

In The Circuit Court for Baltimore City  
**CIVIL**

*T-2691*  
*OR-11-2-22*

In the Matter of

JOHN WILLIAM SIMMS #140-766

vs

SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL  
SERVICES

*26879*



THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 89142059/CL97862 PAGE 1 of     

PARTIES	ATTORNEY(S)
<p>JOHN WILLIAM SIMMS #140-766</p> <p>VS</p> <p>SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES</p>	<p>PROPER PERSON</p> <p>912654</p> <p><u>Scott S. Oakley</u> Alan D. Eason - 463887</p>

DATE	DOCKET ENTRIES	NO.
5/22/89	ORDER FOR APPEAL FROM THE DECISION OF THE INMATE GRIEVANCE COMMISSION AND PETITION.	1
"	MOTION AND ORDER OF COURT WAIVING PAYMENT OF COURT COSTS. J D. ROSS	2
7/21/89	App. Scott S. Oakley for deft, answer	3
7/31/89	Transcript of record (Set C.T.F.) 13pp	4
7/31/89	Notices sent in accordance with Md. Rule B-12	.
10-5-89	Writ of Habeas Corpus Ad Testificandum	5 ✓
11/28/89	App. of attorney Alan D. Eason & withdraw Scott S. Oakley for appellee	6 ✓
12-12-89	Defendants Post Hearing Memorandum fl	6A ✓
1-2-90	Plaintiffs Answer to Defendants Memorandum fl	6B ✓
6/13/90	The decision of the Inmate Grievance Commission is hereby "affirmed" memo of opinion filed, Costs waived Halliday L 1057.	7 ✓
6-21-90	Application for leave to Appeal Judge's Decision fd by John W. Simms	8 ✓

# Court of Special Appeals

No. 39, September Term, 1990  
Type MS

John William Simms  
v.  
Inmate Grievance Commission

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:  
August 23, 1990: Per Curiam. Applicatin  
for leave to appeal denied.

RECORD RETURNED TO CLERK OF CIRCUIT COURT FOR:  
BALTIMORE CITY  
BALTIMORE, MD 21202                      DATE: 8/23/90

BY: ~~HAND DELIVERED~~

REMARKS:

UNREPORTED

IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

Application for Leave to Appeal  
No. 39

September Term, 1990

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INMATE GRIEVANCE

---

JOHN WILLIAM SIMMS

v.

INMATE GRIEVANCE COMMISSION

---

Moylan,  
Wilner,  
Bell, Robert M.,

JJ.

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PER CURIAM

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Filed: August 23, 1990

The application of John William Simms for leave to appeal from a denial of relief from an inmate grievance proceeding has been read, considered, and is denied.

APPLICATION FOR LEAVE  
TO APPEAL DENIED.

Misc. No. 39 (LEAVE BLANK) SEPTEMBER TERM, 19 90

# TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE CITY

**Judge:** ..... Honorable Ellen L. Hollander

IN THE CASE OF

John William Simms # 140-766

V S.

Appellant

~~Secretary of Public Safety~~

*Inmate Assistance Commission*

Appellee

TO THE

COURT OF SPECIAL APPEALS

John William Simms # 140-766

954 Forrest Street Maryland Pentitary

Baltimore, MD 21202

FOR APPELLANT

*P 724 026 992*

Alan D. Eason, Esquire Asst. Atty General

6776 Reisterstown Road

Baltimore, Maryland 21215 (301) 764-4191

FOR APPELLEE

Filed ..... *6/22/90* (LEAVE BLANK)





John William Simms # 140-766

NO. 89142059/ CL 97862

PAGE:

DOCKET:

VS.

**IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY**

Sandra E. Banks, Clerk

Secretary of Public Safety and  
Correctional Services

**CERTIFICATE BY CLERK OF THE COURT, TO TRANSCRIPT OF RECORD.**

State of Maryland, Baltimore City, Set.:

I, Sandra E. Banks, Clerk of the Circuit Court for Baltimore City, hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said Court, in the Therein entitled cause.

I further certify that all counsel of record, heretofore, have been notified to inspect the foregoing transcript of record, prior to its transmission, and that said counsel have had ample opportunity for such inspection.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Baltimore City aforesaid, on this day of June 21, 19 90 .

SEAL OF THE COURT Transcript of record  
Open Court Costs N/A

*Sandra E. Banks*

Clerk of the Circuit Court for Baltimore City

Testimony N/A  
Court Reporter N/A

Hollander

Stokes

COURT

CHRONOLOGICAL

B. Trowbridge

ASSIGNMENT FOR TUESDAY DECEMBER 05, 1989

9142059

TITLE - SIMMS VS SEC OF PUB SAFETY (CL97862)  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

OAKLEY, SCOTT S  
SIMMS, JOHN WILLIAMS

DEFENSE ATTORNEY  
PLAINTIFF

764-4

State to provide post-hearing legal memorandum by 12/20/89. Appellant to reply by 1/3/90. Case held sub curia

6/1/90  
Commissioner of Public Safety  
James C. [unclear]

OF PROCEEDINGS:

( ) JURY (  ) JURY ( )

DISPOSITION (CHECK ONE)

- ( ) SETTLED ( ) CANNOT SETTLE ( ) NEXT COURT DATE
- ( ) VERDICT ( ) REMANDED ( ) NOW SET
- ( ) JUDGEMENT NISI ( ) ORDER/DECISION SIGNED ( ) OTHER (PLEASE EXPLAIN)
- ( ) JUDGEMENT ABSOLUTE ( ) ORDER/DECREE SIGNED
- ( ) POSTPONED ( ) GRANTED
- (  ) SUB CURIA ( ) MOTION DENIED

LOG SIGNATURE

Hollander

DATE

12/5/89

*[Handwritten mark]*

JUDGE ELLEN L. HOLLANDER  
CIRCUIT COURT FOR BALTIMORE CITY  
111 N. CALVERT STREET  
BALTIMORE, MARYLAND 21202

MR. JOHN W. SIMMS #140766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

FEBRUARY 26, 1990

CASE NO. 89142059/CL97862

DEAR JUDGE HOLLANDER,

ON DECEMBER 5, 1989, I APPEARED BEFORE YOU IN THE ABOVE NUMBERED CASE WHICH WAS AN APPEAL FROM A DECISION MADE BY THE INMATE GRIEVANCE COMMISSION. YOU DELAYED MAKING A RULING IN THIS CASE TO GIVE THE STATE AN OPPORTUNITY TO PROVIDE YOU WITH A COPY OF A DIVISION OF CORRECTION RULE THAT STATES BOTH INMATES ARE TO BE PLACED ON LOCK UP FOR FIGHTING REGARDLESS OF THE CIRCUMSTANCES, WHICH HE SAID HE COULD DO, AND HAS FAILED TO DO. THERE IS NO SUCH RULE ANYWHERE IN THE DIVISION OF CORRECTION. I WAS RIGHT WHEN I STATED THAT ONLY THE AGGRESSOR IS TO BE FOUND GUILTY AND PLACED ON LOCKUP, AND NOT THE OTHER PERSON WHO IS DEFENDING HIMSELF. I ASSUME THAT YOU HAVEN'T MADE A RULING IN THIS CASE YET, AS I HAVE NOT YET RECEIVED A COPY OF ANY RULING.

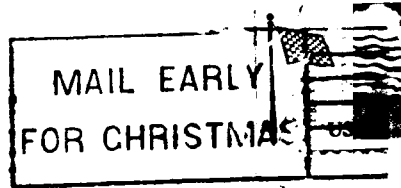
SOMETIME IN MAY OF 1990, I WILL BE GOING BEFORE THE CLASSIFICATION BOARD FOR A TRANSFER TO ANOTHER INSTITUTION, AND I WOULD LIKE TO HAVE MY RECORD CLEANED UP BEFORE I DO TRANSFER OUT OF HERE. I ASK THAT YOU PLEASE MAKE A RULING IN THIS CASE IMMEDIATELY AND PLEASE RULE IN MY FAVOR, AS I AM RIGHT, AND I THINK THAT I HAVE PROVEN BEYOND ANY DOUBT THAT I AM RIGHT. AND I SINCERELY HOPE THAT YOU WON'T HOLD THE FACT THAT I AM AN INMATE IN PRISON AGAINST ME WHEN YOU MAKE YOUR RULING IN THIS CASE, BECAUSE IF YOU ARE FAIR AND DO RULE IN MY FAVOR I WILL BE DEFEATING A PROMINENT ATTORNEY.

BUT I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK YOU VERY MUCH FOR YOUR CAREFUL CONSIDERATION OF THIS CASE.

YOURS TRULY,

John W. Simms

JOHN W. SIMMS #140766  
954 FORREST ST.  
BALTO., MD. 21202



JUDGE ELLEN L. HOLLANDER  
CIRCUIT COURT FOR BALTIMORE CITY  
111 N. CALVERT STREET  
BALTIMORE, MARYLAND 21202

(LEGAL MAIL)

STATE OF MARYLAND

INMATE GRIEVANCE COMMISSION

ORDER

In the Matter of John Simms, #140766  
Maryland Penitentiary

IGC NO. 20288

Mr. Simms first filed this grievance on May 18, 1988. Upon preliminary review by the Inmate Grievance Commission, his grievance was Administratively dismissed without a hearing. Mr. Simms appealed that decision to the Circuit Court for Baltimore City. As a result of that appeal, an Order of Remand was issued by the Honorable Thomas Ward, Judge of the Circuit Court for Baltimore City, in which this Commission was instructed to conduct a full, evidentiary hearing to determine whether Mr. Simms' adjustment hearing on May 3, 1988 was conducted in accordance with applicable law and regulations; and to determine whether the adjustment conviction was based upon substantial evidence.

Commissioners Matz, Hergenroeder and Millard heard this grievance at the Maryland Penitentiary on March 15, 1989. Representing the institution was H.E. Rodgers, Classification Supervisor. Present as a witness was Hearing Officer Shawn Jackson. All parties were duly sworn prior to the taking of testimony and afforded the opportunity to review the relevant and pertinent documents to be considered by the Commission.

Summary of the Proceedings

Mr. Simms testified that he was found guilty of assault by the Hearing Officer, but he said that he was assaulted in the shower by James Trimble. He stated that when Mr. Trimble hit him, he hit him back in order to protect himself. Mr. Simms said that when a fight takes place, only one person should be found guilty and that person should be the person who started the fight, which in this instance was James Trimble.

Mr. Jackson testified that Mr. Trimble said that Mr. Simms assaulted him first and Mr. Simms said that Mr. Trimble struck him first. Mr. Jackson said that he found both of the inmates guilty of assaulting each other.

Findings of Fact

The Commission finds:

1. Mr. Simms' adjustment conviction was based upon substantial evidence. Mr. Simms admitted that he was involved in a fight with Mr. Trimble while in the shower and that he struck Mr. Trimble.

- 2. Mr. Simms' adjustment hearing on May 2, 1988 was conducted in accordance with applicable laws and regulations.
- 3. Both Mr. Simms and Mr. Trimble were involved in a fight in the shower. They both exchanged blows and thereby assaulted each other. Both were guilty of violating Rule #1.

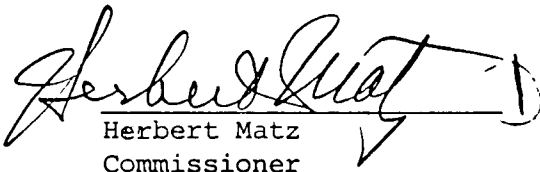
**Conclusion**

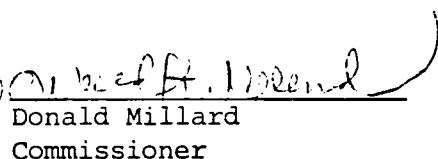
In light of the foregoing, the Commission concludes that the grievance of John Simms is without merit.

**Disposition**

Having concluded that the grievance of John Simms is without merit, the Commission orders it dismissed.

This 15th day of May, 1989.

  
 \_\_\_\_\_  
 Herbert Matz  
 Commissioner

  
 \_\_\_\_\_  
 Donald Millard  
 Commissioner

  
 \_\_\_\_\_  
 Henry Hergenroeder  
 Commissioner

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES



WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY

MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

May 15, 1989

Mr. John Simms, #140766  
Md. Pen.

Enclosed please find a photocopy of the Commission's Order(s) in the following matter(s). Please note the final disposition is either without merit or moot.

IGC No. 20288

Sincerely,

Marvin N. Robbins  
Executive Director

MNR/ps

Maryland Division of Correction

MD. Pen

Institution

Notice of Infraction or Incident

I. Name John Simms No. 140766 Date of Infraction 4-30-88 Time 9:00 A.M. P.M.

A report has been filed charging you with the following violation(s):

Major: Rule # 1 Minor: Rule # \_\_\_\_\_ (See reverse side for explanation of Rule #)

State Facts (What Happened): Sir, on the above date and approximate time this writer was assigned to B-Block P.C. showers. The above named inmate informed that inmate James Trimble # 161658 had struck him in the face with his fist. Inmate John Simms # 140766 then said he struck inmate James Trimble in his face, apparently these two inmates had a physical confrontation while in the shower area. This writer notified the OIC of wing. The two inmates was interviewed by Lt. Moore and escorted to the hospital for head treatment.

EXHIBIT #	<u>1</u>
Grievant	<u>Inst. ✓</u>
IGC No.	<u>20288</u>
Date	<u>3/15/89</u>

Reporting Office Latham Wilkins

The report, as stated, has been reviewed by the Shift Commander and the following action has been taken:

Approved  Disapproved  Reduced to an Incident Report (State Reasons)  Informal Disposition (State Disposition)

Refer to Adjustment Hearing Officer for action

Commander's Signature Capt B Ford Date 4/30/88 Time 3:49 A.M. P.M.

I accept reduction to Incident Report  Yes  No I accept Informal Disposition  Yes  No

Inmate's Signature \_\_\_\_\_ Number \_\_\_\_\_ Date \_\_\_\_\_

II. SERVICE NOTICE

Served by HENRY A. McKnight Title CO-I Date 4-30-88 Time 3:55 A.M. P.M.

In acknowledgement of the charge(s) presented:  I do not want to be represented  I do want to be represented, and request

the following person(s): Representative: HARRY DOUGLASS Witnesses: MARK ALLENDER

NOTE: If you are currently on probation by virtue of a previous adjustment violation, please be aware that your probation may be revoked by committing another offense and all sanctions deferred as a result of that probation may be added to those received, if you are found guilty of a current offense.

Name John Simms Number 140766 Date 4/30/88

III. WAIVER OF 24-HOUR NOTICE

I understand that I must be given 24-hour notice before an adjustment hearing in order to prepare my case. I may waive this requirement by signing this section:

Inmate's Signature \_\_\_\_\_ Date \_\_\_\_\_

SEE BACK FOR RIGHTS AT HEARING & RIGHTS OF APPEAL

OB S/gw



Maryland Division of Correction

Inmate's Name John Simmons No. 140766 Date of Infraction 4-30-88

I. ADJUSTMENT HEARING ACTION

Date of Hearing 5-3-88 Time 9:16 A.M.

