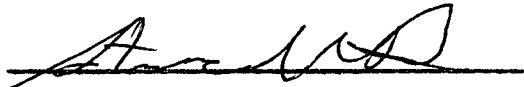
4. If the notice of appeal is dismissed for untimely service on the administrative law court, which occurred from inadequate law library resources, it will be an "actual injury" to this appeal, which was caused by the SCDC's failure to provide current statutory law. For this reason, this appeal should proceed in the interest of fairness.

Note See Howard v. Ozmint, et.al., 6.04-Cv-3171-GRA-WMC

July 2, 2009

Kershaw, South Carolina

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Stacy W. Howard", is written over a horizontal line.

Stacy W. Howard, Appellant

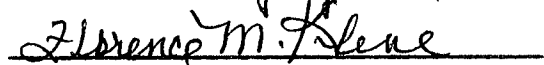
Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Sworn to and subscribed before me

this 2 day of July, 2009.

A handwritten signature in dark ink, appearing to read "Florence M. Kline", is written over a horizontal line.

Notary Public for South Carolina

My commission expires 1/31/18

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON. JOHN D. MCLEOD, JUDGE

Docket No. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

PROOF OF SERVICE

I, Stacy W. Howard, hereby certify that I have served the administrative law court and the Respondent with Motion to Amend Notice of Appeal and Proof of Service on the officials named herein, by depositing same in the U.S. Postal Mail, with postage prepaid on July 2, 2009, properly addressed to:

The Hon. John D. McLeod, Judge
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, SC 29201

David M. Tatarsky
General Counsel
Robert M. Peele
Staff Attorney
4444 Broad River Road
Columbia, SC 29211-1787

July 2, 2009

Kershaw, South Carolina

Sworn to and subscribed before me

this 2 day of July, 2009,

Florence M. Kline

Notary Public for South Carolina

My commission expires: 1/31/18

Stacy W. Howard

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON JOHN D MCLEOD, JUDGE

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard,

Appellant,

v

South Carolina Department of Corrections,

Respondent

AMENDED PROOF OF SERVICE

I, Stacy W Howard, have served and filed Notice of Appeal and Motion to Proceed In Forma Pauperis on the officials named herein, by depositing same in the U S Postal Mail, with postage prepaid on July 2, 2009, properly addressed to

The Hon John D McLeod, Judge
Administrative Law Court
Edgar A Brown Bldg
1205 Pendleton Street, Suite 224
Columbia, SC 29201

David M Tatarsky
General Counsel
Robert M Peele
Staff Attorney
44444 Broad River
Columbia, SC 29211-1787

July 2, 2009
Kershaw, South Carolina

Sworn to and subscribed before me

this 2 day of July, 2009


Notary Public for South Carolina

My commission expires 1/31/18

Associate Warden McKay/Programs
Patricia Cook, Librarian
Kershaw Corr. Inst.

May 13, 2009

RE: Inmate Request
Access to the Courts
Stacy W. Howard #191458, OB-40

TO THE ABOVE NAMED:

I have received a final agency response to my step two grievance in KRCI-0932-08. The responsible authority indicated in its response that I direct my requests to the institutional librarian for any publication that is missing or has been damaged, and that the institutional librarian will secure a copy of that publication from the nearest core law library. However, the problem with this is the fact that this process frustrates and obstructs court deadlines.

Notice

The K.C.I. law library is missing the following resources:

- 1) Current pocket part supplements to the Code of Laws of South Carolina;
- 2) Current pocket part supplements to the West's South Carolina Digest second edition,
- 3) Current statutes and pocket part supplements to the United States Code Annotated,
- 4) Current pocket part supplements to the West's Federal Practice Digest Fourth edition,
- 5) Current Shepard's Citations of state and federal cases,
- 6) Current pocket part supplements to volumes 14A, 22, 22A, 23; 23A, 24 and 28A of the Corpus Juris Secundum,
- 7) A current holding of the Lafave Modern Criminal Law,
- 8) Volumes 117A; 103; 97A, 96A, 89 and 85A of the United States Supreme Court Reporter,
- 9) Approximately 179 volumes of the 244 volumes of the Federal Supplement second series that is required by the outdated 2004 GA-01.03 policy, and

I am prejudiced in the following cases due to the inadequacy of the K C I law library and the outdated policy that it is governed by

Howard v Ozmint, et al , 6 08-CV-3171-GRA-WMC

The defendants in this action have filed a motion to dismiss, or in the alternative, for summary judgement. In order to prepare a meaningful affidavit and memorandum of law in opposition to defendants' motion and upcoming amended motion, I need access to the following resources

- 1) Title 42 U S C A 1771 to 1982 (current statutes and supplement),
- 2) Title 42 U S C A 1983 to 1984 (current statutes and supplement)
- 3) Title 42 U S C A 1985 to 2000d (current statutes and supplement),
- 4) Title 28 U S C A 1861 to 2200 (current statutes and supplement)
- 5) Title 28 U S C A Rules 12 to 16 (current rules and supplement),
- 6) Title 28 U S C A Rule 54 to 56 (current rules and supplement),
- 7) Title 28 U S C A Rules 67 to 71 (current rules and supplement)
- 8) Current supplements to volumes 12B-18A, Civil Rights, West's Federal Practice Digest 4th
- 9) Current supplements to volumes 41A-49B, Federal Civil Procedure, West's Federal Practice Digest 4th,
- 10) Current supplements to volumes 49B-57, Federal Courts, West's Federal Practice Digest 4th
- 11) Current supplements to volumes 67-67P, Judgement, West's Federal Practice Digest 4th
- 12) Current supplement to volume 81, Prisons, West's Federal Practice Digest 4th

In addition, the defendants and the Court have cited the following cases, which I cannot read from the K C I law library

- 1) Alvin Peterson v Alan Tomaselli, et al , 469 F Supp 2d 146, 2007 U S Dist Lexis 3200
- 2) Leroy Shaw v Artnor P Thomas, et al , 2005 U S Dist Lexis 27478
- 3) Williams v Leeke, 584 F 2d 1336 (4th Cir 1978) and
- 4) Roseboro v Garrison, 520 F 2d 302 (4th Cir 1975)

Howard v Cartee, 07-CP-16-935

The respondent in this action has cited two (2) cases in its initial brief , but I cannot explore the authority of these cases because they are not held by the law library These cases are

- 1) Harris v. State, 659 S E 2d 140 (2008)
- 2) Miller v State, 659 S E 2d 492 (2008)

Howard v State, 07-CP-22-1127

I am prejudiced in preparing myself in this action due to the deprivation of current statutes of the Code of Laws of South Carolina, current supplements of the South Carolina Practice Digests 2nd, and where the K C I law library is devoid of the South Eastern Reporter 2nd series past volume 576

Howard v SCDC, 09-ALJ-04-00122-AP

I am prejudiced in preparing myself in this appeal where I cannot prepare a meaningful brief in opposition due to the deprivation of current statutes of the Code of Laws of South Carolina, current supplements to the South Carolina Practice Digests 2nd, and where the K C I law library is devoid of the South Eastern Reporter 2nd series past volume 576

The respondent has cited the following cases in its brief, but I cannot explore the authority of these cases because they are not held by the law library These cases are

- 1) Al-Shabazz v State, 527 S E 2d 742 (2000)(Pages are torn from volume),
- 2) Slezak v SCDC, 605 S E 2d 506 (2004),
- 3) Slezak v SCDC, 586 S E 2d 124 (2004),
- 4) Skipper v. SCDC, 633 S E 2d 910 (2006), and
- 5) Furtick v SCDC, 374 S C 334

The respondent has also set forth section 1-23-600(D), S C Code (2008), which I cannot read, where the K C I law library only holds 2007 supplements to the S.C Code

Howard v. State, 07-CP-22-912

This is an actual innocence claim that I am currently pursuing. At this time I have to file within the statute of limitations for habeas corpus review pursuant to section 2254 of Title 28 of the United States Code Annotated. In order to file a meaningful petition to prove my innocence, I will need the following resources.

