

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 19-6524**

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GARY WALL,

Petitioner - Appellant,

v.

WARDEN JEFFREY KISER,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of Virginia, at  
Roanoke. Elizabeth Kay Dillon, District Judge. (7:17-cv-00066-EKD-RSB)

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Argued: September 21, 2021

Decided: December 27, 2021

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Before GREGORY, Chief Judge, and NIEMEYER and RICHARDSON, Circuit Judges.

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Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge  
Richardson joined. Judge Gregory wrote a dissenting opinion.

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**ARGUED:** Lauren Elizabeth Bateman, GEORGETOWN UNIVERSITY LAW  
CENTER, Washington, D.C., for Appellant. Jessica Merry Samuels, OFFICE OF THE  
ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee. **ON BRIEF:**  
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NIEMEYER, Circuit Judge:

In his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254, a state-convicted inmate seeks to apply retroactively a federal procedural rule first announced in 2019 to overturn the result of his state disciplinary proceedings that took place in 2015. The question that this appeal presents is whether the principles articulated in *Teague v. Lane*, 489 U.S. 288 (1989), prohibiting the retroactive application of procedural rules on federal collateral review, apply to bar the inmate's effort in the circumstances of this case.

While serving a sentence at the Red Onion State Prison in Pound, Virginia, Gary Wall was charged in 2015 with assaulting two corrections officers during an altercation. At the hearings on those charges, the hearing officers denied Wall's requests that they review the surveillance video of the incident. After denying Wall's requests, the hearing officers found Wall guilty of the assault charges and stripped him of a total of 270 days accrued good conduct sentence credits. Wall filed administrative appeals, which were unsuccessful, and then filed a petition for a writ of habeas corpus in the Supreme Court of Virginia, alleging that the hearing officers denied him due process of law in refusing to review the video footage. The court, however, ruled that it lacked jurisdiction to review a decision resulting in a loss of good conduct credits and dismissed Wall's petition. Wall did not seek review in the U.S. Supreme Court, but he did file a separate action under 42 U.S.C. § 1983 that also challenges the prison hearings, and that case is still pending.

Wall filed this federal petition for habeas relief under § 2254, claiming that the state prison hearing officers denied him the constitutional right to due process recognized in *Wolff v. McDonnell*, 418 U.S. 539 (1974), when they denied his multiple requests that they

view the surveillance video of the altercation. Applying the then-current law, the district court denied Wall relief and dismissed his petition by order dated March 31, 2019. The court stated that although Wall had, in accordance with *Wolff*, a qualified due process right to present documentary evidence at the prison hearings, surveillance footage was, under the applicable law, “outside the definition of ‘documentary evidence.’” From the district court’s order, Wall filed this appeal.

In 2019, while Wall’s appeal was pending, we issued our decision in *Lennear v. Wilson*, where we held “for the first time in this circuit” that, under *Wolff*, inmates subject to a loss of good time credits “have a qualified right to obtain and compel consideration of video surveillance evidence.” 937 F.3d 257, 273–74 (4th Cir. 2019) (emphasis omitted).

Wall now argues that he is entitled to the retroactive application of *Lennear* to his 2015 disciplinary proceedings and that the general principles prohibiting retroactive application of new procedural rules on collateral review, as recognized in *Teague*, do not apply to the circumstances in this case. We conclude, however, that the retroactivity principles stated in *Teague* do indeed apply and that they preclude retroactive application of *Lennear* to this case. Accordingly, we affirm.

## I

In August 2015, while incarcerated at the Red Onion State Prison with a sentence imposed in 1995 of over 40 years’ imprisonment, Gary Wall was involved in an altercation with two corrections officers, Elijah Rasnick and Jason Hicks, resulting in injury to both Wall and the officers. Wall was charged with disciplinary offenses, including aggravated



assault against both Rasnick and Hicks. Hearings on the charges were conducted separately as to each officer.

Before and during the hearings, Wall repeatedly — both orally and in writing — requested that the hearing officers review surveillance video of the underlying incident, and those requests were denied. On his written request, which was made on a prison form, the hearing officers responded by checking a box stating that “information will not be obtained due to being from an outside source, restricted for security reasons such as video and audio recordings, information is not written documentation, or is otherwise restricted to the offender.” (Cleaned up). At the hearing on the Rasnick charge, the hearing officer did receive testimony summarizing the video from Captain Still, an officer who had investigated the incident. Wall was found guilty at each hearing, and a total of 270 days of his accrued good conduct credits were revoked.

Wall appealed both decisions administratively, claiming that the hearing officers erred in refusing to review the video. Both the Warden and the Regional Administrator for the Virginia Department of Corrections denied relief.

After exhausting his administrative appeals, Wall filed a pro se petition for a writ of habeas corpus in the Virginia Supreme Court, alleging due process violations and seeking the restoration of his good conduct credits. The court, however, dismissed the petition, ruling that it lacked habeas jurisdiction over “institutional proceeding[s] resulting in loss of good conduct . . . credit.” In reaching its judgment, the court relied on its decision in *Carroll v. Johnson*, 685 S.E.2d 647, 652 (Va. 2009), and quoted *Carroll*’s language that habeas relief is available only when an order will “directly impact the duration of a

petitioner's confinement." The Virginia Supreme Court's ruling thus implied that an order resulting in the loss of good conduct credits does not impact an inmate's confinement. Wall did not seek to challenge that ruling in the U.S. Supreme Court. Instead, he filed a second habeas petition in the Virginia Supreme Court, which was again denied based on that court's earlier ruling. Thus, with the Virginia Supreme Court's judgment, Wall's state proceedings came to an end.

Wall then filed this federal habeas petition under § 2254, contending that the state hearing officers' failure to review the surveillance video violated his right to procedural due process, as articulated in *Wolff*. In *Wolff*, the Supreme Court held that an inmate at a disciplinary proceeding at which good conduct credits are at stake has a procedural due process right to "call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566. Wall also submitted an affidavit averring that he had gained access to the surveillance video when state criminal charges were filed against him in connection with the same incident and that the video supported his side of the case. According to Wall, when the video was brought to the attention of the Commonwealth, it dropped the criminal charges against him.

On the Commonwealth's motion, the district court dismissed Wall's § 2254 petition, explaining that surveillance footage was "clearly outside the definition of 'documentary evidence,'" as defined in *Wolff*, and therefore that the hearing officers had not violated Wall's right to procedural due process when they failed to review that footage.

After Wall appealed to this court, we issued our opinion in *Lennear*, holding in 2019 *for the first time* that “prison video surveillance evidence constitutes documentary evidence subject to the procedural due process protections recognized in *Wolff*.” 937 F.3d at 269. In light of *Lennear*, we granted a certificate of appealability in this appeal on the question of whether “the prison disciplinary hearings failed to comport with the Due Process Clause because the hearing officers failed to review the surveillance video of the incident,” with directions to “address [the] decision in *Lennear* . . . , and whether the retroactivity analysis announced in *Teague* . . . , and its progeny, applies in this case.” By order dated January 29, 2020, we also appointed counsel to represent Wall, and we have much appreciated their fine and professional work.

## II

*Teague* and its progeny establish that while “new procedural rules apply to cases pending in trial courts and on direct review,” they “do not apply retroactively on federal collateral review.” *Edwards v. Vannoy*, 141 S. Ct. 1547, 1562 (2021). Moreover, “*Teague*’s nonretroactivity principle acts as a limitation on the *power* of federal courts to grant ‘habeas corpus relief to . . . state prisoner[s].’” *Beard v. Banks*, 542 U.S. 406, 412 (2004) (emphasis added) (quoting *Caspari v. Bohlen*, 510 U.S. 383, 389 (1994)).

In this appeal, Wall argues that while *Lennear* announced a new rule, *Teague* does not apply because “[its] restrictions rest on finality and comity concerns raised when a federal court upsets a final judgment no longer subject to direct review — considerations not implicated by judicial review of a prison administrative decision. Where, as here, a

prisoner's first and only opportunity for judicial review of such a decision is federal habeas corpus, the habeas court must apply binding precedent like *Lennear*.” This argument implies, as Wall states explicitly, that his federal habeas petition does not involve collateral review but instead “direct judicial review” not subject to the *Teague* retroactivity principles.

We conclude that Wall's argument lacks both factual and legal support.

#### A

At the outset, we note that Wall is a state-incarcerated inmate who, pursuant to a final judgment of state courts, is serving a sentence of over 40 years. And by virtue of state law, he can obtain a reduction of that sentence as a result of good conduct while in prison. *See* Va. Code Ann. § 53.1-202.2. But an inmate's good conduct credits can also be revoked for misconduct while in prison. *See id.* § 53.1-189. Prison conduct therefore can, and does, affect an inmate's sentence and thus the duration of his custody.

When good conduct credits are revoked, state procedure requires that the inmate be given: (1) written notice, (2) a hearing, (3) the assistance of a staff member or fellow inmate for his defense, (4) a written statement of reasons for the revocation, and (5) a right to appeal administratively. *See* Va. Admin. Code § 15-40-833. And the administrative decision may be reviewed judicially by filing a petition for a writ of habeas corpus in a state circuit court or in the Virginia Supreme Court if the decision “impact[s] the duration of the [inmate's] confinement,” such as the loss of good conduct credits. *Carroll*, 685 S.E.2d at 652; *see also* Va. Code Ann. § 8.01-654.

In this case, Wall exhausted his state proceedings. He raised his objection to the denial of his request to have the hearing officers view the video footage both during his prison hearings and in his administrative appeals to the Warden and the Regional Administrator. And upon failing to obtain relief through that process, he sought review with his petition for a writ of habeas corpus in the Virginia Supreme Court. While that court relied on *Carroll* to hold that it did not have jurisdiction to review Wall's loss of good conduct credits, it apparently failed to recognize that *Carroll* construed Virginia Code § 8.01-654 to authorize the review of a loss of sentencing credits. *See* 685 S.E. 2d at 649–52. *Carroll* itself had relied on the federal habeas jurisprudence stated in *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973), which held that habeas jurisdiction to review illegal sentences includes review of revocations or forfeitures of good conduct sentencing credits that extend an inmate's sentence. *See Carroll*, 685 S.E. 2d at 651. The Virginia Supreme Court in *Carroll* thus held:

Code § 8.01-654(A)(1) allows a petitioner to challenge the lawfulness of the entire duration of his or her detention so long as an order . . . will directly impact the duration of the petitioner's confinement. Here, Carroll is "detained" for 13 years pursuant to his sentencing order, which includes the 288 days for which he is seeking credit. Thus, Carroll is "detained without lawful authority" within the meaning of the statute if his sentence, including the 288 days for which he seeks credit, is imposed without lawful authority.

685 S.E. 2d at 652. On Wall's petition, the Virginia Supreme Court did not purport to overrule *Carroll*; to the contrary, it cited it approvingly for support but then dismissed the petition stating that it lacked jurisdiction over proceedings involving "[the] loss of good conduct . . . credit."

Thus, while the Virginia Supreme Court denied Wall habeas relief from the administrative ruling, apparently misreading the decision on which it relied, Wall's petitions to that court exhausted state procedures, and his state case became final. It was final in the sense that state courts had nothing further to do with respect to Wall's claim for relief from the revocation of his good conduct credits, and Wall had no other state court to which to turn. *Cf. Beard*, 542 U.S. at 411; *Riley v. Kennedy*, 553 U.S. 406, 419 (2008) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)) (defining "final judgments").

In light of these procedural facts, Wall materially overstates his position when he asserts that the federal district court was the "only opportunity for judicial review" of the state administrative proceedings and that his habeas petition filed in the district court was in effect an effort to obtain "direct judicial review" of those proceedings. His argument fails to account for the fact that state habeas review in a state court *was available* even though, in his case, the state court may have erred in not reaching the merits of his claim. While the state court provided no relief, federal habeas relief was nonetheless available to Wall, as authorized under 28 U.S.C. §§ 2241 and 2254. But in the circumstance where a state court refuses to address a state inmate's claims, federal habeas review is collateral to the state proceedings and not a "direct review." As the Supreme Court has specifically pointed out,

Habeas corpus always has been a *collateral* remedy, providing an avenue for upsetting judgments that have become otherwise final. It is not designed as a substitute for direct review.

*Teague*, 489 U.S. at 305 (plurality opinion) (quoting *Mackey v. United States*, 401 U.S. 667, 682–83 (1971) (Harlan, J., concurring in part and dissenting in part)).

In short, Virginia *made judicial relief available*, even though no Virginia court addressed the relief claimed. Wall’s assertion that the district court was Wall’s only “*opportunity*” for judicial review is a misstatement.

## B

Wall’s argument that federal habeas review in this case is “direct review” in which new procedural rules apply is also not legally supportable. The syllogism he presents begins with the premise that “new rules apply retroactively to cases ‘pending *on direct review* or not yet final, with no exception.’” (Emphasis added) (quoting *Teague*, 489 U.S. at 304–05). Wall then asserts that he “has not yet obtained a judicial ruling on his due process claim that is final.” And thus — arguing that because he had “no prior opportunity to obtain judicial review of a prison disciplinary decision” — he concludes that this federal habeas proceeding is a direct review to which *Lenneer*, as a new rule, applies.

Again, this argument overlooks the totality of the state proceedings. But more importantly, it fails to consider that “habeas corpus always has been a collateral remedy” in that it is a writ providing relief independent of all other process. *Teague*, 489 U.S. at 305 (plurality opinion) (cleaned up). The Supreme Court has defined collateral review “according to its ordinary meaning” as “refer[ring] to judicial review that occurs in a proceeding outside of the direct review process.” *Wall v. Kholi*, 562 U.S. 545, 560 (2011). *Kholi* also reinforces the proposition that habeas corpus is a form of collateral review, without making any distinction regarding the proceeding a court is reviewing. *See id.* at

552 (“[O]ur cases make it clear that habeas corpus is a form of collateral review. We have used the terms habeas corpus and ‘collateral review’ interchangeably”).

Furthermore, the concept of habeas as collateral review is not limited to proceedings that challenge the lawfulness of a prior *judgment*. The Supreme Court rejected any notion that collateral review should “turn on whether the motion or application that triggers that review is captioned as a part of the criminal case or as a separate proceeding.” *Kholi*, 562 U.S. at 556–59 (finding that collateral review includes a motion to reduce a sentence). Furthermore, while federal habeas review in cases where state courts heard habeas claims but failed to explain why they rejected the petition are “infrequent,” *Tyler v. Hooks*, 945 F.3d 159, 167 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 2785 (2020), such federal habeas proceedings do occur and are still collateral review, as they are proceedings outside of the direct review process. Indeed, the Supreme Court has recognized that habeas corpus is a broad, independent writ designed to address challenges to any illegal custody, whether “by executive direction” or “by order of a court.” *Preiser*, 411 U.S. at 484; *see also Fay v. Noia*, 372 U.S. 391, 408 (1963) (noting that at common law, the writ of habeas corpus redressed “restraints contrary to fundamental law, *by whatever authority imposed*” (emphasis added)).

While Wall’s petition for a writ of habeas corpus in the Virginia Supreme Court was dismissed on jurisdictional grounds instead of being resolved on the merits, the federal petition here nonetheless invoked a collateral procedure, as it was filed outside of the direct review process. Wall’s argument that *Teague* does not apply because the federal habeas corpus proceeding before us is a direct review of the state administrative proceedings is



simply untenable. That this is so is only reinforced by the fact that federal courts do not directly review state administrative proceedings, just as they do not directly review state court judgments. *See Skinner v. Switzer*, 562 U.S. 521, 531–32 (2011).

### C

Wall also suggests, as a possible alternative argument, that “‘*Teague* has no application’ *at all* to habeas petitions that, like Mr. Wall’s, ‘do not challenge the validity of [criminal] convictions or sentences,’” quoting our decision in *Plyler v. Moore*, 129 F.3d 728, 735 n.9 (4th Cir. 1997). But he allows that we “need not address” that issue because his federal habeas petition is the first review and therefore a direct review that is not covered by *Teague*.

Since we reject Wall’s argument that the habeas proceeding before us is “direct review,” we address Wall’s alternative argument and conclude that it does not advance his position. As *Plyler* recognized in dictum, habeas is a collateral proceeding challenging the legality of “convictions or *sentences*,” 129 F.3d at 735 n.9 (emphasis added), and that statement, at that broad level, is an accurate one. Habeas is a writ independent of other proceedings that at bottom affords a petitioner the opportunity to challenge *his custody*. *See Preiser*, 411 U.S. at 484. And challenges to custody can be grounded on either the *illegality of the conviction* giving rise to detention or the *duration of his detention* — his sentence. The writ is thus functional for challenges to both convictions and sentences, as summarily noted in *Plyler*.

Wall may nonetheless be suggesting that his habeas petition does not challenge the duration of his detention — his sentence — but rather the revocation of good conduct credits. But challenging the revocation of good conduct credits is indeed a challenge to the duration of detention. This has been conclusively established, beginning with the Supreme Court’s decision in *Preiser*. In *Preiser*, the Court held that since good conduct credits affect the duration of detention, a challenge to their revocation falls within the heartland of habeas corpus jurisdiction. The Court stated:

So, even if restoration of respondents’ good-time credits had merely shortened the length of their confinement, rather than required immediate discharge from that confinement, their suits would still have been within the core of habeas corpus in attacking the very duration of their physical confinement itself. It is beyond doubt, then, that the respondents could have sought and obtained fully effective relief through federal habeas corpus proceedings.

411 U.S. at 487–88. Thus, *Plyler*’s statement that “*Teague* has no application here because the Inmates do not challenge the validity of their convictions or sentences,” 129 F.3d at 735 n.9, rightly implied that *Teague* does indeed apply to habeas corpus proceedings that challenge a sentence, as Wall’s petition does in contending that his sentence was illegally extended by 270 days.

At bottom, we conclude that Wall’s § 2254 petition is a federal collateral proceeding, not direct review of a state administrative proceeding, and therefore *Teague*’s principle that a new procedural rule does not apply retroactively on federal collateral review governs.

## III

To determine whether the requirements of *Teague* are satisfied in this case, we need to determine (1) whether the state proceeding became “final”; (2) whether the *Lennear* rule is a “new rule”; and (3) whether the new rule is “procedural.” See *Edwards*, 141 S. Ct. at 1554, 1562. We conclude that all are satisfied.

State convictions — or in this case, state orders extending a sentence — are final “for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.” *Beard*, 542 U.S. at 411 (quoting *Caspari*, 510 U.S. at 390). For example, in *Caspari*, a defendant’s conviction and sentence became final when a state court of appeals denied the petition for rehearing and the defendant did not file a petition for a writ of certiorari. 510 U.S. at 390–91. Here, the decision revoking 270 days of Wall’s accrued good conduct credits became final when Wall exhausted his administrative appeals, as there was no *direct* appeal available in state court. He then filed two state habeas petitions that were dismissed by the Virginia Supreme Court. Wall did not file a petition for a writ of certiorari, and the time for doing so elapsed. With that, his state habeas proceedings became final as well. *Teague*’s finality requirement is thus readily satisfied here.

As to whether *Lennear* announced a new rule, we must determine whether it broke “new ground or impose[d] a new obligation on the States or the Federal Government.” *Teague*, 489 U.S. at 301 (plurality opinion). A rule is not new if “it was ‘dictated by precedent existing at the time the defendant’s conviction became final.’” *Edwards*, 141

S. Ct. at 1555 (quoting *Teague*, 489 U.S. at 301). As to the *Lennear* rule, our opinion recognized that “this Court, to date, has not addressed whether the universe of ‘documentary evidence’ subject to the due process protections recognized in *Wolff* encompasses video surveillance evidence.” 937 F.3d at 268. Concluding that it does, we stated that “we establish *for the first time in this circuit* that inmates at risk of being deprived of a liberty interest, like good time credits, have a qualified right to obtain *and* compel consideration of video surveillance evidence.” *Id.* at 273–74 (first emphasis added); *see also Tyler*, 945 F.3d at 168 (noting that *Lennear* “made plain that we established a prisoner’s right to compel review of video surveillance evidence ‘for the first time in this circuit’” (cleaned up)). We conclude that *Lennear* was a new rule, and the parties do not argue otherwise.

Finally, to complete the analysis, we need to determine if the new *Lennear* rule is procedural because new criminal *procedural* rules “do not apply retroactively on federal collateral review” — they only apply to cases that are “pending in trial courts and on direct review.” *Edwards*, 141 S. Ct. at 1562. In explaining what constitutes a procedural rule, *Edwards* stated that procedural rules alter “only the manner of determining the defendant’s culpability.” *Id.* (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)). There can be no doubt that *Lennear*’s new qualified right to obtain and compel consideration of video surveillance evidence is procedural. It only alters the manner in which the State determines a defendant’s culpability.

In sum, we conclude that the nonretroactivity instruction in *Teague* applies to the circumstances here and that we therefore lack the power in this collateral proceeding to

apply *Lennear*'s new procedural rule to Wall's state disciplinary hearings that concluded some four years earlier.

#### IV

Wall argues on fairness grounds that a federal habeas court should provide him judicial access to address his arguments on the merits because no state court has done so. He states that his "habeas action challenges a detention decision never before judicially *examined*, let alone approved" and complains that the "State seeks to insulate its prison disciplinary decisions from due process scrutiny in *any* court." He argues that because "federal habeas is meant to 'preserv[e] for the state prisoner an expeditious federal forum for the vindication of his federally protected rights, if the State has denied redress,'" *Teague* cannot be read to bar such access. (Quoting *Preiser*, 411 U.S. at 498).

This argument, however, is belied by the fact that federal habeas procedure is indeed available to provide inmates such as Wall relief even when there is no available corrective process at the state level. *See* 28 U.S.C. § 2254(b)(1)(B)(i) (providing that federal habeas relief may be granted when "there is an absence of available State corrective process"). The issue is not whether a federal habeas court is available to him, but rather whether a federal habeas court considering Wall's claims can give Wall the benefit of a new procedural rule adopted four years after his state hearings concluded. Under *Teague*, the answer is no. Otherwise, the federal habeas court is authorized to consider any other argument challenging the legality of his state detention. Wall's fairness argument thus ultimately reduces to a critique of the fairness of the *Teague* rule itself.

But the *Teague* rule is both fair and necessary to our system of justice. In that system, defendants are convicted of misconduct and incarcerated under the procedural rules *then in effect*. Over time, those procedural rules are changed, often for the benefit of defendants. When a criminal or disciplinary proceeding against a defendant is ongoing when a procedural rule changes, we give the defendant the benefit of that new rule. But when the new procedural rule is made after the defendant's proceedings are completed, the defendant should not expect a redo to apply the new rule. The policies for this are compelling.

The principal considerations focus on the finality of decisions, the integrity of the judicial process, and comity with respect to state process. *See, e.g., Linkletter v. Walker*, 381 U.S. 618, 636–37 (1965). In *Linkletter*, the Court noted that applying new procedural rules retroactively could “tax the administration of justice to the utmost” by requiring new hearings when evidence had long since been lost and witnesses have become unavailable. *Id.* at 637. Indeed, in *Edwards*, the Court observed that the principle of finality is “essential to the operation of our criminal justice system.” 141 S. Ct. at 1554. Not only would reopened proceedings tax the system of justice with the potential for countless hearings with each new change to a procedural rule, but subsequent hearings could suffer from “lost evidence, faulty memory, and missing witnesses,” to all parties’ detriment. *Id.* (quoting *Allen v. Hardy*, 478 U.S. 255, 260 (1986) (per curiam)). As *Teague* stated, “No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.” *Teague*, 489 U.S.

at 309 (plurality opinion) (quoting *Mackey*, 401 U.S. at 691 (Harlan, J., concurring in part and dissenting in part)).

The Supreme Court has also recognized that the application of new procedural rules on collateral review would continually force “the States to marshal resources in order to keep in prison defendants whose trials and appeals conform to then-existing constitutional standards.” *Beard*, 542 U.S. at 413 (quoting *Teague*, 489 U.S. at 310). To put it “simply, the ‘costs imposed upon the States by retroactive application of new rules of constitutional law on habeas corpus thus generally far outweigh the benefits of this application’” and also for this reason the Supreme Court “has repeatedly stated that new rules of criminal procedure ordinarily do not apply retroactively on federal collateral review.” *Edwards*, 141 S. Ct. at 1555 (quoting *Sawyer v. Smith*, 497 U.S. 227, 242 (1990)). And particularly “in the context of disciplinary proceedings, where less is generally at stake for an individual than at a criminal trial, great weight should be given to the significant impact a retroactivity ruling would have on the administration of all prisons in the country” and on “the reliance prison officials placed, in good faith, on prior law not requiring such procedures,” taking into consideration the “burden on federal and state officials.” *Wolff*, 418 U.S. at 574.

Finally, the Court has noted that without finality, the criminal law is deprived of much of its deterrent effect. The fact that life and liberty are at stake in criminal prosecutions “shows only that conventional notions of finality should not have *as much* place in criminal as in civil litigation, not that they should have *none*.” *Teague*, 489 U.S. at 309 (plurality opinion) (quoting Friendly, *Is Innocence Irrelevant? Collateral Attacks on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 150 (1970)).

The criminal justice system must do its best at the time of each defendant's proceeding by complying with the then-existing rules of procedure. But no proceeding is ever perfect, and applying new procedural rules retroactively would not make proceedings perfect. Indeed, applying new procedural rules retroactively would serve to make criminal process *less* perfect.

These policy concerns are implicated in the case before us. Wall was charged with assault of two corrections officers, and the prison hearings on those disciplinary charges were conducted in compliance with due process as it was then understood. After conducting the hearings, the Commonwealth provided Wall with appeals to the Warden and to the Regional Administrator, as well as the opportunity to file a habeas petition in a Virginia court. Moreover, to address his dissatisfaction with that state process — at least to the extent that it could be claimed to have violated the Constitution or federal law — he could obtain collateral review in a federal court pursuant to 28 U.S.C. §§ 2241 and 2254. But what he cannot do is claim in federal court the benefit of a new procedural rule that was not in effect at the time he pursued the state process.

The order of the district court denying Wall habeas relief is affirmed.

AFFIRMED



GREGORY, Chief Judge, dissenting:

Gary Wall was charged with institutional violations arising from a physical altercation with two corrections officers that left all three men injured. Despite conflicting accounts as to what occurred, the institution’s hearing officers repeatedly denied Wall’s requests that they review surveillance video of the incident. Instead, relying on evidence of the officers’ injuries and the testimony of corrections officers—one of whom was not involved in the altercation but claimed to have reviewed the video—the hearing officers found that Wall had assaulted the corrections officers as alleged and stripped him of 270 days (nearly nine months) of accrued good-time credit.