Proper Notice Given  Notice Signed  Hearing Within 96 Hours  Postponed

Reason n/a

Inmate Refusal to Appear for Hearing no

Representation Requested no yes Name & No. \_\_\_\_\_ Rep. Accepts \_\_\_\_\_

Adjustment Report Read to Inmate yes Pleas:  Guilty  Not Guilty  No Plea

Additional Witnesses Requested no yes Name(s) Douglas  
M. Allender

Reporting Officer's Statement: (See Notice of Infraction)

Inmate's Statement: Trimble - We were going to the showers.

We walked in + I put my soap down. Simmons said it was his shower stall + he pushed me.

He hit me in the head + face. I covered up + walked out. I did not defend myself. I never hit him in defense.

Witness(es) Statement: Simmons - He went back to the old shower he used.

I was already in the shower stall. He hit me in the jaw 1st. I hit him back.

Douglas - I saw Trimble run out of the shower. I went in to see what was going on. Another inmate told me Trimble struck Simmons.

M. Allender - I was watching it. Trimble swung at Simmons. Simmons defended himself.

Maryland Division of Correction

D-256

Inmate's Name John Simms No. 140766 Date of Infraction 4-30-88

II. HEARING OFFICER DECISION/RECOMMENDATION

Decision:  Guilty  Not Guilty  Dismissed Guilty of Rule: 1 But not Guilty of Rule: \_\_\_\_\_

Charge(s) 1 Reasons: I believe

that Simms was involved in a fight with James Trimble 161658. I believe that Simms and Trimble exchanged blows in the shower area.

Recommend: Lose 0 Days GCT; Industrial Time for Month of \_\_\_\_\_

Commissioner to Take 0 Days GCT (Document Time Taken on Each Charge): \_\_\_\_\_

Remove:  PRS  Work Release Return:  PRS  MHC  MCIH  MCTC  MP  MCI-J

Segregation Sentence 60 Days, Including Time Spent Prior to Hearing (Document Time for Each Charge): for rule 1

Cell Restriction \_\_\_\_\_ Days or Probation \_\_\_\_\_ Days from 4-30-88

Other Penalty \_\_\_\_\_

Reasons: \_\_\_\_\_

Category I Fair  
This sanction is appropriate in view of the nature & circumstances of the incident & D's overall adj. history.

Last ticket 12-87

Decision and Recommendation to Inmate \_\_\_\_\_ Inmate Objects:  Yes  No Date 5-3-88

III. MANAGING OFFICER ACTION

Approved  Disapproved Sentence Reduced to \_\_\_\_\_  New Proceedings Ordered

Reasons: \_\_\_\_\_

INMATE NOTIFIED  
5/12/88 gw

Decision Suspended Due to Following Technical Violation of Adjustment Procedure: \_\_\_\_\_

Signature: James H. Galt Date 5-11-88

Inmate Notified of Managing Officer's Decision Date \_\_\_\_\_

"[T]he question here is . . . did the defendant, Gerald N. Klauber, intend to defraud?"

This intent on the part of Klauber to defraud was the keynote and the tenor of the instructions. There is simply no way in which the instructions of the trial judge can be reasonably construed as permitting the jury to return a verdict of guilty on the crimes charged without finding that Klauber devised, or aided and abetted in devising, a scheme or artifice to defraud. Patently, a scheme or artifice "to defraud" requires an "intent to defraud." An intent to defraud encompasses moral turpitude. See *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 459-460, 374 A.2d 354 (1977). In other words, from a review of the allegations of the indictment and the District Court's charge to the jury, and the jury's verdicts, the crimes of which Klauber was convicted plainly involved moral turpitude. See *Attorney Grievance Comm'n v. Reamer*, 281 Md. 323, 328-330, 379 A.2d 171 (1977).<sup>4</sup> Thus, the suspension of Klauber would be within the ambit of the former provisions of Rule BV 16, the applicability of which is not questioned here. I would grant the petition of Bar Counsel and suspend Klauber from the practice of law in this State until our further order, Rule BV 16 c, to protect the public from his acts pending a determination of the propriety of his convictions. *Attorney Grievance Comm'n v. Anderson*, 279 Md. 250, 253-254, 367 A.2d 1251 (1977).

As noted *supra*, the applicability of the former provisions of Rule BV 16 to Klauber is not questioned here, and the majority expressly do not now pass upon whether the new provisions of that Rule are applicable. Even if Klauber falls in a nether land so that neither the old nor the new Rule applies to him, action should be taken forth-

4. In *Attorney Grievance Comm'n v. Reamer*, 281 Md. 323, 328, 379 A.2d 171, 174 (1977), as the majority point out, we carefully and expressly refrained from deciding "whether a conviction for mail fraud in any and all circumstances, will always involve moral turpitude." At the least, implicit in the majority opinion is that a conviction of mail fraud may not involve moral turpitude. This apparent conclusion is

with to suspend him. We said in *Pub. Serv. Comm'n v. Hahn Transp., Inc.*, 253 Md. 571, 583, 253 A.2d 845 (1969) that the regulation of the practice of law and of its practitioners is, and essentially and appropriately should be, a function of the judicial branch of the government. If Rule BV 16, as formerly in effect or as revised, is not applicable to Klauber, I would invoke this inherent power with regard to him. The nature of the felonious acts of which he was convicted, as shown by the allegations of the indictment, the trial court's instructions and the jury's verdicts, cry in clear voice that he be suspended from the practice of law pending the determination of the convictions whether or not moral turpitude was involved. The conduct which the jury found beyond a reasonable doubt was engaged in by him makes a mockery of the trustworthiness, honesty and good faith required of those given the privilege to practice law. To permit him to practice in the face of his convictions stigmatizes an honorable profession.



40 Md.App. 382  
**Patton Fulton GAINER**  
 v.  
**STATE of Maryland.**  
 No. 20.

Court of Special Appeals of Maryland.

Oct. 11, 1978.

Certiorari Denied Dec. 15, 1978.

Defendant was convicted in the Criminal Court of Baltimore, Joseph H. H. Ka-

reached without discussion and with no cogent reasons being advanced. It is difficult for me to understand how the crime of mail fraud as set out in 18 U.S.C. § 1341, could be a crime not involving moral turpitude, depending as it does on a scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.

plan, J., of murder in the second degree, and he appealed. The Court of Special Appeals, Moore, J., held that where self-defense was issue in prosecution based on homicide which occurred in defendant's home and jury question existed as to whether defendant was the aggressor, trial court should have instructed jury on "castle" doctrine that there was no duty on defendant's part to retreat since he was in his own home.

Reversed and remanded.

### 1. Homicide ⇐ 118(3)

There is no duty to retreat if one is attacked in his own home, if in other respects he brings himself within the ordinary rules of self-defense.

### 2. Homicide ⇐ 118(3), 123

"Castle" doctrine, that there is no duty on defendant's part to retreat when attacked in his own home, applies both to defense of one's habitation and to defense of one's person when attacked within one's home.

### 3. Homicide ⇐ 118(3)

"Castle" doctrine permits a person who is without fault and is attacked within his dwelling or its curtilage to stand his ground and defend himself even if retreat could be safely accomplished.

### 4. Homicide ⇐ 118(3)

One who is not the head of the house but is a member of household is within ambit of "castle" doctrine's protection which states that there is no duty on his part to retreat when attacked in his own home.

### 5. Homicide ⇐ 118(3)

When an attack occurs in one's home by an assailant who is not an intruder but who has a right to be on the premises, assailed person who is without fault need not "retreat to the wall" before defending himself.

### 6. Homicide ⇐ 112(1), 116(4), 118(3), 119

"Castle" doctrine which states that there is no duty on a person's part to re-

treat when attacked in his own home is for defensive and not for offensive purposes and does not confer a license to kill or to inflict grievous bodily harm merely because assault takes place within one's home; rather, doctrine is always subject to primary prerequisite of self-defense, including particularly the requirement that person assailed not be aggressor, that apprehension of personal harm be reasonable and that no more force than necessary be applied.

### 7. Homicide ⇐ 300(15)

Where self-defense was issue in prosecution based on homicide which occurred in defendant's home and jury question existed as to whether or not defendant was the aggressor, trial court should have instructed jury on "castle" doctrine that there was no duty on defendant's part to retreat when attacked in his own home.

Michael R. Malloy, Asst. Public Defender, with whom was Alan H. Murrell, Public Defender on the brief, for appellant.

Michael A. Anselmi, Asst. Atty. Gen., with whom were Francis B. Burch, Atty. Gen., William A. Swisher, State's Atty. for Baltimore City and Mark Cohen, Asst. State's Atty. for Baltimore City on the brief, for appellee.

Argued before MORTON, MOORE and COUCH, JJ.

MOORE, Judge.

At a jury trial in the Criminal Court of Baltimore (Kaplan, J., presiding) appellant was convicted of murder in the second degree and was sentenced to a term of 22 years' imprisonment. On this appeal, he assigns error principally in the trial court's refusal to grant an instruction, under the "castle" doctrine, that there was no duty on his part to retreat because appellant was in his own home. A subsidiary assignment of error is that the State improperly requested appellant, during cross-examination, to identify the victim's mother who was present in the courtroom. For the reasons stated, we find reversible error in the

EX. 2 (1978, etc.)  
 3/15/89 F208 PF

court's failure to grant the requested instruction.

## I

Shortly after 8:00 P.M., on March 3, 1977, appellant, then 16 years of age, shot and killed Kenneth Dorsey, his sister's fiancé, age 19, with a rifle. That he did so was not denied. Instead, appellant claimed that he used the weapon in self-defense.

There was evidence before the jury, adduced by the State, tending to establish the following facts:

Appellant, his brother, four sisters, and two nephews resided with their mother in a house in Baltimore City. Kenneth Dorsey, the victim, was engaged to appellant's sister, Romaine, age 18, and resided with his mother two doors away. Appellant was a student at the Harbor Learning Center; Dorsey was employed at a local "Club" where there was a bar and a package dispensary.

Dorsey left his place of employment on March 3, 1977, shortly after 6:30 P.M., following a late afternoon birthday party for a fellow employee. About one hour later, he stopped at the Gainer residence to see Romaine where he found her and the appellant, her brother, quarreling. When Dorsey intervened on Romaine's behalf, a heated argument—lasting over twenty minutes—ensued between appellant and Dorsey. The latter then left the Gainer home but returned after another twenty minutes with a carton of beer.

Upon Dorsey's return, the argument between the two young men—the subject matter of which could not be recalled by any of the witnesses—resumed. Approximately ten minutes later, appellant went upstairs; he reappeared in a few moments bearing a .22 caliber semi-automatic rifle which he had obtained from the room of his brother Rommel. Dorsey was then standing near the front door of the residence and Romaine was nearby. Appellant descended the stairway, stopped about halfway down, raised the rifle and fired twice at Dorsey who fell to the floor. Romaine examined him, then rushed to the phone to summons

an ambulance. Dorsey was pronounced dead at 10:30 P.M. at the hospital, after emergency surgery. The cause of death was a gunshot wound in the chest; he had also sustained a nonfatal gunshot wound of the left thigh.

After the shooting, appellant fled from the scene and disposed of the rifle. Later, in a telephone conversation with his mother, he was persuaded to surrender himself to the police. The police apprehended him at 2:40 A.M. on March 4th at his home pursuant to an arrest warrant.

Appellant was 5' 10" and weighed 140 pounds; the victim Dorsey was 5' 8" and weighed 126 pounds. There was no evidence that appellant had been drinking although the autopsy which was performed on Dorsey at approximately 10:30 P.M. disclosed that his blood alcohol level was .17. Medical testimony indicated that the alcohol level was decreased by the injection of intravenous fluids and blood. Notwithstanding testimony that Dorsey had been taking Valium while drinking, the autopsy failed to detect any signs of drugs.

The State's version of the case was presented through seven witnesses, including appellant's three sisters who were present at the time of the fatal shooting. In addition to Romaine, the State presented Gail, 16, and Wilvetta, 14, who had given a written statement to the police on the evening of the killing. A detective testified on cross-examination that after his arrest, appellant told the police that following the verbal altercation, Dorsey left the Gainer home and then returned; and that because appellant was apprehensive that Dorsey was armed, he became frightened and shot him. "He [appellant] said he shot the man because he thought the man had something behind his back," the detective testified.

Appellant's version of the details and circumstances of the homicide was presented through his own testimony and that of five other witnesses, including his mother and brother. According to appellant, the victim Dorsey was the owner of a .44 caliber Magnum, customarily left in his car, which on

that evening was parked near Dorsey's house two doors away. Appellant further testified that after the argument, in which Dorsey was abusive of him, he became apprehensive and went upstairs to arm himself with his brother's rifle. He obtained the rifle from in back of his brother's bed and inserted two cartridges. On redirect, he quoted the victim as saying, "Come on down now. I've got something for you. I am going to kill you," and testified it was at that point that he obtained the rifle. Appellant admitted stopping halfway down the stairs and testified further that Dorsey was immediately below, near the first step, with his hands behind his back. Dorsey suddenly brought his hands forward and appellant, at that instant, squeezed the trigger, releasing the two cartridges in somewhat rapid succession. (According to the testimony of appellant's brother Rommel, the rifle was a semi-automatic which held about 20 bullets and it would continue to discharge by squeezing the trigger.)

Appellant's version of the facts was corroborated by the testimony of his friend, Preston Alderman, age 17, and another friend, Jackson Jones, age 19. The latter testified that he had seen the victim about 12 noon on the day of the shooting and he was at that time carrying a .44 automatic in a holster and also had a supply of Valium pills. The State offered a rebuttal witness, a supervisory employee at the victim's place of work, who testified in rebuttal of Jackson's testimony that Dorsey had been at the dispensary-bar all day and had remained after his 3:30 P.M. quitting time to attend her birthday party in the establishment. She also testified that she did not see him with a weapon that day and, indeed, "never saw him with a weapon at all."

The investigating police officers found no evidence that the victim was himself armed at the time he was shot.

## II

The evidence, although conflicting, fairly generated the issue of self-defense for jury

1. Cf. *Street v. State*, 26 Md.App. 336, 339, 338 A.2d 72 (1975) (the defendant, who was charged with armed robbery, was not entitled to a self-defense instruction when he was the

aggressor and the only evidence supporting the defense was a self-serving declaration that the victim had assaulted him with a pair of scissors).

consideration.<sup>1</sup> The trial court, pursuant to the requirement that, in a criminal case, an advisory instruction be given on every essential question or point of law supported by the evidence, included an instruction on self-defense. See *Bruce v. State*, 218 Md. 87, 145 A.2d 428 (1958); *Peterson v. State*, 15 Md.App. 478, 498-99, 292 A.2d 714, 726 (1972); Maryland Rule 757. The instruction included the following statement pertaining to the duty to retreat:

*"Ordinarily a person who is attacked is required to retreat if the means of doing so are within his power and consistent with his safety. If he fails to retreat or withdraw when he could safely do so, then the killing is not excusable. On the other hand, if the peril is imminent and he cannot safely retreat, he need not do so, but may stand his ground and defend himself."* (Emphasis added.)

The court rejected appellant's requested instruction relating to immunity from the law of retreat, submitted by trial counsel, in the following form:

*"Generally, one who is under attack may have a duty to retreat, where possible, however, when one is in his own home, there is no duty to retreat to escape the danger, but instead [he] may stand his ground and, if necessary to repel the attack, may kill the attacker. Law v. State, 21 Md.App. 13 [318 A.2d 859]; Crawford v. State, 231 Md. 354 [190 A.2d 638]."*

Appellant specifically excepted to the court's refusal so to instruct. This was also the principal basis for appellant's motion for a new trial and, on this appeal, it is the main challenge to the judgment below. In our view, "the rule of non-necessity of retreat in one's own home," *Hedges v. State*, 172 So.2d 824, 827 (Fla.1965), should also have been covered—although not in the specific language proposed—and the failure to do so was reversible error.