- 1) Title 28 U.S.C.A. § 2254 (current statute and supplement)
- 2) Current supplements to volumes 57, 57B, 58, 58B and 59, Habeas Corpus, West's Federal Practice Digest 4th edition

Lastly, I need adequate, effective, and meaningful time in the K.C.I. law library to maintain all of the actions hereinbefore shown.

Thank you for your time, patience, and understanding.

Sincerely,



Stacy W. Howard

OB-40

Memo

TO Stacy Howard, #191458
Kershaw C I

FROM Chris Florian, Staff Attorney

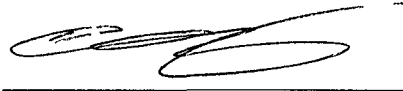
DATE 5/28/09

Re Request for Legal Materials

The request for legal materials you sent to Officer Cooks has been forwarded to me. Most of the materials you requested are either not in the materials held by law libraries or are limited to existing holdings by SCDC policy. Therefore, I am unable to send copies of those materials.

However, I have sent a copy of Al-Shabazz v. State, 338 S C 354, 527 S E 2d 742 to the law library to replace the torn out pages from that volume of the Southeastern reporter since that case is within the materials held by SCDC law libraries under policy.

In addition, you requested several volumes of the Supreme Court reporter, which were stolen from the law library in 1997. I am unable to send a replacement for those volumes at this time. However, if you request from your library a limited number of specific cases from those volumes which you need in connection with ongoing litigation, I will forward copies of those cases to the library.



Chris Florian
Staff Attorney

Cc: File

David M Tatarsky
General Counsel
S C Dept of Corr
4444 Broad River Road
Columbia, SC 29221-1787

June 19, 2009
/

RE Howard v SCDC
09-ALJ-04-00122-IJ

Dear Mr Tatarsky,

Enclosed please find Notice of Appeal, Motion to Proceed In forma
Pauperis, and Proof of Service that is filed with the Clerk of the South
Carolina Court of Appeals This letter serves as notice that the latter motion
ids before said Court

Sincerely,


Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon. John D McLeod, Judge

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard,... Appellant,
V.

South Carolina Department of Corrections,..... Respondent.

PROOF OF SERVICE

I, Stacy W. Howard, certify that I have served the Notice of Appeal on the officials named herein, by depositing a copy of same in the U.S. Postal Mail, postage prepaid, on June 19, 2009, properly addressed to the following

David M. Tatarsky
General Counsel
Robert M. Peele
Staff Attorney
S.C Dept. of Corr.
4444 Broad River Road
Columbia, SC 29221-1787

June 19, 2009
Kershaw, South Carolina

Sworn to and subscribed before me
this 19 day of June, 2009

Loren M. Kline
Notary Public for South Carolina
My commission expires. 1/31/18

Stacy W. Howard
Stacy W. Howard, Appellant
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

The Hon. John D. McLeod, Judge
S C Administrative Law Court
Edgar A. Brown Bldg
1205 Pendleton Street, Suite 224
Columbia, SC 29201

July 2, 2009

RE Howard v. SCDC
09-ALJ-04-00122-IJ

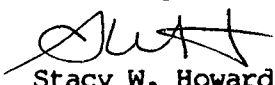
Dear Judge McLeod,

Enclosed herewith and served upon this Court is the following

- 1 Notice of Appeal dated June 19, 2009,
- 2 Motion to Proceed In Forma Pauperis dated June 19, 2009,
- 3 Motion to Amend Notice of Appeal and Proof of Service,
- 4 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 5 Amended Proof of Service,
- 6 Proof of Service, and
- 7 Letter to Jeanette F. Barber dated June 19, 2009

Thank you for your time, patience, and understanding

Sincerely,



Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

David M Tartarsky
Office of General Counsel
Robert M Peele
Staff Attorney
4444 Broad River Road
Columbia, SC 29211-1787

July 2, 2009

RE Howard v SCDC
09-ALJ-00122-IJ

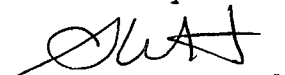
Dear Mr Tartarsky,

Enclosed herewith and served upon you is the following

- 1 Motion to Amend Notice of Appeal and Proof of Service,
- 2 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 3 Amended Proof of Service,
- 4 Proof of Service, and
- 5 Letters to the Honorable Judge McLeod and Ms. Barber dated July 2, 2009

Please recall that I timely served the Respondent with Notice of Appeal and Motion to Proceed In Forma Pauperis on June 19, 2009

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED
AUG 26 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-0012

Stacy W. Howard,.....Appellant,

vs.

South Carolina Dept. of Corrections,.....Respondent.

AFFIDAVIT OF MAILING

I, Stacy W. Howard, have mailed items 1-14 indicated in my August 20, 2009 letter to V. Claire Allen, by placing a copy of same in the hand of the official who has signed below, for inter-agency or U.S. Postal Mail by the SCDC. Mailing occurred as dated below.

Mailed on August 20, 2009

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

I received the mail indicated above
on the date of notarizing this Affidavit

Sworn to and subscribed before me

this 20 day of August, 2009



Notary Public for South Carolina

My commission expires. December 23, 2010

V. Claire Allen, Deputy
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

August 20, 2009

RECEIVED

AUG 26 2009

SC Court of Appeals

RE: Howard v. SCDC
2009-131247

Dear Ms. Allen,

Enclosed please find a copy of the following, which has been previously mailed to this Court

1. 6-19-09 Mail Receipt signed by Florence M. Kline,
2. 6-19-2009 letter to Jeanette F. Barber;
3. 6-19-09 letter to David M. Tatarsky;
4. 6-19-09 Notice of Appeal;
5. 6-19-09 Motion to Proceed in Forma Pauperis.
6. 6-19-09 Proof of Service;
- *7. 7-2-09 Mail Receipt signed by Florence M. Kline;
- *8. 7-2-09 letter to Jeanette F. Barber.
- *9. 7-2-09 Motion to Amend Notice of Appeal and Proof of Service.
- *10. 7-2-09 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service;
- *11. 7-2-09 Proof of Service;
- *12. 7-2-09 Amended Proof of Service;
13. Exhibits #1 and #2 consisting of the following:
 - (a) 5-13-09 Request to Assoc. Warden McKay;
 - (b) 5-28-09 Memo from Chris Florian, Staff Attorney.
 - (c) 6-19-09 letter to David M. Tatarsky, and
 - (d) 6-19-09 Proof of Service
- *13. 7-2-09 letter to Judge John D. McLeod, and
- *14. 7-2-09 letter to David M. Tatarsky

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101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200

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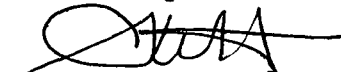
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In your most recent letter dated August 17, 2009, you have indicated that this Court did not receive any of the July 2, 2009 documentation that is numbered above. The SCDC mail record and Proofs of service evince that I mailed all July 2, 2009 documentation to this Court, as instructed, for filing. In addition, I simultaneously mailed the same content to Judge McLeod and Mr. Tatarsky. You will find on the debit form/mail receipt that two(2) letters containing the July 2, 2009 documentation was sent inter-agency mail, and the third, which contained said documents, was sent by regular mail. However, I am not sure which piece of mail was sent regular mail, but in the future, I assure you that my affidavits of mailing will identify who was the mailing official and they will specifically indicate whether the letter was mailed inter-agency or by U.S. Postal Mail. This will eliminate mail tampering.