But Wall later gained access to the video footage when he was charged criminally in state court for the alleged assaults. In his sworn affidavit, he avers that the video “clearly” demonstrates that he “never threw any punches at either officer as alleged.” J.A. 93. According to Wall, the video also reveals that Wall did not cause the eye injury suffered by one of the officers; it was instead the result of the officer’s “head-to-head collision” with another officer while Wall was “laying face-down, fully restrained in handcuffs and shackles.” *Id.* Wall asserts that after reviewing the video evidence the county prosecutor declined to prosecute the criminal charges lodged against him. J.A. 94.

No court has addressed on the merits Wall’s claim that the hearing officers’ refusal to review potentially exculpatory video evidence violated his Fourteenth Amendment due process rights. But before we can reach the substance of Wall’s claim, this Court must determine the applicability of *Teague v. Lane*, 489 U.S. 288 (1989), and its retroactivity analysis to Wall’s case. Simply stated, if *Teague* applies, Wall cannot benefit retroactively

from the Court's favorable decision in *Lennear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), where this Court held that prisoners have a qualified due process right to obtain and present surveillance video evidence in prison disciplinary proceedings.

I conclude that *Teague* does not preclude federal habeas review of Wall's claim. *Teague*'s prohibition on the retroactive application of new rules of criminal procedure rests on finality and comity concerns not implicated by judicial review of prison administrative decisions. Here, Wall's first and only true opportunity for judicial review on the merits was on federal habeas review. Accordingly, his federal habeas petition is, in essence, direct, not collateral, review and not subject to *Teague*'s retroactivity principles. And applying retroactively the new procedural rule established in *Lennear* to the record now before this Court, I conclude that Wall was denied due process when the hearing officers refused to review video evidence of the altercation without any penological justification for doing so.

A.

*Teague v. Lane* sets out rules about whether and when a new constitutional rule may be applied in habeas cases. The Commonwealth argues that *Teague* applies to all habeas cases, including Wall's. Wall contends that *Teague*'s application is limited to postconviction habeas cases where prisoners have had the opportunity to litigate their claims to final judgment in state court. In other words, *Teague* applies to judicially final cases, not administratively final ones. Further, Wall argues that because the Virginia Supreme Court declined to consider his case on the merits and thus offered no opportunity for review, his federal habeas petition does not involve collateral review but instead "direct

judicial review” not subject to *Teague*’s retroactivity principles. I agree with Wall that *Teague* does not bar federal courts from retroactively applying new rules of criminal procedure on direct review of prison administrative decisions, and thus, under the unique procedural posture of this case, where the state court did not consider Wall’s claim on the merits, *Teague* does not prevent this Court from finding a violation of Wall’s due process rights.

In *Teague*, the Supreme Court explained that new rules apply retroactively to cases “pending on direct review or not yet final, with no exception.” *Teague*, 489 U.S. at 304–05 (quoting *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987)). When a court has entered final judgment and no opportunities for appellate or certiorari review remain, *Teague* says that finality and comity considerations generally bar the application of new rules on collateral review of that final judgment. *See id.* at 308–10. But while *Teague* generally restricts the retroactive application of newly announced rules of criminal procedure, its rationale is based on finality and comity concerns that arise if a court were to overturn a final judgment no longer subject to direct review. A careful analysis of the facts in Wall’s case demonstrates that neither circumstance is present here. His case involves judicial review of a prison administrative decision where Wall has not yet obtained a final judicial ruling on his due process claim, and where federal habeas corpus is Wall’s first and only opportunity for judicial review of the administrative decision on the merits.

1.

Fourth Circuit precedent casts doubt on whether *Teague* is a natural fit in the prison disciplinary context since prison administrators’ unreviewed decisions are not those of

courts and do not implicate comity concerns. In *Tyler v. Hooks*, 945 F.3d 159, 167 (4th Cir. 2019), the Fourth Circuit held that AEDPA<sup>1</sup> deference does not apply in prison disciplinary cases because prison hearing officers and disciplinary systems are not “courts” for purposes of the federal habeas statute. And in *Hamlin v. Warren*, 664 F.2d 29 (4th Cir. 1981), the Fourth Circuit drew a distinction between “attacks upon administrative actions affecting the fact or duration of sentence service” and “attack[s] upon the validity of a judgment of conviction.” *Id.* at 31. The Court noted that “all of the reasons underlying the rule of comity are present in [an attack on the validity of a conviction] while none are present, or at least not highly visible, in controversies over good time credits.” *Id.* It found that comity interests are not implicated where no state court judgment is involved. *Id.*

Even more directly, in *Plyler v. Moore*, 129 F.3d 728 (4th Cir. 1997), this Court noted that, where the state had waived a *Teague* argument as it applied to a group of South Carolina prisoners challenging aspects of a furlough program through habeas, *Teague* had no application in any event “because the [i]nmates do not challenge the validity of their convictions or sentences.” *Id.* at 735 n.9 (citing *O’Dell v. Netherland*, 521 U.S. 151, 156 (1997) (explaining that the *Teague* doctrine applies when a prisoner seeks to overturn his state conviction or sentence); *Helton v. Fauver*, 930 F.2d 1040, 1047 n.11 (3d Cir. 1991) (concluding that *Teague* did not apply to an Ex Post Facto challenge because the challenge

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) specifically limits habeas review where a claim has been “adjudicated on the merits in State court proceedings.” 28 U.S.C. § 2254(d).

“does not implicate the policy favoring the finality of judgments that was at issue in *Teague*”).

Based on our Circuit’s precedent, the Majority’s concerns regarding comity and judicial finality are misplaced in the narrow context that this case presents. *Teague* is simply a strange fit for this kind of non-conviction habeas claim. Here, there was no judicial proceeding at all, nor any resulting conviction. Nothing that occurs in a prison disciplinary hearing will ever affect the fundamental fairness of the underlying conviction, because the two circumstances are independent. Moreover, the Majority fails to establish that *Teague* applies outside the conviction context; it cites no cases holding that *Teague* applies beyond habeas cases challenging final criminal convictions and judicially-imposed sentences.

2.

The Majority’s conclusion that the application of *Teague* bars Wall’s federal habeas claim is also rooted in its finding that Wall had the opportunity for review in state court. But Wall’s federal habeas petition is his first and only *true* opportunity for judicial review.

Wall first sought habeas review of his claim in state court. But the Virginia Supreme Court found that it lacked jurisdiction over institutional proceedings resulting in the loss of good time credit, based in part on its decision in *Carroll v. Johnson*, 685 S.E.2d 647 (Va. 2009), where that court held that habeas relief is available only when it “directly impact[s] the duration of a petitioner’s confinement.” *Id.* at 652. The Majority acknowledges that in denying Wall’s request for habeas relief the Virginia Supreme Court failed to recognize that *Carroll* actually *authorized* the review of the loss of good time credits. *See* Maj. Op.

9. Indeed, the Virginia Supreme Court’s misinterpretation and misapplication of its own precedent ultimately denied Wall consideration of his claim on the merits.

Nevertheless, according to the Majority, where a state court refuses to address a state inmate’s claims—even in error—federal habeas review is collateral to a state proceeding and is not a “direct review.” The Majority concludes that Wall “overstates his position when he asserts that the federal district court was the ‘only opportunity for judicial review’ of the state administrative proceedings and that his federal habeas petition filed in the district court was in effect ‘direct judicial review’ of those proceedings.” Maj. Op. 10. Although the state court “provided no relief,” the Majority finds it is enough that “state habeas review in a state court *was available* even though, in [Wall’s] case, the state court may have erred in not reaching the merits of his claim.” Maj. Op. 10. Despite conceding that Wall was improperly denied judicial review and thus “no Virginia court addressed the relief claimed,” the Majority has determined that “Virginia made judicial relief available,” and thus Wall’s federal habeas petition was not “Wall’s only opportunity for judicial review.” Maj. Op. 11. The Majority has created its own standard without supporting authority. But making “judicial review available” is simply not the procedural equivalent of “opportunity for judicial review,” particularly where that opportunity was improperly denied, nor does it satisfy procedural due process.

As the district court recognized, a claim is not “adjudicated on the merits” when a state court refuses to reach the merits and instead dismisses for lack of jurisdiction. Virginia provides no judicial review of good-time credit revocations, and as this Court has recognized, a current prisoner like Wall “may challenge the revocation of good-time

credits” in federal court “only by way of habeas corpus.” *See Dilworth v. Corpening*, 613 F. App’x 275, 275 (4th Cir. 2015) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (2011)). Thus, when federal habeas corpus provides the only judicial means to challenge an administrative decision, a habeas court may retroactively apply new law because the court “effectively act[s] as if [it] were reviewing the issue on direct appeal,” *Alvarenga-Villalobos v. Ashcroft*, 271 F.3d 1169, 1172 (9th Cir. 2001), and so must apply existing rules of law regardless of when they were announced. *See Griffith*, 479 U.S. at 326. Under these principles, *Teague* does not bar this Court from applying *Lennear* to Wall’s habeas petition because his claim, in essence, is on direct review.

Contrary to the Majority’s concern, a ruling in favor of Wall would not open the floodgates to other litigation because only those cases by custodial prisoners who raise the same preserved issues, arising in the same procedural posture pre-*Lennear*, would be affected. Moreover, the procedural posture of Wall’s case is identical to that which will be brought by prisoners in the future post-*Lennear*, with the exception of its timing. In other words, a prisoner unfairly denied access to video evidence in a disciplinary proceeding today will face the same path to this Court that Wall took. Given Virginia’s stance on the scope of its habeas jurisdiction, there is no intervening party apart from the prison itself that could correct the problem before it arrives in federal court.

I conclude, therefore that *Teague*'s retroactivity principles do not apply in Wall's case, and thus do not preclude retroactive application of *Lennear*.<sup>2</sup> We turn then to the application of *Lennear* to the facts and circumstances of Wall's claim.

B.

Federal courts have long recognized that the revocation of prisoners' earned good-time credits implicates their procedural due process rights. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

[T]he State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle them to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure [sic] that the state-created right is not arbitrarily abrogated.

*Id.* This Court has held that *Wolff* grants prisoners at risk of being deprived of a liberty interest, such as good time credits, a qualified right to obtain and present video surveillance evidence in disciplinary proceedings. *Lennear*, 937 F.3d at 262. Hearing officers are required to review the video evidence or establish a case-specific penological justification for refusing to do so. *Id.* at 272. In Wall's case, the hearing officers did neither.

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<sup>2</sup> Wall argues that even if *Teague* bars the application of *Lennear* to his case that he is nevertheless entitled to habeas relief. In *Lennear*, this Court, without any precedent squarely dictating the outcome, relied on "existing—and controlling—Supreme Court and Fourth Circuit case law" to find in favor of the petitioner. 937 F.3d at 274. Wall maintains that without relying on *Lennear* as binding precedent, this Court could, because *Lennear* addressed a due process issue nearly identical to the issue presented in this case, rely on the "same body of controlling precedent underpinning *Lennear*'s holding" and find in Wall's favor. Appellant's Br. 21–22. Given that *Teague*'s retroactivity principles do not bar the application of *Lennear* to Wall's case, this Court need not address this alternative argument.



There is no dispute that Wall’s hearing officers revoked his good-time credits after rejecting his account of the incident and refusing his repeated requests—both oral and in writing—to review the surveillance video that he maintained would corroborate his testimony. Accordingly, the hearing officers were required to provide a penological justification for their refusals. The Commonwealth demonstrates a penological interest that justifies denying access to video surveillance footage where it “establishes that providing the inmate with access to such evidence would be ‘unduly hazardous to institutional safety or correctional goals.’” *Id.* at 270. This is a case-specific inquiry where the Commonwealth bears the burden of proof. *Id.*

On this record, the Commonwealth has not met its burden. At Wall’s first hearing, his request for review of the video footage was denied because a corrections officer testified as to its contents. At his second hearing, the hearing officer denied the request for no apparent reason. These reasons (or the lack thereof) fail to provide the required case-specific penological justification. “Courts repeatedly have found procedural due process violations when hearing officers decline to consider video surveillance evidence—or other forms of documentary evidence—without offering a constitutionally cognizable justification for refusing to do so.” *Id.* at 272.

As examples of these “procedural due process violations,” this Court has cited *Howard v. United States Bureau of Prisons*, 487 F.3d 808 (10th Cir. 2007), and *Piggie v. McBride*, 277 F.3d 922 (7th Cir. 2002). In *Howard*, a hearing officer refused to watch videotape evidence on the grounds that it would be “‘needlessly cumulative’ of staff reports.” *Id.* at 814. We held that

the Tenth Circuit rightly reasoned that if prison officials could refuse to review documentary evidence—like the videotape evidence at issue—simply because it *might* prove “cumulative” of statements in staff reports, then inmates, who necessarily face a “credibility problem” in disciplinary proceedings, would be effectively deprived of potentially critical “evidence contradicting statements of prison staff.”

*Lennear*, 937 F.3d at 272 (quoting *Howard*, 487 F.3d at 814)). The *Howard* court also reasoned that the hearing officer “could not possibly have known the videotape was needlessly cumulative without looking at it.” *Howard*, 487 F.3d at 814. And in citing *Piggie*, this Court recognized that hearing officers “may not arbitrarily refuse to consider [potentially] exculpatory evidence simply because other evidence in the record suggests guilt.” *Lennear*, 937 F.3d at 272 (quoting *Piggie*, 277 F.3d at 925).

And certainly, this Court’s decision in *Lennear* itself establishes that accepting a corrections officer’s version of contested events while refusing repeated requests to review surveillance video without a security or correctionally-related rationale has due process implications. This Court held not only that “prison surveillance evidence constitutes documentary evidence subject to the procedural due process recognized in *Wolff*,” but also that access to such evidence is “an essential aspect of the inmate’s due process right to ‘marshal facts in his defense and present witnesses and documentary evidence’” in a disciplinary proceeding. *Id.* at 269 (quoting *Gibbons v. Higgins*, 73 F.3d 364, 364 (7th Cir. 1995)).

*Lennear* requires a demonstration that “consideration of [video] evidence would be, under the particular circumstances of the case, ‘unduly hazardous to institutional safety or correctional goals.’” 937 F.3d at 272 (quoting *Wolff*, 418 U.S. at 566). No such showing

was made here. Prison officials never alleged that any institutional safety or correctional goal was met by declining to review the video surveillance footage. The hearing officers simply chose to credit the testimony of two corrections officers over Wall's despite the availability of evidence that very likely would have resolved any factual dispute as to what occurred and addressed concerns regarding the credibility of witnesses. The hearing officers' refusals to permit Wall to view plainly relevant evidence—once because it was cumulative and once for no apparent reason—were clear violations of procedural due process as they provide no grounds to show that providing access to the video was unduly hazardous to institutional safety or correctional goals.

C.

The Commonwealth does not argue that any penological interest was met by the hearing officers' decisions not to review the video evidence. It argues instead that if *Lennear*'s new procedural rule applies retroactively to Wall's case, remand is appropriate to determine “whether the principles outlined in *Lennear* were met with respect to Wall's disciplinary proceedings and, if not, whether the error was harmless.” Appellee's Br. 45. More specifically, the Commonwealth urges that it should be permitted on remand to establish any institutional concerns, supplement the record to support its justification for the hearing officers' actions, and argue that any violation of Wall's procedural due process rights was harmless error. Appellee's Br. 46.

Although prison officials “bear the burden to come forward with evidence of the reasons for denying an inmate's request for access to documentary evidence, including video surveillance footage, they ‘may wait to assert such institutional concerns until after

the disciplinary hearing” and can present those reasons “in court.” *Lennear*, 937 F.3d at 270 (quoting *Ponte v. Real*, 471 U.S. 491, 497 (1985)). Because the district court did not have the benefit of this Court’s ruling in *Lennear* when it denied Wall’s habeas petition, and so that prison officials’ compliance with *Lennear*’s due process standard may be litigated in the district court in the first instance rather than on appeal, remand to the district court is appropriate, with instructions to review Wall’s claim on the merits. There, the district court can determine whether the prison officials had any justifiable penological reasons to deny Wall access to the video.

I caution, however, that the Commonwealth should not be permitted on remand to manufacture institutional safety or correctional concerns that did not exist, or otherwise present reasons that were not the true, contemporaneous reasons Wall’s requests for review of the video evidence were denied. Moreover, the district court should take care on remand to apply the proper harmless error standard. “[I]n evaluating whether prison officials’ failure to disclose or consider evidence was harmless, courts must determine whether the excluded evidence could have aided the inmate’s defense. *Lennear*, 937 F.3d at 277; *see also Grossman v. Bruce*, 447 F.3d 801, 805 (10th Cir. 2006); *Brennan v. United States*, 646 F. App’x 662, 666 (10th Cir. 2016) (“A [hearing officer’s] failure to comply with the *Wolff* requirements is harmless when it does not prejudice an inmate’s preparation or defense at a hearing.”); *Piggie v. Cotton*, 342 F.3d 660, 666 (7th Cir. 2003) (asking whether excluded evidence “might have aided [the inmate’s] defense”).

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

GARY WALL,	)	
Petitioner,	)	Civil Action No. 7:17-cv-00066
	)	
v.	)	
	)	By: Elizabeth K. Dillon
WARDEN JEFFREY KISER,	)	United States District Judge
Respondent.	)	

**MEMORANDUM OPINION**

Petitioner Gary Wall, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging institutional disciplinary convictions he received while confined at Red Onion State Prison (Red Onion) on August 14, 2015. Wall was transferred to Wallens Ridge State Prison (Wallens Ridge) on August 17, 2015, and his charges were heard there. Wall complains of his loss of good conduct time and alleges due process violations in the disciplinary proceedings. This matter is before the court on respondent's amended motion to dismiss and Wall's response in opposition.<sup>1</sup> Having considered the record, the court will grant respondent's amended motion to dismiss.

**I. BACKGROUND**

On August 14, 2015, Wall was involved in an "altercation" at Red Onion, involving him, Officer Hicks, and Officer Rasnick. Both officers and Wall were injured.<sup>2</sup> Following the incident, Wall was charged with several disciplinary infractions. Two of these disciplinary infractions, one for aggravated assault on Officer Hicks and the other for aggravated assault on

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<sup>1</sup> Respondent previously filed a motion to dismiss, arguing that the Wall's petition was procedurally barred. *See* Dkt. No. 23. On March 5, 2018, the court ruled that the matter was not procedurally barred and directed respondent to file an amended motion to dismiss addressing the merits of Wall's claims. *See* Dkt. No. 31.

<sup>2</sup> Officer Hicks needed three stitches on his face and suffered a fractured hand, which caused him to miss work for two weeks. Officer Rasnick suffered knee and eye injuries which had to be treated at the local hospital due to their "severity." (Mem. 2, 6, Dkt. No. 24-3, 90, 94.)

Officer Rasnick, resulted in the loss of good conduct time and are the subject of this habeas corpus proceeding. For each of the two charges, Wall was given notice of the charges in advance of his hearings. (Pet., Dkt. No. 1, 16; Disciplinary Offense Rep., Dkt. No. 1, 34, 56, 93-95.)

With regard to the charge concerning Officer Hicks, Wall requested an advisor, a witness, documentary evidence, and to appear at the hearing. Wall was assigned CIRC Pendleton as an advisor to assist at his hearing, and Lt. King served as Wall's advisor concerning his witnesses and documentary evidence. As a witness, Wall requested a control booth officer. The officer submitted a statement, indicating that he did not see the incident. Thereafter, Hearing Officer Hensley denied Wall's request for a witness after determining that the witness's statement was not relevant to the offense. As documentary evidence, Wall requested three rapid-eye security videos and Virginia Department of Corrections (VDOC) policy, memos, or directives governing inmate movement. The Hearing Officer denied his requests for the evidence after determining that the items requested were restricted for security reasons or were not relevant.<sup>3</sup>

A hearing was held on September 8, 2015. Wall was present, and Officer Hicks, the reporting officer, testified. At the hearing, Officer Hicks stated that when he arrived at the vestibule door, he ordered Wall to get on the wall. When Officer Hicks reached for Wall, Wall spun around and swung at Officer Hicks, but missed. Officer Hicks said that Wall would have "cleaned [his] clock" if the blow had connected. Officer Hicks grabbed Wall around the waist, and the two fell to the ground. Officer Hicks said that Officer Rasnick tried to gain control of Wall's feet in order to subdue him. Officer Hicks had Wall's left arm and was attempting to find

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<sup>3</sup> On the Disciplinary Offense Report, the Hearing Officer checked the box indicating that the policies, memos, and directives were denied because they are restricted from inmates. Later, it was also determined that they were not relevant because the focus of the charge was what happened during the altercation, not the events leading up to it. (Memo. 4-5, Dkt. No. 24-3, 92-93.)

the right arm when Wall struck him in the eye. Wall stated that he and Officers Hicks and Rasnick were walking toward the vestibule door with Wall in front and the two officers behind him. When they arrived at the door, Wall turned around and Officer Rasnick came forward and grabbed Wall's arm and a scuffle ensued. Wall stated that Officer Rasnick swung at him, striking him on his left eye. Officer Hicks came in to assist Officer Rasnick. Wall testified that at no time did Officer Hicks ever tell him to present himself to be handcuffed. Wall also testified that while he and the two officers were on the floor, Wall rolled to his side to avoid the blows and collided with Officer Hicks. Wall stated that he did not attempt to throw, or actually throw, a punch at either officer. When the Hearing Officer asked Wall why Officer Rasnick assaulted him "out of the blue," Wall explained that Officer Rasnick was in an agitated state because they had been cursing at each other, back and forth. (Disciplinary Offense Rep., Dkt. No. 1, 56, 63; Witness Req., Dkt. No. 1, 60; Req. for Doc. Evid., Dkt. No. 1, 58-59; Memo., Dkt. No. 1, 67-73.)

During the hearing, Wall requested that the video footage be reviewed, and the Hearing Officer told Wall that he would need to "convince him" that it was necessary. Wall asked if the security camera would show if the blow that struck the officer in the face had been intentional or not, since he had been charged with aggravated assault. The Hearing Officer commented that neither Officer Hicks nor the video would be able to make that determination. However, the Hearing Officer asked Officer Hicks if he thought the blow was intentional, and Officer Hicks stated that he had been trying to restrain Wall and any activity from Wall would have been intentional, in his opinion. The Hearing Officer ultimately determined that the video was not necessary because Officer Hicks' injuries, an eye injury requiring three stitches and a fractured hand, were consistent with an assault upon an officer. Further, the reporting officer, Officer

Hicks, testified at the hearing, and Wall was given the opportunity to question him. (Memo., Dkt. No. 1, 67, 71-72.)

Hearing Officer Hensley found Officer Hicks' testimony more credible and, consequently, found Wall guilty of the charge. As a penalty, Wall lost 180 days of good conduct time. The conviction and penalty were reviewed and approved by Captain Tate on September 8, 2015. Wall received written notice of the Hearing Officer's determination, penalty, and reasoning on September 11, 2015. Wall appealed, and the Warden upheld the conviction and penalty. Wall further appealed, and the Regional Administrator also upheld the conviction and penalty. (Disciplinary Offense Rep., Dkt. No. 1, 63; Certification, Dkt. No. 24-3, 86; Memo., Dkt. No. 1, 66-73; Letter, Dkt. No. 1, 76-77.)

With regard to the charge concerning Officer Rasnick, Wall requested an advisor, documentary evidence, and to appear at the hearing.<sup>4</sup> Wall was assigned CIRC Rose as an advisor to assist at his hearing. As documentary evidence, Wall requested the rapid-eye security videos and interview statements of both officers from an interview with Captain Still. On August 18, 2015, a Hearing Officer denied Wall's requests on the basis that they were restricted from inmate access. (Disciplinary Offense Rep., Dkt. No. 1, 34; Req. Doc. Evid., Dkt. No. 1, 36-37.)

A hearing was held on August 25, 2015, where Wall was present and Captain Still, the reporting officer, testified.<sup>5</sup> Captain Still testified that he had reviewed the rapid-eye videos and saw Wall take a swing at Officer Rasnick when Officer Rasnick attempted to handcuff Wall.

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<sup>4</sup> The court notes that Wall checked the box on the Disciplinary Offense Report indicating that he "wish[ed] to request a witness"; however, it appears he never submitted a Witness Request Form indicating which witness he would like and why.

<sup>5</sup> At the time of the hearing, Officer Rasnick was still out of work, recovering from his injuries incurred during the incident.



Officer Hicks then came to aid Officer Rasnick, and all three of them fell to the floor while Wall continued to fight the officers. Officer Rasnick sustained injuries to his knee and eye. Wall did not say much at the hearing because he “seemed concerned” about a “street charge” and that his testimony at the hearing might be used against him in the criminal case. During the hearing, Wall requested that the video footage be reviewed, and Hearing Officer Franks determined that it was not necessary because Captain Still had reviewed the videos and testified as to what the video showed, and Wall had the opportunity to question him. (Disciplinary Offense Rep., Dkt. No. 1, 38; Memo., Dkt. No. 1, 44-50.)

Ultimately, Hearing Officer Franks found Captain Still’s testimony credible and, consequently, found Wall guilty of the charge. As a penalty, Wall lost 90 days of good conduct time. The conviction and penalty were reviewed and approved by Captain Cope on August 27, 2015. Wall received written notice of the Hearing Officer’s determination, penalty, and reasoning on September 2, 2015. Wall appealed, and the Warden upheld the conviction and penalty. Wall further appealed, and the Regional Administrator also upheld the conviction and penalty. (Disciplinary Offense Rep., Dkt. No. 1, 38; Certification, Dkt. No. 24-3, 86; Memo., Dkt. No. 1, 43-50; Letter, Dkt. No. 1, 55.)

Wall filed the instant habeas petition on November 8, 2016. Wall alleges that: (1) he is actually innocent, in light of “newly-discovered reliable” evidence; (2) the disciplinary proceedings violated his due process rights because he was not allowed to present evidence or call witnesses; (3) the disciplinary proceedings violated his due process rights because the hearing officer was not impartial; (4) Wallens Ridge personnel did not have subject matter jurisdiction over his alleged violations that occurred at Red Onion; and (5) his due process rights

were violated when he was denied an advisor for two of his disciplinary hearings. (Pet., Dkt. No. 1, 5, 15.)