Preliminarily, a brief recapitulation of Maryland law on the subject of self-defense may serve to place in proper context the precise issue presented. The Court of Appeals<sup>2</sup> has approved trial court instructions which have stated that:

- 1) The right to defend one's self is based upon necessity.
- 2) To justify or excuse the killing of another on that ground, the person claiming the right must not have been the aggressor or have provoked the conflict.
- 3) The circumstances must have been such as to afford reasonable grounds, in the mind of a person of ordinary reason, for the belief that the defendant was in such immediate danger of losing his own life or suffering serious bodily harm as to necessitate killing the deceased to save himself.
- 4) One not seeking a fight but reasonably apprehensive that he might be attacked, has a right to arm himself in anticipation of the assault.

2. See *Bruce v. State*, 218 Md. 87, 96-97, 145 A.2d 428 (1958). See also *DeVaughn v. State*, 232 Md. 447, 453, 194 A.2d 109 (1963); *Crawford v. State*, 231 Md. 354, 190 A.2d 538 (1963); *Gunther v. State*, 228 Md. 404, 179 A.2d 880 (1962); *Guerrero v. State*, 213 Md. 545, 549, 132 A.2d 466 (1957); L. Hochheimer, *Crimes and Criminal Procedure* §§ 507, 508, 671, 681 (1897).

3. According to Perkins, the "retreat rule" has been adopted by a "substantial minority" of jurisdictions. R. Perkins, *Perkins on Criminal Law* 899 (1957). See also *Bruce v. State*, 218 Md. at 96-97, 145 A.2d 428; Clark & Marshall, *A Treatise on the Law of Crimes* § 7.03 (6th ed. 1958).

4. *Wharton's Criminal Law and Procedure* § 239 (Anderson 1957). The castle doctrine applies both to the defense of one's habitation and to the defense of one's person when attacked within one's home. See generally *Law v. State*, 21 Md.App. 13, 318 A.2d 859 (1974) appeal after remand, 29 Md.App. 457, 349 A.2d 295 (1975) for a discussion on the defense of habitation.

5. See *Beard v. United States*, 158 U.S. 550, 15 S.Ct. 962, 39 L.Ed. 1086 (1895). One of the most important elements is that the force used not be excessive. After having decided that the situs of the crime was not defendant's dwelling, the court in *DeVaughn v. State*, went on to postulate that even if it were, the defendant used excessive force thereby destroying the

5) One may not use greater force than is reasonably necessary to defend himself against attack or threat of attack by another.

6) It is the duty of the defendant to retreat or avoid danger if the means to do so are within his power and consistent with his safety; but if the peril is so imminent that he cannot safely retreat, he has a right to stand his ground and defend himself.<sup>3</sup>

[1-4] With respect to the proposition last stated, the so-called "retreat rule," a universally recognized exception exists: there is no duty to retreat if one is attacked in his own home,<sup>4</sup> if in other respects he brings himself within the ordinary rules of self-defense.<sup>5</sup> Premised on the common law principle that a man's home is his castle, indeed his ultimate sanctuary, the castle doctrine permits a person who is without fault<sup>6</sup> and is attacked within his dwelling<sup>7</sup> or its curtilage,<sup>8</sup> to stand his ground and

applicability of the doctrine. 232 Md. at 454, 194 A.2d 109. See also *State v. Robinson*, 3 Terry 419, 42 Del. 419, 36 A.2d 27 (Del.Ct. of Oyer & Terminer 1944); *State v. Hewitt*, 205 S.C. 207, 31 S.E.2d 257 (1944); Clark & Marshall, *A Treatise on the Law of Crimes* § 7.03 (6th ed. 1958).

6. *Ison v. State*, 252 Ala. 25, 39 So.2d 249 (1949); *State v. Hewitt*, 205 S.C. 207, 31 S.E.2d 257 (1944); *State v. Gordon*, 128 S.C. 422, 122 S.E. 501 (1924).

7. See note 9 *infra*. In *DeVaughn v. State*, the court refused to accept the defendant's argument that the scene of the crime, the home of his common law wife, was his dwelling since he had another address which he gave to the police and to which he referred as home to his children. 232 Md. at 453-54, 194 A.2d 109. Compare *Kelley v. State*, 226 Ala. 80, 145 So. 816 (1933) where the court extended the castle doctrine to a guest who was claiming self-defense after being attacked in another's dwelling.

8. Courts differ in interpreting what qualifies as being within the curtilage. See *Beard v. United States*, 158 U.S. 550, 15 S.Ct. 962, 39 L.Ed. 1089 (1895) (property surrounding defendant's farm was within the curtilage); *State v. Provoid*, 110 N.J.Super. 547, 266 A.2d 307 (App.Div.1970) (public thoroughfare running along bounds of one's property is not within the curtilage of the

defend himself, even if a retreat could be safely accomplished. See generally, *Naugher v. State*, 105 Ala. 26, 17 So. 24 (1895); *Hedges v. State*, 172 So.2d 824 (Fla.1965); *Crawford v. State*, 231 Md. 354, 190 A.2d 538 (1963); Prosser, *Law of Torts* 111-12 (1971). One who, as in the situation of the appellant, is not the head of the house but a member of the household, is within the ambit of the doctrine's protection.<sup>9</sup>

In the instant appeal, the record does not disclose the specific reasons why the trial court, having instructed on the duty to retreat, previously quoted, declined to give an instruction on the castle doctrine.<sup>10</sup> This Court, in an analogous situation, recently found reversible error when the trial court applied the duty to retreat rule although the homicide had occurred in the home of the accused. *Jackson v. State*, 31 Md.App. 518, 357 A.2d 845 (1976). In *Jackson*, the appellant was convicted of manslaughter in the killing of her boyfriend in a house occupied by her. Speaking for the Court, Judge Morton stated:

"[I]t was error to refuse the request of counsel to instruct the jury affirmatively that since Ms. Jackson was in her own home, she had no duty to retreat or seek escape, but was entitled to stand her

home); *State v. Browning*, 28 N.C.App. 376, 221 S.E.2d 375 (1976) (backyard, between home and storage shed, was within the curtilage); *State v. Preece*, 116 W.Va. 176, 179 S.E. 524 (1935) (hallway outside apartment was within curtilage).

9. The Restatement of Torts Second (1965) defines a dwelling place as:

"[A]ny building or habitation, or part of it, in which the actor is at the time temporarily or permanently residing and which is in the exclusive possession of the actor, or of a household of which he is a member. Only that part of the building or other habitation which is actually used for residential purposes is a dwelling place. Thus a man's house is the dwelling place of himself, his family, his servants and for the time being, the dwelling place of one who is residing, however temporarily, in the house as a guest. It is not the dwelling place of a visitor, social or business, who comes to the house for a particular purpose and not to reside therein. The phrase 'dwelling place' includes a room or apartment in a hotel which the guest and

ground and take her assailant's life if it became necessary."

*Id.* at 524, 357 A.2d at 848.

It is to be noted that, in *Jackson*, the State argued that since the victim and the accused sometimes lived together, they were on "common ground," thus reactivating the rule requiring an accused to retreat or seek escape. We observed, however, a split of jurisdiction on this issue;<sup>11</sup> we stated that "there is respectable authority that no exception to the rule of no retreat is brought about because of joint occupancy of the home"; and we held that, at all events, the deceased was, at the time of the homicide, an intruder. *Id.* at 523, 357 A.2d at 848.

[5] In the instant appeal, the State asserts no similar contention based upon the status of the deceased as a social invitee. (As previously noted, Dorsey was engaged to the appellant's sister, Romaine.) Nonetheless, we consider his status an issue in the case and we, at this time, adopt the rule that when an attack occurs in one's home by an assailant who is not an intruder but who has a right to be on the premises, an assailed person who is without fault, need not "retreat to the wall" before defending himself.<sup>12</sup> We thus adopt the reasoning of

his family are entitled to occupy exclusively. It does not include the lobbies, halls or common rooms of a hotel or apartment house." (Emphasis added.) *Id.* at § 65.

10. In denying appellant's motion for a new trial based on this point, the trial judge merely stated, "At the time the instructions were presented to the Court, the Court considered them, did not feel they were applicable, still does not feel they were applicable. . . ." Discussions of instructions, at trial, between court and counsel were not on the record.

11. See Annot. 26 A.L.R.3d 1296 (1969); *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496 (1914).

12. A contrary position, appearing to be less strongly accepted by the states, holds that the parties are on common ground and, therefore, if a safe retreat is possible it must be taken. *State v. Bissonnette*, 83 Conn. 261, 76 A. 288, 290-91 (1910); *State v. Grierson*, 96 N.H. 36, 69 A.2d 851, 854-55, (1949); *State v. Provoid*, 266 A.2d at 311.

Mr. Justice Cardozo in *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496, 497-98 (1914), when he made the following oft-quoted statement:

"It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. . . . The rule is the same whether the attack proceeds from some other occupant or from an intruder. It was so adjudged in *Jones v. State* [1884], 76 Ala. 8, 14. 'Why,' it was there inquired, 'should one retreat from his own house, when assailed by a partner or cotenant, any more than when assailed by a stranger who is lawfully upon the premises? Whither shall he flee, and how far, and when may he be permitted to return?'"

This language was quoted with approval in *Jackson v. State*, 31 Md.App. at 523-24, 357 A.2d 845. See 18 Pa. Const. Stat. Ann. § 505(b)(2)(ii) (A) (Purdon 1973) discussed in *Commonwealth v. Eberle*, 474 Pa. 548, 379 A.2d 90, 92-95 (1977). See also *Bryant v. State*, 252 Ala. 153, 39 So.2d 657 (1949); *Hutcherson v. State*, 170 Ala. 29, 54 So. 119 (1910); *State v. Phillips*, 8 W.W.Harr. 24, 38 Del. 24, 187 A. 721 (Del.Ct. Oyer & Terminer 1936); *Watkins v. State*, 197 So.2d 312 (Fla.App.1967); *People v. Lenkevich*, 394 Mich. 117, 229 N.W.2d 298 (1975); *People v. McGrandy*, 9 Mich.App. 187, 156 N.W.2d 48 (1968); *State v. Browning*, 28 N.C.App. 376, 221 S.E.2d 375 (1976); *State v. Grantham*, 224 S.C. 41, 77 S.E.2d 291 (1953); *State v. Gordon*, 128 S.C. 422, 122 S.E. 501 (1924).

13. The court in *Peterson* stated:

"Despite the practically universal acceptance of the 'castle' doctrine in American jurisdictions wherein the point has been raised, its status in the District of Columbia has never been squarely decided. But whatever the fate of the doctrine in the District law of the future, it is clear that in absolute form it was inapplicable here."

157 U.S.App.D.C. 219, 234, 483 F.2d 1222, 1237, cert. denied, 414 U.S. 1007, 94 S.Ct. 367, 38 L.Ed.2d 244 (1973).

The principal contention of the State in this case is that the appellant was clearly the aggressor and, not being without fault, may not avail himself of the castle doctrine. Heavy reliance is placed upon the case of *United States v. Peterson*, 157 U.S.App.D.C. 219, 483 F.2d 1222, cert. denied, 414 U.S. 1007, 94 S.Ct. 367, 38 L.Ed.2d 244 (1973). *Peterson*, however, is based upon unsettled principles of District of Columbia law<sup>13</sup> and we find it inapposite. Moreover, in *Peterson*, the appellant was a participant in an affray to such an extent that one might question the giving of a self-defense instruction in the first instance. In the case at bar, the trial court reasoned, we think correctly, that self-defense was an issue in the case. It was also apparent that a jury question existed as to whether or not appellant was the aggressor.<sup>14</sup> That being so, it was not the function of the trial court to decide—for castle doctrine purposes—the issue of aggression *vel non* on the part of the appellant, as the State appears to contend, but rather, to leave that question for determination by the jury under appropriate instructions.

[6] Such instructions should, in our judgment, properly include a caveat, in appropriate language, that the castle doctrine is for defensive and not offensive purposes and does not confer a license to kill or to inflict grievous bodily harm merely because the assault takes place within the defendant's home; rather, that it is subject always to the primary prerequisites of self-defense, including particularly the requirements that the person assailed not be the aggressor, that the apprehension of personal harm be

14. This case does not involve excusable or imperfect self-defense and, therefore, we do not decide the effect or application of the castle doctrine to a factual situation presenting such an issue. See generally *Whitehead v. State*, 9 Md.App. 7, 262 A.2d 316 (1970); *Tipton v. State*, 1 Md.App. 556, 232 A.2d 289 (1967); *Clark & Marshall*, *supra* note 3, at § 7.03; *Perkins*, *supra* note 3, at 903-907; *Wharton's Criminal Law and Procedure*, *supra* note 4, at §§ 213, 227-229, 232.

Alvin SNYDER, Herbert Thaler and Harold Crone, co-partners, T/A Twin Lakes Partnership

STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE et al.

No. 1377.

Court of Special Appeals of Maryland.

Oct. 11, 1978.

Certiorari Denied Dec. 15, 1978.

Landowner sued county for damages incurred when county refused to allow the landowner to hook up to the county's sewer system. The Circuit Court, Baltimore County, H. Kemp MacDaniel, J., sustained the county's motion raising the preliminary objection of governmental immunity, and landowner appealed. The Court of Special Appeals, Davidson, J., held that the defense of governmental immunity was available to a municipality which allegedly failed in its duty to maintain its sewers in such condition as to permit a landowner with a previously issued sewer connection permit to hook up to the municipality's sewer system.

Affirmed.

1. Municipal Corporations ↔ 833

Defense of governmental immunity was available to municipality which allegedly failed in its duty to maintain its sewers in such condition as to permit property owner with previously issued sewer connection permit to hook up to municipality's sewer system.

2. Municipal Corporations ↔ 724, 725

Defense of governmental immunity is available to municipalities if alleged tort

fairly and adequately and cover the points of law properly embodied in the requested instruction, there is no error. *Cropper v. State*, 233 Md. 384, 390, 197 A.2d 122 (1964); *King v. State*, 36 Md.App. 124, 136, 373 A.2d 292 (1977).

reasonable and that no more force than necessary be applied.<sup>15</sup>

[7] In sum, it is our conclusion in the instant appeal that when the trial court undertook to instruct the jury on the subject of self-defense, it was incumbent upon the court to provide an accurate and complete statement of the law.<sup>16</sup> Its failure to grant an instruction under the castle doctrine was a significant and serious omission. This, as we have previously indicated, was error. Other courts, including the Supreme Court, have similarly held it to be reversible and prejudicial error to give a standard self-defense instruction without the castle doctrine exception when the evidence supports its applicability. See *Beard v. United States*, 158 U.S. at 563-64, 15 S.Ct. 962 (1895); *Hedges v. State*, 172 So.2d at 826-27; *Watkins v. State*, 197 So.2d at 318; *People v. Lenkevich*, 229 N.W.2d at 300-02; *People v. McGrandy*, 156 N.W.2d at 49-50; *State v. Grantham*, 77 S.E.2d at 293; *State v. Bowers*, 122 S.C. 275, 115 S.E. 303, 305 (1923); *State v. Marlowe*, 120 S.C. 205, 112 S.E. 921, 922 (1922); *State v. Gibbs*, 118 S.C. 256, 102 S.E. 333, 334 (1920); *State v. Brooks*, 79 S.C. 144, 60 S.E. 518, 519-20 (1908); *State v. Preece*, 116 W.Va. 176, 179 S.E. 524, 527-28 (1935).