The enclosed July 2, 2009 documentation is in response to your letter that is dated June 29, 2009. You will find that the May 21, 2009 Order of Judge McLeod is not with the enclosures because that order was sent to this Court on July 2, 2009, and again two (2) copies of Judge McLeod's order was sent to this Court on August 11, 2009 with my Petition for Rehearing. I have not yet paid the \$100.00 filing fee for this appeal because I am waiting on a ruling on the Motion to Proceed in Forma Pauperis regarding installment payments up to the filing of the initial brief. However, if the appeal is going to be dismissed, due to the SCDC's failure to provide me with updated legal resources so that I could learn and know how to make proper service, then that is a matter I will be compelled to pursue to the state and federal Courts for further review.

Thank you for your time.

Sincerely,


Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9711
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

August 17, 2009

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009-131247

Dear Ms Howard

We are in receipt of your Petition for Rehearing

Be advised that we have no record of your correspondence dated July 2, 2009 as indicated in your petition. If you so desire, you may provide this court the requested documents expressed in our correspondence dated August 06, 2009 and June 29, 2009 within seven (07) days from the date of this correspondence.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/pd

cc David Tatarsky, Esquire



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Granted.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 14 2009

SC Court of Appeals

CJ
CASE NO 09-AL-04-00122

Stacy W Howard Petitioner,

v.

South Carolina Dept of Corrections

Respondent

FILED

PETITION FOR REHEARING

9/18/09

The Appellant received a copy of this Court's Order on August 10, 2009. The order indicates that the Notice of Appeal was not filed in the above matter due to the failure of Appellant to provide a copy of the order and/or judgement being challenged, failure to provide the \$100.00 dollar Notice of Appeal filing fee or proof that the Motion to Proceed in Forma Pauperis was served on all parties to the appeal, and for failure to provide proof of service of the Notice of Appeal on the South Carolina Administrative Law Court, as provided for in Rules 203 and 207 of the South Carolina Appellate Court Rules, and as requested by letter from this office dated June 29, 2009.

Appellant respectfully submits that the Court may have overlooked his documents that are dated July 2, 2009, and filed with this Court. The documents on file with this Court are the following:

- 1 July 2, 2009 letter to Ms. Jeanette F Barber,
- 2 July 2, 2009 letter to Judge John D McLeod,
- 3 July 2, 2009 letter to David M Tartarsky,

17th Nov 1944

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4. July 2, 2009 Motion to Amend Notice of Appeal and Proof of Service,
- 5 July 2, 2009 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 6 July 2, 2009 Proof of Service,
- 7 July 2, 2009 proposed Amended Proof of Service,
- 8 June 19, 2009 Notice of Appeal,
- 9 June 19, 2009 letter to Ms Jeanette F Barber,
- 10 June 19, 2009 letter to David M Tatarsky,
11. June 19, 2009 Motion to Proceed In Forma Pauperis,
- 12 June 19, 2009 Proof of Service,
13. May 21, 2009 Order of Judge John D McLeod, and
- 14 Exhibits #1 and #2 consisting of the following
 - (a) May 13, 2009 Request to Associate Warden McKay,
 - (b) May 28, 2009 Memo from General Counsel,
 - (c) Items 3 and 12, supra.

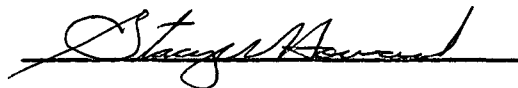
This Court may have misplaced the above records in Appellant's other appeal pending in this Court in Howard v Cartee, 07-CP-16-935. If the Court has misplaced the records 1-14 above, the Appellant will provide this Court with an additional copy in support of this petition, and for this Court's record In addition, Appellant will provide this Court with a copy of the Kershaw Correctional Institute's Mail Receipt to confirm that the record 1-14 was mailed to this Court on July 2, 2009

Based upon the foregoing, Appellant asks for this Court to reconsider its order dated August 6, 2009, and his Motion to Proceed In Forma Pauperis so that he can proceed in this appeal

August 11, 2009

Kershaw, South Carolina

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stacy W. Howard", is written over a solid horizontal line.

Stacy W Howard, Appellant

Kershaw Corr Inst.

4848 Goldmine Highway

Kershaw, SC 29067

RECEIVED

AUG 14 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

09-ALJ-04-0012

Stacy W. Howard.....Appellant,

v.

South Carolina Dept. of Corrections.....Respondent.

AFFIDAVIT OF SERVICE

I, Stacy W. Howard, have filed and served Petition for Rehearing dated August 11, 2009 on the following persons by placing a copy of same in the United States Postal Mail with postage, properly addressed to.

The Hon. Jeanette F. Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

The Hon. John D. Mcleod
Admin. Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, SC 29201

David M. Tatarsky
Office of General Counsel, SCDC
4444 Broad River Road
Columbia, SC 29211-1787

Sworn to and subscribed before me
this 11 day of Aug., 2009

Florence M Kline
Notary Public for South Carolina
My commission expires. 1/31/18

Stacy W. Howard
Stacy W. Howard
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

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[illegible]