## II. DISCUSSION

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving “any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. “To state a procedural due process violation, a plaintiff must (1) identify a protected liberty or property interest and (2) demonstrate deprivation of that interest without due process of law.” *Prieto v. Clarke*, 780 F.3d 245, 248 (4th Cir. 2015). “A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word ‘liberty,’ or it may arise from an expectation or interest created by state laws or policies.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Federal habeas courts recognize a protected liberty interest in good conduct time earned, requiring “those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.” *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

“Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff*, 418 U.S. at 556. If a disciplinary proceeding subjects the inmate to loss of a constitutionally protected interest, such as earned good conduct time, the inmate must receive: (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985) (citing *Wolff*, 418 U.S. at 563-67).

*Wolff* “did not require either judicial review or a specified quantum of evidence to support the factfinder’s decision.” *Id.* at 454. “The requirements of due process are flexible and depend on a balancing of the interests affected by the relevant government action.” *Id.* A deprivation of an inmate’s constitutionally protected interest “does not comport with “the minimum requirements of procedural due process . . . unless the findings of the prison disciplinary board are supported by some evidence in the record.” *Id.* In other words, “[t]he fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators [in disciplinary proceedings] that have some basis in fact.” *Id.* at 456. Determining “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.” *Id.* at 455.

#### **A. Evidence**

Wall alleges that he is actually innocent of his disciplinary convictions based on “newly-reliable” evidence. Wall claims that since his disciplinary hearings, during the course of a criminal proceeding in the Wise County Circuit Court, he has viewed the video footage of the incident. Wall alleges that the video shows that the injury to Officer Hicks’ right eye was “caused by a head-on collision with his co-worker, and NOT by [Wall,] as alleged.”<sup>6</sup> Wall submits a copy of a letter he sent to his criminal defense attorney, wherein he asks the attorney to provide an affidavit concerning the video footage. (Letter, Dkt. No. 1, 86.) He also submits the response from the attorney indicating that he was “unable to provide an Affidavit in regard to any video footage.” (Letter, Dkt. No. 1, 88.) Wall also claims that he has discovered notes from an investigative interview of Officer Rasnick and an internal incident report of Officer Hicks,

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<sup>6</sup> The video has not been submitted to the court in this case.

both of which Wall claims “contradict” the statements made on the Disciplinary Offense Reports. (Investigative Interview, Dkt. No. 1, 83-84; Internal Incident Rep., Dkt. No. 1, 85.)

Judicial review of prison disciplinary actions is limited solely to a determination as to whether there is evidence in the record to support the hearing officer’s decision. *See Hill*, 472 U.S. at 457; *Baker v. Lyles*, 904 F.2d 925, 931-32 (4th Cir. 1990); *see also Kirillov v. Yancey*, No. 9:05-3251-HFF, 2006 U.S. Dist. LEXIS 101970, 2006 WL 2827373, at \*8 (D.S.C. Sept. 28, 2006). The court “does not have the authority to weigh evidence or to judge the strength of any particular defense the petitioner may present.” *Marin v. Bauknecht*, No. 8:07-0165-JFA-BHH, 2007 U.S. Dist. LEXIS 104228, 2007 WL 3377152, \*4 (D.S.C. Nov. 9, 2007). A court must reject the evidentiary challenges to a prison disciplinary decision if there exists in the record “some evidence” to support the decision of the hearing examiner. *Hill*, 472 U.S. at 454; *Sinde v. Gerlinski*, 252 F. Supp. 2d 144, 150 (M.D. Pa. 2003). The court finds that there is some evidence to support each of Wall’s disciplinary convictions. Moreover, a claim of actual innocence is not recognized in a habeas action relating to a disciplinary conviction. *See Rojas-Parra v. Warden, FCI-Bennettsville*, No. 1:13-1581-TMC, 2014 U.S. Dist. LEXIS 78224, 2014 WL 2548352, at \*7 (D.S.C. June 6, 2014) (“To the extent Petitioner alleges he is entitled to relief based on a claim of actual innocence, a claim of actual innocence is not a basis for federal habeas corpus relief.”); *Johnson v. Warden, FCI Williamsburg*, No. 1:13-3347-JFA-SVH, 2014 U.S. Dist. LEXIS 135426, 2014 WL 4825926, at \*8 (D.S.C. Sept. 24, 2014) (same); *Bermea-Cepeda v. Atkinson*, No. 8: 11-cv-03170-JMC, 2013 U.S. Dist. LEXIS 92134, 2013 WL 3293594, at \*8 (D.S.C. June 28, 2013) (same); *Gonzalez-Martinez v. Drew*, No. 8:11-00437-TMC-JDA, 2011 U.S. Dist. LEXIS 151351, 2011 WL 6982247, at \*7 (D.S.C. Dec. 16, 2011) (same). Accordingly, the court grants defendants’ amended motion to dismiss as to this claim.

## B. Witnesses and Documentary Evidence

Wall claims that the disciplinary proceedings violated his due process rights because he was not allowed to call witnesses or present evidence. It is well established that “[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits. . . . [by] refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases.” *Wolff*, 418 U.S. at 566. The Supreme Court expressly “stop[ped] short of imposing a more demanding rule with respect to witnesses and documents.” *Id.* at 567.

The only witness that Wall requested was the control booth officer, and he only requested the officer as a witness in his case concerning Officer Hicks. The control booth officer submitted a statement that he did not see the incident based on where it occurred. The Hearing Officer, in his discretion as fact finder, ruled that the control booth officer’s testimony was not relevant and, thus, excluded it. Live witness testimony may be disallowed by a hearing officer where the testimony would be irrelevant or cumulative. *Ward v. Johnson*, 690 F.2d 1098, 1112-13 (4th Cir. 1982).

With regard to “documentary evidence,” Wall requested rapid-eye videos, investigative interview statements of both officers, and VDOC policy, memos, or directives governing inmate movement. For each of these pieces of evidence, the Hearing Officers, in their discretion as factfinders, denied Wall’s requests because the evidence was restricted for security reasons and/or irrelevant. With regard to the rapid-eye videos, the Hearing Officers’ denials of this evidence did not constitute a Due Process violation because this type of surveillance footage is “clearly outside the definition of ‘documentary evidence’ to which plaintiff is entitled.” *Wallace v. Watford-Brown*, No. 1:13cv319 (TSE/IDD), 2015 U.S. Dist. LEXIS 136566, at \*10, 2015 WL 5827622 (E.D. Va. Oct. 5, 2015). Further, a hearing officer may decide that legitimate

penological interests justify the denial of an individual inmate's documentary evidence request, and their decisions are not to be lightly second-guessed by courts far removed from the demands of prison administration. *Brown v. Braxton*, 373 F.3d 501, 505 (4th Cir.2004). Accordingly, Wall has not demonstrated a due process violation; therefore, the court will grants defendants' amended motion to dismiss as to this claim.

### **C. Impartial Hearing Officer**

Wall claims that the Hearing Officer on his charge concerning Officer Hicks was not impartial. Wall bases this complaint on the Hearing Officer's alleged question to Wall, inquiring whether Wall "expect[ed] him to believe two correctional officers would assault an offender for no reason . . . ." (Pet., Dkt. No. 1, 18.) An inmate facing disciplinary charges has the right to an impartial decisionmaker. *Wolff*, 418 U.S. at 571. "[D]ue process is satisfied as long as no member of the disciplinary board has been involved in the investigation or prosecution of the particular case, or has had any other form of personal involvement in the case." *Id.* at 592. "While a 'fair trial in a fair tribunal is a basic requirement of due process,' not all claims of bias rise to a constitutional level." *Rowsey v. Lee*, 327 F.3d 335, 341 (4th Cir. 2003) (quoting *Withrow v. Larkin*, 421 U.S. 35, 46 (1975)). "In order to prevail in a deprivation of due process claim, a defendant must show a level of bias that made 'fair judgment impossible.'" *Id.* (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). "[B]ecause honesty and integrity are presumed on the part of a tribunal, there must be some substantial countervailing reason to conclude that a decisionmaker is actually biased with respect to factual issues being adjudicated." *Gwinn v. Awmiller*, 354 F.3d 1211, 1220 (10th Cir. 2004) (quoting *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 518 (10th Cir. 1998)). Furthermore, "[d]ue process is violated only when 'the risk of unfairness is intolerably high' under the circumstances of a

particular case.” *Gwinn*, 354 F.3d at 1220 (quoting *Withrow v. Larkin*, 421 U.S. 35, 58 (1975)).

There is no evidence that the Hearing Officer in this case was involved in the investigation or prosecution of Wall’s disciplinary charges. Further, Wall has not shown that the Hearing Officer’s alleged question to Wall demonstrate that he lacked impartiality to the extent that fair judgment was impossible. Accordingly, the court will grant defendants’ amended motion to dismiss as to this claim.

#### **D. Subject Matter Jurisdiction**

Wall alleges that Wallens Ridge personnel did not have subject matter jurisdiction over Wall’s disciplinary charges because the underlying conduct occurred at Red Onion. Inasmuch as both prisons are VDOC facilities which are governed by the same overarching policies and procedures, Wall has not demonstrated, and the court cannot find, a basis to justify this concept of subject matter jurisdiction as applied to institutional offenses committed within the VDOC. Accordingly, the court will grant defendants’ amended motion to dismiss as to this claim.

#### **E. Advisor**

Wall argues that his due process rights were violated when he was not provided an advisor to assist him during the hearings. It appears from the record that Wall was assigned an advisor to assist him at each of his hearings. However, there is no general constitutional right of an inmate to have a staff representative or advisor in prison disciplinary hearings. *See Hudson v. Hedgepath*, 92 F.3d 748, 751 (8th Cir. 1996); *Morgan v. Quarterman*, 570 F.3d 663, 668 (5th Cir. 2009). Due process requires that inmates be provided with the aid of a staff representative only where the inmate is illiterate or “the complexity of the issue[s] make it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case.” *Wolff*, 418 U.S. at 570; *Hedgepath*, 92 F.3d at 751. In this case, there is no

evidence that Wall is illiterate or that the issues were so complex as to require a staff representative. Accordingly, even if Wall did not receive the services of an advisor at the hearings, this does not implicate federal due process, and, thus, the court grants defendants' amended motion to dismiss as to this claim.

### III. CONCLUSION

For the reasons stated above, the court grants defendants' amended motion to dismiss, and an appropriate order will be entered.

Entered: March 31, 2019.

*/s/ Elizabeth K. Dillon*

Elizabeth K. Dillon  
United States District Judge



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

GARY WALL,	)	
Petitioner,	)	Civil Action No. 7:17-cv-00066
	)	
v.	)	
	)	By: Elizabeth K. Dillon
WARDEN JEFFREY KISER,	)	United States District Judge
Respondent.	)	

**FINAL ORDER**

In accordance with the memorandum opinion entered this day, it hereby ORDERED that respondents' amended motion to dismiss (Dkt. No. 34) is GRANTED; Wall's 28 U.S.C. § 2254 is DISMISSED; and this action is STRICKEN from the active docket of the court.

Further, finding that Wall has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is DENIED.

The Clerk shall send copies of this order and accompanying memorandum opinion to the parties.

Entered: March 31, 2019.

*/s/ Elizabeth K. Dillon*  
Elizabeth K. Dillon  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

GARY WALL,	)	
Petitioner,	)	Civil Action No. 7:17-cv-00066
v.	)	
	)	By: Elizabeth K. Dillon
JEFFREY KISER,	)	United States District Judge
Respondent.	)	

**MEMORANDUM OPINION**

Gary Wall, a Virginia inmate proceeding *pro se*, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the validity of a Wallens Ridge State Prison disciplinary hearing, alleging that he was deprived of liberty interests without due process. Respondent filed a motion to dismiss, and Wall responded, making the matter ripe for disposition. Having reviewed the record, the court concludes that the motion to dismiss must be denied.

**I. BACKGROUND**

On August 14, 2015, Wall was involved in an incident at Red Onion State Prison that resulted in institutional charges of: being in an unauthorized area, disobeying an order, gathering around/approaching any person in a threatening/intimidating manner, and aggravated assault on a non-offender.<sup>1</sup> After several hearings, Wall was found guilty on each of the charges, losing a total of 270 earned good-time credits. He appealed, but the warden upheld his convictions.

On January 26, 2016, Wall filed a petition for a writ of habeas corpus in the Supreme Court of Virginia. The court denied his petition, citing *Carroll v. Johnson*. 685 S.E.2d 647, 694 (Va. 2009) (“[D]isputes which only tangentially affect an inmate’s confinement, such as prison

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<sup>1</sup> Wall received two charges of aggravated assault on a non-offender.

classification issues concerning the rate at which a prisoner earns good conduct or sentence credits . . . are not proper matters for habeas corpus.”). Wall filed an additional habeas petition in the Supreme Court of Virginia, which the court denied based on the previous holding.

## II. CLAIMS

On February 22, 2017, Wall filed the current petition, seeking the restoration of earned good-time credits. He appears to raise five claims:

1. Wall is actually innocent in light of newly discovered reliable evidence;
2. The disciplinary proceedings violated Wall’s due process rights because he was not allowed to present evidence or call witnesses;
3. The disciplinary proceedings violated Wall’s due process rights because the hearing officer was not impartial;
4. Wallens Ridge State Prison personnel did not have subject matter jurisdiction over Wall’s alleged violations that occurred at Red Onion State Prison; and
5. Wall’s due process rights were violated when he was denied an advisor for two of his disciplinary hearings.

## III. DISCUSSION

The Respondent argues that “Wall’s federal petition for a writ of habeas corpus should be dismissed because it was already adjudicated on the merits by the Supreme Court of Virginia.” Resp’t’s Mot. to Dismiss 6. However, by ruling that “[t]he court’s habeas corpus jurisdiction does not extend to [Wall’s petition],” the Supreme Court of Virginia did not adjudicate the merits of his claims. *Wall v. Barksdale*, No. 160145, slip op. at 1 (Va. Jun. 10, 2016); *see Higdon v. Jarvis*, 2012 WL 738731, at \*4 (W.D. Va. Mar. 5, 2012) (“The Supreme Court of Virginia dismissed petitioner’s state habeas petition because ‘[state] habeas corpus does not lie in this

matter’ pursuant to *Carroll v. Johnson* . . . . Therefore, the Supreme Court of Virginia’s dismissal of petitioner’s state habeas petition did not constitute an adjudication ‘on the merits’ for purposes of 28 U.S.C. § 2254(d).”) (citation omitted).

The Respondent also contends that the court should dismiss Wall’s petition because the Supreme Court of Virginia’s ruling was not contrary to, or an unreasonable interpretation of, federal law or an unreasonable determination of the facts. However, the Supreme Court of Virginia made no legal or factual findings; the court simply dismissed Wall’s petition pursuant to *Carroll*. Meanwhile, federal habeas courts recognize “a protected liberty interest in good-time credits earned,” requiring “those minimum procedures appropriate under the circumstances and required by the Due Process Clause to ensure that the state created right is not arbitrarily abrogated.” *Perry v. Clarke*, 2012 WL 6738164, at \*3 (W.D. Va. Dec. 28, 2012) (quoting *Ewell v. Murray*, 11 F.3d 482, 488 (4th Cir. 1993)). Therefore, Wall’s claims are cognizable on federal habeas review, but the court cannot, as Respondent requests, defer to the state court’s nonexistent legal and factual findings.

#### IV. CONCLUSION

For the reasons stated, the motion to dismiss Wall’s § 2254 petition will be denied. Respondent is directed to file an amended motion to dismiss within twenty-one days addressing the merits of Wall’s claims. Wall may file a reply to the response within fifteen days thereafter.

An appropriate order will enter this day.

Entered: March 5, 2018.

*/s/ Elizabeth K. Dillon*  
Elizabeth K. Dillon  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

GARY WALL,	)	
Petitioner,	)	Civil Action No. 7:17-cv-00066
v.	)	
	)	By: Elizabeth K. Dillon
JEFFREY KISER,	)	United States District Judge
Respondent.	)	

**ORDER**

In accordance with the memorandum opinion entered this day, it is hereby ORDERED that respondent's motion to dismiss (Dkt. No. 23) is DENIED. Respondent is directed to file an amended motion to dismiss within twenty-one days addressing the merits of the claims. Petitioner may file a response within fifteen days thereafter.

The Clerk is directed to send copies of this order and accompanying memorandum opinion to all counsel of record and to Mr. Wall, petitioner.

Entered: March 5, 2018.

*/s/ Elizabeth K. Dillon*  
Elizabeth K. Dillon  
United States District Judge

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of June, 2016.*

Gary Wall, No. 1133749,	Petitioner,
against      Record No. 160145	
Earl Barksdale, Warden,	Respondent.

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed January 26, 2016, the Court is of the opinion that petitioner's claims, which concern an institutional proceeding resulting in loss of good conduct or sentence credit are not cognizable in a petition for a writ of habeas corpus. This Court's habeas corpus jurisdiction includes "cases in which an order, entered in the petitioner's favor . . . will, as a matter of law and standing alone, directly impact the duration of a petitioner's confinement." Carroll v. Johnson, 278 Va. 683, 694, 685 S.E.2d 647, 652 (2009). The court's habeas corpus jurisdiction, however, does not extend to

disputes which only tangentially affect an inmate's confinement, such as prison classification issues concerning the rate at which a prisoner earns good conduct or sentence credits, or challenges to parole board decisions.

Id. It is therefore ordered that the petition be dismissed.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:

  
Deputy Clerk



## COMMONWEALTH OF VIRGINIA

### Department of Corrections Western Regional Office

Henry J. Ponton  
Regional Administrator

5427 Peters Creek Road,  
Suite 350  
Roanoke, Virginia 24019-3890  
(540) 561-7050

Log #	36097	Case #	ROSP-2015-1481
Offense Code	105A	Offense Title	AGGRAVATED ASSAULT UPON A NON-OFFENDER
Offense Date	8/14/2015	Hearing Date	9/8/2015
Disposition	Guilty – Hearing	Penalty	Loss of SGT – 180 days

November 9, 2015

Gary Wall, #1133749  
Wallens Ridge State Prison  
272 Dogwood Drive  
P. O. Box 759  
Big Stone Gap, VA 24219

Dear Mr. Wall:

This letter is in response to your appeal of the above-stated charge. After considering your appeal, the following determinations have been made.

**ISSUE #1: Operating Procedure 861.1 sections XII.2, XV.C.7&D.3, XV.A1&2, X.B.4.2&3, and IX.F.5 were violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #2: Since the justification for your emergency transfer was the aggregated assault on two non-offenders, and you did not have an ICA before being transferred, the report given by Correctional Officer Hicks was used for this transfer and initial assignment to Special Housing upon your arrival to Wallens Ridge State prison on 8/14/2015.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #3: You were never given an Authorized Continuance by the Hearings Officer by way of the Notice of Continuance Form per Operating Procedure 861.1 section XII.A to conduct a hearing outside of the 15 days prescribed in section XII.2 and you were not allowed a meeting with an advisor which also violated your Due Process Rights.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #4: Operating Procedure 861.1 sections XV.C.7 and D.3 was violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number two (2).

**ISSUE #5: Operating Procedure 861.1 section XI.A.1&2 were violated. In addition, the attached request on 8/17/2015 clearly showed that while in medical with a fractured bone in your left hand and without any of your property indicating access to Operating Procedure 861.1 were all denied.**

Contention was adequately addressed by the Facility Unit Head; refer to number three (3).



**ISSUE #6: Operating Procedure 861.1 section X.3&4 (2&3) were violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number four (4).

**ISSUE #7: Operating Procedure 861.1 section IX.F.5 was violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number five (5).

Please be advised that all of the contentions you presented within your Level II Appeal were contentions that you raised within your Level I Appeal. All such contentions, upon review, have already been answered in full within your Level I Appeal Response and/or during your original hearing. This office deems your Warden's response was complete and adequately addressed all of your issues.

Upon review of all documents submitted, this office finds no procedural errors. Thus, based on the preponderance of evidence against you, the charge is **UPHELD**.

Sincerely,

A handwritten signature in black ink that reads "Henry Ponton/ap". The signature is written in a cursive, flowing style.

Henry J. Ponton  
Regional Administrator

HJP/jvl/kl

cc: Earl Barksdale, Warden – Red Onion State Prison  
Leslie Fleming, Warden – Wallens Ridge State Prison





**5427 Peters Creek Road,  
Suite 350  
Roanoke, Virginia 24019-3890  
(540) 561-7050**

RECEIVED OFFICE  
WALLENS RIDGE STATE PRISON  
SEP 28 2015

## MEMORANDUM

**Wallens Ridge State Prison**

**Warden: Leslie J. Fleming**

To: Wall, Gary #1133749

From: L. J. Fleming, Warden

Subject: Disciplinary Hearing Appeal

Offense Code: 105A Dated: 08-14-15 Tape # ROSP-VR-2015-1481

Date: September 21, 2015

I have reviewed your appeal of the conviction of the above-stated offense, including your statement of appeal, the tape recording of the disciplinary hearing, and all other relevant material.

{On what do you base your appeal?}

**You state:** I base my appeal on the clearly established due process violations in OP 861.1 XII #2, XV. C. #7 & D. #3, XV. A #1 & 2, X. B. #4 (2 & 3) and IX F. #5 Governing Offender Discipline in the Virginia Department of Corrections. Violation of XII. #2 which clearly states in plain language: 15 days to conduct hearing if on PHD ...or any other detention states for the charge. Since I was removed from General Population at ROSP and was immediately transferred to WRSP on 8/14/15, the (attached) ICA Form I presented during the disciplinary hearing clearly indicated I was being placed on Special Housing. A general forum for special purpose bed assignment including general detention and pre-hearing detention as stated in 861.1 III (Definitions) for the 105A. Being per OP 830.5 IV. J. #8 (a) (ii) (b) and IV J # (a) (iii) (a) through (e) governing Emergency transfers clearly stated, "If an offender is transferred before the sending facility conducts an ICA, the Reporting Officer will provide a signed written statement describing the pertinent facts and actions." Since the justification for my emergency transfer was the aggravated assault on two, non-offenders and I did not have an ICA before being transferred the Report given by C/O Hicks was used for this purpose (transfer) and my initial assignment to Special Housing upon my arrival to WRSP on 8/14/15. Therefore under Section OP 861.1 IX. G. 1 & 2 the 8/14/15 ICA placed on me (General or Pre-Hearing Detention). Since I was never given an Authorized Continuance by the IHO by way of the Notice of Continuance Form per OP 861.1 XII. A, to conduct a hearing outside of the 15 days prescribed in XII #2 and I was not allowed a meeting with an advisor (upon request dated 8/17/15 per IO 861.1 IX. G. #3 (b & c) was also violated, violating both of these clearly established due process rights.

Wall, Gary #1133749  
Offense Code: 105A Dated: 08-14-15  
Page: 2  
Date: September 21, 2015

Disciplinary Appeal Hearing  
Tape #: ROSP-2015-1481

*Hearings Officer Hensley explained during the hearing that the Disciplinary Offense Report did not indicate that you were placed in Pre-Hearing Detention. Mr. Hensley can only go by what is presented before him. You were placed in PHD from one of the numerous charges that you received but it was not this particular case. The hearing must then be conducted within 30 calendar days before an Authorized Continuance would be required. You were served Notices of Postponement and you signed each one and both were within the authorized timeframes per policy. Concerning OP 830.5 the Reporting Officer was at the hearing via speaker phone and you had the opportunity to ask him the questions you submit in this forum. C/O Hicks was available at the hearing to give his testimony and to respond to any questions that you or your advisor posed to him. The issue of the ICA was not known by Hearings Officer Hensley and he handled your hearing in accordance with OP 861.1. According to the Disciplinary Offense Report for this charge, you were assigned an advisor to assist you at the hearing, and Lt. King confirmed in writing that he advised you concerning the witnesses and documentary evidence. You submitted disciplinary documentation that was read into the record.*

*The Request Form that you wrote to the Hearings Officer was answered appropriately by that department. You had several charges on this date and you did not specify which charge you were referring to.*

Violation of OP 861.1 XV. C #7 & D #3 which clearly states if the offender request the review of a video/audio recording...the need to review such is determined by the IHO. Since the IHO simply determined that the documentary Evidence Request form was the wrong form to request such, disregarding the 8/16/15 Request Form submitted by me and several verbal request during the hearing, then stating I needed to convince him to do such (after pointing out several distinctive actions testified to that could only be confirmed or contradicted by reviewing the irrefutable evidence requested nor did he state why this dispositive evidence was not necessary for review to adequately present or confirm my defense to these allegations.

*The Hearings Officer has the authority to review the security tape or not. Mr. Hensley explained during your hearing that a form was not required to request a review of the camera and that he need only be convinced to do so during the course of the hearing. After hearing both your testimony and that of C/O Hicks, the Hearings Officer did not feel that he needed to review the security camera. That decision may have been based, in part, on the fact that two certified officers were injured to the extent that C/O Hicks was off at least two weeks from work. C/O Rasnick had to be treated at the local hospital due to the severity of his injuries. The evidence indicated that the altercation was so intense that all three participants received injuries due to the violent interaction*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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Date: September 21, 2015

Disciplinary Appeal Hearing

Tape #: ROSP-2015-1481

***of those involved. Your stance that you never struck either of the officers was not a credible defense.***

Violations of XI. A #1 & 2 which clearly states at the offender's request....or if other limitations that may interfere with their ability to prepare for....the disciplinary hearing the IHO .... Shall appoint an advisor to assist the offender (Not to be mistook for XIV. D rights). The attached #2 8/17/15 request clearly shows while in medical with a fractured bone in my left (writing) hand and without any of my property, indicating access to the OP 861.1 (which was also requested) were all denied.

***Lt. King acted as your advisor concerning the disciplinary documentation that you requested. You were able to submit the necessary documentation which was made a part of the record during the hearing. The Request Form that you sent to the Hearings Officer was answered adequately. You did not express any concerns about OP 861.1 during this hearing nor did you indicate that your request for information was denied. As previously stated you received several charges during the same time frame but you made no statements during the hearing that you had not received the documentation that you requested for this particular hearing.***

Violation of OP 861.1 X. 3 & 4 (2 & 3) which clearly states the right to request...assistance from an advisor with completing the Witness Request and Documentary Evidence Request Forms which were also denied and the 8/17/15 request to the IHO.

***This concern has been previously addressed. The Request Form that the Hearings Officer received was answered. You submitted both a Witness Statement and Requests for Documentary Evidence which were read into the record.***

Violation of OP 861.1 IV. F. #5 clearly stated the OIC will "Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer or any relevant witness to obtain additional information, if necessary to determine if sufficient information exists to notify the offender a DOR is being placed against him." But this was not nor could have been done because additional witnesses (in A-100 pod) and the Rapid Eye video footage were at Red Onion and is not accessible at WRSP to investigate my claims of assault on Officer Hick's allegations to have a charge generated at WRSP.