Appellant's additional contention with respect to the alleged improper interrogation of the victim's mother need not be considered in the light of our finding on his first assignment of error.

JUDGMENT REVERSED; CASE REMANDED FOR NEW TRIAL; MAYOR AND CITY COUNCIL OF BALTIMORE TO PAY THE COSTS.



15. See generally D. Aaronson, *Maryland Criminal Jury Instructions and Commentary* §§ 5.11-16 (1975).

16. This, of course, differs from the situation where proposed instructions are refused, the court preferring its own general charge. So long as the instructions given advise the jury

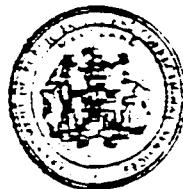
-4-

STATE OF MARYL  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFFER  
GOVERNOR

MELVIN A. STEINBERG  
COMPTROLLER

BISHOP L. ROBINSON  
SECRETARY



MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

INMATE GRIEVANCE COMMISSION

Suite 302, Pieze Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

June 16, 1988

John Simms #140766  
MD. PEN

RE: UGC #20288

Dear Mr. Simms:

In response to your letter of June 7, 1988 this is to advise that you have not stated a grievance. The Commission will not conduct a second adjustment hearing for the purpose of determining the issue of guilt or innocence. That is the function of the Hearing Officer.

Accordingly, no action by this Commission is deemed warranted and this matter is dismissed as being on its face wholly lacking in merit, pursuant to Article 41, Section 4-1104 (e) of the Annotated Code of Maryland.

Very truly yours,

Marvin N. Robbins  
Executive Director

MNR: rf

Enclosure: 1

cc: John M. Hassett, Esq. w/enc.

...

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES  
Suite 312-6776 Reisterstown Road  
Baltimore, Maryland 21215-2341  
(301) 764-4070

MEMORANDUM

January 17, 1989

TO: Marvin N. Robbins  
FROM: *[Signature]* Stuart M. Nathan  
SUBJECT: John Simms v. SPSCS  
Circuit Court for Baltimore City  
Case Number: 88181031/CL83423  
IGC Number : 20288

Please find enclosed a copy of the order remanding the captioned case to the Commission for a full hearing.

If you have any questions concerning this matter, please contact me.

SMN/dlg  
Enclosure

**RECEIVED**  
JAN 17 1989  
INVESTIGATIVE COMMISSION



JOHN SIMMS

Appellant

v.

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES

Appellee

IGC NO.: 20288

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE CITY

\* CASE NO.: 88181031/CL83423

\*

\* \* \* \* \*

ORDER

Upon consideration of the record filed in this case, and after having heard argument in open court, it is this \_\_\_\_ day of \_\_\_\_\_, 19\_\_,

ORDERED, that this matter be remanded to the Inmate Grievance Commission for a full evidentiary hearing to determine whether the adjustment hearing of John William Simms on May 3, 1988, was conducted in accordance with applicable law and regulations, and to determine whether the adjustment conviction of John William Simms was based upon "substantial evidence."

THOMAS WARD  
JUDGE

JUDGE THOMAS WARD  
Circuit Court for Baltimore City

TRUE COPY

TEST

*Sandra E. Banks*

BAUNDRA E. BANKS, CLERK

-6-

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY



MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

January 23, 1989

Mr. John Simms, #140766  
MD PEN

RE: IGC #20288

Dear Mr. Simms:

I am now in receipt of a copy of the Court Order issued as a result of your appeal from the administrative dismissal of the above-captioned grievance.

Please advise me in writing of the names/addresses of any witnesses you wish to be scheduled in this case, as well as the nature of their expected testimony so that I can make a determination as to the relevancy of those persons.

I have listed Mr. Hassett as your representative in this matter, so please let me know as soon as possible if Mr. Hassett is not expected to represent you in this matter.

I will send you a written notice as soon as your hearing is scheduled.

Very truly yours,

Marvin N. Robbins  
Executive Director

MNR/bs

cc: Stuart M. Nathan, Asst. Atty. Genl.

MR. MARVIN M. ROBBINS  
INMATE GRIEVANCE COMM. ion  
SUITE 302

6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215-2

RECEIVED

FEB 2 1989  
INMATE GRIEVANCE COMMISSION

MR. JOHN W. SIMMS - 146166 - 7-  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

JANUARY 30, 1989

ICC No. 20288

DEAR MR. ROBBINS,

I AM IN RECEIPT OF YOUR LETTER DATED JANUARY 23, 1989.

PLEASE BE ADVISED THAT MR. HASSETT WILL NOT BE REPRESENTING ME IN THIS MATTER, HE'S NO LONGER MY ATTORNEY.

PLEASE CALL THE FOLLOWING NAMED PEOPLE AS WITNESSES IN THIS CASE.

1. MR. SEAN JACKSON, HEARING OFFICER - HAVE HIM BRING IN THE TAPE OF THE PROCEEDINGS AT MY ADJUSTMENT HEARING.

2. ~~MAJOR HOLLIS THOMPSON~~ - irrelevant  
MAJOR HOLLIS THOMPSON, 8-4 SHIFT - HE WILL EXPLAIN THE RULES CONCERNING A PHYSICAL ALTERCATION TO THE COMMISSION, AND TELL THEM THAT ONLY THE AGGRESSOR IS THE ONE TO BE FOUND GUILTY OF FIGHTING, AND NOT THE PERSON ATTACKED BY THAT INDIVIDUAL.

3. INMATE MARK ALLENDER #153366, NOW AT THE ROXBURY CORRECTIONAL INSTITUTION - HE WAS AN EYEWITNESS TO THE INCIDENT, AND HE WILL STATE THAT THE OTHER MAN WAS THE AGGRESSOR. ~~MAJOR HOLLIS THOMPSON~~ - irrelevant - not a de novo A(H).

4. OFFICER L. WILKINS, 8-4 SHIFT REPORTING OFFICER  
5. SERGEANT J. HENDRICKS, 8-4 SHIFT O.I.C.  
THEY WILL BOTH STATE THAT THE OTHER MAN WAS NOT HURT AT

ALL BY ME. I USED A MINIMUM AMOUNT OF FORCE IN PROTECTING MYSELF, WHICH IS WHAT THE LAW ALLOWS.

PLEASE CALL ALL OF THESE PEOPLE AS WITNESSES, THEY CAN HELP ME TO CLEAR UP MY RECORD.

YOURS TRULY,

John W. Simms

-8-

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY



MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

February 6, 1989

John Simms #140766  
MD. PEN

RE: IGC #20288

Dear Mr. Simms:

I am in receipt of your letter dated January 30, 1989.

Please be advised, however, that Major Thompson's expected testimony is irrelevant (inasmuch as he plays no role whatsoever in determining issues of guilt or innocence); and that inasmuch as our hearing will not be a de novo (or second) Adjustment Hearing for the purpose of proving your guilt or innocence, the expected testimony of Mr. Allender, Officer Wilkins and Sgt. Hendricks would also be irrelevant for our purposes. Your request for their presence as witnesses, therefore, is respectfully denied.

Very truly yours,

Marvin N. Robbins  
Executive Director

MNR/rf

-9-

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES



WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY

MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

February 22, 1989

Mr. John Simms, #140766  
Md. Pen.

RE: IGC No.     .  
20288

The captioned case has been scheduled for a hearing on 3/15/89. Any other complaints made by you in this matter which are not included in the attached synopsis have been administratively dismissed. At your hearing you will have an opportunity to appear and present your grievance.

If you have not already done so, please furnish us with the names and addresses of your requested representative and witnesses, and the testimony you would expect each of your witnesses to give. If you fail to specify the expected testimony, the Commission will make the selection of witnesses on the basis of the information available to it.

A request for postponement should be made at least five (5) days prior to the hearing and will be granted only with adequate justification.

If yours is a property grievance, see the attached "Property Regulation" **FOR YOUR RESPONSIBILITIES AT YOUR HEARING**. You should further note that in reference to paragraphs D(4) and E(5) therein, the best evidence to present in order to establish the actual cost of the property at the time of acquisition is the purchase receipt. We are also enclosing a form which you are encouraged to fill out and present at your hearing.

Please note that whatever information you wish to offer into evidence must be submitted at the time of your hearing. WE WILL NOT CONSIDER AS EVIDENCE ANYTHING THAT IS SUBMITTED AFTER YOUR HEARING.

Sincerely,

Marvin N. Robbins  
Executive Director

14

-10-

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY



MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

February 22, 1989

Mr. Bernard Smith  
Asst. Warden  
Md. Penitentiary  
954 Forrest Street  
Baltimore, Maryland 21202

RE: IGC HEARINGS - March 15, 1989

Dear Mr. Smith:

Listed below are the matters to be heard by the Inmate Grievance Commission on March 15, 1989 at the Maryland Penitentiary. The Commission's hearing session will begin at approximately 9:30 a.m.

LEISURE, Robert #159827 - IGC No. 20928

Mr. Leisure has filed an appeal from ARP-MP-0455-88, which is incorporated herein by reference.

In essence Mr. Leisure contends that, although he had obtained personal sheets and a blanket, after having obtained the necessary permission and authorization, they were unjustly confiscated from him on or about May 5, 1988 without due process (i.e., without notice or a hearing.) He claims that the basis of the confiscation was reiterated in a memo addressed to "all inmates" from Assistant Warden Smith, dated May 6, 1988. He claims, however, that the memo and its enforcement are also examples of violations to his right to due process, and cites as authority the case of Hopkins vs. Waknitz, U. S. Court of Appeals, 4th Circuit, No. 76-1389.

As relief, Mr. Leisure wishes to be reimbursed in the amount of \$41.75 for 4 sheets and 1 blanket.

As a witness, we request the presence of Assistant Warden Bernard Smith. In addition, we request the presence of Mr. Leisure's Property Records.

15

Mr. Bernard Smith  
Asst. Warden

- 2 -

February 22, 1989

FONSECA, Jamie #163964 - IGC No. 21591

This grievance is identical, in substance, to the one filed in IGC No. 20796, but which was filed "prematurely".

In that case, Mr. Fonseca contends that the Division of Correction unjustly considers his Record of Disciplinary Infractions received while at Patuxent Institution when determining his classification status. In this regard, he alleges that DCR 100-1 only provides for consideration of infractions obtained while in a Division of Correction institution (Patuxent Institution is not part of the Division of Correction.)

In addition, he contends that it is a violation of his rights to due process for the Classification Team to consider his juvenile and criminal records when making Classification decisions.

As an example of the violations of his rights, as referenced above, he contends that his Classification Hearing (on or about December 29, 1988) did consider his Patuxent and juvenile records.

Mr. Fonseca wishes to be represented by Charles K. Hopkins, #124403.

As a witness, we request the presence of Ms. Lucille Bagley, Classification Counselor.

SIMMS, John #140766 - IGC No. 20288

Mr. Simms first filed this grievance on May 18, 1988. Upon preliminary review by the Inmate Grievance Commission, his grievance was Administratively dismissed without a hearing. Mr. Simms appealed that decision to the Circuit Court for Baltimore City. As a result of that appeal, an Order of Remand was issued by the Honorable Thomas Ward, Judge of the Circuit Court for Baltimore City, in which this Commission was instructed to conduct a full, evidentiary hearing to determine whether Mr. Simms Adjustment Hearing on May 3, 1988 was conducted in accordance with applicable law and regulations; and to determine whether the Adjustment Conviction was based upon substantial evidence.

As a witness, we request the presence of Hearing Officer Shawn Jackson and the Adjustment Hearing tape.

McCOY, Frankie #172986 - IGC No. 21325

Mr. McCoy has filed an appeal from ARP-MP-0777-88, which is incorporated herein by reference.

February 22, 1989

In essence, he contends that he is and has been subjected to numerous threats and intimidations by Captain Thomas which amount to harassment and wishes it to cease.

As a witness, we request the presence of Captain Thomas.

WISE, Bruce #126284 - IGC No. 21328

Mr. Wise claims that the witnesses he requested for his Adjustment Hearing on August 17, 1988 were unjustly denied; and that the resultant Adjustment Conviction was not based upon substantial evidence.

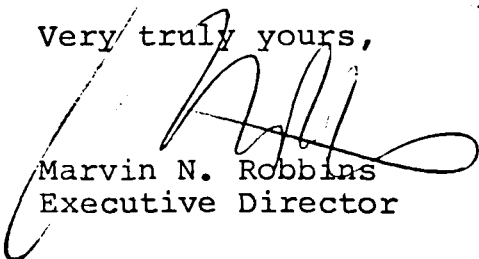
In addition, he contends that on or about August 20, 1988, he confronted the officer who caused the Notice of Infraction to be issued, who then acknowledged that he had erred in identifying Mr. Wise as the inmate who assaulted him and identified another inmate as the responsible party. Following this acknowledgment, the Reporting Officer then notified his Supervisor of the alleged mistake; and the Supervisor thereafter notified the Warden.

Mr. Wise complains, however, that the Warden failed or refused to reverse the Adjustment Conviction, or to take any corrective action; thus, violating his rights to due process and causing him to be subjected to cruel and unusual punishment in violation of the 5th Amendment.

Mr. Wise wishes to be represented by Michael Randolph, of the Legal Aid Bureau.

As witnesses, we request the presence of Chief Hearing Officer Warren Tilley; Officer Gaither (the Reporting Officer); Captain Allen (the Supervisor); and Warden James Rollins.

Very truly yours,

  
Marvin N. Robbins  
Executive Director

MNR/aes

cc:

Commissioners  
Ms. Carolyn Waters  
Mr. Warren Tilley, DOC  
Mr. Richard Kastendieck, Esq.



IN THE MATTER OF  
JOHN WILLIAM SIMMS #140-766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

APPELLANT

-VS-

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215

APPELLEE

IN THE  
CIRCUIT COURT

(1)

FILED

MAY 22 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

FOR

BALTIMORE CITY

CASE No.: \_\_\_\_\_

DOCKET No.: \_\_\_\_\_

89142059

CL97862

000

IGC No. 20288

ORDER FOR APPEAL

TO THE CLERK:

PLEASE ENTER AN APPEAL TO THIS COURT FROM THE ORDER DATED  
(MAY 15, 1989) IN THE MATTER OF (JOHN WILLIAM SIMMS, AND THE INMATE  
GRIEVANCE COMMISSION CASE No. 20288).

KINDLY SET THE APPEAL DOWN FOR A HEARING AND DIRECT A SUMMONS TO  
THE AGENCY, INSTRUCTING SAID AGENCY TO TRANSMIT TO THIS COURT ALL ORIGINAL  
AND CERTIFIED COPIES OF ORIGINAL PAPERS AND EXHIBITS, INCLUDING ANY  
TRANSCRIPT OF TESTIMONY, UPON WHICH ACTION WAS TAKEN BY SAID AGENCY IN  
CONNECTION WITH THIS PROCEEDING.