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| № | Имя | Возраст | Стаж | Пол | Средняя зарплата | Средняя зарплата на душу населения |
|----|------------|---------|------|-----|------------------|------------------------------------|
| 1 | Иванов | 45 | 15 | М | 12000 | 10000 |
| 2 | Петров | 35 | 10 | М | 15000 | 12000 |
| 3 | Сидоров | 55 | 20 | М | 18000 | 15000 |
| 4 | Климов | 40 | 12 | М | 14000 | 11000 |
| 5 | Васильев | 30 | 8 | М | 16000 | 13000 |
| 6 | Попов | 50 | 18 | М | 17000 | 14000 |
| 7 | Морозов | 42 | 14 | М | 13000 | 10500 |
| 8 | Куликов | 38 | 11 | М | 15500 | 12500 |
| 9 | Левин | 52 | 19 | М | 16500 | 13500 |
| 10 | Зинин | 48 | 16 | М | 14500 | 11500 |
| 11 | Березин | 32 | 9 | М | 17500 | 14500 |
| 12 | Воробьев | 58 | 22 | М | 19000 | 16000 |
| 13 | Григорьев | 44 | 13 | М | 13500 | 11000 |
| 14 | Давыдов | 36 | 10 | М | 16500 | 13500 |
| 15 | Жуков | 54 | 21 | М | 18500 | 15500 |
| 16 | Заболотный | 41 | 12 | М | 14800 | 11800 |
| 17 | Ильин | 31 | 7 | М | 17800 | 14800 |
| 18 | Колосов | 51 | 17 | М | 16800 | 13800 |
| 19 | Королев | 43 | 14 | М | 13800 | 11200 |
| 20 | Лазарев | 33 | 8 | М | 18200 | 15200 |
| 21 | Медведев | 53 | 19 | М | 17800 | 14800 |
| 22 | Михайлов | 46 | 15 | М | 14200 | 11200 |
| 23 | Мухоморов | 34 | 9 | М | 16800 | 13800 |
| 24 | Новиков | 56 | 21 | М | 18800 | 15800 |
| 25 | Осипов | 47 | 16 | М | 15200 | 12200 |
| 26 | Павлов | 37 | 11 | М | 17200 | 14200 |
| 27 | Панов | 57 | 22 | М | 19200 | 16200 |
| 28 | Парфенов | 49 | 17 | М | 15800 | 12800 |
| 29 | Пересильев | 39 | 10 | М | 17800 | 14800 |
| 30 | Петухов | 59 | 23 | М | 19800 | 16800 |
| 31 | Полосин | 45 | 14 | М | 14200 | 11200 |
| 32 | Попов | 35 | 9 | М | 17200 | 14200 |
| 33 | Потапов | 55 | 20 | М | 18800 | 15800 |
| 34 | Романов | 40 | 12 | М | 14800 | 11800 |
| 35 | Савин | 30 | 7 | М | 18200 | 15200 |
| 36 | Самойлов | 50 | 18 | М | 16800 | 13800 |
| 37 | Семин | 42 | 14 | М | 13800 | 11200 |
| 38 | Серебряков | 32 | 8 | М | 18200 | 15200 |
| 39 | Синицын | 52 | 19 | М | 17800 | 14800 |
| 40 | Смирнов | 44 | 13 | М | 13800 | 11200 |
| 41 | Соловьев | 34 | 9 | М | 16800 | 13800 |
| 42 | Степанов | 54 | 21 | М | 18800 | 15800 |
| 43 | Сухов | 46 | 15 | М | 14200 | 11200 |
| 44 | Тарасов | 36 | 10 | М | 17200 | 14200 |
| 45 | Тимофеев | 56 | 21 | М | 18800 | 15800 |
| 46 | Тихонов | 48 | 16 | М | 15800 | 12800 |
| 47 | Толкачев | 38 | 11 | М | 17200 | 14200 |
| 48 | Трунов | 58 | 22 | М | 19200 | 16200 |
| 49 | Тютчев | 49 | 17 | М | 15800 | 12800 |
| 50 | Уваров | 39 | 10 | М | 17800 | 14800 |
| 51 | Удальцов | 59 | 23 | М | 19800 | 16800 |
| 52 | Усачев | 45 | 14 | М | 14200 | 11200 |
| 53 | Фадеев | 35 | 9 | М | 17200 | 14200 |
| 54 | Федотов | 55 | 20 | М | 18800 | 15800 |
| 55 | Филиппов | 40 | 12 | М | 14800 | 11800 |
| 56 | Фомин | 30 | 7 | М | 18200 | 15200 |
| 57 | Фролов | 50 | 18 | М | 16800 | 13800 |
| 58 | Харин | 42 | 14 | М | 13800 | 11200 |

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The Hon. Jeanette F. Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

August 11, 2009

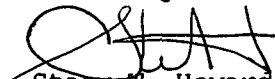
RE. Howard v. SCDC
09-ALJ-04-0012

Dear Ms. Barber,

Enclosed please find Appellant's Petition for Rehearing and Affidavit of Service for filing. If you need any of the records indicated in the petition, please notify me and I will make you a copy of my file.

Thank you for your time.

Sincerely,



Stacy W. Howard

Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

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AUG 14 2009

SC Court of Appeals

The South Carolina Court of Appeals

Stacy W Howard,

Appellant,

v

South Carolina Department of Corrections, Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2009-AL-04-00122

ORDER of DISMISSAL

The Notice of Appeal was not filed in the above matter due to the failure of Appellant to provide a copy of the order and/or judgment being challenged, failure to provide the \$100 Notice of Appeal filing fee or proof that the Motion to Proceed in Forma Pauperis was served on all parties to the appeal and for failure to provide proof of service of the Notice of Appeal on the South Carolina Administrative Law Court, as provided for in Rules 203 and 207 of the South Carolina Appellate Court Rules, and as requested by letter from this office dated June 29, 2009

IT IS ORDERED that the above captioned appeal be and hereby is dismissed Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for the South Carolina Administrative Law after fifteen (15) days, exclusive of the date of filing this Order

V. Claire Allen, Deputy, DEPUTY CLERK
For the Court

Columbia, South Carolina

08/06/2009

cc Stacy W Howard
 David Tatarsky, Esquire
 The Honorable Jana E Shealy

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JUL 09 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON JOHN D MCLEOD, JUDGE

Docket No 09-ALJ-04-00122-IJ

Stacy W Howard, . . . Appellant,

v

South Carolina Department of Corrections, Respondent

MOTION TO AMEND NOTICE OF APPEAL AND
PROOF OF SERVICE

The Appellant served and filed Notice of Appeal and Proof of Service from his appeal from the Administrative Law Court on June 19, 2009 As indicated by the proof of service and letter to David M Tatarsky, the Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service was served on the Respondent However, due to an inadequate law library in the Kershaw Correctional Institute (see exhibit #1), and the ambiguity of the law set forth in Appellant's Affidavit in Support of this Motion, the administrative law court has not been served with the notice of appeal, proof of service, or motion to proceed in forma pauperis until the date indicated on Appellant's Amended Notice of Appeal and Proof of Service

Based upon the foregoing, Appellant asks for this Court to permit the following

1 The filing of the Amended Notice of Appeal and Proof of Service with this Court and the Administrative Law Court,

20 copies of volume
10, 10, 10,
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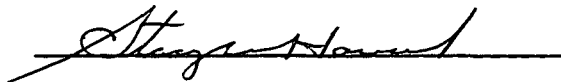
2 The filing of the proof of service of Motion to Proceed In Forma Pauperis, which indicates that the Respondent and the Administrative Law Court have been served, and

3 That the amended Notice of Appeal and Proof of Service stated in the above paragraphs, and Motion to Proceed In Forma Pauperis relate back to the June 19, 2009 service and filing of the Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service, so that service and filing is deemed proper

July 2, 2009

Kershaw, South Carolina

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Stacy W. Howard", is written over a horizontal line.