***The OIC did review the charge and found that it met the standard for the case to be heard by the Hearings Officer. The OIC may interview the accused offender, the Reporting Officer or any other witness but that is not a requirement for every case.***

Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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*The Hearings Officer has the authority to review the security camera but chose not to do so in this case. The Reporting Officer was available to give his testimony and you were given ample opportunity to ask him questions during that hearing. Also if Mr. Hensley deemed it necessary to review the Rapid Eye camera, accessibility would not have been an issue.*

**Offense:**

*On the above date and approximate time while trying to place restraints on Offender G. Wall #1133749 offender spun around and tried to strike me. This resulted in trying to gain control of Offender Wall at which point Offender Wall did strike me in my eye with his right fist. Offender charged per OP 861.1 (105A – Aggravated Assault upon a non-offender).*

For this hearing you requested an advisor which was CIRC Pendleton. You did request witnesses. You did request documentary evidence.

**SUMMARY:**

*This is a Category I Offense and the Reporting Officer, C/O Hicks, was present via speaker phone from Red Onion State Prison for the hearing.*

*Offender Wall asked Hearings Officer Hensley a question concerning PHD which was indicated on the Disciplinary Report had not been utilized for this charge. The offender said C/O Hicks said the offender had been placed on PHD upon the offender's arrival at WRSP. Mr. Hensley responded that the offender had been placed on Pre-Hearing Detention for one of the several charges he had received but it was unclear which charge the PHD had been applied. The Hearings Officer also clarified that since the charge had been received at Red Onion State Prison, that facility would determine if PHD had been utilized or not.*

*Mr. Hensley considered the Witness Statement from C/O Hess at Red Onion. C/O Hess stated that he could not see anything due to where the incident happened. The statement was deemed not relevant by H/O Hensley. Therefore the officer would not be required to testify at the hearing.*

*The Request for Documentary Evidence for any written VADOC, LOP policy, written memo or directive governing a population offender's movement. The request was*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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Date: September 21, 2015

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*deemed not relevant by Mr. Hensley because the focus was on what happened during the incident and not what lead up to the incident.*

*The Request for Documentary Evidence was the request to review A-100 pod's three Rapid Eye security cameras during the incident. Mr. Hensley explained there had been no need to request review of the camera on a Documentary Evidence Form. The Hearings Officer said the Hearing Officer need only be convinced to review the camera during the course of the hearing. Mr. Hensley clarified the difference between documentary evidence and physical evidence for the offender's future reference.*

*Offender Wall was asked to give his testimony concerning the incident with clear instructions from Mr. Hensley to only speak about what happened when the offender got to the vestibule and not what occurred prior to the incident. Offender Wall stated that he and C/O's Hicks and Rasnick had been walking toward the vestibule door with the offender in front and the two officers behind him. The offender said that he stopped at the vestibule door and turned around. Offender Wall said C/O Hicks stopped and had the walkie-talkie to his ear while C/O Rasnick continued to come forward toward the offender. It was clarified that the vestibule door never opened. The offender said that C/O Rasnick came forward and grabbed the offender's arm and a scuffle ensued. Offender Wall said C/O Rasnick swung at the offender striking him on his left eye causing the offender to duck to the left in an effort to avoid any further blows. The offender said C/O Hicks came in to assist C/O Rasnick. Mr. Hensley then asked the offender where C/O Rasnick struck the offender who said the officer struck him on the top of his head. Offender Wall said at no time did C/O Hicks ever tell the offender to present himself to be handcuffed.*

*For clarity Hearings Officer Hensley asked the offender to explain which officer attacked him. Offender Wall said C/O Rasnick attacked him and C/O Hicks assisted Rasnick and all three individuals went to the ground with Wall on his back. The offender said C/O Rasnick continued to hit the offender in his face while Wall attempted to avoid the blows by rolling toward his right side. Offender Wall said that he and C/O Hicks collided. The offender said at no time did he attempt to throw or actually threw a punch at either of the officers.*

*Mr. Hensley asked why C/O Rasnick assault the offender out of the blue. The offender said when the officers told him to "shut the fuck up" and go in his cell, Offender Wall said he said, "Shut the fuck up. I'm talking to him." The offender said C/O Rasnick was in an agitated stated and C/O Hicks stopped C/O Rasnick from coming down from the top tier. The offender said he continued to curse back and forth with the officers while he continued to walk toward his cell. Offender Wall said that was the reason he*

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*wished to have the security camera reviewed. The H/O asked the offender if he had also been in an agitated stated. The offender said he had only been responding to the officer's "ignorance" and Wall said he also had been ignorant to respond.*

*Mr. Hensley asked if there any injuries to the three people involved in the incident. Offender Wall said he had a cracked bone in his hand, lacerations to his wrist from the handcuffs, two black eyes and several knots to the front and back of his head. The Hearings Officer asked if the scuffle was an all-out brawl. The offender again denied that he ever threw a punch and said that he only saw C/O Rasnick throw punches during the altercation.*

*C/O Hicks was asked to give his statement concerning the incident once the officers and the offender arrived at the vestibule door. The Reporting Officer said that when he arrived at the vestibule door, he ordered the offender to get on the wall. C/O Hicks said he did not want to chance going through the vestibule door in case something occurred and the officers did not have any assistance. It was confirmed that C/O Rasnick had been at the vestibule door as well. C/O Hicks said that when he reached for the offender, Wall spun around and swung on the officer but missed. The Reporting Officer said the offender could have "cleaned my clock" if the blow had connected. C/O Hicks testified that he grabbed Offender Wall around the waist and the two fell to the ground. Hicks said that C/O Rasnick tried to gain control of the offender's feet in order to subdue the offender. C/O Hicks stated that he had Offender Wall's left arm and was attempting to find the right arm when the offender struck the officer in the eye.*

*Hearings Officer Hensley comment that Offender Wall said that the incident began with C/O Rasnick and then C/O Hicks came to Rasnick's rescue. The Reporting Officer replied, "No sir. That is now how I recalled it at all."*

*Offender Wall was given the opportunity to ask questions of C/O Hicks. The offender asked if the R/O sustained any injuries. C/O Hicks said he received injuries to the right eye that required three stiches to close up as well as a fracture to the officer's hand. Mr. Hensley asked how long C/O Hicks was off from work. The R/O responded that he was off for two weeks. The offender asked if the security camera would show if the blow that struck the officer in the face had been intentional or not since the offender had been charged with aggravated assault. Mr. Hensley commented that the only person that would know if the blow had been intentional or not would be Offender Wall. The Hearings Officer explained that neither C/O Hicks nor the video would be able to make that determination. However, Mr. Franks asked C/O Hicks if the officer thought Offender Wall had intentionally struck the officer. C/O Hicks replied that he*



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*had been trying to restrain the offender and any activity from Offender Wall would have been intentional in the R/O's opinion. It was determined that during the scuffle the offender had struck C/O Hicks with his fist closed.*

*Offender Wall maintained that he was on the ground and never struck either officer and the video would support his statements.*

*The offender had no further questions from C/O Hicks and the officer was dismissed from the hearing.*

*Offender Wall addressed a concern he had about OP 830.5 about an offender transfer. The offender said that he had not received an ICA before he was transferred to WRSP from ROSP. Offender Wall said he had been told that he was on PHD and should have had the hearing within 15 days according to policy. Mr. Hensley responded that he would not be aware of the offender being in PHD unless the Disciplinary Report indicated such and showed that the box had been checked. The Hearings Officer also said that C/O Hicks had been off work for two week and he could not have conducted the hearing before the R/O came back to work.*

*Offender Wall said that an authorized continuance would have to have been enforced either way. Mr. Hensley replied that according to the DOR, Pre-hearing Detention had not been recommended for this particular case. Concerning the review of the security camera, Mr. Hensley said he would not look at the footage because C/O Hicks said he had been struck in the eye that required stitches and had received a fractured hand. The Hearings Officer opined those injuries had been consistent with an assault upon the officer.*

*Therefore based on the evidence that was submitted, Mr. Hensley found Offender Wall guilty of the offense as charged. The penalty was set at 180 days loss of good time.*

#### CONCLUSION:

*I have listened to the taped hearing and have carefully considered both the oral and written evidence that was submitted therein. Offender Wall denied that he ever threw a punch at either Officer Hicks or Rasnick. In fact the offender said that he had been the one that was assaulted by the officers and the security camera would support his statements. However, C/O Hicks's version of events indicated that Offender Wall had struck him in the eye during the time that he and the offender were scuffling on the ground. During that struggle both officers received injuries that caused them to lose*



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*time from work. All three individuals received injuries which would indicate that a fight took place that required considerable effort by the officers to subdue Offender Wall while the offender forcefully rebuffed the officer's attempt to restrain the offender. I therefore agree with Mr. Hensley's finding of guilt in this case.*

It is my findings that sufficient evidence was presented to support the finding of guilt in your case. Additionally, you were provided with a fair and equitable hearing with all due process rights afforded. I have also reviewed the penalty assessed and find that it is appropriate and within the range of allowable penalties per OP #861.1. Therefore, this charge will not be dismissed.

In accordance with OP 861.1 only issues not addressed by the Warden may be appealed to the Regional Administrator on Category II Charges. This must be done within fifteen calendar days, to the following address:

Henry J. Ponton, Regional Administrator  
Disciplinary Appeals Unit  
PO Box 26963  
Richmond, VA. 23261

LJF Warden/jae

cc: Hearings Officer  
Records

# MEMORANDUM

Wallens Ridge State Prison

Warden: Leslie J. Fleming

To: Wall, Gary #11733749

From: L. J. Fleming, Warden

Subject: Disciplinary Hearing Appeal

Offense Code: 105A Dated: 08-14-15 Tape # ROSP -VR-2015-1503  
Tape Number was uploaded on CORIS as ROSP-2015-1203

Date: September 15, 2015

I have reviewed your appeal of the conviction of the above-stated offense, including your statement of appeal, the tape recording of the disciplinary hearing, and all other relevant material.

{On what do you base your appeal?}

**You state:** I base my appeal on the clear violations to my due process rights and violations to OP 861.1 IX. G. #3 (B & C), XV, C. #7, XV, D. #3, XI. A. #1 & 2, X. B. #4 (2 & 3) and IX. F. #5 of the established written OP governing offender disciplines.

*According to the Disciplinary Offense Report you requested an advisor to assist you at the hearing. The boxes were not checked in Q#2 and #3 to indicate that you requested the services of advisor for witnesses and documentary evidence. You did receive several charges on the same date and you received disciplinary documentation as requested for each of the charges. You made no mention during this particular hearing that you had not received the documentation that you asked for or that you required documentation other than the two Documentary Evidence Forms that you submitted for this case. Concerning the request to review the security camera, Mr. Franks advised you at the hearing that Capt. Still had reviewed that evidence as a part of his investigation and testified as to what he witnessed during the hearing. Mr. Franks based his decision of guilt or innocence based on a preponderance of the evidence that was submitted. Your request for an advisor has been addressed. You also submitted two Offender Request Forms in which Hearings Officer Hensley replied that you had been given a staff advisor and instructed you where to send all disciplinary documentation. The Serving Officer indicated that he read you your rights when he served the charge and also signed the document to show that you refused to place your signature on the charge. Captain Still indicated on the DOR that he*

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*completed an investigation which included the review of the Rapid Eye camera. That investigation did not have to include you in the interviewing process.*

Section IX. G. #3 (b & c) clearly stated when PHD is utilized, the offender will be provided assistance if requested, to (b) meet with an advisor and (c) otherwise prepare a defense. After clearly requesting both by way of the 8/17/15, regular request form to the IHO (see attached) and being denied was in violation of this section.

*According to the DOR for this particular offense, you were given the documentation that you requested and the assistance that you requested. You did not mention during the hearing that you had not received the necessary tools to prepare your defense. The Request Forms you submitted were answered by Hearings Officer Hensley who advised you that the Serving Officer acted as your advisor during the service of the charge. Assistance was granted according to your responses.*

Section XV. C. #7 and XV D. #3 clearly states if the offender requests the review of a video/audio recording the need to review such is determined by the IHO. Since the IHO simply determined that the request for documentary evidence form was the wrong form to request such review (disregarding the 8/16/15 request submitted by offender) (see attached #2) and requested at the hearing and no one stated "why" the evidence requested was determined not to be necessary or relevant for review was also in violation of XV. D. #3 which states the IHO shall rule on all matters of evidence. This important disposition evidence requested not only supports my defense of the initial description of offense given by the Reporting Officer, Capt. D. Still of "G. Wall did assault Officer Rasnick by punching him repeatedly resulting in injuries" but contradicts is verbal testimony of (as stated for the reason for a guilty decision and detailing what the video initially showed), the video showed Officer Rasnick coming to the aid of another officer and in the process the officers ended up on the floor. At no time is it ever mentioned, implied, or described in any fashion the video showed me repeatedly punching Officer Rasnick causing his injuries. Aggravated assault is defined under OP 861.1, Section III as the intentional impermissible physical contact...with the intent to cause serious injuries. By Capt. Still's testimony of "The mark under his right eye looked like it was caused by a blow," but never did he say or indicate the video showed that blow came from G. Wall (or it was intentionally done to cause serious injuries by him) further proves the video never showed what was initially stated in the Offense Report as alleged. The fact that the IHO would refuse to even review the video footage himself clearly indicated he was not of being an impartial fact finder in this hearing (he simply took the R/O's account of what he saw on the video) in violation of OP 861.1 VD. D. #2 and #11.



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*It is at the discretion of the Hearings Officer whether or not to review the security camera. Mr. Franks in this instance informed you that Capt. Still had looked at the Rapid Eye camera and would testify according to what he had observed during the hearing. There is no form required to request a review of the camera and Mr. Franks simply informed you of that fact. The evidence that Capt. Still testified to was that he saw you take a swing at C/O Rasnick when that officer attempted to handcuff you. C/O Hicks then came to you aid C/O Rasnick and all three of you fell to the floor while you continued to fight the officers. C/O Rasnick sustained injuries to his knee and eye which were serious enough to require treatment at the local hospital. You had the opportunity to ask questions of Capt. Still and you did not ask him point blank if you caused the injuries. Based on his testimony it would indicate that the fight that ensued was a result of your refusal to be handcuffed and you told the officers, "Don't fucking touch me." Based on a preponderance of the evidence it would seem that you were agitated by the officers and fought them due to that agitation. You denied that you repeatedly punched the officer but Capt. Still's testimony upon reviewing the video cannot be dismissed or ignored. You did not say much in your own defense as you seemed concerned about a "street charge" in which your testimony at this hearing may be used against you. Hearings Officer Franks did not review the camera simply because Capt. Still had reviewed the Rapid Eye and testified according to what the R/O witnessed. There was no indication that Mr. Franks was unfair or biased in this case.*

Section XI. A #1 & 2, clearly states "at the offender's request or if other limitations that may interfere with their ability to prepare for...the disciplinary hearing, the IHO shall appoint an advisor to assist the offender (not to be mistaken for advisor proved in Right XIV. D). On 8/17/15 I sent a Request Form to the IHO requesting assistance of an advisor to help me prepare a defense for these allegations. Since I was in Medical (with a fractured left hand my writing hand) I was newly received form ROSP on 8/14/15 on an Emergency transfer, without any of my property including access to OP 861.1 in which I also requested but was denied.

*This issue has already been addressed previously. You were given documentation and information relative to the way the Disciplinary Report had been completed. You did submit Requests Forms to the Hearings Officer which were answered. You had several charges on the same day and you made no mention as to which charge you had not received assistance or documentation. You also did not say anything during the hearing for this charge that you had not received the assistance or documentation that you requested.*

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Section X. B. #4 (2 & 3) also clearly stated an offender has the right to request assistance from an advisor with completing the Witness Request Form and Request for documentary evidence forms in which I also requested on the 8/17/15 request to the IHO.

***You did not submit any Witness Request Forms in this case. There was no indication that you were not given the proper documentation that you requested. As previously mentioned you had several charges on the same day but you did not specify on the Request Forms which case you requested assistance. You also made no mention during this hearing that you had not received the help or documents that you needed to prepare your defense.***

Section XV. C. #7 clearly stated if the offender requests the review of a video/audio recording, the need to review such is determined by the IHO. Since this request was made on 8/16/15 and during the hearing to confirm my version and support my defense to these allegations.

***This issue has already been addressed. Capt. Still had reviewed the security camera and testified as to what he witnessed during the hearing.***

Section IX F. #5 states the OIC will investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer or any relevant witness to obtain additional information if necessary to determine if sufficient information exists to notify the offender a disciplinary offense report is being brought against him. None of this was done because per OP 830.5 transfers, facility reassignments, Section IV. J. #8 (2) (ii)(b) state the sending facility will conduct an ICA before transfer or the Reporting Officer will provide a signed written statement describing the pertinent facts and actions. And Section IV #8 (2) (ii) (2 through (e) also state the following documents are to be forwarded to the receiving facility with the offenders records at the time of transfer: (a) ICA indicating the reason for transfer; (b) Reporting Officer's original written statement; (c) Any untried disciplinary infraction as well as the originals of any infractions and (e) other pertinent documents, statement and/or reports concerning the incident and/or transfer.

***The OIC in this case, Lt. Church, coordinated efforts with Capt. Still, the Reporting Officer at Red Onion State Prison regarding the investigation of this incident. The OIC is not required to interview you as part of his investigation process but may do so if he felt it necessary. The claims that you make concerning OP 830.5 is not relevant to the hearing which has to observe OP 861.1 regarding the disciplinary process. All of your due process rights and privileges have been med under that policy. If you have***



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***concerns that something was not done correctly in accordance with OP 830.5 you may wish to speak to your Unit Manager or Building Lt. concerning that issue.***

I believe since I never received an ICA (or notice thereof) prior to my transfer to WRSP on 8/14/15, the signed written statement from the Reporting Officer were used at WRSP to generate the disciplinary offense report without conducting any of OP 861.1 Section IX. F. #5 because the Rapid Eye security camera footage at ROSP could not be reviewed at WRSP to confirm any of the allegations by the Reporting officer's statements or obtain any additional relevant witnesses information (because they were at ROSP in A-100 pod). I ask that you review the video footage to see this was not an offender on staff assault as alleged but an assault on an offender.

***Per OP 861.1 IX. F. #5, an investigation was conducted and indicated as such on the Disciplinary Report. The OIC may or may not interview you as part of that investigation. The Rapid Eye video was reviewed by Capt. Still and he reported what he witnessed during your hearing. Mr. Franks, the moderator of the hearing, did not deem it necessary to view the security camera to affirm or corroborate Capt. Still's testimony. Mr. Franks explained the term preponderance of the evidence, which was a process by which the Hearings Officer weighed and measured each party's testimony based on which was more credible or more likely to have happened. C/O Rasnick received injuries serious enough to require advanced medical treatment but you would have the Hearings Officer to believe that you had not caused those injuries. After considering all of the evidence, Mr. Franks found you guilty based on a preponderance of that evidence.***

**Offense:**

***On August 14, 2015 at approximately 4:05 pm, Offender G. Wall did assault Officer E. Rasnick by punching him repeatedly resulting in injuries to the officer that were treated outside Red Onion State Prison by Mountain View Regional Medical Center. The basis of the charge is the result of an investigation completed August 17, 2015. Interviews of the victims and a review of security footage were completed and provided the factual knowledge in writing this charge. Offender charged per OP 861.1 (105A – Aggravated assault upon a non-offender).***

For this hearing you requested an advisor which was CIRC Rose. You did request witnesses but that form was not submitted to the Hearings Officer. You did request documentary evidence.

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**SUMMARY:**

*This is a Category I offense and the Reporting Officer, Capt. Still, was present at the hearing via speaker phone.*

*The Request for Documentary Evidence Form was considered in which Offender Wall asked to review the Rapid Eye camera. Hearings Officer Franks explained that a form was not necessary and would not be obtained because the request was not for documentary evidence. Mr. Franks also stated that Capt. Still had looked at the security footage and would be able to testify as to what he saw on the video.*

*The second Request for Documentary Evidence Form was a request for all the interview statements conducted by Capt. Still. The Hearings Officer stated that the request would not be obtained because they were restricted for security reasons or otherwise restricted to the offender.*

*Offender Wall was asked to give his statement concerning the incident. The offender denied that he repeatedly punched C/O Rasnick and in fact had not hit the officer at all. Offender Wall said he would be interested to see what the interview garnered after speaking to both victims and after looking at the Rapid Eye camera.*

*Captain Still, the Reporting Officer, was asked to give his statement concerning the incident. The R/O stated that C/O Hicks placed the handcuffs on Offender Wall when the offender turned around and swung on C/O Hicks screaming, "Don't fucking touch me." Capt. Still said that C/O Rasnick came to assist C/O Hicks and all three of the individuals began to fight. The R/O said the security footage showed Offender Wall fighting with the officers and all three were on the ground and the offender fought the officers.*

*Mr. Franks confirmed that C/O Rasnick received injuries serious enough to require treatment at a local hospital. Capt. Still commented that C/O Rasnick injured his knee and had a reddened area round his left eye which would indicate a punch had been thrown. Capt. Still also said C/O Rasnick as of the date of the hearing had not been able to return to work.*

*Offender Wall was given the opportunity to ask questions of Capt. Still. The offender wished to know what injuries the officer had received as a result of the altercation. Mr. Franks said the officer had injured his knee, sustained an eye injury and had not yet returned to work as a result of those injuries. Offender Wall asked if the officer received stitches. Capt. Still said C/O Rasnick had not received stitches. The offender*



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*asked if the officer received stitches. Hearings Officer Franks replied he would not deal with any issues relative to the other officer since that would be handled under a separate case. Offender Wall asked if he had been investigated to be charged for a possible "street charge". Mr. Franks commented that the only case that could not be heard at the institution was the killing or attempting to kill another person but otherwise OP 861.1 permitted the hearing of this charge. The offender said he preferred to not say anything at this hearing if he would have to face a street charge. The Hearings Officer responded that Offender Wall's only testimony was that he had not struck either officer but Capt. Still said the officers suffered injuries that indicated the offender had struck the officers and one officer was injured seriously enough to require hospital treatment. In addition Mr. Franks stated the Rapid Eye camera captured the incident.*

*Offender Wall stated that if three people are scuffling around on the floor how could there be certainty that he caused the injuries to the officers. Mr. Franks replied that he would have to base his decision on the preponderance of the evidence. The Hearings Officer said part of the evidence was Capt. Still's testimony that the scuffle came about as a result of the offender's refusal to be cuffed and the injuries came about because of the fight that took place as a result of that refusal.*

*The offender asked Capt. Still if officer could state why the offender was being handcuffed. Hearings Officer Franks pointed out that officers were permitted to place cuffs on an offender at any time for practically any reason. Mr. Franks deemed the question to be irrelevant.*

*Based on a preponderance of the evidence Mr. Franks found Offender Wall guilty of the offense as charged. The penalty was set at 90 days loss of good time.*

#### CONCLUSION:

*I have listened to the taped hearing and have carefully considered both the oral and written evidence that was submitted therein. Offender Wall's primary defense was that he had not struck either of the officers and had not caused the injuries to C/O Rasnick. However Capt. Still testified that he had reviewed the security camera and witnessed Offender Wall take a swing on C/O Rasnick when that officer attempted to place handcuffs on the offender and then C/O Hicks came to assist Rasnick. The Reporting Officer said that all three individuals fell to the floor and saw the offender fighting the officers which resulted in injuries serious enough that C/O Rasnick had to be treated at*



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*the local hospital. I therefore concur with Hearings Officer Frank's finding of guilt in this case.*

It is my findings that sufficient evidence was presented to support the finding of guilt in your case. Additionally, you were provided with a fair and equitable hearing with all due process rights afforded. I have also reviewed the penalty assessed and find that it is appropriate and within the range of allowable penalties per OP #861.1. Therefore, this charge will not be dismissed.

In accordance with OP 861.1 you may submit an appeal to the Regional Administrator on Category I Charges. This must be done within fifteen calendar days, to the following address:

Henry J. Ponton, Regional Administrator  
Disciplinary Appeals Unit  
PO Box 26963  
Richmond, VA. 23261

LJF Warden/jac

cc: Hearings Officer  
Records



VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by McCoy, K

Report run on 08/15/2015 at 3:51 PM

Case #: ROSP-2015-1481 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
Offense Date: 8/14/2015 Time: 4:05 PM Location: N/A - A-1-GP

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On the above date and approximate time while trying to place restraints on Offender G. Wall #1133749, offender spun around and tried to strike me. This resulted in trying to gain control of the offender Wall at which point Offender Wall did strike me in my eye with his right fist. Offender charged per D.O.P. 861.1

☐ Description Continued on attached

Witnesses: Rasnick, E

Submitted by Reporting Officer: \_\_\_\_\_

Hicks, JJ

Date: 8/15/2015

Time: 1:35 PM

☐ Witnesses continued on attached

Title: Correctional Officer

☐ Investigation Completed

Date: \_\_\_\_\_

☐ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/15/2015

Time: 3:45 PM

Print Name: \_\_\_\_\_

McCoy, K

Title: Lieutenant

### ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a **WAIVER** of the first three rights. The following forms are available to the offender **UPON REQUEST** in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within **48-HOURS** of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING? Advisor Name: <u>Cene Dandlawa</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided <u>Lt C. King 8/16/15</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided <u>Lt C. King 8/16/15</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer.	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/16/15

Time: 7:47 AM

Date set for Hearing: 8/24/2015

Revised Date: \_\_\_\_\_

9-2-15

Revised Date: \_\_\_\_\_

9-8-20

*All paperwork provided on 8/16/15 - J King*

**ENCLOSURE**

**DISCIPLINARY OFFENSE REPORT (continued)**

Case Number: ROSP-2015-1481 Offender Name: Wall, Gary L DOC #: 1133749 Housing: A-1-GP-106T  
Facility: Red Onion State Prison Reference: \_\_\_\_\_

**OFFENDER'S PLEA AND RIGHTS**

Hearing Location: Wallens Ridge State Prison Date: 9/8/2015 Time: 9:50 AM

Plea: ☐ Guilty ☒ Not Guilty ☐ No Plea Offender's Signature: \_\_\_\_\_

Advisor's Name: CIRC Advisor's Signature: \_\_\_\_\_

If the Offender is absent from hearing, explain why: \_\_\_\_\_

Is the Reporting Officer present at the hearing? ☒ Yes ☐ No

Has there been a denial of requested Witnesses? ☐ Yes ☐ No

Has there been a denial of Documentary Evidence Forms? ☐ Yes ☐ No

**DECISION OF THE HEARINGS OFFICER**

☒ Guilty ☐ Not Guilty ☐ Dismissed ☐ Accepted Penalty Offer within 24 Hours of Service

☐ Informal Resolution ☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty

☐ Vacated - Offender waived rewrite/serve of offense ☐ Vacated for Rewrite/Re-serve

☒ For the Offense of: 105A - Aggravated Assault upon a non-offender

☐ For the lesser included offense of: \_\_\_\_\_

Reason for Decision: 

OFFICER HICKS STATED THAT HE WAS ATTEMPTING TO CUFF OFFENDER WALL TO TAKE HIM TO SEGREGATION AND HE THEN WAS ASSAULTED BY OFFENDER WALL. HE STATED THAT OFFENDER WALL STRUCK HIM IN THE EYE WITH HIS FIST REQUIRING THREE STITCHES. DURING THE HEARING OFFENDER WALL STATED THAT HE WAS THE ONE WHO WAS ASSAULTED AND IF HE STRUCK OFFICER HICKS HE DID NOT MEAN TO. OFFENDER WALL STRUCK OFFICER HICKS WITH A CLOSED FIST. THEREFORE I FIND OFFENDER WALL GUILTY OF AGGRAVATED ASSAULT UPON A NON-OFFENDER.