Costs: David Ross  
Waived: Judge DAVID ROSS  
JUDGE

John William Simms  
APPELLANT

ACW

CERTIFICATION

I HEREBY CERTIFY THAT ON THIS 17<sup>TH</sup> DAY OF MAY, 1989 A COPY OF THE ORDER FOR APPEAL IN THE ABOVE-CAPTIONED CASE WAS MAILED, POSTAGE PREPAID TO THE APPELLEE, SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215, AND THE MARYLAND INMATE GRIEVANCE COMMISSION, SUITE 302, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215

John William

IN THE MATTER OF  
JOHN WILLIAM SIMMS #140-766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

APPELLANT

-VS-

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215  
APPELLEE

IN THE  
CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO. : \_\_\_\_\_

DOCKET NO. : \_\_\_\_\_

oo

IGC NO. : 20288

PETITION FOR REVERSAL OF ADMINISTRATIVE AGENCY'S DECISION

APPELLANT, JOHN WILLIAM SIMMS, HEREBY ALLEGES THAT :

1. I WAS AN INMATE HOUSED ON PROTECTIVE CUSTODY AT THE MARYLAND PENITENTIARY. ON APRIL 30, 1988 I WAS PHYSICALLY ASSAULTED BY A DEATH ROW INMATE DOWN IN THE SHOWER AREA HERE AT THE PENITENTIARY. I USED THE MINIMUM AMOUNT OF FORCE IN PROTECTING MYSELF AGAINST <sup>THIS</sup> ATTACK, AND WAS FOUND GUILTY OF FIGHTING AND PLACED ON SEGREGATION LOCK UP FOR A PERIOD OF SIXTY DAYS.
2. APPELLANT PETITIONED THE INMATE GRIEVANCE COMMISSION FOR A REVIEW OF HIS COMPLAINT. ON MARCH 15, 1989, A HEARING WAS HELD BEFORE THE INMATE GRIEVANCE COMMISSION.
3. APPELLANT CONTENDED AT THAT HEARING; HE WAS ASSAULTED BY ANOTHER INMATE, AND ONLY TRIED TO PROTECT HIMSELF FROM SERIOUS BODILY HARM. AND THERE WAS TESTIMONY FROM AN EYEWITNESS TO SUPPORT THIS ISSUE.

4. IN A DECISION DATED MAY 15, 1989, THE INMATE GRIEVANCE COMMISSION FOUND:  
THAT MY GRIEVANCE WAS WITHOUT MERIT.

5. THE INMATE GRIEVANCE COMMISSION RECOMMENDED THAT;  
HAVING CONCLUDED THAT MY GRIEVANCE WAS WITHOUT MERIT, IT SHOULD BE  
DISMISSED. SINCE MY COMPLAINT WAS DISMISSED, PURSUANT TO ARTICLE 41,  
SECTION 4-1104(e), THE COMMISSIONS ORDER OF DISMISSAL IS A FINAL DECISION OF  
THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES FOR THE  
PURPOSE OF JUDICIAL REVIEW.

6. APPELLANT NOTED THIS APPEAL PURSUANT TO ARTICLE 41, SECTION 204F(1).

7. APPELLANT CONTENDS THAT HE IS ENTITLED TO A REVERSAL OF THE ORDER OF  
THE (SECRETARY OR THE INMATE GRIEVANCE COMMISSION) FOR THE FOLLOWING REASONS:

A. HE WAS ATTACKED BY THIS OTHER INMATE FIRST, AND WAS ONLY PROTECTING  
HIMSELF FROM SERIOUS BODILY HARM.

B. THERE WAS AN EYEWITNESS TO SUPPORT THIS ISSUE.

C. AND IN A CASE LIKE THIS, ONLY THE AGGRESSOR IS TO BE FOUND  
GUILTY AND GO ON LOCKUP, NOT THE PERSON PROTECTING HIMSELF.

WHEREFORE, THE APPELLANT PRAYS THAT THE DECISION OF THE INMATE  
GRIEVANCE COMMISSION OR THE SECRETARY OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES BE REVERSED.

AS RELIEF, I ASK THAT THE DECISION IN THIS CASE BE REVERSED,  
AND THIS BLACK MARK BE REMOVED FROM MY RECORD.

RESPECTFULLY SUBMITTED:

John William Smith

APPELLANT

CERTIFICATION

I HEREBY CERTIFY THAT ON THIS 17<sup>TH</sup> DAY OF MAY, 1989 A COPY OF THE AFORE GOING PETITION OF REVERSAL OF ADMINISTRATIVE AGENCY'S DECISION IN THE ABOVE-CAPTIONED CASE WAS MAILED, POSTAGE PREPAID TO THE EXECUTIVE DIRECTOR, INMATE GRIEVANCE COMMISSION, SUITE 302, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215, AND TO THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215.

John William Smith  
(SIGNATURE)

IN THE MATTER OF  
JOHN WILLIAM SIMMS #140-766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202  
APPELLANT

-VS-

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21245  
APPELLEE

IAC No.: 20288

000

IN THE (2)  
CIRCUIT COURT  
FOR  
BALTIMORE CITY

CASE NO.: 89142059/

DOCKET NO.: CL97862

MOTION TO PROCEED WITHOUT PAYMENT OF COST

APPELLANT, JOHN WILLIAM SIMMS, RESPECTFULLY MOVE THIS COURT FOR AN ORDER PERMITTING HIM TO PROCEED WITH THIS APPEAL WITHOUT THE PAYMENT OF COST OR PROVIDING SECURITY THEREFOR. HIS SUPPORTING STATEMENT OF INDIGENCY IS ATTACHED.

John William Simms

(SIGNATURE)

15

IN THE MATTER OF  
JOHN WILLIAM SIMMS # 10-766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202  
APPELLANT

-VS-

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY

CASE NO. ; \_\_\_\_\_

DOCKET NO. ; \_\_\_\_\_

00

ICC NO. ; 20288

STATEMENT OF INDIGENCY AND PRAYER  
TO PROCEED WITHOUT PAYMENT OF COST

I, JOHN WILLIAM SIMMS, AM THE APPELLANT IN THIS APPEAL.

I BELIEVE THIS APPEAL HAVE MERIT. I DO NOT HAVE A SOURCE OF INCOME NOR DO I HAVE ANY ASSETS AND I AM UNABLE TO PAY THE COST OF PROCEEDING WITH THIS APPEAL OR PROVIDE SECURITY THEREFOR. I HEREBY REQUEST, THEREFOR, THAT THIS COURT PERMIT ME TO PROCEED WITHOUT THE PAYMENT OF, OR PROVISION OF SECURITY FOR COST.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTY OF PERJURY THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

John William Simms  
954 Forrest St.  
Baltimore, Maryland 21202  
NAME AND ADDRESS OF APPELLANT

IN THE MATTER OF  
JOHN WILLIAM SIMMS #140-766  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202  
APPELLANT

-VS-

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215  
APPELLEE

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY

CASE NO. : \_\_\_\_\_

DOCKET NO. : \_\_\_\_\_

000

IGC NO.: 20288

ORDER TO PROCEED WITHOUT PAYMENT OF COST

IT IS, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_, HEREBY ORDERED THAT  
THE APPELLANT ABOVE BE PERMITTED TO PROCEED WITH HIS APPEAL WITHOUT  
PAYMENT OF COST OR PROVISION OF SECURITY THEREFOR.

\_\_\_\_\_  
JUDGE



JOHN W. SIMMS #140760  
959 FORREST ST.  
BALTO., MD. 21202



UNITED STATES POSTAL SERVICE

MS. SAUNDRA E. BANKS, CLERK  
CIRCUIT COURT FOR BALTIMORE CITY  
111 N. CALVERT STREET  
BALTIMORE, MARYLAND 21202

50  
(LEGAL MAIL)

LAW OFFICES

HAROLD I. GLASER

SUITE 1717  
CENTRAL SAVINGS BANK BUILDING  
201 N. CHARLES ST.  
CHARLES AND LEXINGTON STREETS  
BALTIMORE, MARYLAND 21201

HAROLD I. GLASER  
RICHARD C. BERGER  
SAUNDRA C. ROTHSTEIN  
JOHN M. HASSETT

OFFICE  
TELEPHONE  
(301) 244 8822

May 17, 1988

RECEIVED

MAY 18 1988

INMATE GRIEVANCE COMMISSION

Mr. Marvin Robbins  
Executive Director  
Inmate Grievance Commission  
Suite 302  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346

Re: John W. Simms  
I.D. NO. 140-766  
Maryland Penetentiary

Dear Mr. Robbins:

Our office has been contacted by Mr. John W. Simms, I.D. NO. 140-766, who is presently serving a life sentence at the Maryland Penetentiary.

On May 3, 1988 an Administrative Hearing was held at the Penetentiary concerning an altercation between Mr. Simms and a death row inmate, James Trimble. Our information is that Mr. Simms and Mr. Trimble were involved in a fight concerning the use of a shower stall. As a result of the Administrative Hearing, Mr. Simms was placed on a 60-day administrative lock-up and Mr. Trimble received a 30-day lock-up.

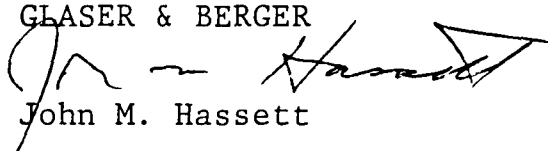
Please consider this letter as an Appeal to the Inmate Grievance Committee on behalf of Mr. Simms.

If you need additional information concerning this matter, please contact our office or Mr. Simms directly at the Maryland Penetentiary.

Thank you for your kind cooperation.

Very truly yours,

GLASER & BERGER

  
John M. Hassett

JMH:gjh

STATE OF MARYLAND  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

WILLIAM DONALD SCHAEFER  
GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

BISHOP L. ROBINSON  
SECRETARY



MARVIN N. ROBBINS  
EXECUTIVE DIRECTOR

**INMATE GRIEVANCE COMMISSION**

Suite 302, Plaza Office Center  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2346  
(301) 764-4257  
TTY FOR THE DEAF: 486-0677

June 2, 1988

Mr. John Simms, #140766  
Maryland Penitentiary

RE: IGC No. 20288

Dear Mr. Simms:

In response to your letter received May 18, 1988 this is to advise that you have not stated a grievance. The Commission will not conduct a second adjustment hearing for the purpose of determining the issue of guilt or innocence. That is the function of the Hearing Officer.

If you wish to proceed further, you should write informing me in what manner, if any, you consider your adjustment hearing to have been unjust or unfair, or improperly conducted. If we have not heard from you within 15 days, we will consider the matter closed.

Very truly yours,

Marvin N. Robbins  
Executive Director

MNR/bs

\* Your grievance was submitted in your behalf by John M. Hassett, Esq., of the law offices of Harold I. Glaser.

P.S. Please note that the difference in the penalties administered to you and to Mr. Trimble is not itself indicative of any wrongdoing or impropriety. As you should know, the Division of Correction employs a sentencing matrix which takes into consideration, among other things, the inmate's adjustment history.

cc: John M. Hassett, Esq.

MR. JOHN W. STAMM # 140100  
INMATE GRIEVANCE COMMISSION  
SUITE 302  
6776 REISTERSTOWN ROAD  
BALTIMORE, MARYLAND 21215-2346

154 FORREST ST. -3-  
BALTIMORE, MARYLAND 21202

RECEIVED  
JUN 10 1988

JUNE 7, 1988

INMATE GRIEVANCE COMMISSION

RE: IGC NO. 20288

DEAR MR. ROBBINS,

MY GRIEVANCE IS THAT MY BEING FOUND GUILTY AT THE ADJUSTMENT HEARING WAS UNJUST, BECAUSE THE OTHER MAN STARTED THE FIGHT. HE HIT ME FIRST, I WAS JUST PROTECTING MYSELF AND I HAD A WITNESS TO ATEST TO THAT FACT. I WAS ONCE EMPLOYED HERE AT THE PENITENTIARY AS A CORRECTIONAL OFFICER, PRIOR TO MY ARREST AND SUBSEQUENT CONVICTIONS. AND WHEN WE HAD A SITUATION LIKE THIS, THE AGGRESSOR WAS ALWAYS THE ONE TO GET FOUND GUILTY AND GO ON LOCK UP. THE OTHER PERSON WAS ALWAYS FOUND NOT GUILTY. THERE ALSO USED TO BE A LIEUTENANT AND A CLASSIFICATION COUNSELOR IN THERE, THIS TIME THERE WAS NO ONE BUT THE HEARING OFFICER PRESENT. HAD THERE BEEN A LIEUTENANT PRESENT HE COULD HAVE TOLD THE HEARING OFFICER JUST WHAT THE POLICY WAS. THIS WAY THE HEARING OFFICER HAS A LOT OF POWER, AND HE DOESN'T USE VERY MUCH LATITUDE WHEN MAKING HIS DECISION. PLEASE GIVE ME A GRIEVANCE HEARING SO THAT I CAN CLEAR UP MY RECORD

YOURS TRULY,



CC: JOHN M. HASSETT, ESQ.

FILED

JUL 21 1989

CIRCUIT COURT FOR BALTIMORE CITY

3 Dd

JOHN WILLIAM SIMMS, #140766

Appellant

v.

SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Appellee

IGC NO.: 20288

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY

\* CASE NO.: 89142059/CL97862

\* \* \* \* \*

ANSWER

Appellee Secretary of Public Safety and Correctional Services, by his attorneys J. Joseph Curran, Jr., Attorney General of Maryland, and Scott S. Oakley, Assistant Attorney General, as an answer to the above-captioned Petition, states:

1. The allegations in paragraph 1 of the Petition are denied, except insofar as to admit that Appellant Simms was an inmate housed on protective custody at the Maryland Penitentiary on April 30, 1988, and that he was found guilty of fighting, and placed on segregation lockup for a period of 60 days.

2. The allegation in paragraph 2 of the Petition is admitted.

3. The allegation in paragraph 3 of the Petition is admitted.

4. The allegation in paragraph 4 of the Petition is admitted.

5. The allegations in paragraph 5 of the Petition are admitted.

Handwritten signature and initials at the bottom right corner.


6. The allegation in paragraph 6 of the Petition is a jurisdictional statement to which a responsive pleading is not required.

7. The allegations in paragraph 7 of the Petition are denied.

8. The Order of the Inmate Grievance Commission dated May 15, 1989 is supported by substantial evidence and is not otherwise effected by error of law.

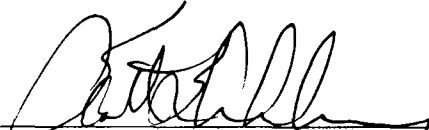
WHEREFORE, Appellee Secretary of Public Safety and Correctional Services respectfully requests that this Court affirm the Order of the Inmate Grievance Commission dated May 15, 1989.

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL OF MARYLAND

  
\_\_\_\_\_  
SCOTT S. OAKLEY  
ASSISTANT ATTORNEY GENERAL  
6776 Reisterstown Road  
Suite 311  
Baltimore, Maryland 21215-2341

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of July, 1989, a copy of the foregoing Answer was mailed, postage prepaid, to John William Simms, #140766, Maryland Penitentiary, 954 Forest Street, Baltimore, Maryland 21202.

  
\_\_\_\_\_  
Scott S. Oakley

FILED

JUL 31 1989

CIRCUIT COURT FOR  
BALTIMORE CITY

*Handwritten initials*

*B-12*

JOHN SIMMS, #140766

Appellant

v.