Stacy W Howard, Appellant

Kershaw Corr Inst

4848 Goldmine Highway

Kershaw, SC 29067

JUL 09 2009

THE HON. JOHN D. MCLEOD, JUDGE

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الحمد لله الذي جعل

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on June 19, 2009, however, I only served the Respondent with the Notice of Appeal, and this was done because the Kershaw Correctional Institute's law library is inadequate. The second excuse for this mistake is that the law library just received the 2008 supplements to the Code of Laws of South Carolina, and this prevented Appellant from reading and following statute section 1-23-610 subsection (A)(1), which was amended by 2008 Act No. 334, § 8. The third excuse is the ambiguity in state law and court rules regarding service of the Notice of Appeal in inmate appeals from the Administrative Law Court. The uncertainty has arisen by the lack of clarity in the following changes in section 1-23-610 of the S.C. Code and Rule 66 of the Administrative Law Court Rules:

Revised 2005 Bound Volume 1 of Titles 1-2, S.C. Code

History: 1993 Act No. 181 § 19

1-23-610

(B) For judicial review of any final decision of an administrative law judge of cases involving departments governed by the single director, a petition by an aggrieved party must be filed with the "Circuit Court" and served on the "opposing party" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. 1-23-610 (Supp. 2007)

2006 Act No. 387, § 5

(B) For judicial review of a final decision of an administrative law judge of cases in which review is not governed by subsection (A), including cases involving the Department of Natural Resources and the Department of

Health and Environmental Control, a notice of appeal by an aggrieved party served and filed with the "court of appeals" as provided in the South Carolina Appellate Court Rules in civil cases and served on the "opposing party" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. 1-23-610 (Supp 2008)

2008 Act No. 334, § 8

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the "court of appeals" as provided in the South Carolina Appellate Court Rules in civil cases and served on the ²"opposing party" and the ³administrative law court" not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

Note ² The opposing party was timely served according to S C. Code Ann 1-23-610 (B) (Supp. 2007), which was the only available supplement at the time service was made. This statute does not indicate that the Administrative Law Court has to be served. Also see Rule 66, Administrative Law Court Rule, which indicates the "clerk of court", but does not designate what clerk of court.[amended April 30, 2007].

Note ³ It is unclear whether inmate special appeals (V.Special Appeals) is governed by Rule 203, SCACR, governs service of the notice of appeal. Rule 51, ALC, states that the Rules in this section shall apply "exclusively" in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 527 S.E 2d 742 (2000). The note to the 2007 Amendment of the ALC Rule 66 references Act No 387, supra., which does not indicate service on the administrative law court.

5

Rule 66 Appeal of Final Order

2006 & 2007 Administrative Rules (V Special Appeals)

Effective May 1, 2001

The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the clerk of the Division. Upon receipt of the notice of appeal, the clerk of the division shall transmit the record of the proceedings which were the subject of the appeal to the reviewing authority. A certified copy of the record may be substituted for the original. The court receiving the record shall acknowledge transmission of the record by signing and returning the Statement of Contents of the Record to the Division.

Amended April 30, 2007

Rule 66 Appeal of Final Order

The appellant shall file a copy of the notice of appeal from the decision of the Administrative Law Judge with the "clerk of court ". Also see note to 2007 amendment. Notice that the note references Act No. 387, which does not indicate that the Administrative Law Court has to be served, and that the note says nothing about the South Carolina Appellate Court Rules govern the filing of the notice of appeal, but states that the SCACR now governs the procedure for appealing a final order of an administrative law judge. Therefore, Appellant has interpreted the note to mean in the filing of briefs and the record on appeal, because the statute and the rule is ambiguous concerning service of the notice of appeal, ² and both the statute and the rule is ambiguous at this time.

Note ² Even section 1-23-610 (A)(1) (Act No. 334, § 8, does not specify that this section applies to inmate appeals from the SCDC, it only indicates "aggrieved party ".

3 Appellant respectfully submits that he should be excused from his failure to serve the administrative law court with notice of appeal and motion to proceed in forma pauperis, where the statute and rule is unclear about filing and service. In recap of the aforementioned, Rule 66, ALC (2007 amendment), says that the Appellant shall file a copy of the notice of appeal from the decision of the administrative Law Judge with the clerk of court, but does not indicate which clerk of court. The Appellant relied on the only available 2007 supplement in effecting filing and service of the notice of appeal, which does not indicate that the administrative law court has to be served, and the statute and rule is unclear whether section 1-23-610 applies to inmate filing and service of notice of appeal, where the statute says "aggrieved party", not inmate, and where rule 66, ALC, nor its note indicates that the SCACR governs notice of appeals. Lastly, Appellant respectfully submits that the administrative law judge should have advised him in its final order of his right to appeal and that filing the notice of appeal must be made with the clerk of the administrative law court, where the statute and rule is unclear.

4 If the notice of appeal is dismissed for untimely service on the administrative law court, which occurred from inadequate law library resources, it will be an "actual injury" to this appeal, which was caused by the SCDC's failure to provide current statutory law. For this reason, this appeal should proceed in the interest of fairness.

Note. See Howard v. Ozmint, et.al., 6:04-Cv-3171-GRA-WMC

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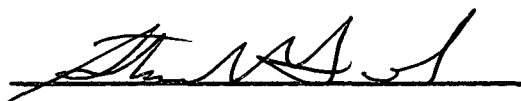
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July 2, 2009

Kershaw, South Carolina

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Stacy W. Howard', is written over a horizontal line.

Stacy W Howard, Appellant

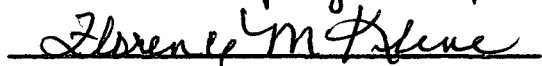
Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Sworn to and subscribed before me

this 2 day of July, 2009

A handwritten signature in dark ink, appearing to read 'Florence M. Kline', is written over a horizontal line.

Notary Public for South Carolina

My commission expires 1/31/18

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

THE HON. JOHN D. MCLEOD, JUDGE

RECEIVED

JUL 09 2009

SC Court of Appeals

Docket No. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

PROOF OF SERVICE

I, Stacy W. Howard, hereby certify that I have served the administrative law court and the Respondent with Motion to Amend Notice of Appeal and Proof of Service on the officials named herein, by depositing same in the U.S. Postal Mail, with postage prepaid on July 2, 2009, properly addressed to.

The Hon. John D. McLeod, Judge
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, SC 29201

David M. Tatarsky
General Counsel
Robert M. Peele
Staff Attorney
4444 Broad River Road
Columbia, SC 29211-1787

July 2, 2009

Kershaw, South Carolina

Sworn to and subscribed before me

this 2 day of July, 2009.

Florence M. Kline

Notary Public for South Carolina

My commission expires: 1/31/18



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

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JUL 09 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HON JOHN D MCLEOD, JUDGE

Docket No 09-AJJ-04-00122-IJ

Stacy W Howard,

Appellant,

v

South Carolina Department of Corrections

Respondent

AMENDED PROOF OF SERVICE

I, Stacy W Howard, have served and filed Notice of Appeal and Motion to Proceed In Forma Pauperis on the officials named herein, by depositing same in the U S Postal Mail, with postage prepaid on July 2, 2009, properly addressed to

The Hon John D McLeod, Judge
Administrative Law Court
Eagar A Brown Bldg
1205 Pendleton Street, Suite 224
Columbia, SC 29201

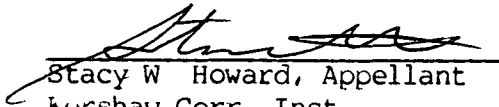
David M Tatarsky
General Counsel
Robert M Peele
Staff Attorney
44444 Broad River
Columbia, SC 29211-1787

July 2, 2009
Kershaw, South Carolina

Sworn to and subscribed before me

this 2 day of July, 2009
Florence M Kline
Notary Public for South Carolina

My commission expires 1/31/18


Stacy W Howard, Appellant
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

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Associate Warden McKay/Programs