Penalty: Loss of SGT of up to 180 days - Imposed Value: 180 Days

Comment: \_\_\_\_\_

Hearing Officer's Signature: *WRH* Date: 9/8/2015

Print Name: Hensley, W R

**INSTITUTIONAL REVIEW:**

☒ Approved ☐ Dismissed ☐ Suspended Penalty ☐ Informal Resolution

☐ Reduced Penalty ☐ Rehear ☐ Reduced to Lesser-Included Offense

☒ For the Offense of: 105A - Aggravated Assault upon a non-offender

☐ For the lesser included offense of: \_\_\_\_\_

Comments: \_\_\_\_\_

Penalty: Loss of SGT of up to 180 days - Imposed Value: 180 Days

Signature: *Capt. N. Cope* Date: 9/8/2015

Print Name: Cope, N P Title: Captain



VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by Church, W L

Report run on 08/17/2015 at 3:01 PM

INK!

Case #: ROSP-2015-1503 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
Offense Date: 8/14/2015 Time: 4:05 PM Location: \_\_\_\_\_

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On August 14, 2015 at approximately 4:05 pm offender G. Wall did assault Officer E. Rasnick by puching him repeatedly resulting in injuries to the officer that were treated outside Red Onion State Prison by Mountain View Regional Medical Center. The basis of the charge is the result of an investigation completed August 17, 2015. Interviews of the victims and a review of security footage were completed and provided the factual knowledge in writing this charge.

☐ Description Continued on attached

Witnesses: \_\_\_\_\_

Submitted by Reporting Officer: \_\_\_\_\_

Still, D A

Date: 8/17/2015

Time: 2:39 PM

Title: Captain

☐ Witnesses continued on attached

☒ Investigation Completed

Date: 8/17/2015

☒ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/17/2015

Time: 3:00 PM

Print Name: \_\_\_\_\_

Church, W L

Title: Lieutenant

### ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a **WAIVER** of the first three rights. The following forms are available to the offender **UPON REQUEST** in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within **48-HOURS** of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING? Advisor Name: _____	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer. <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/17/15

Time: 3:15

Date set for Hearing: 8/25/2015

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

**ENCLOSURE**

DISCIPLINARY OFFENSE REPORT (continued)

Case #: ROSP-2015-1503 Reference:   
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T

DISCIPLINARY HEARING

Facility where heard: Wallens Ridge State Prison Date: 8/25/2015 Time: 10:38 AM

Tape No(s):

Plea: ☐ Guilty ☒ Not Guilty ☐ No Plea Offender's Signature: \_\_\_\_\_

Reason for Absence/Exclusion of the Accused Offender:

Was the Reporting Officer present at the hearing? ☐ Yes ☐ No

NOTE: The personal appearance of the Reporting Officer at the hearing is not required for Category II Offenses.

Was there a denial of requested Witnesses? ☐ Yes ☐ No and/or Documentary Evidence? ☐ Yes ☐ No

If yes, refer to the Witness Request Form or the Documentary Evidence Request Form for the reason why the request was denied.

Decision of Hearings Officer: ☒ Guilty ☐ Not Guilty ☐ Offender Accepted Penalty Offer  
☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty ☐ Vacated for Rewrite/Re-serve  
☐ Vacated Offender waived rewrite/serve of offense ☐ Dismissed

Reason for Decision:

Offender Wall said that he did not hit anyone. Captain Still testified that he investigated the altercation between offender Wall and officer Rasnick. The video showed officer Rasnick coming to the aid of another officer that was having trouble with offender Wall and that in the process the officers ended up on the floor. Captain also said that as a result of the altercation officer Rasnick had to be treated at an off site medical facility (Mountain View Regional Medical Center) for his knee and a mark under his eye that looked like it was caused by a blow. Officer Rasnick has not yet returned to work because of the altercation. Offender Wall was found guilty on the reporting officer testimony about what was viewed on the video, along with the injuries that officer Rasnick received.

Penalty: Loss of SGT up to 90 Days - Imposed Value: 90 Days

☒ for the above listed offense, or ☐ Penalty continued or attached  
☐ for the following lesser included offense

Comment:

Name of Interpreter/Translator (if applicable):

Hearing Officer's Signature: \_\_\_\_\_ Date: 8/25/2015

Print Name: Franks, C W

Admitted to Pre-Hearing Detention: Date In: 8/17/2015 Date Out: \_\_\_\_\_

Admitted to Isolation: ☐ Yes ☒ No Date In: \_\_\_\_\_ Date Out: \_\_\_\_\_

INSTITUTIONAL REVIEW: ☒ Approved ☐ Dismissed ☐ Suspended Penalty  
☐ Reduced Penalty ☐ Rehear ☐ Reduced to Lesser-Included Offense

Comment:

Penalty: Loss of SGT up to 90 Days - Imposed Value: 90 Days

☒ for the above listed offense, or ☐ Penalty continued on attached  
☐ for the following offense of

Signature: \_\_\_\_\_ Date: 8/27/2015

Print Name: Cope, N P Title: Captain

RECEIPT OF APPEAL COPIES: ☐ Offender intends to appeal ☐ Offender does not intend to appeal

This is to certify that I have received a copy of this report and have been advised of my right to appeal the decision to the Facility Unit Head (Category I and II Offenses) and to the Regional Director (Category I Offenses only).

Offender's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

FILED: January 24, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-6524  
(7:17-cv-00066-EKD-RSB)

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GARY WALL

Petitioner - Appellant

v.

WARDEN JEFFREY KISER

Respondent - Appellee

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Gregory, Judge Niemeyer, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk



NOV 14 2016

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

JULIA C. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

United States District Court		Eastern/Western (circle one) District of Virginia	
Name (under which you were convicted): <u>MR. GARY WALL</u>		Docket or Case No.: <u>711 CV 00539</u>	
Place of Confinement: <u>RED OXON STATE PRISON</u>		Prisoner No.: <u>1133749</u>	
Petitioner (include the name under which you were convicted): <u>MR. GARY WALL</u>		Respondent (authorized person having custody of petitioner): <u>E. BARKSDALE, N. J. PRISON</u>	
The Attorney General of the State of Virginia		<u>MARK HERRING</u>	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: STAFFORD COUNTY CIRCUIT COURT IN STAFFORD COUNTY VIRGINIA
- (b) Criminal docket or case number (if you know): CR-94000272-00
2. (a) Date of the judgment of conviction (if you know): MARCH 7<sup>th</sup> 1995
- (b) Date of sentencing: MARCH 7<sup>th</sup> 1995
3. Length of sentence: 35 YEARS, WITH 20 YEARS SUSPENDED
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
5. Identify all crimes of which you were convicted and sentenced in this case: ROBBERY, 35 YEARS WITH 20 YEARS SUSPENDED, REVOKATION OF: 10 YEARS of the 20 YEAR SUSPENDED SENTENCE ON OCTOBER 30<sup>th</sup> 1995, REVOKATION OF: 4 YEARS of REMAINING 10 YEAR SENTENCE ON APRIL 15<sup>th</sup> 1997, REVOKATION OF: 5 YEARS of REMAINING 6 YEAR SENTENCE ON DECEMBER 2<sup>nd</sup> 1997.
6. (a) What was your plea? (Check one)
  - (1) Not guilty ☐
  - (2) Guilty ☒
  - (3) Nolo contendere (no contest) ☐
  - (4) Insanity plea ☐

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? ONE (1) COUNT OF ROBBERY

(c) If you want to trial, what kind of trial did you have? (Check One)

Jury ☐

Judge only ☒

7. Did you testify at pretrial hearing, trial, or post-trial hearing? **NO**

8. Did you appeal from the judgment?

Yes ☐

No ☒

9. If you did appeal, answer the following: N/A

(b) Name the court: \_\_\_\_\_

(c) Docket or case number(if you know) \_\_\_\_\_

(d) Result: \_\_\_\_\_

(e) Date of result(if you know) \_\_\_\_\_

(f) Citation to the case(if you know) \_\_\_\_\_

(g) Grounds raised: \_\_\_\_\_

(g) Did you seek further review in a higher court? Yes ☐ No ☒

If yes, answer the following:

(1) Name the court: N/A

(2) Docket or case number(if you know) \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result(if you know) \_\_\_\_\_

(5) Citation to the case(if you know) \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number(if you know): \_\_\_\_\_



(2) Result: 1/4

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state?

Yes [ ] No [X]

11. If you answer to Question 10 was "Yes", give the following information:

(1) Name of the court: THE SUPREME COURT OF VIRGINIA

(2) Docket or case number (if you know) RECORD NO. 16045

(3) Date of filing (if you know) JANUARY 7th 2016

(4) Nature of proceeding: STATE HABEAS CORPUS § 9.01-654 (A) (1).

(5) Grounds raised: GROUND ONE: Violations of petitioner's Procedural Due Process rights in the grounds the respondents discretionary denial of repeated requests to review the exculpatory evidence of the RAPID-EYE Video footage of the incident in question...

(CONTINUED ON ATTACHED PAGE ONE)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes [ ] No [X]

(7) Result: DISMISSED BASED ON COURT'S OPINION Plaintiff did NOT RAISE COGNIZABLE HABEAS CORPUS ISSUE.

(8) Date of result (if you know) JUNE 10th 2016

(b) If you filed any second petition, application, or motion, give the same information?

(1) Name of court: THE SUPREME COURT OF VIRGINIA

(2) Docket or case number (if you know) \_\_\_\_\_

(3) Date of filing (if you know) SEPTEMBER 1st 2016

(4) Nature of the proceeding: STATE HABEAS CORPUS § 9.01-654 (A) (1).

(5) Grounds raised: GROUND ONE: CHALLENGING THE LENGTH OF PETITIONERS CONFINEMENT BY 270 DAYS if already EARNED accumulated good-time credits BASED ON AN UNCONSTITUTIONAL (NUE PROCESS) DISCIPLINARY PROCEDURAL TAKING 90, and 180 DAYS, totaling: 270 DAYS.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed a third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(7) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(8) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(9) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First Petition Yes ☒ No ☒

(2) Second Petition Yes ☐ No ☒

(3) Third Petition Yes ☐ No ☒

(e) If you did not appeal to the highest court having jurisdiction, explain why you did not? THE SUPREME COURT OF VIRGINIA is the highest Court having jurisdiction.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal courts. Also, if you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Petitioner asserting actual innocence in light of "newly-discovered reliable" evidence; (Probability that constitutional violations had probably resulted in the conviction of one who is actually innocent)

A. Supporting facts and law (State the specific facts and law that support your claim.) In WOLFE v. MCINNES, 418 U.S. 939 (1974), The Supreme Court established certain minimum DUE PROCESS rights which must be afforded prisoners in disciplinary proceedings. Among these requirements is an inmates limited right to "call witnesses and present documentary evidence in his defense, when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals."

(CONTINUED ON ATTACHED PAGE TWO)

B. If you did not exhaust your state remedies on ground one, explain why: This "newly-reliable evidence" was presented during "DISCOVERY" of a Criminal Case # F60-55; Commonwealth v. Grant Wall, after petitioner raised his initial HABEAS CORPUS issues in STATE COURT.

**C. Direct Appeals of Ground One:**

- (1) If you appealed from judgment of conviction, did you raise this issue?

Yes [ ] No [ ]

- (2) If you did not raise this issue in your direct appeal, explain why? \_\_\_\_\_

Petitioner "asserting actual innocence" CLAIM NOW.

**(d) Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition or petition for habeas corpus in a state court? Yes [ ] No [X]

- (2) If you answer "yes" to question (d)(1) please state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_



Docket or case number (if you know): \_\_\_\_\_  
Date of the court's decision: \_\_\_\_\_  
Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive hearing on your motion or petition?  
Yes [ ] No [X]

(4) Did you appeal from the denial of your motion or petition?  
Yes [ ] No [X]

(5) If your answer to question (d) (4) is "Yes", did you raise the issue in the Appeal?  
Yes [ ] No [X]

(6) If your answer to Question (d) (4) is "Yes" state:  
Name and Location of the court where the appeal was filed: N/A  
\_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know) \_\_\_\_\_  
Date of court's decision: \_\_\_\_\_  
Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) If you answer to question (d) (4) or Question (d) (5) is "No", explain why you did not raise this issue? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative, remedies, etc) that you have used to exhaust your state remedies on ground one. \_\_\_\_\_  
\_\_\_\_\_

**Ground Two:** CHALLENGING LENGTH OF CONFINEMENT by a total of 270 DAYS. for the loss of already earned Good-time Credits in "UNCONSTITUTIONAL DISCIPLINARY PROCEEDINGS" Violating the 14<sup>th</sup> Amendment

(a) Supporting facts and law (State the specific facts and law that support your claim.)  
See attached pages TWO through SIX, as raised in GROUND ONE of this petition  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. If you did not exhaust your state remedies on ground <sup>two</sup> ~~one~~, explain why: \_\_\_\_\_

**C. Direct Appeals of Ground One:**

(2) If you appealed from judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why?

**(d) Post-Conviction Proceedings:**

(3) Did you raise this issue through a post-conviction motion or petition or petition for habeas corpus in a state court? Yes ☒ No ☐

(4) If you answer "yes" to question (d)(1) please state:

Type of motion or petition: HABEAS CORPUS 28.01-654 (2) (1)

Name and location of the court where the motion or petition was filed: THE SUPREME COURT OF VIRGINIA, in RICHMOND, VIRGINIA.

Docket or case number (if you know): RECORD No. 160145

Date of the court's decision: JUNE 10<sup>th</sup> 2016

Result (attach a copy of the court's opinion or order, if available): DENIED BASED ON COURT'S OPINION PETITIONER DID NOT RAISE A COGNIZABLE HABEAS CORPUS ISSUE.

(3) Did you receive hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to question (d) (4) is "Yes", did you raise the issue in the Appeal?

Yes ☒ No ☐

(6) If your answer to Question (d) (4) is "Yes" state:

Name and Location of the court where the appeal was filed: 4/4

Docket or case number (if you know) N/A  
 Date of court's decision: \_\_\_\_\_  
 Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If you answer to question (d) (4) or Question (d) (5) is "No", explain why you did not raise this issue? RETHONER MADE AN ATTEMPT TO FILE MOTION OF RECONSIDERATION BUT MOTION WAS RETURNED TO SENDER INDICATING MAILING COULD NOT BE MAILED (INSUFFICIENT ADDRESS). See EXHIBITS # 9(a)(iv) & (v)

E. **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative, remedies, etc) that you have used to exhaust your state remedies on ground one. THE OFFENDER DISCIPLINARY PROCEDURES APPEALS LEVEL - I, to the Warden and LEVEL - II, to the REGIONAL ADMINISTRATOR — ALSO, STATE HABEAS CORPUS PROCEDURES.

**GROUND THREE:** N/A

A. Supporting facts and law (State the specific facts and law that support your claim.) N/A

B. If you did not exhaust your state remedies on ground one, explain why: N/A

C. **Direct Appeals of Ground Three**

(3) If you appealed from judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why? N/A

**(d) Post-Conviction Proceedings:**

(5) Did you raise this issue through a post-conviction motion or petition or petition for habeas corpus in a state court? Yes ☐ No ☒

(6) If you answer "yes" to question (d)(1) please state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to question (d) (4) is "Yes", did you raise the issue in the Appeal?

Yes ☐ No ☒

(6) If your answer to Question (d) (4) is "Yes" state: N/A

Name and Location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know) N/A

Date of court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If you answer to question (d) (4) or Question (d) (5) is "No", explain why you did not raise this issue? N/A

**E. Other Remedies:** Describe any other procedures (such as habeas corpus, administrative, remedies, etc) that you have used to exhaust your state remedies on ground one. N/A



**GROUND FOUR:** N/A

A. Supporting facts and law (State the specific facts and law that support your claim.) N/A

B. If you did not exhaust your state remedies on ground one, explain why: N/A

**C. Direct Appeals of Ground Four:**

(4) If you appealed from judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why? N/A

**(d) Post-Conviction Proceedings:**

(7) Did you raise this issue through a post-conviction motion or petition or petition for habeas corpus in a state court? Yes ☐ No ☒

(8) If you answer "yes" to question (d)(1) please state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒



(5) If your answer to question (d) (4) is "Yes", did you raise the issue in the Appeal? Yes ☐ No ☒

(6) If your answer to Question (d) (4) is "Yes" state: N/A  
Name and Location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know) N/A  
Date of court's decision: \_\_\_\_\_  
Result (attach a copy of the court's opinion or order, if available): N/A

(7) If you answer to question (d) (4) or Question (d) (5) is "No", explain why you did not raise this issue? N/A

E. **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative, remedies, etc) that you have used to exhaust your state remedies on ground one. N/A

13. Please answer these additional questions about the petition you are filing:

(h) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒  
If you answer "No" state which grounds have not been presented and give your reason(s) for not presenting them: \_\_\_\_\_

(i) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes" state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court's opinion or order, if available. The Supreme Court of Virginia: & B.01-654 (6) (1); HABEAS CORPUS PETITION raising issues of Challenge to length of Confinement by taking 270 DAYS of EARNED Good-time Credits and Violations to the 14<sup>th</sup> Amendment of the U.S. Constitution

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenge? Yes [ ] No [ ]

If "Yes" state the name and location of the court, the docket number, the type of proceeding, and issues raised. The Supreme Court of Virginia: & B.01-654 (A)(1), HABEAS CORPUS PETITION raising issues of Challenge to length of Confinement by taking 270 DAYS of EARNED Good-time Credits raising Violations to the 14<sup>th</sup> Amendment of the U.S. Constitution. (filed September 1st 2016)

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Mr. Timothy Wall; 1300 Princess Anne Street, Fredericksburg Virginia 22401

(b) At arraignment and plea: Same as above

(c) At trial: Plea Agreement (Same as above)

(d) At sentencing: Same as above

(f) In any post-conviction proceeding: N/A

(g) On appeal from any filing against you in a post-conviction proceeding: N/A

17. Do you have future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes [ ] No [X]

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date and other sentence was imposed: N/A

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to serve in the future? Yes [ ] No [☒]

18. TIMELESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one year statute of limitations as contained in 28 U.S.C § 2244(d) does not bar this petition. Section § 2244 (d) (1) (A); governs the Timeless of Petition. § 2244 (b) (2): Clearly States, "A Claim presented in a second or successive HABEAS CORPUS application under § 2254, that was not presented in a prior application shall be dismissed UNLESS...  
(B) (ii): "The facts underlying the claim, if proven and reviewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the Constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense."

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C § 2244(d) provides in part that:

(1) A one year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a state court. The limitation period shall run from the latest date of -

(a) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(b) the date on which the impediment toiling application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented by filing such state action'

(c) the date on which the constitution right asserted was initially recognized by the retroactively applicable to cases on collateral review; or

(d) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: The restoration of the 270 Days  
of already EARNED Good-time Credits without Procedural DUE PROCESS rights afforded during disciplinary proceedings  
that affected the duration of Petitioner's Confinement by a total of 270 days.  
 or any relief to which petitioner may be entitled.

W. J. Kelly #1133749  
 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty or perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on November 8<sup>th</sup> 2016 (month, date, and year).

Executed (signed) on November 8<sup>th</sup> 2016 (date):

W. J. Kelly #1133749  
 Signature of Petitioner

If any person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A



cc:file

28 USC § 2254; Writ of HABEAS CORPUS petition

Continuation from: page four, paragraph Number 11, of GROUNDS RAISED

(Continuation of: GROUND ONE of GROUNDS RAISED on page four #11) was not based on doing so wasn't necessary, relevant, nor would impair institutional concerns or any other penological interest during the Disciplinary hearings for Case # ROSP-2015-1481, and Case # ROSP-2015-1503, held on 9/8/15, and 8/25/15, Violating the 14<sup>th</sup> Amendment of the UNITED STATES CONSTITUTION; Article I, sections 8, and 11, of the Virginia Constitution; Virginia Code § 53.1-10, and 25; and Operating Procedure 861.1; governing Offender Discipline in the Virginia Department of Corrections resulting in the loss of 180 days in Case #1481, and 90 days in Case #1503, of accumulated Good-time Credits Challenging the length of petitioners Confinement.

GROUND TWO RAISED: Violation of petitioners Procedural DUE PROCESS rights on the grounds the respondents Statements made during the hearing showed his lack of impartiality to the Defense presented (an Impartial Decision maker) during the Disciplinary hearings for Case # ROSP-2015-1481, and Case # ROSP-2015-1503, held on 9/8/15 and 8/25/15, Violating the 14<sup>th</sup> Amendment of the UNITED STATES CONSTITUTION; Article I, sections 8, and 11, of the Virginia Constitution; Virginia Code § 53.1-10, and 25; and Operating Procedure 861.1; governing offender Discipline in the Virginia Department of Corrections, resulting in the loss of 180 days in Case #1481, and 90 days in Case #1503, of accumulated Good-time Credits, Challenging the length of petitioners Confinement.

GROUND THREE RAISED: Violation of established Subject Matter Jurisdiction on the grounds the respondent Generated and held the Disciplinary hearings, that occurred at Red Onion State Prison, for Case # ROSP-2015-1481, and Case # ROSP-2015-1503, Solely by WALLACE RIDGE STATE PRISON personnel, and the appeal to the Warden of W.R.S.P. were in Violation, exceeding a policy implementation from a revised Operating Procedure 861.1, not in effect until 2/16/16, Violating the 14<sup>th</sup> Amendment of the UNITED STATES CONSTITUTION; Article I, sections 8, and 11, of the Virginia Constitution; Virginia Code § 53.1-10, and 25; and Operating Procedure 861.1; governing Offender Discipline in the Virginia Department of Corrections.

GROUND FOUR RAISED: The Violations to a State Created liberty interest, a clearly established Procedural DUE PROCESS rights afforded offenders in the Virginia Department of Corrections concerning the denial of assistance of an ADVISOR upon request during the Disciplinary hearings for Case # ROSP-2015-1481, and Case # ROSP-2015-1503, held on 9/8/15, and 8/25/15, under Article I, sections 8, and 11, of the Virginia Constitution; Virginia Code § 53.1-10, and 25; and Operating Procedure 861.1; governing Offender Discipline in the Virginia Department of Corrections (sections XI A #1 & #2; also XV C #1 & D #3) Challenging the length of petitioners Confinement.

(CONTINUED ON PAGE: FOUR of PETITION)

attached page: one

### A. SUPPORTING FACTS and LAW:

In Wolff v. McDONNELL, 418 U.S. 539 (1974), The Supreme Court established Certain minimum Due PROCESS rights which must be afforded prisoners in disciplinary proceedings. Among these requirements is an inmates limited right to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals.

While prison officials retain discretion to refuse to call witnesses... or documentary evidence "whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases" this discretion "is NOT unbounded." (See: Cardenas v. Norton, 523 F.2d 990, 998 (2<sup>nd</sup> Cir. 1975)). Courts have recognized that the right to call witnesses... and requested documentary evidence, is basic to a fair hearing and that there must be a legitimate reason for denying the prisoner this opportunity. Wolff v. McDONNELL, 418 U.S. at 566, 94 S.Ct. at 2279; Thus, prison officials may not arbitrarily deny an inmates' request to present... documentary evidence. Among the procedural rights enjoyed by an inmate in petitioner's position in the 8/25/15, disciplinary hearing (for Case #1503) are:

The right for the Video of the incident in question, to be reviewed by the sole finder of fact to support his defense;  
The requested documentary evidence of the written statement of Officer E. Rasnick; and The assistance of an ADVISOR to prepare a defense.

and in the 9/8/15, disciplinary hearing (for Case #1481) are:

The right for the Video of the incident in question, to be reviewed by the fact-finder to support his defense;  
and an hearing before an impartial fact-finder.

1) After an altercation in population of ALPHA-100 pod, at Red Onion State Prison ("R.O.S.P.") I was Emergency Transferred to Wallens Ridge State Prison ("W.R.S.P.") I was Verbally informed of my status change from a population offender to being placed on SPECIAL HOUSING STATUS, a general term used for General or Pre-hearing Detention ("PHD") Status (See: Exhibit #31(a)), for several charges waiting to be served but mainly a 105-A, Aggravated Assault upon a non-offender.

2) On 8/16/15, I was served multiple disciplinary infractions (See: Exhibits #32(a), (b), and (c)), including a 105-A, Case #1481, scheduled for a 8/24/15, hearing date, when I ask the serving officer (LT. C. KING) why PHD Status was not checked-off on the charge coinciding with my Special Housing Status as of 8/14/15, because of none of the other charges served on 8/16, indicated PHD was utilized either, he verified it was an error and immediately after he finished serving the charge, went to the "WATCH COMMANDER'S OFFICE" and retrieved the PHD form (generated by a LT. K. MCCOY) indicating PHD was utilized for this 105-A, charge just served because all the other charges served, did NOT warrant PHD Status under Operational Procedure 601.3; SPECIAL HOUSING. Since these charges were generated, heard by W.R.S.P., then appealed to the Warden of W.R.S.P., a tactic implemented from a POST FACTO, revised 601.1, policy that did not come into effect until 2/16/16, Violated established policy. (See: Exhibit #22(a) and (b))

3) That night, I filled out Two (2) Request for Documentary Evidence forms and a Witness request form for Case #1481, that made mid-call (See: Exhibit #15(a), (b), and (c)) being a new arrival to W.R.S.P. without any of my property, access to 601.1, and having injuries to my left (writing) hand, I also wrote a Regular Request form requesting the assistance of an ADVISOR to help me prepare a defense for the several listed charges I received (See: Exhibits #32(a) and #19 page 3) That I...