INMATE GRIEVANCE COMMISSION

Appellee

IGC No. 20288

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* CASE NO. 89142059/CL97862

\* \* \* \* \*

CERTIFICATE OF RECORD

I HEREBY CERTIFY that the attached documents are the full, complete and official record of the proceedings before the Inmate Grievance Commission in Case No. 20288:

1. Letter received May 18, 1988 from John Hassett to Marvin Robbins;
2. Letter dated June 2, 1988 from Marvin Robbins to John Simms;
3. Letter received June 10, 1988 from John Simms to Marvin Robbins;
4. Letter dated June 16, 1988 from Marvin Robbins to John Simms;
5. Memo received January 17, 1989 from Stuart Nathan to Marvin Robbins with attached Order of Baltimore City Circuit Court;
6. Letter dated January 23, 1989 from Marvin Robbins to John Simms;

7. Letter received February 2, 1989 from John Simms to Marvin Robbins;

8. Letter dated February 6, 1989 from Marvin Robbins to John Simms;

9. Letter dated February 22, 1989 from Marvin Robbins to John Simms;

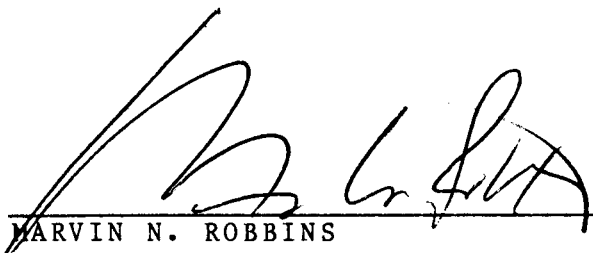
10. Letter dated February 22, 1989 from Marvin Robbins to Bernard Smith;

11. Transcript of the proceedings before the Inmate Grievance Commission on March 15, 1989, reference IGC #20288;

12. Order of the Inmate Grievance Commission in IGC #20288 dated May 15, 1989;

13. Letter dated May 15, 1989 from Marvin Robbins to John Simms.

Exhibit 1




---

MARVIN N. ROBBINS  
Executive Director  
Inmate Grievance Commission  
Suite 302 - 6776 Reisterstown Road  
Baltimore, MD 21215



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Certificate of Record was mailed, postage prepaid, this 28<sup>th</sup> day of July 1989 to Mr. John Simms #140766, Maryland Penitentiary, 954 Forrest Street, Baltimore, MD 21202.

  
\_\_\_\_\_  
SCOTT S. OAKLEY  
Assistant Attorney General  
Department of Public Safety  
and Correctional Services  
Suite 312 - 6776 Reisterstown Road  
Baltimore, MD 21215

-11-

STATE OF MARYLAND  
INMATE GRIEVANCE COMMISSION

Transcript of Proceedings  
March 15, 1989  
Maryland Penitentiary

In the Matter of John Simms, #140766

IGC No. 20288

Herbert MATZ, Commissioner: Allright this is the grievance (inaudible) hearing on Mr. John Simms, IGC #20288. The hearing is being held at the Maryland Pen on March 15, 1989 before Commissioners Millard, Hergenroeder and Matz. Let the record show that Mr. H.E. Rodgers who is the Classification Supervisor at the Pen (inaudible) to represent the Division and the institution and let the record further show that Mr. Simms reviewed the adjustment report consisting of one, two, three pages is that right Mr. Simms?

John SIMMS, Inmate Complainent: Yes that's correct.

MATZ: Allright I'm going to read your grievance and let me know if it's that. Mr. Simms first filed this grievance on May 18, 1988. Upon preliminary review by the Inmate Grievance Commission, his grievance was Administratively dismissed without a hearing. Mr. Simms appealed that decision to the Circuit Court for Baltimore City. As a result of that appeal, an Order of Remand was issued by the Honorable Thomas Ward, Judge of the Circuit Court for Baltimore City, in which this Commission was instructed to conduct a full, evidentiary hearing to determine whether Mr. Simms' adjustment hearing on May 3, 1988 was conducted in accordance with applicable law and regulations; and to determine whether the adjustment conviction was based upon substantial evidence. Is that your grievance?

SIMMS: Yes it is.

MATZ: Well you were found guilty of what?

SIMMS: Fighting.

MATZ: Fighting is Rule 1?

SIMMS: Yes.

MATZ: Well what, what are you claiming was improper about the conviction or whether the hearing was not conducted according to (inaudible). What were you complaining about?

SIMMS: First of all I had nothing to do with this. I was assaulted by this other man.

MATZ: Well were you claiming it wasn't substantial evidence.

SIMMS: Right, I was assaulted by another....

MATZ: What else were you complaining.

SIMMS: That I was assaulted and (inaudible).

MATZ: I understand (inaudible). What, we're going to go, Judge ordered us to (inaudible) to conduct a full evidentry hearing to determine whether Mr. Simms adjustment hearing on May 3, 1988 was conducted (inaudible) whether or not the (inaudible) was based on substantial evidence. Is that the thing you're telling us now? Well what other complaint are you having with respect to this conviction that it was not held in accordance with applicable law and regulations.

SIMMS: And that they didn't follow the rules on that.

MATZ: What rules, who didn't?

SIMMS: The Hearing Officer's rules.

MATZ: What rules?

SIMMS: The rule is on (inaudible) only person being found guilty is the (inaudible). That's the only person who was found guilty.

MATZ: Only person found guilty of fighting?

SIMMS: Yes.

MATZ: And you're telling us now, for the record, that that's the only, that this substantial evidence, that's the only complaint you have (inaudible).

SIMMS: That is correct.

MATZ: Alright, okay. So you're trying to tell us substantial evidence, (inaudible) is that it?

SIMMS: Yes.

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MATZ: And what's your complaint that he....

SIMMS: The other inmates attacked me, wasn't for no apparent reasons, in front of the showers.

MATZ: Well was it self defense?

SIMMS: (Inaudible)

Donald MILLARD, Commissioner: It was Mr. Trimble.

SIMMS: Yes sir.

MATZ: What's his name Trimble (inaudible).

UNIDENTIFIED: (Inaudible) James.

MILLARD: You say he struck you?

SIMMS: Yes.

MILLARD: For no reason at all?

SIMMS: It was a dispute on the shower and he assaulted me first for no reason.

MATZ: (Inaudible)

SIMMS: Yes I did (inaudible).

Henry HERGENROEDER: Where was it in the shower?

SIMMS: It was in the shower.

MATZ: Allright Mr. Jackson. Why are you saying there was substantial evidence?

Shawn JACKSON, Hearing Officer: Well during the attack when I noticed the Colonel stated that Simms attacked him. Simms claimed Trimble attacked him.

HERGENROEDER: Well the grievance says Trimble (inaudible).

JACKSON: Trimble said that Simms hit him first.

MILLARD: And Simms said that Trimble hit him.

(Inaudible)

MATZ: (Inaudible) Simms says he went back (inaudible) I was already in the shower stall. He hit me in the jaw first and I hit him back and the witness said I saw Trimble run out of the shower, I went in to see what was going on (inaudible) Trimble struck Simms. (Inaudible).

SIMMS: That's correct.

MATZ: So he had testimony that you struck Trimble first and Trimble then hit back and he had testimony that Trimble hit you first and then you hit back.

SIMMS: (Inaudible).

MATZ: (Inaudible) the basis of your....

(Inaudible conversation)

MATZ: Alright well what else do you want to tell us Mr. Simms?

SIMMS: (Inaudible)

MATZ: Do you want to give us (inaudible).

SIMMS: Yes it clearly states (inaudible).

MATZ: Did they both hit at the same....

JACKSON: They were not in the categories (inaudible) in different categories of the matrix (inaudible).

MILLARD: Now Mr. Simms will you repeat the statement you made at the beginning. Did you say that the Hearing Officer did not follow the rules, that the only person found guilty was (inaudible). Is that what you said?

SIMMS: That's one of the (inaudible) supposed to be (inaudible).

MILLARD: Supposed to be (inaudible).

SIMMS: Yes (Inaudible).

MILLARD: And that's what it said (inaudible).

SIMMS: Yes.

MATZ: Now what happened?

SIMMS: The two people don't start (inaudible) only one and the other person protects himself, which is what the law allows. (Inaudible).

MATZ: Allright what would you have us do? (Inaudible)

SIMMS: I'd like (end of tape)

(Tape 2, side A inaudible - about 15 seconds).

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

John William Simms

.....  
Secretary of Public Safety &  
Correctional Services

Docket: .....  
Folio: 89142059/CL97862  
File: .....  
Date of Notice: 7/31/89

STATE OF MARYLAND, ss: 31st July

I HEREBY CERTIFY, That on the ..... day of .....  
Nineteen Hundred and eighty-nine, I received from the Administrative  
Agency, the record, in the above captioned case.

**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

John William Simms

.....  
vs.  
Secretary of Public Safety &  
Correctional Services

Docket: .....  
Folio: 89142059/CL97862  
File: .....  
Date of Notice: 7/31/89

STATE OF MARYLAND, ss: 31st July

I HEREBY CERTIFY, That on the ..... day of .....  
Nineteen Hundred and eighty-nine, I received from the Administrative  
Agency, the record, in the above captioned case.

**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

Scott S. Oakley  
Assistant Attorney General  
6776 Reisterstown Road  
Suite 311  
Baltimore, Maryland 21215-2341

John William Simms # 140-766  
Maryland Penitentiary  
954 Forrest Street  
Baltimore, Maryland 21202



5

HABEAS CORPUS AD TESTIFICANDUM

CASE NO. 89142059 - CL-97862  
 INDICTMENT NO. .... POLICE IDENT. NO. ....  
 PART ..... D.O.B. ....  
 ROOM ... 219 Mitchell Court House ISSUED BY .. Civil Assignment...  
 DATE ... December 5, 189 ..... PHONE ..... 333-3755.....

~~9:30 a.m.~~  
 TIME: ~~9:30 a.m.~~

The State of Maryland

TO THE COMMISSIONER OF CORRECTION, GREETINGS:

You are hereby commanded, that you have the body of .....  
 ..... John Williams Simms #140766 - Dept. of ..... detained  
 ..... Correction  
 under your custody as it is said, by whatsoever name he may be called in the same,  
 before the ~~Criminal~~ <sup>Civil</sup> Court of Baltimore to testify in the case of ~~the State of Maryland vs~~  
 ..... ~~Simms vs. Sec. of Pub. Safety~~ ..... then and there to be tried. Inmate is  
 required to appear from day to day until conclusion of proceedings or until excused by Judge.  
 Immediately thereafter the said ..... John Williams Simms .....  
 shall have given his testimony before the said Court to return him to said prison, and have  
 you then and there this writ.

Witness the hand of the Judge and the Seal of the ~~Criminal~~ <sup>Civil</sup> Court of Baltimore this  
 .. 5th ... day of ... October ..... A. D., 19 <sup>89</sup> .....

*JH*  
 .....  
 JOSEPH H. KAPLAN  
 Judge  
 Judge

*CR*

HABEAS CORPUS AD TESTIFICANDUM

INDICTMENT NO. ... POLICE IDENT. NO. ...
PART ... D.O.B. ...
ROOM ... 219 Mitchell Court House ... ISSUED BY .. Civil Assignment...
DATE ... December 5, 189 ... PHONE ... 333-3755 ...

WRIT OF HABEAS CORPUS ADTESTIFICANDUM SERVED ON TRANSPORTATION
DEPT. AT D.O.C., 505 E. MADISON ST., ON 10-13-89 TIME: 9 A.M.
AT 9:00 A.M., IN THE PRESENCE OF DEPUTY SHERIFF #33

John Anderson
SHERIFF

The State of Maryland

TO THE COMMISSIONER OF CORRECTION, GREETINGS:

You are hereby commanded, that you have the body of ...
John Williams Simms #140766 - Dept. of ... detained
under your custody as it is said, by whatsoever name he may be called in the same,
before the Criminal Court of Baltimore to testify in the case of the State of Maryland vs.
Simms vs. Sec. of Pub. Safety ... then and there to be tried. Inmate is
required to appear from day to day until conclusion of proceedings or until excused by Judge.
Immediately thereafter the said ... shall have given his testimony before the said Court to return him to said prison, and have
you then and there this writ.

Witness the hand of the Judge and the Seal of the Criminal Court of Baltimore this
... day of ... A. D., 19 ...

TRUE COPY
TEST

JOSEPH H. H. KAPLAN
Judge
Judge.

Saundra E. Banks

SAUNDRA E. BANKS, CLERK

*Cl*

FILED

JOHN SIMMS, #140766

Appellant

v.

INMATE GRIEVANCE COMMISSION

Appellee

IGC No. 20288

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No. 89142059/  
\* CL97862

\* \* \* \* \*

NOTICE OF WITHDRAWAL OF APPEARANCE AND  
REQUEST FOR ENTRY OF APPEARANCE

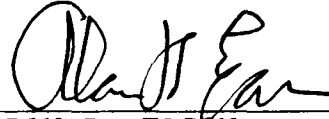
Please take notice that Scott S. Oakley, Assistant Attorney General, herewith withdraws his appearance on behalf of Appellee Inmate Grievance Commission and that Alan D. Eason, Assistant Attorney General, herewith requests the entry of his appearance on behalf of Appellee.

*Scott S. Oakley*  
\_\_\_\_\_  
SCOTT S. OAKLEY  
Assistant Attorney General

*Alan D. Eason*  
\_\_\_\_\_  
ALAN D. EASON  
Assistant Attorney General  
Division of Correction  
6776 Reisterstown Road  
Baltimore, MD 21215  
764-4191

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of Nov., 1989,  
I caused a copy of the foregoing Notice of Withdrawal of  
Appearance and Request for Entry of Appearance to be mailed,  
first class, postage prepaid, to John Simms, #140766, Maryland  
Penitentiary, 954 Forrest Street, Baltimore, MD 21202.



ALAN D. EASON

6A

Rec'd  
12/21/89  
Court File Copy

JOHN SIMMS	*	IN THE
APPELLANT	*	CIRCUIT COURT
V.	*	FOR
SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES	*	BALTIMORE CITY
APPELLEE	*	CASE NO. 8914059/CL97862
IGC NO. 20288	*	
	*	

APPELLEE'S POST HEARING MEMORANDUM OF LAW  
IN RESPONSE TO THE COURT'S REQUEST OF DECEMBER 5, 1989

Appellee Secretary of Public Safety and Correctional Services, by his undersigned attorney, submits the following memorandum of law in accordance with the Court's request made at the court hearing held on December 5, 1989.

Issues

1. Was there sufficient evidence for the Inmate Grievance Commission to affirm the Division of Correction (DOC) hearing officer's decision that Appellant violated DOC Rule 1 by being involved in a fight with another inmate?
2. Was it error for the hearing officer not to specifically consider and determine whether or not Appellant was entitled to acquittal on the basis of self-defense?

Argument

An order issued by the Inmate Grievance Commission (IGC) dismissing an inmate's grievance constitutes a final decision of the Secretary of Public Safety and Correctional Services for purposes of requesting judicial review of that administrative decision. Md. Code Ann. Art. 41, Section 4-102(f)(1). Judicial review of an IGC decision by a court is

limited to a review of the record of the proceedings before the IGC and of the final order of the IGC or Secretary. The Court's review is, by statute, "limited to a determination of whether there was a violation of any right of the inmate protected by federal or State laws or constitutional requirements." Art. 41, Sec. 4-102.1(1).