Patricia Cook, Librarian

Kershaw Corr Inst

May 13, 2009

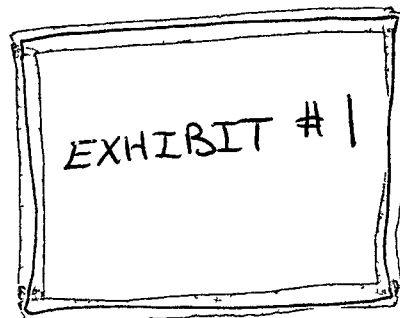
RE Inmate Request

Access to the Courts

Stacy W Howard #191458, OB-40

TO THE ABOVE NAMED

I have received a final agency re
KRCI-0932-08 The responsible authority
direct my requests to the institutional li
missing or has been damaged, and that the institutional librarian will secure
a copy of that publication from the nearest core law library However, the
problem with this is the fact that this process frustrates and obstructs court
deadlines



5 PAGES

MAY 13, 2009 LETTER

MAY 28, 2009 LETTER

Notice

The K C I law library is missing the following resources

- 1) Current pocket part supplements to the Code of Laws of South Carolina
- 2) Current pocket part supplements to the West's South Carolina Digest second edition,
- 3) Current statutes and pocket part supplements to the United States Code Annotated
- 4) Current pocket part supplements to the West's Federal Practice Digest Fourth edition,
- 5) Current Shepard's Citations of state and federal cases,
- 6) Current pocket part supplements to volumes 14A, 22 22A, 23, 23A, 24 and 28A of the Corpus Juris Secundum,
- 7) A current holding of the Lafave Modern Criminal Law,
- 8) Volumes 117A, 103, 97A, 96A, 89 and 85A of the United States Supreme Court Reporter,
- 9) Approximately 179 volumes of the 244 volumes of the Federal Supplement second series that is required by the outdated 2004 GA-01 03 policy, and



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I am prejudiced in the following cases due to the inadequacy of the K C I law library and the outdated policy that it is governed by

Howard v Ozmint, et al , 6 08-CV-3171-GRA-WMC

The defendants in this action have filed a motion to dismiss, or in the alternative, for summary judgement. In order to prepare a meaningful affidavit and memorandum of law in opposition to defendants' motion and upcoming amended motion, I need access to the following resources

- 1) Title 42 U S C A 1771 to 1982 (current statutes and supplement),
- 2) Title 42 U S C A. 1983 to 1984 (current statutes and supplement),
- 3) Title 42 U S C A 1985 to 2000d (current statutes and supplement),
- 4) Title 28 U S C A 1861 to 2200 (current statutes and supplement)
- 5) Title 28 U S C A Rules 12 to 16 (current rules and supplement),
- 6) Title 28 U S C A Rule 54 to 56 (current rules and supplement),
- 7) Title 28 U S C A Rules 61 to 71 (current rules and supplement),
- 8) Current supplements to volumes 12B-18A, Civil Rights, West's Federal Practice Digest 4th,
- 9) Current supplements to volumes 41A-49B, Federal Civil Procedure, West's Federal Practice Digest 4th,
- 10) Current supplements to volumes 49B-57, Federal Courts, West's Federal Practice Digest 4th,
- 11) Current supplements to volumes 67-67B, Judgement, West's Federal Practice Digest 4th,
- 12) Current supplement to volume 81, Prisons, West's Federal Practice Digest 4th

In addition, the defendants and the Court have cited the following cases, which I cannot read from the K C I law library

- 1) Alvin Peterson v Alan Tomaselli, et al , 469 F Supp 2d 146, 2007 U S Dist. Lexis 3200,
- 2) Leroy Shaw v Arther R Thomas, et al , 2005 U S Dist Lexis 27478,
- 3) Williams v Leeke, 584 F 2d 1336 (4th Cir 1978), and
- 4) Roseboro v Garrison, 528 F 2d 309 (4th Cir 1975)

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The letter is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

2. The second part of the document is a report from the Secretary of the Interior, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

3. The third part of the document is a report from the Secretary of the Treasury, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

4. The fourth part of the document is a report from the Secretary of the War, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

5. The fifth part of the document is a report from the Secretary of the Navy, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

6. The sixth part of the document is a report from the Secretary of the State, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

7. The seventh part of the document is a report from the Secretary of the War, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

8. The eighth part of the document is a report from the Secretary of the Navy, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

9. The ninth part of the document is a report from the Secretary of the State, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

10. The tenth part of the document is a report from the Secretary of the War, dated January 3, 1862. It is a very important document, as it contains the Secretary's annual report to the President. The report is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

Howard v Cartee, 07-CP-16-935

The respondent in this action has cited two (2) cases in its initial brief , but I cannot explore the authority of these cases because they are not held by the law library These cases are

- 1) Harris v State, 659 S E 2d 140 (2008)
- 2) Miller v State, 659 S E 2d 492 (2008)

Howard v State, 07-CP-22-1127

I am prejudiced in preparing myself in this action due to the deprivation of current statutes of the Code of Laws of South Carolina, current supplements of the South Carolina Practice Digests 2nd, and where the K C I law library is devoid of the South Eastern Reporter 2nd series past volume 576

Howard v SCDC, 09-ALJ-04-00122-AP

I am prejudiced in preparing myself in this appeal where I cannot prepare a meaningful brief in opposition due to the deprivation of current statutes of the Code of Laws of South Carolina current supplements to the South Carolina Practice Digests 2nd, and where the K C I law library is devoid of the South Eastern Reporter 2nd series past volume 576

The respondent has cited the following cases in its brief, but I cannot explore the authority of these cases because they are not held by the law library These cases are

- 1) Al-Shabazz v State, 527 S E 2d 742 (2000)(Pages are torn from volume),
- 2) Slezak v SCDC, 605 S E 2d 506 (2004),
- 3) Slezak v SCDC, 586 S E 2d 124 (2004),
- 4) Skipper v SCDC, 633 S E 2d 910 (2006), and
- 5) Furtick v SCDC, 374 S C 334

The respondent has also set forth section 1-23-600(D), S C Code (2008), which I cannot read, where the K C I law library only holds 2007 supplements to the S C Code

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Howard v State, 07-CP-22-912

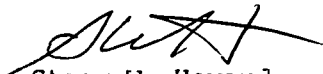
This is an actual innocence claim that I am currently pursuing At this time I have to file within the statute of limitations for habeas corpus review pursuant to section 2254 of Title 28 of the United States Code Annotated In order to file a meaningful petition to prove my innocence, I will need the following resources

- 1) Title 28 U S C A § 2254 (current statute and supplement)
- 2) Current supplements to volumes 57, 57B, 58, 58B and 59, Habeas Corpus, West's Federal Practice Digest 4th edition

Lastly, I need adequate, effective, and meaningful time in the K C I law library to maintain all of the actions hereinbefore shown

Thank you for your time, patience, and understanding

Sincerely,



Stacy W Howard

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Memo

TO Stacy Howard, #191458
Kershaw C I

FROM Chris Florian, Staff Attorney

DATE 5/28/09

Re Request for Legal Materials

The request for legal materials you sent to Officer Cooks has been forwarded to me. Most of the materials you requested are either not in the materials held by law libraries or are limited to existing holdings by SCDC policy. Therefore, I am unable to send copies of those materials.