(CONTINUED ON NEXT ATTACHED PAGE: THREE)

Attached page: Two



cc: file

28 U.S.C. § 2254; Writ of HABEAS CORPUS petition

Continuation of: paragraph #3, from ATTACHED PAGE: TWO

(CONTINUATION OF: PARAGRAPH #3, FROM ATTACHED PAGE: TWO) mailed on 8/17/15, along with another Regular Request form indicating my desire to have the RAPID-EYE Video footage of this incident reviewed to support my version of what happened at R.O.S.P. and my defense to these allegations. (See: EXHIBITS #33(b) and #19 page 3)

4) On or about 8/18/15, my request form (dated: 8/17) was responded to by Hearings Officer W.R. HENSLEY indicating: "I must convince him during the hearing to review the Video," (See: EXHIBIT #33(b)) and the request form (dated: 8/16) request was answered: "I received an ADVISOR during the Service of the Charge(s) (a Lt. C. KING on 8/16, and a Sgt. Smith on 8/17) disregarding my request for an advisors assistance ~~AT THE~~ the Service of these charges in accordance with §61.1, (See: EXHIBIT #33(a)) that recognizes an offenders 14<sup>th</sup> Amendment right to an Advisor to prepare a defense.

5) The Virginia Department of Corrections Operating Procedure §61.1, Offender Discipline (dated: 9/1/11) Section III, Clearly defines an Aggravated Assault as: "... The intentional, impermissible physical contact involving a weapon and/or resulting in serious injury or committed with the intent to inflict serious injury." (See: EXHIBIT #5(a)).

6) On 8/25/15, Prior to the scheduled hearing for the other charges received on 8/16, I was verbally informed the 105-A, Case #1481, was being post-poned and was provided such written notice on 8/23/15, rescheduling the hearing for 9/2/15. (See: EXHIBIT #16(a)).

7) On 9/2/15, the day of the hearing for Case #1481, I was informed again of another post-ponement form, re-scheduling the hearing for 9/8/15. (See: EXHIBIT #16(b)).

8) Concerned about my DUE PROCESS right, detailed in §61.1 XI C\*\*7 & #0#3, under Operating Procedure §61.1, governing Offender Discipline coinciding with the information I was told during the service of Case #1481, and being shown a PHO form was utilized for Case #1481, on 8/16/15, I referred to my initial I.C.A. notification form (the DOC-11 G form) upon my arrival to W.R.S.P. which confirmed I was placed on SPECIAL HOUSING STATUS on 8/14/15, not an investigative status as alleged. So I took this DOC-11 G form (See: EXHIBIT #35, and #18 page 4) with me into the hearing as evidence.

9) On 9/8/15, Prior to the start of my hearing, I was provided both request for documentary evidence forms initially sent on 8/16, informing me my requested information was NOT being obtained because it was "Restricted for Security reasons such as Video and audio recording," and "Information is not written documentation." (See: EXHIBIT #15(a), (b)). At the start of the disciplinary hearing I was once again told the documentary evidence form was not the correct method used to request review of Video footage, but he never mentioned the Request form submitted on 8/17/15, or the verbal request during the hearing, also requesting such.

10) During the hearing, conducted by Inmate hearings Officer W.R. HENSLEY of W.R.S.P., after giving my testimony and reiterating my request for the Inmate hearings Officer to review the dispositive evidence of the RAPID-EYE Video of the incident to confirm my testimony (and defense), I was informed it was at his discretion and I needed to convince him to do such, disregarding the importance of reviewing such evidence for this serious offense, even after I pointed out several critical discrepancies in the Reporting Officers testimony that CLEARLY conflicted with the defense presented that could ONLY have been resolved by him actually reviewing the requested irrefutable evidence of the Video footage of the incident in question. At the point when the I.H.O. simply resulted to referring to the Reporting Officer to decide any disputes in the conflicting testimonies given during the hearing, I...

(CONTINUATION ATTACHED PAGE: FOUR)



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28 U.S.C. § 2254; Writ of HABEAS CORPUS petition

Continuation of: paragraph #10, from ATTACHED PAGE: THREE

(Continuation of: PARAGRAPH #10, FROM ATTACHED PAGE: THREE) understood clearly he was not going to review the RAPID-EYE Video footage under any circumstance (nor was he going to post pone my DUE PROCESS right to do such later) Suppressing this evidence. (See: EXHIBIT #19)

11) In one last effort for the I.H.O. to recognize (or at least confirm my allegations) PHD was utilized for this 105-A, charge by presenting my DOC-11 & form indicating I was placed on Special Housing upon my arrival to W.R.S.P. and made another attempt at requesting the review of the MEDICAL UNIT'S RAPID-EYE Camera to confirm L.T.C. KING, after Service of the 105-A, case #1481, showed me the PHD form was utilized on 8/16/15, but once again, I was Denied.

12) Before I was found Guilty of Aggravated Assault upon a non-offender, the hearing officer showed his bias to my defense presented with stating: "DID I EXPECT HIM TO BELIEVE TWO CORRECTIONAL OFFICERS WOULD ASSAULT AN OFFENDER FOR NO REASON", therefore finding me guilty and punishing me to 180 Days loss of accumulated Good-time Credits, Credits that I already EARNED during the year (See: EXHIBIT #14) Altering the length of petitioners Confinement by 180 Days (See: EXHIBITS #23, #24(a) and (b))

13) On or about 9/13/15, I submitted my level-I, appeal to the Warden of W.R.S.P. raising clear Violations to my Procedural DUE PROCESS rights under the 14<sup>th</sup> Amendment and Offender discipline in the Virginia Department of Corrections which included Violations to Operating Procedure 601.1 sections XII #2; XI C #7 & D #3; XI A #1 & #2; XI B #4 (283); and IX F #5. (See: EXHIBIT #16)

14) On or about 9/13/15, I received the level-I, response to my appeal by way of a "MEMORANDUM PACKAGE", denying every Violation to my DUE PROCESS rights raised (See: EXHIBIT #19) Concerning Case #1481, but the response given to Violations XI A #1 & #2, raised the record clearly shows I was not provided an ADVISOR upon my request (and I DID Specify which Case I was referring too) because the 8/16, Request form indicated Ad. the disciplinary charges I received on 8/16 & 8/17, so the advisor during the Service of the Charges were not in accordance with this section, nor provided within a 24/48 hour time-frame AFTER my request was made, and the response given of: "I was placed on PHD from one of the numerous charges that I received... but it wasn't this particular one", to Violation XI A #2, raised is also in error because the record showed NONE of these other charges received on 8/16, indicated PHD was utilized either (See: EXHIBIT #32(a), (b), and (c)) but I was placed on "DETENTION STATUS", on 8/16/15 for this 105-A, charge as indicated by the DOC-11 & form submitted with my appeal and at the hearing, also later supported by the Hearing Disposition form submitted for Case #1483, Crediting me with being on Pre-hearing Detention Status from 8/14, until 8/25/15. (See: EXHIBIT #34)

15) On or about 9/13/15, I submitted my level-II, appeal to the Regional Administrator (See: EXHIBIT #20) whom simply reiterated the level-I, responses (See: EXHIBIT #21) and never reviewed the Requested dispositive evidence of the Video footage of the incident in question, as I requested both levels of appeals to do.

16) On 8/17/15, I was served another 105-A, case #1503, indicating it was investigated by a Captain J. Still of R.O.S.P. and PHD was utilized on 8/17/15, by OSC L.T. CHURCH of W.R.S.P., scheduling a hearing for 8/25/15 (See: EXHIBIT #6(a)) This charge too was also generated and heard by W.R.S.P., then appealed to the Warden of W.R.S.P. a tactic implemented from a POST FACTO, revised 601.1 policy that did not come into effect until 2/16/16, Violated established policy (See: EXHIBIT #22(a) and (b))

17) Prior to the disciplinary hearing on 8/25/15, for Case #1503, The Requested Documentary evidence of the Written statement given by Officer G. RASNIK during this alleged investigation to contradict the Reporting Officers testimony was denied indicating: "Restricted for security reasons" and "... or otherwise restricted to the offender." (See: EXHIBIT #7(a) and (b))

(CONTINUED ON ATTACHED PAGE: FIVE)



18) During the hearing for Case #1503, conducted by Inmate Hearings Officer C. FRANKS of W.R.S.P., I invoked the right to give limited testimony because I was informed prior to the hearing (by Special Investigator Woods) STREET CHARGES were being sought but I still maintained my innocence of "Not hitting either officer as alleged and review of the requested exculpatory evidence requested would support my defense. Hearing Officer Franks repeatedly refused to review the available requested Video footage of the incident in question to draw an unbiased conclusion. Simply because Reporting Officer STILL alleged to have reviewed this footage and testified as to what "He" said, "He" saw (See: EXHIBIT # 8.) In clear Violation to my established Procedural Due Process right under the DUE PROCESS CLAUSE for "an accused to present exculpatory evidence on his behalf and having a hearing before an impartial decision-maker, but instead based his decision on "... the reporting officers testimony about what was viewed (HEARD by him) on the Video..." (See: EXHIBIT # 8.) Therefore, finding me Guilty of Aggravated Assault on a non-offender and punished me to 90 days loss of accumulated Good-time Credits, Credits that I already EARNED during the year (See: EXHIBIT # 22) affecting the length of Prisoners Confinement by a total of: 270 DAY (loss of accumulated already earned Good-time Credits) (See: EXHIBIT # 23, # 24(a), and # 24(b)).

19) On or about 9/21/15, I submitted my level-I, appeal to the Warden of W.R.S.P. raising clear violations to my ~~the~~ Procedural DUE PROCESS rights governing Offender Discipline in the Virginia Department of Corrections which included Violations to Operating Procedure Vol. 1, Sections IV & #3 (b)(c); XII C-1 & #3; XI A-1 & #2; IX B-4 (2283); and IX & #5. (See: EXHIBIT # 9)

20) On or about 9/28/15, I received my level-I, response to my appeal by way of a "MEMORANDUM PACKAGE", denying every Violation to my DUE PROCESS right raised Concerning Case #1503. (See: EXHIBIT # 10.) but the response given to Violations IX & #3 (b)(c), states erroneously: "The Issues were NOT Checked in Question #2, and #3, to indicate that you requested the Services of an ADVISOR..." (See: EXHIBIT # 6(a)) but review of the Regular Request form submitted as "ATTACHED" in my level-I, appeal clearly shows I did ask for an ADVISOR for this, and the several other charges I received clearly Violating Section IX & #3 (b)(c), because this charge DID show PHO was checked off on the Disciplinary Offense Report (See: EXHIBIT # 6(a)) and per this Section, "an offender can request the assistance of an ADVISOR at any time upon request while on PHO Status". (See: EXHIBIT # 5(b)).

21) On or about 9/28/15, I submitted my level-II, appeal to the Regional Administrator (See: EXHIBIT # 11) when No response to this level-II, appeal I submitted long before the appeal for Case #1461, never came, on 12/13/15, I wrote a letter to the Regional Administrator inquiring about the disposition of this appeal (See: EXHIBIT # 12(a)) Only to receive a Vague response letter dated: 12/8/15, with a Postmark date of: 12/31/15, way past the Time-frame provided for a level-II, response which leads me to believe the vague response letter given was clearly BACKDATED (See: EXHIBIT # 12(b)) without ~~even~~ reviewing the relevant Video of the incident in question, as requested.

22) Since these charges resulted in the loss of a total of: 270 DAYS already accumulated EARNED Good-time Credits, in accordance with FEDERAL EXHAUSTION requirements, on 1/26/16, I submitted to the SUPREME COURT of VIRGINIA a petition for Writ of HABEAS CORPUS, § 8.01-694 (4)(c), Record no. 160145, to exhaust the available state remedies concerning the issue raised in this petition. (See: EXHIBIT # 1.) That was DISMISSED on 6/10/16, based on I didn't raise a Cognizable Habeas Corpus Claim" (See: EXHIBIT # 1.).

(CONTINUED ON ATTACHED PAGE: ~~XXXX~~)

Attached page: ~~XXXX~~



cc:file

28 USC § 2254; Writ of HABEAS CORPUS petition

Continued from: SUPPORTING FACTS, in ATTACHED page: FIVE

23) On 7/4/16, I submitted a MOTION FOR RECONSIDERATION, based on the record submitted (on the merit) that was "RETURNED TO SENIOR", on 8/8/16, indicating: "INSUFFICIENT ADDRESS." (See: Exhibit #3(a), (b) and (c))

24) On 9/1/16, I then submitted another State HABEAS CORPUS petition, that's still under consideration. (See: Exhibit # )

25) On 2/7/16, I was informed of a Two (2) Count indictment for the alleged assault on Officer D. Hicks and E. RASNICK, in violation of Virginia Code § 18.2-57 (c), (Case # 195 CR 16 F 000-55-00, and #195 CR 16 F 000-55-00), where I was then taken to the Sheriff's Office and processed, then taken to the WISSE COUNTY CIRCUIT COURTHOUSE and arraigned, appointed Counsel and informed of a 5/27/16, Trial-Date.

26) On 4/5/16, during a Attorney Visitation with my appointed Counsel, I was informed the Video of the incident was in the possession of the WISSE COUNTY prosecutor and he planned to review the content of it soon. He also informed me of having BOTH officers written Statements and initial Reports sent to him during a "DISCOVERY" request on or about 3/31/16, (See: Exhibit #25) and that I will be getting Copies of everything soon.

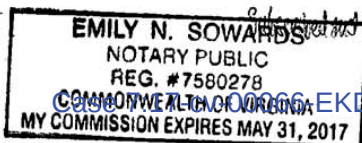
27) On 5/27/16, I received a Complete Copy of the "DISCOVERY" material from my appointed Counsel and given an Opportunity to review the actual "Critical Physical Evidence" of the Video footage of the incident in question for myself. I could not obtain any of the evidence to prove my innocence until discovery in the Criminal proceedings were Complete in or about 5/29/16, when the Video was shown to petitioner and Copies of both officers written Statements were obtained from Counsel, because the Special Investigative Unit or the prosecutor had these items in their possession and the petitioner is in the Custody of the Virginia Department of Corrections where possession of a Video Disk is prohibited. Being unable to obtain a "trustworthy eye witness" Affidavit from my appointed Counsel as to the Content of the Video Footage (he saw and was shown to me) (See: Exhibit #26(a) and (b)) Petitioner relies on the "newly-reliable evidence" of both officers initial written Statements and the item of this "Critical Physical Evidence" of the Video footage of the incident in question, STILL in the possession of the WISSE COUNTY prosecutor (Case file #195 CR 16 F-55-00)

28) This "newly-reliable" Critical Physical evidence of the Video clearly shows the injury to Officer Hicks' right eye was caused by a head-to-head Collision with Officer Rasnick, while petitioner was on the ground, face-down, fully restrained, causing it to bleed profusely. (See: Exhibit #29) and the written Statement of D. Hicks was clearly initially wrote as a "SIMPLE ASSAULT" (See: Exhibit #27) while the written Statement of Officer Rasnick was wrote on 11/5/15, (See: Exhibit #26) indicating the investigator Captain D. Still could not have based his testimony on Officer Rasnick's Statement as alleged in the Disciplinary hearing for Case #1503, on 8/25/15, nor his allegations as to "WHAT HE SAID, HE SAW" in the Video footage were true. Both newly-reliable items clearly contradicting his Reporting Officers testimony given in the hearing.

29) On or about 6/23/16, (See: Exhibit #28(b)) After bring the Video footage content to the attention of the WISSE COUNTY's prosecutor, he decided NOT to Continue to prosecute this Case after reviewing the irrefutable evidence on tape repeatedly requested to be reviewed during Both Disciplinary proceedings for Aggravated Assault but was DENIED.

STATE OF VIRGINIA  
CIRCUIT COURT OF: WISSE

James Wadd #1133749  
Respectfully Submitted



Emily N. Sowards  
Notary Public  
attached page: Six

Case# 195 CR 16 F-55-00 EKD-RSB Document 1 Filed 11/14/16 Page 20 of 26 PageID# 20

(Continued on page seven of petition)

## EXHIBITS & ATTACHMENTS

- #1 Supreme Court's Decision to Record No. 160145.
- #2(a) letter to the Supreme Court; dated: 6/16/16.  
(b) Response to letter; dated: 6/24/16.
- #3(a) Petition for Reconsideration; dated: 6/30/16.  
(b) AFFIDAVIT IN SUPPORT OF MOTION, w/ up-date sheet  
(c) Envelope of MOTION returned to sender.
- #4 AFFIDAVIT OF: G. WALL #1133749 w/ up-date sheet
- #5(a) Operational Procedure §61.1, section III, definitions  
(b) Operational Procedure §61.1, ~~§61.1~~ §61.1, #2, and #3 (a-c)
- #6(a) Disciplinary Offense Report; Case #1503.  
(b) Penalty Offer.
- #7(a) Request for Documentary Evidence.  
(b) Second Request for Documentary Evidence.
- #8 Hearing Disposition form for Case #1503.
- #9 Level-I, appeal (3 pages)
- #10 Level-I, appeal response from the Warden (8 pages)
- #11 Level-II, appeal (3 pages)
- #12(a) letter to Regional Administrator about Case #1503, appeal  
(b) Response Envelope (post marked 1/14/16)
- #13 Level-II, appeal response from the Regional Administrator.
- #14(a) Disciplinary Offense Report; Case #1401  
(b) Penalty Offer.
- #15(a) Request for Documentary Evidence.  
(b) Second Request for Documentary Evidence.  
(c) Witness Request form.
- #16 (a) Notice of Post ponement; dated:  
(b) Second Notice of post ponement; dated:
- #17 Hearing Disposition form for Case #1401.
- #18 Level-I, appeal (2 pages)
- #19 Level-I, appeal response from the Warden (8 pages)
- #20 Level-II, appeal (2 pages)
- #21 Level-II, appeal response from Regional Administrator (2 pages)
- #22(a) MEMORANDUM requested by Request form; dated: 9/25/16.  
(b) MEMORANDUM; dated: 11/24/15 (On record with petition #160145, as Exhibit #29)
- #23 Up-date Sheet; dated: 10/15/14.
- #24(a) Up-date Sheet; dated: 4/27/10.  
(b) Up-date Sheet; dated: 3/14/16.
- #25 Discovery letter provided Counsel in Criminal Case; dated: 3/31/16.
- #26 Written Statement of: Officer E. Rasmick; dated: 11/5/15.
- #27 Written (IRR-Report) Statement of: Officer d. Hicks
- #28(a) letter to Counsel seeking Affidavit; dated: 10/16/16.  
(b) Response letter from Counsel; dated: 10/21/16.
- \*#29 Video tape of the incident on 8/14/15\* item Requested in Motion for leave
- #30 AFFIDAVIT OF: G. WALL #1133749, concerning "newly-reliable evidence."
- #31 Operational Procedure §61.3, SPECIAL HANDLING; section III, definitions
- #32(a) Disciplinary Case #1405 (220) (On record with petition #160145, as Exhibit #24(a))  
(b) Disciplinary Case #1403 (201); (On record with petition #160145, as Exhibit #24(b))  
(c) Disciplinary Case #1400 (181); (On record with petition #160145, as Exhibit #24(c))
- #33(a) Request form to I.H.O.; dated: 8/14/15 (On record with petition #160145, as Exhibit #6)  
(b) Second Request form; dated: 8/17/15 (On record with petition #160145, as Exhibit #7)
- #34 Hearing Disposition form for Case #1403.
- #35 Doc-11 & form; dated: 8/14/15 (On record with petition #160145, as Exhibit #1)
- ~~#36 Disciplinary Case #1405 (220) (On record with petition #160145, as Exhibit #24(a))~~



**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Friday the 10th day of June, 2016.*

Gary Wall, No. 1133749,	Petitioner,
against      Record No. 160145	
Earl Barksdale, Warden,	Respondent.

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed January 26, 2016, the Court is of the opinion that petitioner's claims, which concern an institutional proceeding resulting in loss of good conduct or sentence credit are not cognizable in a petition for a writ of habeas corpus. This Court's habeas corpus jurisdiction includes "cases in which an order, entered in the petitioner's favor . . . will, as a matter of law and standing alone, directly impact the duration of a petitioner's confinement." Carroll v. Johnson, 278 Va. 683, 694, 685 S.E.2d 647, 652 (2009). The court's habeas corpus jurisdiction, however, does not extend to

disputes which only tangentially affect an inmate's confinement, such as prison classification issues concerning the rate at which a prisoner earns good conduct or sentence credits, or challenges to parole board decisions.

Id. It is therefore ordered that the petition be dismissed.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:

  
Deputy Clerk



IN THE SUPREME COURT OF VIRGINIA:

Name: Mr. Gary Wall

Number: 1133749

Place of Confinement: Red Onion State Prison

Post Office Box 1900, Pound Virginia 24279

Dated: June 16<sup>th</sup> 2016

Mr. Gary Wall #1133749

Petitioner

v.

Carl Banks State, Warden

Respondent

Record no. 160145

IN RE: LETTER RECEIVED FROM CLERK DATED: JUNE 10<sup>th</sup> 2016, in  
Record no. 160145

In writing concerning the letter dated: 6/10/16, received from your office indicating ... it's of the Courts Opinion my habeas Corpus raised only Claims NOT Cognizable in a petition for writ of habeas Corpus; and Therefore, my Petition be dismissed.

I disagree with this because at NO Time in my Petition did I raise or imply a Claim concerning those issues stated nor was this Dismissal in the form of an ORDER Signed by a Judge (Exhausting State level Remedies concerning the issues I did Raise). My habeas Corpus Petition filed on January 26<sup>th</sup> 2016, Clearly Raised Claims ALL Violations to the established procedural DUE PROCESS Clause resulting in the loss of a total of: 270 days of already EARNED accumulated Good-time Credits that would ... as a matter of law just standing alone, directly impact the duration of my Confinement; by a total of approximately nine (9) months!!

THEREFORE, I disagree with the Clerks Opinion and question if this dismissal is FINAL, if so, have it Confirmed by a Judge So I can proceed to the Federal Courts.

Gary Wall #1133749  
Respectfully Submitted

CERTIFICATE OF SERVICE

I hereby Certify that on this 16th day of JUNE 2016 I mailed a copy of the foregoing: RESPONSE TO CLERKS JUNE 10<sup>th</sup> 2016 LETTER, to respondent at: SUPREME COURT OF VIRGINIA, CLERK 100 NORTH 9th STREET 5th Floor, RICHMOND, VIRGINIA 23219, by First Class Mail.

Gary Wall #1133749  
Respectfully Submitted

(Page one of: 1)



**SUPREME COURT OF VIRGINIA**

**PATRICIA L. HARRINGTON, CLERK**

SUPREME COURT BUILDING  
100 NORTH 9TH STREET, 5TH FLOOR  
RICHMOND, VIRGINIA 23219  
(804) 786-2251 V / TDD  
FAX: (804) 786-6249

DOUGLAS B. ROBELEN  
CHIEF DEPUTY CLERK

June 24, 2016

Mr. Gary Wall, #1133749  
Red Onion State Prison  
P.O. Box 1900  
Pound, VA 24279

Re: Gary Wall v. Earl Barksdale, Warden  
Record No. 160145

Dear Mr. Wall:

With regard to your June 16 letter concerning the above case, the document dated June 10, 2016 that you received from this office was not a letter, but rather an order of the Court dismissing your habeas corpus petition. The Court has delegated to this office the responsibility for preparing the orders that memorialize the decisions made by the Court. The Clerk or a deputy clerk signs the order, certifying that it is an order of the Court.

If you disagree with the Court's decision in this case, you have 30 days from June to file a petition for rehearing with this office. Such a petition may not exceed 10 pages and must contain a certificate of service to the Attorney General.

Sincerely,

A handwritten signature in dark ink, appearing to read "DBR", followed by a horizontal line.

Douglas B. Robelen  
Chief Deputy Clerk

HABEAS CORPUS

IN THE SUPREME COURT OF VIRGINIA:

name: MR. GARY WALL

number: 1133749

Place of Confinement: Red Lion State Prison

Post Office Box 1400, POWERS, VIRGINIA 24779-1400

dated: June 30th 2016

MR. GARY WALL #1133749

Petitioner

KARL BARKSDALE; WARDEN

Respondent

Record No. 160145

IN RE: PETITION FOR RECONSIDERATION FOR § 3.01-654(A)(i),  
HABEAS CORPUS RECORD NO. 160145

Petitioner humbly ask this Court to Reconsider the Opinion of the Court that the Habeas Corpus Record no. 160145, filed on January 26, 2016, and Dismissed on June 10, 2016, because my Claims concern a ... Institutional proceeding resulting in the loss of Good Conduct or Sentence Credits that, as a matter of law, and standing alone, will NOT directly impact the duration of petitioners Confinement, but Petitioners ALREADY EARNED accumulated Good-time Credits detailed in the Attached AFFIDAVIT CLEARLY WOULD impact Directly, the duration of petitioners Confinement by a total of: 270 days.

"A 'GROUND' is defined as simply a legally sufficient legal basis for granting the relief sought by the applicant" (SEE: FAIR v. NORTON, 372 U.S. 391 (1963)).

Petitioners Ground(s) ONE and TWO, clearly raise an issue of the 90 days and 180 days of Petitioners ALREADY EARNED GOOD-TIME CREDITS being taken as a result of an UNCONSTITUTIONAL Institutional Disciplinary Proceeding.

As documented evidence on Record Shows, the Exhibits #24 and #25, Plaintiff earned a G.C.A. Level II, on September of 2014, in accordance with Virginia Code § 53.1-198 through 202, and maintained this G.C.A. earning level until September of 2015, therefore earning approximately 220 days of earned Good-time Credits and the Depravity of the 90 days and 180 days of loss accumulated Good-time as a result of denying Petitioner clearly established Procedural DUE PROCESS RIGHTS before taking any ALREADY EARNED GOOD-TIME CREDITS makes Petitioners Claims more than just a "Dispute which only tangentially affects an inmates Confinement" and is Cognizable under Habeas Corpus, since a prayer for appropriate Relief as Justice shall require by the restoration of the 270 days of ALREADY EARNED accumulated Good-time Credits taken was sought.