The case is an appeal seeking judicial review of a prison disciplinary hearing and decision (also known as a prison adjustment action) in which Appellant, an inmate at the Maryland Penitentiary in 1988 had been found guilty of violation of prison Rule 1 for fighting with another inmate on April 30, 1988 and as punishment served 60 days in a segregation cell.

Appellant contends the adjustment action was not supported by substantial evidence and that prison hearing officers are required by rule or policy to not find an inmate guilty of fighting if he was not the aggressor and if he was only fighting in self-defense. T.1, 2 and 4 (references are to the transcript of the IGC hearing, item 11 of the record of the proceedings before the IGC).

Hearing Officer Jackson testified at the IGC hearing that both inmates at the disciplinary hearing claimed the other attacked first. T.3. The documents of the prison adjustment action were marked as Exhibit 1 collectively at the IGC hearing and are part of the record in this appeal. The hearing officer's written summary of the testimony of Appellant Simms and inmate Trimble at the adjustment hearing appears on page 1 of the Adjustment Report (part of Exhibit 1) and is consistent

with the hearing officer's testimony at the IGC hearing that both Simms and Trimble contended the other hit first. The record indicates that Trimble told the hearing officer he made no effort to defend himself or to hit Simms, and the hearing officer noted in his report that Simms testified that Trimble hit Simms first and that Simms hit Trimble back. The hearing officer also noted in his report that inmate Allender testified that he saw Trimble "swing at Simms" and that Allender testified that Simms defended himself. On page 2 of the Adjustment Report, the hearing officer stated that he found Simms guilty of violating Rule 1 because the hearing officer believed Simms and Trimble exchanged blows and were involved in a fight.

When the above-referenced evidence contained in the record is reviewed in the context of the Supreme Court's evidentiary standards applicable to inmate disciplinary proceedings, Appellee contends that the evidence was sufficient for the IGC to affirm the hearing officer's guilty finding.

In Superintendent, Massachusetts Correctional Institution v. Hill, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985), the Supreme Court held "that the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board..." The Supreme Court further explained the standard that there be some evidence to support the disciplinary action.

This standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced...' Ascertainning whether this standard is satisfied does not

require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. We decline to adopt a more stringent evidentiary standard as a constitutional requirement. Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard than some evidence applies in this context (citations omitted).

Ibid, 472 U.S. at 455-456, 105 S.Ct. at 2774.

The hearing officer's conclusion that Appellant Simms was guilty was based on the fact that Simms admitted he hit back and on the testimony of Trimble, Simms and Allender, which testimony, although conflicting, was sufficient Appellee contends to support the conclusion that Simms was involved in a fight with Trimble and was guilty of assault in violation of Rule 1.

Not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences. Bulluck v. Pelhamwood Apartments, 283 Md. 505, 513



(1978). Followed in Courtney v, Board of Trustees of the Maryland State Retirement Systems, 285 Md. 356, 402 A.2d 885 (1979). If evidence is shown in the record, "no matter how conflicting, or questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency" at the hearing. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md.App. 487, 369 A.2d 1067 (1977). The court may not judge for itself whether the administrative agency's decision is right or whether there is greater support for another conclusion. "The test is reasonableness, not rightness." Snowden v. City of Baltimore, 224 Md. 443, 168 A.2d 390, 392 (1961) quoting 4 David Admin. Law treatise, Section 29.05 p. 139 (1958). Based on the evidence in the record, Appellee contends that a reasoning mind reasonably could have reached the factual conclusion that the hearing officer and that the IGC reached. Bullock, supra.

Since the Supreme Court has established that only minimal due process is necessary in a prison disciplinary action and that due process is satisfied if there is some evidence, no matter how meager, Hill, supra at 472 U.S. 457, 105 S.Ct. at 2775, Appellee believes that the adjustment decision and disciplinary action of Appellant did not violate any statutory or constitutional requirements to which Appellant was entitled. The decision was reasonably based on the evidence that Simms struck Trimble, where there was conflicting evidence as to who was the original aggressor. If this Court agrees that the administrative agency decision did not violate any right of

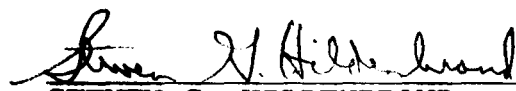
Simms protected by statute or constitutional requirements, Art. 41, Sec. 4-102.1(1), the Court should affirm the IGC decision.

Concerning Appellant Simm's claim that he only hit Trimble in self-defense and that since he was not the aggressor, he should not have been found guilty of violation of Rule 1, the record shows conflicting evidence between Trimble's testimony and that of Simms and witness Allender. In a criminal trial, it probably would be reversible error for the trier of fact to render a conviction on the nature of the conflicting evidence that exists in the record in this case. However, the Supreme Court has stated in Hill, supra, that the stricter evidentiary requirements for a criminal conviction do not apply to prison disciplinary action. The evidence in this case is sufficient for this Court to determine if the disciplinary action was based on some evidence as is required by the Supreme Court's requirements for due process in a prison disciplinary decision.

Subsequent to the hearing before this Court on December 5, 1989, Appellee's attorney has determined from the Chief Hearing Officer for the Division of Correction that where there is sufficient evidence to permit a hearing officer to determine that only one inmate was the aggressor, another inmate initially charged with fighting will usually be acquitted by practice, but not by any rule, if the evidence shows that other inmate did not become mutually involved in the fight. Based on the record in this case, the IGC determined that the hearing officer was reasonable to conclude that Simms was fighting where there was evidence that both had been the original aggressor.

Under the atmosphere that exists at a maximum security institution such as the Maryland Penitentiary, the courts have granted institutional personnel broad discretion in making disciplinary decisions in the interests of maintaining prison security, as long as the disciplinary decision is based on some evidence. Although the hearing officer was silent in his decision and in his rationale as to whether he specifically considered and determined the issue of self-defense, such omission falls short of violating any statutory or constitutional right to which Appellant was entitled in the prison disciplinary proceeding. Accordingly, omission of a determination on the issue of self-defense was not an error by the hearing officer or by the decision of the IGC justifying reversal or remand by this Court, and therefore the decision of the IGC affirming the disciplinary action should be affirmed.

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
STEVEN G. HILDENBRAND  
Assistant Attorney General  
Department of Public Safety and  
Correctional Services  
Suite 312  
6776 Reisterstown Road  
Baltimore, Maryland 21215-2341  
Tel: 764-4072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 20, 1989 that a copy of the foregoing Memorandum was mailed to John Simms, #140-766,

Maryland Penitentiary, 954 Forrest Street, Baltimore, Maryland  
21202.

*Steven G. Hildenbrand*

---

STEVEN G. HILDENBRAND  
Assistant Attorney General

JOHN W. SIMMS  
APPELLANT  
V.

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
APPELLEE

I.G.C. NO.: 20288

IN THE  
CIRCUIT COURT

FOR  
BALTIMORE CITY

CASE NO. 89-42059/CL97862

Rec'd  
prio- to 1/2/90  
Court File Copy

ANSWER TO APPELLEE'S MEMORANDUM OF LAW

MR. HILDENBRAND, IN HIS RESPONSE TO THE COURT'S REQUEST OF DECEMBER 5, 1989, HAS FAILED TO PROPERLY ANSWER THE COURT'S QUESTION, AND THE COURT'S QUESTION WAS, COULD HE PROVIDE THE COURT WITH A RULE THAT STATES BOTH INMATE ARE TO BE FOUND GUILTY OF FIGHTING AND GO ON LOCK UP NO MATTER WHO THE AGGRESSOR WAS? AND THERE IS NO RULE ANYWHERE THAT SAYS THAT IN THE DIVISION OF CORRECTION ON THE MARYLAND PENITENTIARY. ALL MR. HILDENBRAND HAS DONE IS SUPPLY THE COURT WITH A LOT OF LEGAL JARGON ABOUT WHAT THE SUPREME COURT SAID WHEN THERE IS SOME EVIDENCE TO SUPPORT THE DECISION OF THE PRISON DISCIPLINARY BOARD, WHICH I DON'T THINK APPLY TO THIS CASE. THE SAME LAW THAT APPLY TO A PERSON IN FREE SOCIETY ALSO APPLY TO A PERSON INCARCERATED. IF THIS WERE A CRIMINAL CASE, I CERTAINLY WOULD NOT BE FOUND GUILTY BY A RATIONAL FACT FINDER. THE PROPRIETOR OF A STORE WHO SHOOTS AN ARMED HOLD UP MAN TO PROTECT HIMSELF, AND HIS EMPLOYEES, WOULD NOT EVEN BE CHARGED, NOT TO MENTION BEING FOUND GUILTY. BECAUSE HE WOULD HAVE ACTED IN SELF DEFENSE, WHICH IS WHAT I DID. IF YOU WILL NOTICE ON PAGE 3 OF THE TRANSCRIPT, MR. MATZ ASKED IF IT WAS SELF DEFENSE, AND MY ANSWER IS DOWN AS BEING INAUDIBLE. YOU WILL ALSO NOTICE ON PAGE 3 OF THE TRANSCRIPT, AT THE BOTTOM, THE HEARING OFFICER'S TESTIMONY CONCERNING WHO THE AGGRESSOR WAS.

WHEN STATED THAT HE DIDN'T KNOW WHO STUCK THE FIRST BLOW,  
THAT WHY HE FOUND US BOTH GUILTY.

BUT THAT TESTIMONY WAS NOT TRANSCRIBED, IT TOO WAS PUT DOWN AS  
BEING INAUDIBLE. IF YOU WILL NOTICE THROUGHOUT THE ENTIRE TRANSCRIPT,  
ALL OF THE IMPORTANT TESTIMONY IS DOWN AS BEING INAUDIBLE.

ITS NOT REALLY THAT WAY, THIS SYSTEM IS SO CORRUPT THAT THEY DO THIS  
DELIBERATELY TO CAUSE THE INMATE TO LOSE HIS CASE, AND WHEN HE APPEAL IT TO  
THE CIRCUIT COURT, THE JUDGE WILL HAVE NO CHOICE BUT TO AFFIRM THEIR DECISION.

WHAT THE HEARING OFFICER WAS SAYING IN THIS CASE IS, HAD HE KNOWN WHO  
THE AGGRESSOR WAS, THATS THE ONLY PERSON HE WOULD HAVE FOUND GUILTY.

BUT THEY COVERED THAT UP AS THE TESTIMONY BY MYSELF, MARK ALLENDER AND  
HARRY DOUGLASS CLEARLY SHOWED WHO THE AGGRESSOR REALLY WAS.

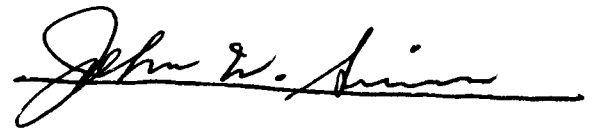
AND TO PROVE THAT THE OTHER MAN WAS WRONG, HE NEVER EVEN CHALLENGED  
HIS GUILTY FINDING AT ALL, HE ACCEPTED IT.

THE STATEMENT THAT THE APPELLEE MADE ON PAGE 6 OF HIS ANSWER CONCERNING  
HIS CONVERSATION WITH THE CHIEF HEARING OFFICER FOR THE DIVISION OF CORRECTION  
IS NOT ENTIRELY TRUE. A MAN IS NOT USUALLY ACQUITTED OF FIGHTING IF HE  
DIDNT BECOME MUTUALLY INVOLVED IN THE FIGHT.

ONLY A FOOL WOULD LET SOMEONE BEAT ON HIM AND NOT PROTECT HIMSELF, AND  
TAKE A CHANCE OF BEING SERIOUSLY INJURED JUST TO KEEP FROM GETTING INTO ANY  
TROUBLE. I COULD HAVE <sup>BEEN</sup> KILLED OR PERMANENTLY MAIMED BY THAT OTHER

INMATE. AND TO FURTHER DISAGREE, AT NO TIME WAS THERE EVER ANY EVIDENCE  
TO PROVE THAT BOTH ME AND THE OTHER MAN WERE THE ORIGINAL AGGRESSOR.  
I DON'T DENY BEING INVOLVED IN A FIGHT, I JUST DENY BEING THE AGGRESSOR.

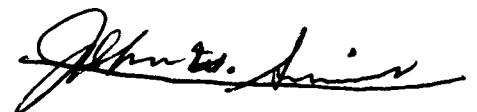
I FEEL THAT THE APPELLEE HAS FAILED TO PROVE THE HEARING OFFICER AND THE INMATE GRIEVANCE COMMISSION WERE JUSTIFIED IN THEIR FINDINGS. AND BECAUSE OF THIS, I ASK THAT THEIR DECISION BE REVERSED AND MY CLEAN RECORD BE RESTORED.



JOHN W. SIMMS  
MARYLAND PENITENTIARY  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS 27<sup>TH</sup> DAY OF DECEMBER 1989, A COPY OF THE FOREGOING ANSWER TO THE APPELLEE'S MEMORANDUM OF LAW WAS MAILED TO STEVEN G. HILDENBRAND, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, SUITE 312, 6776 REISTERSTOWN ROAD, BALTIMORE, MARYLAND 21215-2341



JOHN W. SIMMS	*	IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES	*	BALTIMORE CITY
Appellee	*	Case No. 89142059/CL97862
	*	
* * * * *		

MEMORANDUM OPINION AND JUDGMENT

Hollander, J.

I. Introduction and Background

John W. Simms ("Simms"), who is incarcerated, has appealed from the decision of the Inmate Grievance Commission (the "Commission"), dated May 15, 1989. The Commission found that Simms had exchanged blows with James Trimble ("Trimble"), another inmate, and thereby assaulted him in violation of a prison rule prohibiting fighting. Accordingly, the Commission dismissed as without merit Simms' grievance challenging the disciplinary action imposed as punishment for this infraction.

II. Factual Summary

On April 30, 1988 Simms and Trimble, both inmates housed at the Maryland Penitentiary, were involved in a physical altercation in the shower area. While it is clear that blows were exchanged between the two inmates, and that Trimble then ran from the shower area, the precise sequence of events is a matter of some controversy.



Immediately following the altercation, Simms informed the correctional officer assigned to this area, Officer L. Wilkins, that Trimble "had strucked [sic] him in the face with his fist." Notice of Infraction or Incident.<sup>1</sup> Simms stated that he responded by striking Trimble in his face, according to Officer Wilkins. Id.

The matter was referred for an Adjustment Hearing on May 3, 1988. Both Simms and Trimble presented testimony at the Adjustment Hearing, and Simms also called two additional inmate witnesses. Simms stated that Trimble had wanted to use a particular shower stall he had used before, but that Simms was already in that stall on this occasion. Adjustment Report, at 1. Simms reiterated his contention that Trimble had hit him in the jaw first. Then, Simms said, he hit Trimble back. Id.

The two witnesses called by Simms supported his version of events. The first, Harry Douglas ("Douglas"), stated that he ran into the showers to see what was going on after he saw Trimble run out of the showers. Douglas said that he was told by another inmate, whom he did not identify, that Trimble had struck Simms. Id. The second witness called by Simms, Mark Allender ("Allender"), testified that he saw the incident. According to Allender, Trimble swung at Simms, and Simms then defended himself. Id.

---

1. The record from the Inmate Grievance Commission, on appeal, has not been sequentially numbered. Accordingly, documents in the record will be described herein by name, so as to permit their identification. References to the transcript of the hearing held before the Commission on March 15, 1989 are abbreviated by "T" along with the particular page number of the transcript.