However, I have sent a copy of Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 to the law library to replace the torn out pages from that volume of the Southeastern reporter since that case is within the materials held by SCDC law libraries under policy.

In addition, you requested several volumes of the Supreme Court reporter which were stolen from the law library in 1997. I am unable to send a replacement for those volumes at this time. However, if you request from your library a limited number of specific cases from those volumes which you need in connection with ongoing litigation, I will forward copies of those cases to the library.



Chris Florian
Staff Attorney

Cc: File

OFFICE OF GENERAL COUNSEL
South Carolina Department of Corrections
POST OFFICE BOX 21787
4444 BROAD RIVER ROAD
COLUMBIA SOUTH CAROLINA 29211

JUN 11 2007

MAIL ROOM

INTER-AGENCY MAIL

Stacy Howard, #191458
Kershaw C1

OB40

David M Tatarsky
General Counsel
S C Dept. of Corr.
4444 Broad River Road
Columbia, SC 29221-1787

RE Howard v SCDC
09-ALJ-04-00122-IJ

Dear Mr Tatarsky,

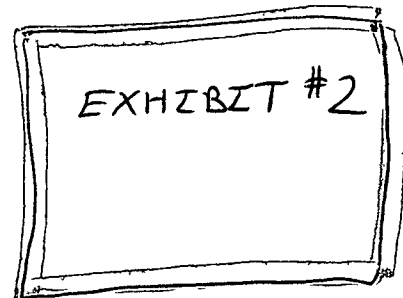
Enclosed please find Notice of Appeal
Pauperis and Proof of Service that is filed
Carolina Court of Appeals This letter serves as notice that the latter motion
ids before said Court

Sincerely,


Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

June 19, 2009



2 PAGES

JUNE 19, 2009 LETTER
JUNE 19, 2009 PROOF OF SERV


Stacy W. Howard, Appellant
Kershaw Corr. Inst
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED
JUL 09 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon. John D. McLeod, Judge

Docket No. 09-ALJ-04-00122-IJ

Stacy W. Howard,.....Appellant,

V.

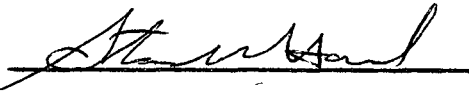
South Carolina Department of Corrections,.....Respondent.

NOTICE OF APPEAL

Stacy W. Howard, the above named Appellant, hereby appeals from the order of the Honorable John D. McLeod dated May 21, 2009. Appellant received a copy of said order on May 25, 2009.

June 19, 2009

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

Other Counsel of Record.

David M Tatarsky

General Counsel

Robert M. Peele, III

Staff Attorney

S C. Dept. of Corr.

STATE OF SOUTH CAROLINA
Administrative Law Court
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET SUITE 224
COLUMBIA SOUTH CAROLINA 29201



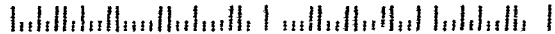
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LEGAL MAIL

Stacy Howard #191458
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw SC 29067

MAY 22 2009
KerCI
MAILROOM

29067+8136



This Order was not received
until May 25, 2009. The
23rd and 24th was a weekend.

¹ An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence related credits pursuant to Section 24 13 210(A) or Section 24 13 230(A)

earned work credits

The loss of earned work credits is governed, tangentially, by Skipper v S C Department of Corrections, 370 S C 267, 633 S E 2d 910 (Ct App 2006) in which the Court held that an inmate had no state created liberty interest in a work release program

More recently, the United States Supreme Court took the opportunity to clarify the law with respect to state-created liberty interests in prison systems that are protected by the Due Process Clause Sandin v Conner, 515 U S 472, 115 S Ct 2293, 132 L Ed 2d 418 (1995) The Court noted that “these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life ” Id at 484, 115 S Ct 2293 (citations omitted) In ruling on Conner's case, the Court established directives for future cases Specifically, the Court held that “Conner's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest ” Id at 486, 115 S Ct 2293

Applying the above-outlined principles, we find Skipper's participation in the Prison Industries program is not a right, but a privilege Not all prisons provide this opportunity to inmates, and those that do provide this option are inundated with inmate requests and forced to maintain long waiting lists This employment program does not meet the test for a state-created liberty interest as outlined in Sandin because it does not present an atypical, significant hardship on inmates who are not permitted to participate Consequently, Skipper, in being terminated from his prison employment, did not suffer an infringement upon his liberty interests

Skipper, 633 S E 2d at 914-15

Applying the same rationale here, there is clearly no liberty interest in an institutional job assignment which is clearly of lesser dignity than employment in a work release program authorized by state statute and its denial is clearly not an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life Since there is no right to the job assignment, there is no liberty interest in credits that may be earned in the job

Under Slezak v S C Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004), the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but “Summary dismissal may be appropriate where the inmate's

grievance does not implicate a state created liberty or property interest " Such is the case here

Therefore, for the foregoing reasons this appeal is hereby **DISMISSED, WITH PREJUDICE**

May 21, 2009
Columbia, SC


John D. McLeod, Judge
S-C Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 21 day of May, 2009
By Anthony R. Bealdman
Judicial Law Clerk

The Hon John D. McLeod, Judge
S.C Adminstrative Law Court
Edgar A Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, SC 29201

July 2, 2009

RE Howard v. SCDC
09-ALJ-04-00122-IJ

Dear Judge McLeod,

Enclosed herewith and served upon this Court is the following

1. Notice of Appeal dated June 19, 2009,
2. Motion to Proceed In Forma Pauperis dated June 19, 2009,
- 3 Motion to Amend Notice of Appeal and Proof of Service,
4. Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 5 Amended Proof of Service,
- 6 Proof of Service, and
- 7 Letter to Jeanette F Barber dated June 19, 2009.

Thank you for your time, patience, and understanding.

Sincerely,



Stacy W Howard

Kershaw Corr. Inst
4848 Goldmine Highway
Kershaw, SC 29067

David M. Tartarsky
Office of General Counsel
Robert M. Peele
Staff Attorney
4444 Broad River Road
Columbia, SC 29211-1787

July 2, 2009

RE Howard v. SCDC
09-ALJ-00122-IJ

Dear Mr. Tartarsky,

Enclosed herewith and served upon you is the following

- 1 Motion to Amend Notice of Appeal and Proof of Service,
- 2 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 3 Amended Proof of Service,
- 4 Proof of Service, and
- 5 Letters to the Honorable Judge McLeod and Ms. Barber dated July 2, 2009

Please recall that I timely served the Respondent with Notice of Appeal and Motion to Proceed In Forma Pauperis on June 19, 2009.