Gary Wall #1133749  
Respectfully Submitted

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of July 2016, I mailed Copies of the foregoing:  
PETITION FOR RECONSIDERATION FOR RECORD NO. 160145; to Respondents:

cc: THE SUPREME COURT OF VIRGINIA  
100 NORTH 9th STREET, 5th Floor  
Richmond, Virginia 23219

and the:

Attorney General's Office of Virginia  
900 EAST MAIN STREET

Richmond, Virginia 23219; by first class mail.

Case 7:17-cv-00066-EKD-RSB Document 1 Filed 11/14/16 Page 25 of 25  
Gary Wall #1133749  
Respectfully Submitted (EXHIBIT # 3 (2))



AFFIDAVIT OF: G. WALL #1133749.

Affiant, Mr. Gary Wall #1133749, do hereby state the following events took place, and this AFFIDAVIT is made of my own free will and under PENALTY OF PERJURY, I do here by State:

1. Affiant declares, LEGAL-up dated: 4/27/10, (SEE ATTACHED) Shows prior to EARNING a G.C.A. level II, in accordance with Virginia Code § 53.1-198 through 202, on September 2014, Petitioner's Projected Dates were:

Discretionary Parole Eligibility: 10/11/2013

Mandatory Parole Release: 11/16/2032

Good-Time Release: 6/16/2033

Adjusted Discharge: 30 days applied to MPRD

THEREFORE, his MANDATORY PAROLE or GOOD-TIME RELEASE Dates Should NEVER go past these dates AFTER I EARNED Good-time at a rate of 20 days for every 30 done (G.C.A. level II, 20/30) Without taking ALREADY EARNED GOOD-TIME CREDITS.

2. Affiant declares, LEGAL-up DATES ON RECORD Submitted with the Petition as Exhibits #14 and #15, CLEARLY Shows Petitioner earned a G.C.A. level II, at a rate of 20/30, on September of 2014, and maintained this G.C.A. earning level until September of 2015. Therefore, earning Good-time Credits of approximately 220 days for that year that were taken along with 50 days more from prior Good-time EARNINGS, totaling 270 days to satisfy the 90 day loss of accumulated Good-time Punishment for Case #1533, and the 180 days loss of accumulated Good-time Punishment for Case #1431, totaling: 270 days of already EARNED GOOD-TIME.

dated: June 30th 2016

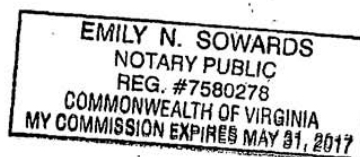
Gary Wall #1133749  
Petitioner's Attorney

STATE OF VIRGINIA:  
City/County of: Wise

Subscribed and sworn to before me, this 1st day of July, 2016.

Emily N. Sowards  
Notary Public

MY COMMISSION EXPIRES: May 31, 2017



**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 04/27/2010 3:24PM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1
<b>Current Class Level:</b> 4		<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b> 43 Years 19 Months 290 Days		<b>Parole Rev. Date:</b>
		<b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 11/16/2032  
**Good Time Release:** 06/16/2033  
**Adjusted Discharge:** 30 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 04/09/2010.

<b><u>Date</u></b>	<b><u>Description</u></b>
--------------------	---------------------------

03/17/2010	<b>Memo:</b> This update was generated for administrative purposes.
------------	---

(~~REDACTED~~)  
 (ATTACHMENT TO AFFIDAVIT OF: G. WALL #1133749)  
 (HABER'S CORPUS ATTACHED & ATTACHED #2)  
 (REDACTED)



By mail to the  
Office of the  
Board, Virginia State Prison

212

WELMAY

2323-24273 01500

15 in Supreme Court of Virginia  
100 North 4th Street, Room 500  
Richmond, Virginia 23219

2126

RETURN TO SENDER  
INSUFFICIENT ADDRESS  
UNABLE TO FORWARD

BC: 24279190000 2155-21551-03-0

KNOWVILLE TN 376  
FOR IT'S CONTENTS  
HAS NEITHER CENSORED OR INSPECTED  
ITEM THEREFORE, THE DEPARTMENT  
DOES NOT ASSUME ANY RESPONSIBILITY

RECEIVED

AUG 08 2016

MAILROOM

HABES CORPUS



IN UNITED STATES DISTRICT COURT of the WESTERN DISTRICT of VIRGINIA:

name: MR. GARY WALL

number: 1133749

Place of Confinement: Red Onion State Prison,

Post Office Box 1100, Pound, Virginia 24279-1900

dated: September 26<sup>th</sup> 2016

MR. GARY WALL #1133749

Petitioner

v.

EARL BARKSDALE, Warden of Red Onion State Prison,  
Respondent(s)

28 U.S.C. § 2254; HABEAS CORPUS

AFFIDAVIT OF: GARY WALL #1133749

Affiant, MR. GARY WALL #1133749, do hereby state the following events took place, and this Affidavit is made of my own free will and under PENALTY OF PERJURY, I do here by state:

1. Affiant declares, from SEPTEMBER 2010 until SEPTEMBER 2014, his G.C.A. level was at IV, 2 B, for 30, earning level in accordance with Virginia Code § 53.1-198, through 202, and his projected dates were:

Discretionary Parole Eligibility: 10/11/2013

Mandatory Parole Release: 11/16/2032

Good-time Release: 6/16/2033

Adjusted Discharge: 30 DAYS applied to NPRD

Indicating his MANDATORY PAROLE and GOOD-TIME RELEASE DATES should never go past these dates if any Good-time ~~was~~ EARNED, without DUE PROCESS, was taken during a Disciplinary Hearing. (SEE: ATTACHED # 1)

2. Affiant declares, on or about SEPTEMBER 2014, until approximately AUGUST 2015, his G.C.A. level was at II, EARNING 20 DAYS OF GOOD-TIME CREDITS for every 30 DAYS Done in accordance with VIRGINIA CODE § 53.1-198, through 202. Therefore, earned Good-time Credits of approximately 240 DAYS for that year (SEE: ATTACHED # 2) that was taken, along with 30 more DAYS from prior Good-time EARNINGS, totaling 270 DAYS to satisfy the 90 DAYS LOSS of accumulated Good-time Punishment for Case #1503, and the 180 DAYS LOSS of accumulated Good-time Punishment for Case #1481, totaling: 270 DAYS of already EARNED Good-time Credits taken (SEE: ATTACHED # 3) Altering the duration/length of Petitioner's Confinement.

dated: 9/26/16

Gary Wall #1133749  
Respectfully Submitted

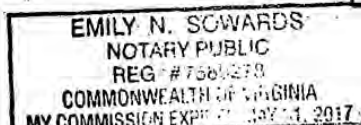
STATE OF VIRGINIA:

City/County of: WISE

Subscribed and Sworn to before me this 26<sup>th</sup> day of September 2016.

Emily N. Sowards  
Notary Public

MY COMMISSION EXPIRES: May 31, 2017



HABEAS CORPUS  
(EXHIBIT # 4)

**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 10/15/2014 11:49AM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1

<b>Current Class Level:</b> 2	<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b> 43 Years 19 Months 290 Days	<b>Parole Rev. Date:</b>
	<b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 07/28/2025  
**Good Time Release:** 12/13/2025  
**Adjusted Discharge:** 28 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 04/27/2010

<b><u>Date</u></b>	<b><u>Description</u></b>
09/06/2014	<b>Class Level:</b> 2

(ATTACHMENT TO AFFIDAVIT OF: G. WALL #1133749)  
 (SIGNED BY: J. [illegible])  
 (DATE: 11/14/16)



**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 03/14/2016 1:52PM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1
<b>Current Class Level:</b> 4		<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b>	43 Years      19 Months      290 Days	<b>Parole Rev. Date:</b> <b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 12/17/2032  
**Good Time Release:** 07/17/2033  
**Adjusted Discharge:** 30 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 10/15/2014

<b><u>Date</u></b>	<b><u>Description</u></b>
08/14/2015	<b>Disciplinary:</b> 105A - Aggravated Assault upon a non-offender Lost: 90 days SGT Applied: 90.00 days lost for Release U, Loss of Good Time for 90 days
08/14/2015	<b>Disciplinary:</b> 105A - Aggravated Assault upon a non-offender Lost: 180 days SGT Applied: 180.00 days lost for Release V, Loss of Good Time for 180 days
08/31/2015	<b>Class Level:</b> 4
09/06/2015	<b>Class Level:</b> 4 Change in GCA from 2 to 4.



# Operating Procedure

**Effective Date**

September 1, 2011

**Number**

861.1

**Amended**9/21/11, 1/17/12, eff. 7/1/12,  
6/25/12, eff. 12/1/12, 6/26/13,  
7/22/13, 10/3/13, eff. 5/1/14,  
2/19/15**Operating Level**

Department

**Supersedes**

Operating Procedure 861.1 (8/1/07)

**Authority**COV §53.1-25; §53.1-39; §53.1-188; §53.1-189;  
§53.1-202.4; §18.2-371.2; §18.2-390; §18.2-391  
BOC 6VAC15-31-300, 6VAC15-31-310**Subject****OFFENDER DISCIPLINE, INSTITUTIONS****ACA/PREA Standards**4-4226 through 4-4248, 4-4320; 2-CO-3C-01;  
§115.41, §115.52, §115.72, §115.78**Incarcerated Offender Access**Yes ☒No ☐**FOIA Exempt** Yes ☐ No ☒**Attachments** Yes ☒ #67 No ☐**Office of Primary Responsibility**

Deputy Director of Operations

**I. PURPOSE**

This operating procedure, to be known as the Offender Disciplinary Procedure, establishes the code of offenses, the penalties for violation of this code, and the disciplinary process for all offenders incarcerated in Department of Corrections institutions. (2-CO-3C-01)

**II. COMPLIANCE**

This operating procedure applies to all institutions operated by or under contract to the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws, Board of Corrections policies and regulations, ACA standards, and DOC directives and operating procedures.

**III. DEFINITIONS**

**Advisor** – A staff member or offender provided to assist an accused offender in the disciplinary process.

**Assault** - Simple Assault is intentional, impermissible physical contact by one person upon another, where the victim does not suffer serious injury. Aggravated Assault is intentional, impermissible physical contact involving a weapon and/or resulting in serious injury or committed with the intent to inflict serious injury.

**Calendar Day** - Any 24-hour day regardless of weekends or holidays

**Discovery of an Offense** - The time that facts sufficient to establish an offense has been committed and the accused offender was involved in its commission come to the attention of the employee writing the *Disciplinary Offense Report*

**Documentary Evidence** - Written information relevant to the *Disciplinary Offense Report*, which is in the possession of the facility. Offenders may only use the *Request for Documentary Evidence* to obtain documents that are normally accessible to the offender.

**Employee** - A person who is paid by the Department of Corrections on an hourly, salaried, or contractual basis, or who is paid by another state agency for working in a position within the perimeter of a DOC facility or in a position which supervises offenders.

**Good Time** - For purposes of this procedure, "good time" refers to Good Conduct Time (GCT), Good Conduct Allowance (GCA) and the equivalent Earned Sentence Credits (ESC).

**Informal Resolution** – A process whereby eligible offenders accused of less serious infractions may accept a disciplinary penalty and avoid the infraction becoming part of the offender's permanent record.

**Institutional Classification Authority (ICA)** - The facility staff person designated to conduct offender



completeness and accuracy of the information.

2. Consider the need for Pre-Hearing Detention.
3. Return the report for revision, if necessary
4. Ensure the offense code title corresponds to the alleged offense description
5. Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer, or any relevant witness to obtain additional information, if necessary to determine if sufficient information exists to notify the offender that a *Disciplinary Offense Report* is being brought against him/her (4-4234)
6. Before disciplinary action is taken against an offender assigned to a Mental Health Unit, housed in Special Housing for a mental health reason (e.g. suicide watch), or against an offender who may be intellectually limited or mentally disordered to the extent they did not know what they were doing the OIC will contact a QMHP to assess the following: (§115.78[c]) (changed 9/21/11)
  - a. Whether the offender can be considered responsible for the offense
  - b. Whether the offender is considered capable of understanding a penalty offer
  - c. Whether the offender is capable of participating effectively in the hearing
  - d. Whether being placed in isolation disciplinary segregation would be detrimental to the offender
  - e. The OIC will ensure that an Offender Mental Health Assessment (861\_F2) is completed and forwarded to the IHO along with the *Disciplinary Offense Report*;
7. Enter the Scheduled Hearing date in VACORIS
8. Following review of the *Disciplinary Offense Report*, the Officer-in-Charge may take one or more of the following actions:
  - a. Not process the *Disciplinary Offense Report* due to lack of evidence or other irregularities and inform the offender
  - b. Dispose of the *Disciplinary Offense Report* informally by discussing it with the offender (OIC not process in VACORIS with explanation in *Comment*)
  - c. Prepare an *Informal Resolution*, if appropriate, or prepare a *Penalty Offer* and arrange to serve the *Disciplinary Offense Report* on the offender.
  - d. Refer all cases where criminal violations are suspected to Facility Unit Head to consider referral to a law enforcement agency. The appropriate law enforcement official will be notified where referral for criminal prosecution is warranted. (4-4231)

#### G. PRE-HEARING DETENTION

1. Until the Disciplinary Hearing, offenders may remain in their existing status unless they pose a threat to persons, property, or facility security.
2. In accordance with Operating Procedure 861.3, *Special Housing*, only the OIC or a higher authority can authorize Pre-Hearing Detention (PHD). While in PHD, the offender's status shall be reviewed in accordance with Operating Procedure 861.3, *Special Housing* and Operating Procedure 830.1, *Facility Classification Management*. (4-4235)
3. When PHD is utilized, the offender will be provided assistance; if requested, to:
  - a. Obtain names of witnesses
  - b. Meet with an offender or staff advisor
  - c. Otherwise prepare a defense
4. The IHO shall credit time spent in PHD or any other detention status, if the assignment was due to

COPY



VIRGINIA DEPARTMENT OF CORRECTIONS

Disciplinary Offense Report

861.1 A-1

Report generated by Church, W L

Report run on 08/17/2015 at 3:01 PM

INK 1

Case #: ROSP-2015-1503 Reference: \_\_\_\_\_  
 Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
 Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
 Offense Date: 8/14/2015 Time: 4:05 PM Location: \_\_\_\_\_

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On August 14, 2015 at approximately 4:05 pm offender G. Wall did assault Officer E. Rasnick by puching him repeatedly resulting in injulres to the officer that were treated outside Red Onion State Prison by Mountain View Regional Medical Center. The basis of the charge is the result of an investigation completed August 17, 2015. Interviews of the victims and a review of security footage were completed and provided the factual knowledge in writing this charge.

☐ Description Continued on attached

Witnesses: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Submitted by Reporting Officer: \_\_\_\_\_  
 Still, D A

Date: 8/17/2015 Time: 2:39 PM

Title: Captain

☐ Witnesses continued on attached

☒ Investigation Completed Date: 8/17/2015

☒ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/17/2015 Time: 3:00 PM

Print Name: Church, W L

Title: Lieutenant

ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a WAIVER of the first three rights. The following forms are available to the offender UPON REQUEST in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within 48-HOURS of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING? Advisor Name: _____	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer. <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/17/15

Time: 3:15

Date set for Hearing: 8/25/2015

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

COPY





## VIRGINIA DEPARTMENT OF CORRECTIONS

861.1 A-2

## Penalty Offer

Report generated by Church, W L

Report run on 08/17/2015 at 3:02 PM

Case #: ROSP-2015-1503  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
Offense Date: 8/14/2015 Time: 4:05 PM Location: \_\_\_\_\_

## Part I

I have reviewed the facts and circumstances of this offense and your institutional record.  
I offer the following penalty:

Loss of all accumulated SGT - All

Days Suspended: \_\_\_\_\_

☒ for the above listed offense, or☐ Penalty continued on attached☐ for a lesser-included offense of \_\_\_\_\_

Staff Signature: \_\_\_\_\_

Date: 8/17/15Time: 3:00p

Print Name: \_\_\_\_\_

Church, W L

Title: \_\_\_\_\_

Lieutenant

NOTE: All three copies of the penalty offer form are to be served on the offender. After completing Part II of this form, the third copy of the form is to be forwarded to the Hearings Officer. The first and second copies are to be given to the offender.

## Part II

By signing below, I indicate that I have been advised of my rights to enter into or refuse this penalty offer. I understand that I accept the penalty offer indicated above:

1. I will waive my right to a Disciplinary Hearing, including any right I may have to present witnesses or other evidence in my behalf, as well as any right I may have to ask questions of anyone who may have given a statement against me; and
2. I will plead guilty to the offense specified in the offer and accept the penalty indicated; and
3. Any appeal of this offense will be limited to a determination of whether there was an acceptance of a penalty offer and whether there was any serious procedural error. No other reasons for an appeal will be considered;
4. I have 24-hours from the date the charge is served to accept this offer and I will be provided the opportunity to consult with an advisor, upon request;
5. If I do not accept the penalty offer, this offense will be referred for a Disciplinary Hearing; I will have the right to enter a not guilty plea at the hearing and this penalty offer will in no way influence the outcome of the hearing or the severity of any penalty imposed as a result of the hearing;
6. If I fail to respond to this offer within the time limit specified, the offer will be terminated and the offense will be referred for a Disciplinary Hearing as indicated in #5 above.

Offender Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Serving Officer Signature: \_\_\_\_\_

Date: 8/17/15Time: 3:15

Print Name: \_\_\_\_\_

Title: Secretary

This offender has refused to sign in the space above. I certify that this agreement was served, and that the offender has been advised of the conditions of acceptance.

Staff Signature: \_\_\_\_\_

Date: 8/17/15Time: 3:15

Print Name: \_\_\_\_\_

## Part III

Choose only one (1) option and sign below. Refusal to choose an option and sign constitutes refusal of the offer.

- ☐ I ACCEPT the penalty offer as indicated in Part I and I understand and accept the conditions as stated in Part II above. My acceptance of this offer is totally voluntary. NOTE: Your signature accepting this offer must be in the presence of a staff member.
- ☐ I DO NOT ACCEPT the penalty offer and understand that I will be afforded a Disciplinary Hearing.
- ☐ The offender has failed to respond to this penalty offer within the specified time limits.

Offender Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

I certify that I have received this form and that the above offender has signed in my presence.

Staff Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Print Name: \_\_\_\_\_

Note: After the offender accepts/declines the offer, the original is forwarded to the Hearings Officer by the witnessing staff member and the second copy is given to the offender.

Report run on 08/17/2015 at 3:02 PM

Page 1 of 1

Rev. 03/30/2009



**Request for Documentary Evidence**

*one of 2, Documentary Request form  
Submitted for 105-A*

Case Number: RASD-2015-1503  
Offender Name: Garry Wall Offender Number: 113349 Housing: A-1 G8-1067

\*\*\*\*\*

**Part I - Offender Request for Documentary Evidence**

Complete this form and submit to the Hearings Officer within **48-hours (excluding weekends and holidays)** of service of the charge. If you are in need of assistance to complete this form, request the services of an advisor. Only written documentary evidence or photographs can be requested using this form.

Note: This form shall not be used to obtain information outside of the institution, to obtain information restricted for security reasons such as video and audio recordings, to request physical evidence, or otherwise restricted by procedure.

I request the following documentary evidence for the above offense:

Describe documentary evidence: Interview Statements Conducted by Captain Still (of both officers)

Who possesses this information: Captain D.A. Still and/or Investigative Unit at R.D.S.P.

Describe how this information is relevant to your charge: Reporting Officer Captain D.A. Still, says his investigation was "completed after interview of both officers and his review of Security footage — Officer Rosnick's statement should be on record and provided for inconsistencies with the actual Security Video footage, available and any detailed description of his actions (Repeating him)

**Medical Release:**

As the person signing this consent, I understand that I am giving permission to Medical Department staff to release the requested information from my medical record directly to the Hearings Officer.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: A witnessing signature is only necessary when the offender is requesting information from his medical record. Any employee of the institution can witness the offender's signature.

\*\*\*\*\*

**Part II - Hearings Officer's Review**

Based on the accused offender's statement regarding the above requested information, it is determined that:

- ☐ INFORMATION **RELEVANT** – Hearings Officer will obtain information, if such information exists.  
☐ INFORMATION IS **NOT RELEVANT** – Hearings Officer will not obtain information requested.  
☒ INFORMATION **WILL NOT BE OBTAINED** due to being from an outside source, restricted for security reasons such as video and audio recordings, information is not written documentation, or is otherwise restricted to the offender.  
☐ REQUEST **DENIED** – offender failed to submit request within 48-hours to the Hearings Officer.  
☐ REQUEST IS **INCOMPLETE** and will not be processed

Hearings Officer: [Signature] Date: 8-18-15

If the information is relevant, an attempt will be made to locate the information requested. If the information is not relevant, an attempt will not be made to locate the information. This form will be made a part of the disciplinary record regardless of the disposition. The offender will be advised of the disposition of this request at least one half hour prior to the hearing.

Revision Date: 2/3/15





**Request for Documentary Evidence**

Page 2 of 2; Documentary Request  
Submitted for 105-A

Case Number: RPSB-2015-1503  
Offender Name: Cravins, Bill Offender Number: 1137709 Housing: A-1 GP-136T

\*\*\*\*\*

**Part I - Offender Request for Documentary Evidence**

Complete this form and submit to the Hearings Officer within **48-hours (excluding weekends and holidays)** of service of the charge. If you are in need of assistance to complete this form, request the services of an advisor. Only written documentary evidence or photographs can be requested using this form.

Note: This form shall not be used to obtain information outside of the institution, to obtain information restricted for security reasons such as video and audio recordings, to request physical evidence, or otherwise restricted by procedure.

I request the following documentary evidence for the above offense:

Describe documentary evidence: Request Review of the available three (3) Rapid-Eye Security Cameras of ADPA-100 pod on 3/11/15, at approx. 4:00 until 5:00 pm (Not for offender possession, requesting C.H.O. to review)

Who possesses this information: ADPA Building Unit Manager / Investigation Unit at RPSB

Describe how this information is relevant to your charge: Reporting Officer Captain D.A. Still, says review of this security video footage provided the factual knowledge in writing this charge. Since I have hit, punched, or attacked other officers alleged to initiate this confrontation so if there is ANY video footage available, knowing I hit Officer Plaznick repeatedly, it should be provided.

**Medical Release:**

As the person signing this consent, I understand that I am giving permission to Medical Department staff to release the requested information from my medical record directly to the Hearings Officer.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: A witnessing signature is only necessary when the offender is requesting information from his medical record. Any employee of the institution can witness the offender's signature.

\*\*\*\*\*

**Part II - Hearings Officer's Review**

Based on the accused offender's statement regarding the above requested information, it is determined that:

- ☐ INFORMATION **RELEVANT** – Hearings Officer will obtain information, if such information exists.
- ☐ INFORMATION IS **NOT RELEVANT** – Hearings Officer will not obtain information requested.
- ☒ INFORMATION **WILL NOT BE OBTAINED** due to being from an outside source, restricted for security reasons such as video and audio recordings, information is not written documentation, or is otherwise restricted to the offender.
- ☐ REQUEST **DENIED** – offender failed to submit request within 48-hours to the Hearings Officer.
- ☐ REQUEST IS **INCOMPLETE** and will not be processed

Hearings Officer: WR Date: 8-18-15

If the information is relevant, an attempt will be made to locate the information requested. If the information is not relevant, an attempt will not be made to locate the information. This form will be made a part of the disciplinary record regardless of the disposition. The offender will be advised of the disposition of this request at least one half hour prior to the hearing.

Revision Date: 2/3/15

DISCIPLINARY OFFENSE REPORT (continued)

Case #: ROSP-2015-1503 Reference:   
Offender Name: Wall, Gary L. DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T

DISCIPLINARY HEARING

Facility where heard: Wallens Ridge State Prison Date: 8/25/2015 Time: 10:38 AM

Tape No(s):

Plea: ☐ Guilty ☒ Not Guilty ☐ No Plea Offender's Signature: 

Reason for Absence/Exclusion of the Accused Offender:

Was the Reporting Officer present at the hearing? ☐ Yes ☐ No

NOTE: The personal appearance of the Reporting Officer at the hearing is not required for Category II Offenses.

Was there a denial of requested Witnesses? ☐ Yes ☐ No and/or Documentary Evidence? ☐ Yes ☐ No

If yes, refer to the Witness Request Form or the Documentary Evidence Request Form for the reason why the request was denied.

Decision of Hearings Officer: ☒ Guilty ☐ Not Guilty ☐ Offender Accepted Penalty Offer  
☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty ☐ Vacated for Rewrite/Re-serve  
☐ Vacated Offender waived rewrite/serve of offense ☐ Dismissed

Reason for Decision:

Offender Wall said that he did not hit anyone. Captain Still testified that he investigated the altercation between offender Wall and officer Rasnick. The video showed officer Rasnick coming to the aid of another officer that was having trouble with offender Wall and that in the process the officers ended up on the floor. Captain also said that as a result of the altercation officer Rasnick had to be treated at an off site medical facility (Mountain View Regional Medical Center) for his knee and a mark under his eye that looked like it was caused by a blow. Officer Rasnick has not yet returned to work because of the altercation. Offender Wall was found guilty on the reporting officer testimony about what was viewed on the video, along with the injuries that officer Rasnick received.

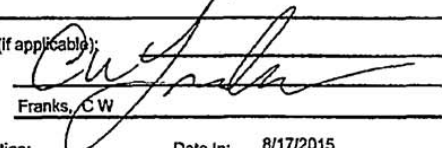
Penalty: Loss of SGT up to 90 Days - Imposed Value: 90 Days

☒ for the above listed offense, or  
☐ for the following lesser included offense

☐ Penalty continued or attached

Comment:

Name of Interpreter/Translator (if applicable):

Hearing Officer's Signature: 

Date: 8/25/2015

Print Name:

Franks, CW

Admitted to Pre-Hearing Detention:

Date In: 8/17/2015

Date Out:

Admitted to Isolation:

☐ Yes ☒ No

Date In:

Date Out:

INSTITUTIONAL REVIEW:

☒ Approved

☐ Dismissed

☐ Suspended Penalty

☐ Reduced Penalty

☐ Rehear

☐ Reduced to Lesser-Included Offense

Comment:

Penalty: Loss of SGT up to 90 Days - Imposed Value: 90 Days

☒ for the above listed offense, or

☐ for the following offense of

☐ Penalty continued on attached

Signature: 

Date: 8/27/2015

Print Name: Cope, NP

Title: Captain

RECEIPT OF APPEAL COPIES:

☐ Offender intends to appeal

☐ Offender does not intend to appeal

This is to certify that I have received a copy of this report and have been advised of my right to appeal the decision to the Facility Unit Head (Category I and II Offenses) and to the Regional Director (Category I Offenses only).