Trimble's version of events was markedly different. According to Trimble, the inmates were going to the showers, and Trimble walked in and put his soap down in one of the stalls. Simms allegedly said that it was his shower stall. Trimble further testified that Simms then pushed him and hit him in the head and face. Id. Trimble stated that his only response was to cover up and to walk out of the shower; he did not defend himself further, and he insisted that he never hit Simms. Id.

After considering the conflicting evidence presented, the Hearing Officer found Simms guilty of violating Division of Correction Rule One (Rule One). Id. at 2. Rule One prohibits "[w]rongful killing, assault, assault and battery, assault by threatening to do bodily harm, with or without weapons." See Division of Correction Regulation 105-1. The Hearing Officer explained his decision as follows: "I believe that Simms was involved in a fight with James Trimble...I believe that Simms and Trimble exchanged blows in the shower area." Id. Simms was sentenced to 60 days in disciplinary segregation. Id.<sup>2</sup>

---

2. Trimble received 30 days in disciplinary segregation. See Letter of May 17, 1988 from John M. Hassett, Esq.; Letter of June 2, 1988 from Marvin N. Robbins. In the latter letter, Marvin N. Robbins, Executive Director of the Commission, explained the differing penalties as follows:

"Please note that the difference in the penalties administered to you and to Mr. Trimble is not itself indicative of any wrongdoing or impropriety. As you should know, the Division of Correction employes [sic] a sentencing matrix which takes into consideration, among other things, the inmate's adjustment history."

On May 18, 1988, Simms filed a grievance challenging this adjustment conviction. Upon preliminary review by the Commission, however, his grievance was administratively dismissed without a hearing as being on its face wholly lacking in merit pursuant to Code, Art. 41, Sec. 41-1104(e). Simms appealed this dismissal to the Circuit Court for Baltimore City. As a result of that appeal, the case was remanded by Judge Thomas Ward, with instructions to the Commission to conduct a full evidentiary hearing to determine whether Simms' adjustment hearing was conducted in accordance with applicable law and regulations, and to determine whether the adjustment conviction was based upon substantial evidence. On March 15, 1989, a hearing was held before the Commission in accordance with the Order.

Simms raised essentially two contentions before the Commission. First, he argued that he "had nothing to do with this [incident]. [He] was assaulted by this other man." T.2. Second, Simms contended that the Hearing Officer did not follow the applicable law and regulations in finding both he and Trimble guilty of fighting. Simms strenuously urged that where there is a physical altercation between inmates in the Division of Correction, it is the rule and practice "that only the aggressor is the one to be found guilty of fighting, and not the person attacked by the individual." Letter of January 30, 1989 from Simms to the Commission; T.2, 5.

The Commission also heard from the Hearing Officer who had presided at the adjustment hearing. The Hearing Officer

emphasized that Trimble had testified that Simms struck the first blow. T.3. The Hearing Officer also specifically reiterated that he had found both inmates guilty of assaulting each other. See Order of the Commission, at 1.

After the hearing, the Commission found that Simms' adjustment conviction was based upon substantial evidence, and that the adjustment hearing had been conducted in accordance with applicable laws and regulations. The Commission determined that both "Mr. Simms and Mr. Trimble were involved in a fight in the shower. They both exchanged blows and thereby assaulted each other. Both were guilty of violating Rule #1." Order of the Commission, at 2. The Commission consequently concluded that Simms' grievance was without merit, and ordered it dismissed. Id.

### III. Scope of Review

Code, Art. 41 Sec. 4-102.1(1), governs the standards of judicial review in connection with the administrative adjudication of inmate grievances and complaints. Sec. 4-102.1(1) provides in pertinent part as follows:

Review by the court shall be limited to a review of the record of the proceedings before the Commission... The court's review shall be limited to a determination of whether there was a violation of any right of the inmate protected by federal or State laws or constitutional requirements.

Holsey v. Inmate Grievance Comm'n., 296 Md. 601, 602 (1983);  
Bryant v. Dep't. of Pub. Safety, 33 Md. App. 357, 364-65 (1976).

The substantial evidence test applies to the judicial review of decisions of the Commission in inmate grievance matters.<sup>3</sup> Greene v. Secretary of Pub. Safety, 68 Md. App. 147, 159 (1986); Hewitt v. Dep't. of Pub. Safety, 38 Md. App. 710, 715 (1978); Bryant, supra, 33 Md. App. at 369. This test is satisfied when, upon review of the record, there is found to exist "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Greene, supra, 68 Md. App. at 147 (citation omitted).

In Hewitt, supra, the Court of Special Appeals reviewed the parameters of the substantial evidence test in considering the scope of judicial review of a decision by the Commission:

A reviewing court may, and should, examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred.

A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

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3. In its Post Hearing Memorandum of Law, Appellee contends that a less restrictive standard of review is appropriate in this matter, relying on Superintendent v. Hill, 472 U.S. 445 (1985). In Hill, the Court held that minimum due process requirements under the United States Constitution are satisfied if "there was some evidence from which the conclusion of the administrative tribunal could be deduced." 472 U.S. at 455 (emphasis in original). But in Greene v. Secretary of Pub. Safety, 68 Md. App. 147 (1986), the Court of Special Appeals reaffirmed the continued validity of the substantial evidence test as the controlling standard of review. 68 Md. App. at 60. Consequently, this court is bound to follow the substantial evidence test as the appropriate standard of review in the instant case.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

38 Md. App. at 714, quoting Comm'r. v. Cason, 34 Md. App. 487, 518 (1977). The validity and continuing viability of these general principles have been reaffirmed numerous times. See, e.g., Maryland State Police v. Lindsey, 318 Md. 325 (1990); Terranova v. Board, 81 Md. App. 1 (1989); Kade v. Hickey School, 80 Md. App. 721 (1989).

Decisions of administrative agencies such as the Commission are prima facie correct, and carry with them the presumption of validity. Thus, on appeal, the agency's decision must be viewed in the light most favorable to the agency. Lindsey, supra, 318 Md. at 334. See generally, Bulluck v. Pelham Woods Apts., 283 Md. 505 (1978). Accordingly, the reviewing court should not "substitute [its] judgment for the expertise of the agency." Lindsey, supra, 318 Md. at 333.

#### IV. Discussion

The Commission's decision dismissing Simms' grievance is supported by substantial evidence and is correct as a matter of law.

On appeal, Simms has continued to press his contention that the evidence he produced before the Hearing Examiner and the Commission shows that he hit Trimble only in self-defense.

Thus, he urges, since he was not the initial aggressor, he cannot be found to have been guilty of violating Rule One. Simms complains that Appellee has not provided the court "with a rule that states both inmate [sic] are to be found guilty of fighting and go on lock up no matter who the aggressor was," and that no such rule exists. Appellant's Answer to Appellee's Memorandum of Law, at 1. Instead, Simms contends, "[t]he same law that apply [sic] to a person in a free society also apply [sic] to a person incarcerated. If this were a criminal case, I certainly would not be found guilty by a rational fact finder," he asserts. Id.

But this action is a civil administrative adjudication and is not comparable to a criminal case. See Wolff v. MacDonnell, 418 U.S. 539, 556 (1974). It is thus circumscribed by the less strict procedural due process requirements of prison disciplinary proceedings rather than those applying to criminal cases. See, Id. at 571-72 n. 19 (setting out minimal due process requirements applicable where punishment imposed "represents a major change in the conditions of confinement"); Greene, supra, 68 Md. App. at 154-55. The same rules do not necessarily apply to a person incarcerated as to a person in free society. See generally, Superintendent v. Hill, 472 U.S. 445, 454 (1985) (recognizing that process due institutionalized inmate must be analyzed "in the distinctive setting of a prison, where disciplinary proceedings 'take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incar-

cerated for doing so.") (quoting Wolff, supra, 418 U.S. at 561).

Appellee concedes that it is the practice of the hearing officers of the Division of Correction to acquit an inmate charged with fighting where there is sufficient evidence to permit a hearing officer to find that only one inmate was the aggressor, and that the other inmate did not become mutually involved in the fight. Appellee's Post Hearing Memorandum of Law, at 6. But despite Simms' confidence in the persuasiveness of the evidence he produced before the Hearing Examiner and the Commission, and in his own credibility, the agency was not required to accept his version of events.<sup>4</sup>

In this case, the determination of the Hearing Examiner was one of credibility, since the evidence produced by the two inmates was diametrically opposed. The Hearing Examiner had the opportunity to observe the demeanor of the witnesses, to question them, and to make conclusions as to their credibility. The Hearing Examiner did so, and clearly found neither side innocent. On the contrary, he found that both had acted wrongfully by fighting with each other, and therefore that both had violated the provisions of Rule One prohibiting fighting.

The Hearing Examiner's reliance on the evidence before him is clear from the record. He emphasized, in his written

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4. The agency also was not required to find Simms guilty beyond a reasonable doubt in this matter, as would be the standard in a criminal case.



report and before the Commission, Trimble's testimony that Simms hit Trimble first. In this case, the Hearing Examiner believed that both parties acted wrongfully, and that Simms had contributed to a potentially dangerous physical altercation that should not have occurred.

This court cannot reject the Hearing Examiner's assessment of credibility of the witnesses and is required to uphold the findings made by the Hearing Examiner in this regard. As the Court of Appeals explained in Annapolis v. Annap. Waterfront Co., 284 Md. 383, 399 (1979), the substantial evidence test operates as follows:

[A]ssume that in an agency hearing five witnesses testify on one side of a proposition, and one witness testifies on the other. In its findings, the agency states that it does not doubt the credibility of any of the witnesses, but that it is relying on the testimony of the one witness and disregarding that of the five. Under the substantial evidence rule, a court would be required to uphold such findings.

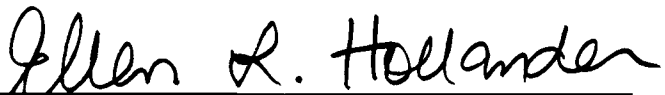
The agency's decision must be reviewed in the light most favorable to the agency, since such decisions are prima facie correct and carry a presumption of validity. It is not the role of this court to conduct a de novo hearing to reassess the credibility of Appellant's witnesses and probative value of the evidence he offered. The ultimate question is whether reasoning minds could reach the same result from the facts and permissible inferences in the record. There was ample evidence before the Hearing Examiner and the Board to support a determination that Simms violated Rule One, and it was permissible for both the Hearing Examiner and the Board to draw such a conclusion.

The Hearing Examiner properly applied the relevant statutory provisions to the facts, which are supported by substantial evidence. Accordingly, Simms' grievance challenging his disciplinary hearing and decision was lawfully dismissed.

Based on the foregoing, it is, this 13<sup>th</sup> day of June, 1990, by the Circuit Court for Baltimore City,

ORDERED that the decision of the Commission be, and the same hereby is, AFFIRMED.

Costs to be waived.

  
Ellen L. Hollander, Judge

cc: Mr. John W. Simms, #140-766  
Maryland Penitentiary  
954 Forrest Street  
Baltimore, Maryland 21202

Steven G. Hildenbrand, Esquire  
Assistant Attorney General  
Department of Public Safety and Correctional Services  
6776 Reisterstown Road, Suite 312  
Baltimore, Maryland 21215

IN THE COURT OF SPECIAL APPEALS FOR MARYLAND

FILED

JUN 21 1990

JOHN W. SIMMS  
APPELLANT

8  
IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY

FILED  
S.F.  
JUN 21 1990

-V-

CASE NO. 89142059 / CL 97862

SECRETARY OF PUBLIC SAFETY  
AND CORRECTIONAL SERVICES  
APPELLEE

APPLICATION FOR LEAVE TO APPEAL

JUDGES DECISION

NOW COMES JOHN W. SIMMS, APPELLANT, PRO-SE, PURSUANT TO MARYLAND RULE OF PROCEDURE, AND MOVES THIS HONORABLE COURT TO GRANT LEAVE TO APPEAL THE DECISION OF THE CIRCUIT COURT FOR BALTIMORE CITY, IN THE APPEAL OF THE INMATE GRIEVANCE COMMISSION'S DECISION.

FACTS

APPELLANT IS AN INMATE AT THE MARYLAND PENITENTIARY, HOUSED ON THE PROTECTIVE CUSTODY TIER. ON APRIL 30, 1988, APPELLANT WAS ATTACKED IN THE SHOWER AREA BY A DEATH ROW INMATE WHO WAS ALSO HOUSED ON PROTECTIVE CUSTODY. THE ATTACK WAS NOT PROVOKED BY THE APPELLANT, AND HE ONLY STRUCK OUT AT HIS ATTACKER IN SELF DEFENSE. AND FOR THIS SELF DEFENSE OF HIMSELF, HE WAS SENTENCED TO SIXTY DAYS ON LOCK-UP, WHICH WAS UNJUST. EVERYONE HAS A RIGHT TO PROTECT HIMSELF AGAINST UNWONTON ATTACK BY ANOTHER PERSON. AND THE FACT THAT THERE WERE WITNESSES TO SUPPORT THE APPELLANT'S CLAIM THAT HE WAS ATTACKED FIRST, SHOULD HAVE BEEN SUFFICIENT PROOF TO FIND HIM NOT GUILTY OF THIS CHARGE. FOR THIS REASON APPELLANT ASK THAT THE CIRCUIT COURTS DECISION BE REVERSED.

DATE :

JUNE 18, 1990

RESPECTFULLY SUBMITTED,

*John W. Simms*

STATEMENT OF INDIGENCY

I, THE APPELLANT IN THE FOREGOING APPLICATION FOR LEAVE TO APPEAL, HEREBY CERTIFY THAT I HAVE NO FUNDS AVAILABLE, NOR DO I OWN ANY REAL OR PERSONAL PROPERTY THAT COULD BE USED TO PAY THE COST OF THIS ACTION.

John V. Simms

JOHN V. SIMMS, APPELLANT

MS. SAUNDRA E. BANKS, CLERK  
CIRCUIT COURT FOR BALTIMORE C  
111 N. CALVERT STREET  
BALTIMORE, MARYLAND 21202

MR. JOHN W. SIMMS #140766  
954 FORREST ST.  
BALTIMORE, MARYLAND 21202

JUNE 18, 1990

CASE NO. 89142059/CL97862

DEAR MS. BANKS,

WOULD YOU PLEASE TRANSMIT THE RECORD IN THE ABOVE NUMBERED  
CASE TO THE COURT OF SPECIAL APPEALS AS SOON AS POSSIBLE, SO THAT I  
CAN APPEAL THE JUDGE DECISION AFFIRMING THE INMATE GRIEVANCE COMMISSION'S  
DECISION. THANK YOU VERY MUCH.

YOURS TRULY,

John W. Simms

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*85 Images*

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**MSA SC 5458-82-150**

**Dates:** 1989-1994

**Description:** Circuit Court for Baltimore City, Cases # 94004032; 94018024

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SIMMS VS SEC OF PUB SAFETY Box 276 Case No. 89142059 [MSA - F.L, 2-1-10 85 Images T2691-2912, OR/11/2/22]

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TROY VS ALLSTATE INS Box 355 Case No. 89184050 [MSA T2691-2991, OR/11/3/17]

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FAISON VS JEFFERSON Box 385 Case No. 89207040 [MSA T2691-3021, OR/11/3/47]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

MITCHELL VS PROVIDENT BANK Box 389 Case No. 89209043 [MSA T2691-3025, OR/11/3/51]

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