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

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The Hon Jeanette Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

July 2, 2009

RECEIVED

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SC Court of Appeals

RE Howard v SCDC
09-ALJ-04-00122-IJ
Case Tracking No 2009-131247

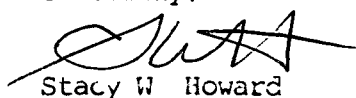
Dear Ms Barber,

I am in receipt of your letters dated June 29, 2009 In response, please find the following for filing

- 1 July 2, 2009 Motion to Amend Notice of Appeal and Proof of Service
- 2 July 2, 2009 Appellant's Affidavit in Support of Motion to Amend Notice of Appeal and Proof of Service,
- 3 July 2, 2009 Proof of Service
- 4 July 2, 2009 proposed Amended Proof of Service,
- 5 Exhibits #1 and #2 consisting of seven (7) pages,
- 6 June 19, 2009 Notice of Appeal,
- 7 May 21, 2009 Order
- 8 July 2, 2009 letter to Judge McLeod, and
- 9 July 2, 2009 letter to Mr Tatarsky

Thank you for your time, patience, and understanding

Sincerely,



Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

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The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

June 29, 2009

Stacy W. Howard
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Re: Howard, Stacy W. v. SCDC
Case Tracking Number 2009 - 131247

Dear Ms. Howard:

This will acknowledge receipt of your Petition for Judicial Review of Administrative Law Judge Division Final Decision in the above entitled matter. According to Rule 203 of the South Carolina Appellate Court Rules, a Notice of Appeal must include the name of the court from which the appeal is taken, the judge's name, the lower court docket number, the date of the order being appealed, the name of the appealing party, and the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each. A copy of the order being challenged on appeal, proof of service showing the notice has been timely served on all respondents and the Administrative Law Court, and a filing fee of \$100.00 must accompany the Notice of Appeal.

Within fourteen (14) days of the date of this letter, you must provide the Court with the following:

- 1. Proof of service showing the Notice of Appeal has been timely served on the Administrative Law Court,**
- 2. The order you are appealing, and**
- 3. Proof of service showing the Motion to Proceed in Forma Pauperis has been timely served all other parties to the appeal and the Administrative Law Court.**

Failure to provide the requested items will result in dismissal of your appeal.

If you intend to proceed with this appeal pro se, the fact that you are not an attorney does not relieve you of the responsibility to perfect your appeal in accordance with the South Carolina Appellate Court Rules. These rules are now available on the Internet at www.sccourts.org. If you do not have access to this website, you may purchase a copy of the rules from this court for a fee of \$5.00. Upon your written request and receipt of the fee in this office, a copy of the rules will be mailed to you.

Very truly yours,



Jeanette F. Barber
CLERK

JFB/pd

cc David Tatarsky, Esquire
The Honorable Jana E. Shealy



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29 11
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

June 29, 2009

Stacy W. Howard
Kershaw Corr. Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Re: Howard, Stacy W. v. SCDC
Case Tracking Number 2009-131247

Dear Ms. Howard:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence (but not on briefs, records, motions, and the like) relating to this matter.

I wish to call the attention of the parties to the August 13, 2007 order of the South Carolina Supreme Court relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Barber", written over the typed name of the clerk.

CLERK

JFB/pd

cc: David Tatarsky, Esquire
The Honorable Jana E. Shealy



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

June 29, 2009

Stacy W Howard
Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

Re Howard, Stacy W v SCDC
Case Tracking Number 2009-131247

Dear Ms Howard

This will acknowledge receipt of your Motion to Proceed In Forma Pauperis in the above entitled matter

Opposing counsel is advised that an original and six (6) copies of a return to this motion may be filed no later than ten (10) days from the date of service, pursuant to Rule 224(e). Upon receipt of the return, if one is filed, the matter will be taken under consideration and you will be notified as soon as action has been taken.

Very truly yours,

A handwritten signature in black ink, appearing to read "JF Barber", is written over the typed name of the clerk.

CLERK

JFB/pd

cc David Tatarsky, Esquire

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JUN 25 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon John D McLeod, Judge

Docket No 09-ALJ-04-00122-IJ

Stacy W. Howard, ... Appellant,

V

South Carolina Department of Corrections, ... Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

This is an appeal which will raise constitutional, statutory, and SCDC policy questions that deal with due process, equal protection of the law, the cruel and unusual punishments clause, access to the courts, and the unconstitutionality of S C. Code section 1-23-600(D)

Because this appeal is dealing with constitutional matter that is provided by the protection of the United States Constitution, Appellant hereby applies for leave to proceed in forma pauperis, or at the least, to make four (4) \$25 00 payments during the course of this appeal under the condition that the appeal will be dismissed if the payments are not made before the initial brief is filed

Based upon the foregoing, the Appellant prays for leave to proceed without cost, or at the least, to make four (4) installment payments before or when the initial brief is filed, where this is a constitutional matter

June 19, 2009

Kershaw, South Carolina

Respectfully Submitted,



Stacy W Howard, Appellant

Kershaw Corr Inst

4848 Goldmine Highway

Kershaw, SC 29067

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JUN 25 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Hon. John D. McLeod, Judge

Docket No. 09-ALJ-04-00122-IJ

Stacy W. Howard,.....Appellant,

V.

South Carolina Department of Corrections,.....Respondent.

NOTICE OF APPEAL

Stacy W. Howard, the above named Appellant, hereby appeals from the order of the Honorable John D. McLeod dated May 21, 2009. Appellant received a copy of said order on May 25, 2009.

June 19, 2009

Kershaw, South Carolina



Stacy W. Howard, Appellant

Kershaw Corr. Inst

4848 Goldmine Highway

Kershaw, SC 29067

Other Counsel of Record

David M Tatarsky

General Counsel

Robert M. Peele, III

Staff Attorney

S.C Dept of Corr.

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JUN 25 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Hon. John D McLeod, Judge

Docket No 09-ALJ-04-00122-IJ

Stacy W. Howard, ... Appellant,
V.

South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

I, Stacy W Howard, certify that I have served the Notice of Appeal on the officials named herein, by depositing a copy of same in the U.S Postal Mail, postage prepaid, on June 19, 2009, properly addressed to the following

David M. Tatarsky
General Counsel
Robert M Peele
Staff Attorney
S C Dept. of Corr.
4444 Broad River Road
Columbia, SC 29221-1787

June 19, 2009
Kershaw, South Carolina

Sworn to and subscribed before me
this 19 day of June, 2009

Lorence M Kline
Notary Public for South Carolina
My commission expires 1/31/18

Stacy W Howard
Stacy W Howard, Appellant
Kershaw Corr. Inst
4848 Goldmine Highway
Kershaw, SC 29067

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Jeanette F Barber, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

June 19, 2009

RE Howard v SCDC
09-ALJ-04-00122-IJ

Ms Barber,

Enclosed please find Notice of Appeal, Motion to Proceed In Forma
Pauperis, and Proof of Service for filing in the above reference matter

Thank you for your time

Sincerely,



Stacy W Howard

Kersnaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED

JUN 25 2009

SC Court of Appeals

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JAN 10 1964

David M Tatarsky
General Counsel
S C Dept of Corr
4444 Broad River Road
Columbia, SC 29221-1787

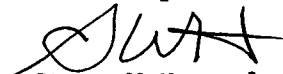
June 19, 2009

RE Howard v SCDC
09-ALJ-04-00122-IJ

Dear Mr Tatarsky,

Enclosed please find Notice of Appeal, Motion to Proceed In Forma Pauperis, and Proof of Service that is filed with the Clerk of the South Carolina Court of Appeals This letter serves as notice that the latter motion is before said Court

Sincerely,


Stacy W Howard

Kershaw Corr Inst
4848 Goldmine Highway
Kershaw, SC 29067

RECEIVED

JUN 25 2009

SC Court of Appeals

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