Offender's Signature:

Date:

Staff Witness Signature:

Date:

Print Name:

Title:

Report run on 08/27/2015 at 8:04 AM

Page 2 of 2

Rev. 03/30/2009





## Disciplinary Appeal

From: Offender Name: Mr. Gary Mall #: 1133749 Delta-102  
Facility: Wallers Ridge State Prison  
Case #: R.O.S.P. 2015-1503 Offense Date: 8/14/15  
Offense Code: 105-A Offense Title: Aggravated Assault upon a non-offender  
Hearing Date: 8/25/15 Penalty: Loss of 90 Days S&T (Good-time)

☒ **LEVEL I APPEAL - SEND TO THE FACILITY UNIT HEAD**

NOTE: The appeal to the Facility Unit Head must be submitted within 15 calendar days from receipt of the completed Disciplinary Offense Report. Staff can access all disciplinary documents in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

☐ **LEVEL II APPEAL - MAIL TO:**

Offender Discipline Unit Department of Corrections, P. O. Box 26963, Richmond, VA 26963

NOTE: Only Category I convictions can be appealed to Level II. Category II convictions cannot be appealed to Level II, except for a reason specified in the Appeal to Regional Administrator (Level II) section of Operating Procedure 861.1, *Offender Discipline*.

New appeal issues will not be considered at this level. Only those issues raised by the offender in the Level I appeal to the Facility Unit Head or in the response from the Facility Unit Head will be considered.

The Level II appeal must be submitted within 15 calendar days from receipt of the response from the Facility Unit Head. Staff can access all disciplinary documents including the Facility Unit Head's response in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

List your issues for appeal: I base my appeal on the CLEAR Violations to my DUE PROCESS Rights and Violations to 861.1 IX G #3 (b & c), XV C #7, XI D #3, XI A #1 & 2, X B #4 (2 & 3) and IX F #5 of the  
established written Operational Procedures governing Offender Discipline

= Section IX G #3 (b & c); Clearly States: When PHD is utilized, the offender will be provided assistance, if requested, to: (b) meet with an advisor, and (c) otherwise prepare a defense. If a clearly Requesting BOTH by way of the 8/14/15, Regular Request form to the L.H.O. (See attached) and being DENIED was in Violation of this section.

= Section (c) XI C #7 & XI D #3; Clearly States: "If the offender Requests the Review of a Video/Audio Recording... the need to Review Such is determined by the L.H.O." Since the L.H.O. Simply determined that the Request for Documenting Evidence form was the wrong form to Request Such Review (disregarding the 8/14/15, Request Submitted by offender (see attached #2) & Request at the hearing) nor State: "WHY" this evidence Requested was determined NOT to be necessary or Relevant for Review was also, in Violation of XI D #3, which States: "The L.H.O. SHALL Rule on all matters of evidence." This important dispositive evidence Requested not ONLY supports my defense of the ~~accused~~ accused; initial description of Offense Given by the Reporting Officer... (Continued on next

Level I Appeals Only: Staff must sign and date below and provide a copy of this form within two working days to the offender as a receipt of their Level I appeal.

Date Appeal Received 9/8/15

Staff Signature: J. Ellis

Additional pages may be attached as needed.

Revision Date: 8/4/1.



Continuation of Level-I, appeal of 105-A, Charge

... Captain D. Still of: "G. Wall did assault Officer Rasnick by punching him Repeatedly Resulting in injuries..." but Contradicts his Verbal Testimony of; (as stated for the Reason for a Guilty Decision & detailing what the Video actually showed) "The Video showed Officer Rasnick coming to the aid of another officer... and in the process the Officers ended up on the floor". At No Time, is it even mentioned, implied, or described in any fashion the Video showed me Repeatedly punching Officer Rasnick, causing his injuries.

Aggravated Assault is defined under Operational procedure 961.1 section III, as: "the intentional incommunicable physical contact... with the intention to cause serious injuries".

By Captain Still's testimony of: "The mark under his Right eye looked like it was caused by a blow", but never did he say or indicate the Video showed that that blow "came from G. Wall (or it was intentionally done to cause serious injuries by him)" further proves the Video never showed what was initially stated in the Offense Report as alleged.

The fact that the T.H.O. would Refuse to even Review this Video footage himself, clearly indicated he was not of being an impartial - fact finder in this hearing (he simply took the Reporting Officers account of what he said HE saw on the Video) in Violation of 961.1 VI D#2 & 2.11.

Section II A #1 & 2; Clearly states: "At the Offenders Request... or if OTHER limitations that may interfere with their ability to prepare for... the disciplinary hearing, the T.H.O. SHALL appoint an advisor to assist the offender (NOT to be mistaken - an advisor provide in Right III B). On 8/17/15, I sent a request form to the T.H.O. Requesting assistance of an advisor to help me prepare a defense for these allegations - Since I was in Medical (with a fractured left hand (my writing hand)), I was Newly Received from R.O.S.P. on 8/14/15, on an Emergency transfer without ANY of my property including access to the Offender Det. 1, in which, I also Requested but was DENIED!!

Section II B #4 (2.5) i also clearly states an Offender has, "the Right to Request... assistance of an advisor <sup>from</sup> with Completing the Witness Request form & Request for Documentary Evidence forms". In which I also Requested the 8/17/15, Request to the T.H.O.

Section VI C #1; Clearly states: "if the Offender Requests the Review of a Video/audio Recording... the need to Review such is determined by the T.H.O.", Since this Requested was made on 8/16/15, and during the hearing to Confirm my Verison & Support my defense of to these allegations.

Section IX F #5; States the P.T.C. will... "Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer(s), or any Relevant witnesses to obtain additional information if necessary to determine if sufficient information exists to notify the Offender a Disciplinary Offense Report is being brought against him (4-11234). None of this was done Because... Continued on Back Side ->

OVER



Per Operational Procedure #00.5; transfers; facility Reassignment, Section IV J# 8 (2) (ii) (b), States the SENDING facility will conduct a I.C.A. BEFORE transfer or the Reporting Officer will provide a signed written Statement describing the pertinent facts & actions" and Section IV #8 (2) (ii) (c) through (e), also states: "the following Documents are to be forwarded to the RECEIVING facility with the offenders Records at the time of transfer:

- (a) I.C.A. indicating the Reason for transfer;
- (b) Reporting Officers Original written Statement;
- (c) Any untimed disciplinary infractions as well as the Originals of any infractions; and
- (4) —

(e) Other pertinent documents, Statements and/or Reports concerning the incident and/or transfer.

I believe, Since I never Received an I.C.A. (or Notice thereof) prior to my transfer to W.R.S.P. on 8/11/16, the Signed written Statement from the Reporting Officer(s), were used at W.R.S.P. to Generate the disciplinary Offense Report without Conducting any of B.G.1 section IX F #5, because the Rapid-Eye Security Camera footage at R.O.S.P. Could NOT be reviewed at W.R.S.P. to Confirm any of the allegations by the Reporting Officers Statements or obtain any additional Relevant witnesses information (because they too were at R.O.S.P. in BLAA-100 pad).

I humbly ask that the next-L, review the available Video footage to see this was NOT an offender on Staff assault as alleged but an assault on an offender.

September 6<sup>th</sup> 2015

Jenny Wolf #1103-1119  
Respectfully Submitted

Attached page to Disciplinary Appeal  
level - I, for a 105-A Change



VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

COPY

86.1.1 A-1

Report generated by Church, W L

Report run on 08/17/2015 at 3:01 PM

IRK1

Case #: ROSP-2015-1503 Reference: \_\_\_\_\_  
 Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
 Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
 Offense Date: 8/14/2015 Time: 4:05 PM Location: \_\_\_\_\_

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On August 14, 2015 at approximately 4:05 pm offender G. Wall did assault Officer E. Rasnick by punching him repeatedly resulting in injuries to the officer that were treated outside Red Onion State Prison by Mountain View Regional Medical Center. The basis of the charge is the result of an investigation completed August 17, 2015. Interviews of the victims and a review of security footage were completed and provided the factual knowledge in writing this charge.

☐ Description Continued on attached

Witnesses:

Submitted by Reporting Officer:

Still, D.A.

Date: 8/17/2015Time: 2:39 PMTitle: Captain
☐ Witnesses continued on attached

☒ Investigation Completed
Date: 8/17/2015
☒ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/17/2015Time: 3:00 PM

Print Name: \_\_\_\_\_

Church, W L

Title: Lieutenant

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a WAIVER of the first three rights. The following forms are available to the offender UPON REQUEST in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within 48 HOURS of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING? Advisor Name: _____	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER, IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer. <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/17/15Time: 3:15Date set for Hearing: 8/25/2015

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

COPY

Page 1 of 2

Rev. 03/30/2009



## MEMORANDUM

Wallens Ridge State Prison

Warden: Leslie J. Fleming

To: Wall, Gary #11733749

From: L. J. Fleming, Warden

Subject: Disciplinary Hearing Appeal

Offense Code: 105A Dated: 08-14-15 Tape # ROSP -VR-2015-1503  
Tape Number was uploaded on CORIS as ROSP-2015-1203

Date: September 15, 2015

I have reviewed your appeal of the conviction of the above-stated offense, including your statement of appeal, the tape recording of the disciplinary hearing, and all other relevant material.

{On what do you base your appeal?}

**You state:** I base my appeal on the clear violations to my due process rights and violations to OP 861.1 IX. G. #3 (B & C), XV, C. #7, XV, D. #3, XI. A. #1 & 2, X. B. #4 (2 & 3) and IX. F. #5 of the established written OP governing offender disciplines.

*According to the Disciplinary Offense Report you requested an advisor to assist you at the hearing. The boxes were not checked in Q#2 and #3 to indicate that you requested the services of advisor for witnesses and documentary evidence. You did receive several charges on the same date and you received disciplinary documentation as requested for each of the charges. You made no mention during this particular hearing that you had not received the documentation that you asked for or that you required documentation other than the two Documentary Evidence Forms that you submitted for this case. Concerning the request to review the security camera, Mr. Franks advised you at the hearing that Capt. Still had reviewed that evidence as a part of his investigation and testified as to what he witnessed during the hearing. Mr. Franks based his decision of guilt or innocence based on a preponderance of the evidence that was submitted. Your request for an advisor has been addressed. You also submitted two Offender Request Forms in which Hearings Officer Hensley replied that you had been given a staff advisor and instructed you where to send all disciplinary documentation. The Serving Officer indicated that he read you your rights when he served the charge and also signed the document to show that you refused to place your signature on the charge. Captain Still indicated on the DOR that he*

Wall, Gary #1133749

Disciplinary Appeal Hearing

Offense Code: 105A Dated: 08-14-15

Tape #: ROSP-2015-1503

Page: 2

Date: September 15, 2015

*completed an investigation which included the review of the Rapid Eye camera. That investigation did not have to include you in the interviewing process.*

Section IX. G. #3 (b & c) clearly stated when PHD is utilized, the offender will be provided assistance if requested, to (b) meet with an advisor and (c) otherwise prepare a defense. After clearly requesting both by way of the 8/17/15, regular request form to the IHO (see attached) and being denied was in violation of this section.

*According to the DOR for this particular offense, you were given the documentation that you requested and the assistance that you requested. You did not mention during the hearing that you had not received the necessary tools to prepare your defense. The Request Forms you submitted were answered by Hearings Officer Hensley who advised you that the Serving Officer acted as your advisor during the service of the charge. Assistance was granted according to your responses.*

Section XV. C. #7 and XV D. #3 clearly states if the offender requests the review of a video/audio recording the need to review such is determined by the IHO. Since the IHO simply determined that the request for documentary evidence form was the wrong form to request such review (disregarding the 8/16/15 request submitted by offender) (see attached #2) and requested at the hearing and no one stated "why" the evidence requested was determined not to be necessary or relevant for review was also in violation of XV. D. #3 which states the IHO shall rule on all matters of evidence. This important disposition evidence requested not only supports my defense of the initial description of offense given by the Reporting Officer, Capt. D. Still of "G. Wall did assault Officer Rasnick by punching him repeatedly resulting in injuries" but contradicts is verbal testimony of (as stated for the reason for a guilty decision and detailing what the video initially showed), the video showed Officer Rasnick coming to the aid of another officer and in the process the officers ended up on the floor. At no time is it ever mentioned, implied, or described in any fashion the video showed me repeatedly punching Officer Rasnick causing his injuries. Aggravated assault is defined under OP 861.1, Section III as the intentional impermissible physical contact...with the intent to cause serious injuries. By Capt. Still's testimony of "The mark under his right eye looked like it was caused by a blow," but never did he say or indicate the video showed that blow came from G. Wall (or it was intentionally done to cause serious injuries by him) further proves the video never showed what was initially stated in the Offense Report as alleged. The fact that the IHO would refuse to even review the video footage himself clearly indicated he was not of being an impartial fact finder in this hearing (he simply took the R/O's account of what he saw on the video) in violation of OP 861.1 VD. D. #2 and #11.



Wall, Gary #1133749

Disciplinary Appeal Hearing

Offense Code: 105A Dated: 08-14-15

Tape #: ROSP-2015-1503

Page: 3

Date: September 15, 2015

*It is at the discretion of the Hearings Officer whether or not to review the security camera. Mr. Franks in this instance informed you that Capt. Still had looked at the Rapid Eye camera and would testify according to what he had observed during the hearing. There is no form required to request a review of the camera and Mr. Franks simply informed you of that fact. The evidence that Capt. Still testified to was that he saw you take a swing at C/O Rasnick when that officer attempted to handcuff you. C/O Hicks then came to you aid C/O Rasnick and all three of you fell to the floor while you continued to fight the officers. C/O Rasnick sustained injuries to his knee and eye which were serious enough to require treatment at the local hospital. You had the opportunity to ask questions of Capt. Still and you did not ask him point blank if you caused the injuries. Based on his testimony it would indicate that the fight that ensued was a result of your refusal to be handcuffed and you told the officers, "Don't fucking touch me." Based on a preponderance of the evidence it would seem that you were agitated by the officers and fought them due to that agitation. You denied that you repeatedly punched the officer but Capt. Still's testimony upon reviewing the video cannot be dismissed or ignored. You did not say much in your own defense as you seemed concerned about a "street charge" in which your testimony at this hearing may be used against you. Hearings Officer Franks did not review the camera simply because Capt. Still had reviewed the Rapid Eye and testified according to what the R/O witnessed. There was no indication that Mr. Franks was unfair or biased in this case.*

Section XI. A #1 & 2, clearly states "at the offender's request or if other limitations that may interfere with their ability to prepare for...the disciplinary hearing, the IHO shall appoint an advisor to assist the offender (not to be mistaken for advisor proved in Right XIV. D). On 8/17/15 I sent a Request Form to the IHO requesting assistance of an advisor to help me prepare a defense for these allegations. Since I was in Medical (with a fractured left hand my writing hand) I was newly received form ROSP on 8/14/15 on an Emergency transfer, without any of my property including access to OP 861.1 in which I also requested but was denied.

*This issue has already been addressed previously. You were given documentation and information relative to the way the Disciplinary Report had been completed. You did submit Requests Forms to the Hearings Officer which were answered. You had several charges on the same day and you made no mention as to which charge you had not received assistance or documentation. You also did not say anything during the hearing for this charge that you had not received the assistance or documentation that you requested.*

Wall, Gary #1133749

Disciplinary Appeal Hearing

Offense Code: 105A Dated: 08-14-15

Tape #: ROSP-2015-1503

Page: 4

Date: September 15, 2015

Section X. B. #4 (2 & 3) also clearly stated an offender has the right to request assistance from an advisor with completing the Witness Request Form and Request for documentary evidence forms in which I also requested on the 8/17/15 request to the IHO.

***You did not submit any Witness Request Forms in this case. There was no indication that you were not given the proper documentation that you requested. As previously mentioned you had several charges on the same day but you did not specify on the Request Forms which case you requested assistance. You also made no mention during this hearing that you had not received the help or documents that you needed to prepare your defense.***

Section XV. C. #7 clearly stated if the offender requests the review of a video/audio recording, the need to review such is determined by the IHO. Since this request was made on 8/16/15 and during the hearing to confirm my version and support my defense to these allegations.

***This issue has already been addressed. Capt. Still had reviewed the security camera and testified as to what he witnessed during the hearing.***

Section IX F. #5 states the OIC will investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer or any relevant witness to obtain additional information if necessary to determine if sufficient information exists to notify the offender a disciplinary offense report is being brought against him. None of this was done because per OP 830.5 transfers, facility reassignments, Section IV. J. #8 (2) (ii)(b) state the sending facility will conduct an ICA before transfer or the Reporting Officer will provide a signed written statement describing the pertinent facts and actions. And Section IV #8 (2) (ii) (2 through (e) also state the following documents are to be forwarded to the receiving facility with the offenders records at the time of transfer: (a) ICA indicating the reason for transfer; (b) Reporting Officer's original written statement; (c) Any untried disciplinary infraction as well as the originals of any infractions and (e) other pertinent documents, statement and/or reports concerning the incident and/or transfer.

***The OIC in this case, Lt. Church, coordinated efforts with Capt. Still, the Reporting Officer at Red Onion State Prison regarding the investigation of this incident. The OIC is not required to interview you as part of his investigation process but may do so if he felt it necessary. The claims that you make concerning OP 830.5 is not relevant to the hearing which has to observe OP 861.1 regarding the disciplinary process. All of your due process rights and privileges have been med under that policy. If you have***



Wall, Gary #1133749

Disciplinary Appeal Hearing

Offense Code: 105A Dated: 08-14-15

Tape #: ROSP-2015-1503

Page: 5

Date: September 15, 2015

***concerns that something was not done correctly in accordance with OP 830.5 you may wish to speak to your Unit Manager or Building Lt. concerning that issue.***

I believe since I never received an ICA (or notice thereof) prior to my transfer to WRSP on 8/14/15, the signed written statement from the Reporting Officer were used at WRSP to generate the disciplinary offense report without conducting any of OP 861.1 Section IX. F. #5 because the Rapid Eye security camera footage at ROSP could not be reviewed at WRSP to confirm any of the allegations by the Reporting officer's statements or obtain any additional relevant witnesses information (because they were at ROSP in A-100 pod). I ask that you review the video footage to see this was not an offender on staff assault as alleged but an assault on an offender.

***Per OP 861.1 IX. F. #5, an investigation was conducted and indicated as such on the Disciplinary Report. The OIC may or may not interview you as part of that investigation. The Rapid Eye video was reviewed by Capt. Still and he reported what he witnessed during your hearing. Mr. Franks, the moderator of the hearing, did not deem it necessary to view the security camera to affirm or corroborate Capt. Still's testimony. Mr. Franks explained the term preponderance of the evidence, which was a process by which the Hearings Officer weighed and measured each party's testimony based on which was more credible or more likely to have happened. C/O Rasnick received injuries serious enough to require advanced medical treatment but you would have the Hearings Officer to believe that you had not caused those injuries. After considering all of the evidence, Mr. Franks found you guilty based on a preponderance of that evidence.***

**Offense:**

***On August 14, 2015 at approximately 4:05 pm, Offender G. Wall did assault Officer E. Rasnick by punching him repeatedly resulting in injuries to the officer that were treated outside Red Onion State Prison by Mountain View Regional Medical Center. The basis of the charge is the result of an investigation completed August 17, 2015. Interviews of the victims and a review of security footage were completed and provided the factual knowledge in writing this charge. Offender charged per OP 861.1 (105A – Aggravated assault upon a non-offender).***

For this hearing you requested an advisor which was CIRC Rose. You did request witnesses but that form was not submitted to the Hearings Officer. You did request documentary evidence.

Wall, Gary #1133749

Disciplinary Appeal Hearing

Offense Code: 105A Dated: 08-14-15

Tape #: ROSP-2015-1503

Page: 6

Date: September 15, 2015

**SUMMARY:**

*This is a Category I offense and the Reporting Officer, Capt. Still, was present at the hearing via speaker phone.*

*The Request for Documentary Evidence Form was considered in which Offender Wall asked to review the Rapid Eye camera. Hearings Officer Franks explained that a form was not necessary and would not be obtained because the request was not for documentary evidence. Mr. Franks also stated that Capt. Still had looked at the security footage and would be able to testify as to what he saw on the video.*

*The second Request for Documentary Evidence Form was a request for all the interview statements conducted by Capt. Still. The Hearings Officer stated that the request would not be obtained because they were restricted for security reasons or otherwise restricted to the offender.*

*Offender Wall was asked to give his statement concerning the incident. The offender denied that he repeatedly punched C/O Rasnick and in fact had not hit the officer at all. Offender Wall said he would be interested to see what the interview garnered after speaking to both victims and after looking at the Rapid Eye camera.*

*Captain Still, the Reporting Officer, was asked to give his statement concerning the incident. The R/O stated that C/O Hicks placed the handcuffs on Offender Wall when the offender turned around and swung on C/O Hicks screaming, "Don't fucking touch me." Capt. Still said that C/O Rasnick came to assist C/O Hicks and all three of the individuals began to fight. The R/O said the security footage showed Offender Wall fighting with the officers and all three were on the ground and the offender fought the officers.*

*Mr. Franks confirmed that C/O Rasnick received injuries serious enough to require treatment at a local hospital. Capt. Still commented that C/O Rasnick injured his knee and had a reddened area round his left eye which would indicate a punch had been thrown. Capt. Still also said C/O Rasnick as of the date of the hearing had not been able to return to work.*

*Offender Wall was given the opportunity to ask questions of Capt. Still. The offender wished to know what injuries the officer had received as a result of the altercation. Mr. Franks said the officer had injured his knee, sustained an eye injury and had not yet returned to work as a result of those injuries. Offender Wall asked if the officer received stitches. Capt. Still said C/O Rasnick had not received stitches. The offender*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

Page: 7

Date: September 15, 2015

Disciplinary Appeal Hearing

Tape #: ROSP-2015-1503

*asked if the officer received stitches. Hearings Officer Franks replied he would not deal with any issues relative to the other officer since that would be handled under a separate case. Offender Wall asked if he had been investigated to be charged for a possible "street charge". Mr. Franks commented that the only case that could not be heard at the institution was the killing or attempting to kill another person but otherwise OP 861.1 permitted the hearing of this charge. The offender said he preferred to not say anything at this hearing if he would have to face a street charge. The Hearings Officer responded that Offender Wall's only testimony was that he had not struck either officer but Capt. Still said the officers suffered injuries that indicated the offender had struck the officers and one officer was injured seriously enough to require hospital treatment. In addition Mr. Franks stated the Rapid Eye camera captured the incident.*

*Offender Wall stated that if three people are scuffling around on the floor how could there be certainty that he caused the injuries to the officers. Mr. Franks replied that he would have to base his decision on the preponderance of the evidence. The Hearings Officer said part of the evidence was Capt. Still's testimony that the scuffle came about as a result of the offender's refusal to be cuffed and the injuries came about because of the fight that took place as a result of that refusal.*

*The offender asked Capt. Still if officer could state why the offender was being handcuffed. Hearings Officer Franks pointed out that officers were permitted to place cuffs on an offender at any time for practically any reason. Mr. Franks deemed the question to be irrelevant.*

*Based on a preponderance of the evidence Mr. Franks found Offender Wall guilty of the offense as charged. The penalty was set at 90 days loss of good time.*

#### CONCLUSION:

*I have listened to the taped hearing and have carefully considered both the oral and written evidence that was submitted therein. Offender Wall's primary defense was that he had not struck either of the officers and had not caused the injuries to C/O Rasnick. However Capt. Still testified that he had reviewed the security camera and witnessed Offender Wall take a swing on C/O Rasnick when that officer attempted to place handcuffs on the offender and then C/O Hicks came to assist Rasnick. The Reporting Officer said that all three individuals fell to the floor and saw the offender fighting the officers which resulted in injuries serious enough that C/O Rasnick had to be treated at*

Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

Disciplinary Appeal Hearing

Tapc #: RO SP-2015-1503

Page: 8

Date: September 15, 2015

*the local hospital. I therefore concur with Hearings Officer Frank's finding of guilt in this case.*

It is my findings that sufficient evidence was presented to support the finding of guilt in your case. Additionally, you were provided with a fair and equitable hearing with all due process rights afforded. I have also reviewed the penalty assessed and find that it is appropriate and within the range of allowable penalties per OP #861.1. Therefore, this charge will not be dismissed.

In accordance with OP 861.1 you may submit an appeal to the Regional Administrator on Category I Charges. This must be done within fifteen calendar days, to the following address:

Henry J. Ponton, Regional Administrator  
Disciplinary Appeals Unit  
PO Box 26963  
Richmond, VA. 23261

LJF Warden/jac

cc: Hearings Officer  
Records





VIRGINIA  
DEPARTMENT OF CORRECTIONS

RECEIVED

Disciplinary Appeal 861-FB-8-14

SEP 28 2015

Disciplinary Appeal

OFFENDER DISCIPLINE

SEP 08 2015

DELTA-102

From: Offender Name:

MA. Grant Mall

Facility:

Wallens Ridge State Prison

Case #:

R.O.S.D. - 2015-1503

Offense Date:

8/14/15

Offense Code:

105-A

Offense Title:

Aggravated Assault upon a non-offender

Hearing Date:

8/25/15

Penalty:

Loss of 90 Days Set (Good-time)

☒ LEVEL I APPEAL - SEND TO THE FACILITY UNIT HEAD

NOTE: The appeal to the Facility Unit Head must be submitted within 15 calendar days from receipt of the completed Disciplinary Offense Report. Staff can access all disciplinary documents in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

☒ LEVEL II APPEAL - MAIL TO:

Offender Discipline Unit Department of Corrections, P. O. Box 26963, Richmond, VA 26963

NOTE: Only Category I convictions can be appealed to Level II. Category II convictions cannot be appealed to Level II, except for a reason specified in the Appeal to Regional Administrator (Level II) section of Operating Procedure 861.1, *Offender Discipline*.

New appeal issues will not be considered at this level. Only those issues raised by the offender in the Level I appeal to the Facility Unit Head or in the response from the Facility Unit Head will be considered.

The Level II appeal must be submitted within 15 calendar days from receipt of the response from the Facility Unit Head. Staff can access all disciplinary documents including the Facility Unit Head's response in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

List your issues for appeal: I am appealing on the CLEAR Violations to my DUE PROCESS Rights and Violations to 861.1 IX G #3 (b & c), XI C #7, XI D #3, XI A #1 & #2, X B #4 (283), and IX F #5 of the established written Operational Procedure Governing Offender Discipline.

= Section IX G #3 (b & c); Clearly States: "When PHD is utilized, the offender will be provided assistance, if requested, to: (6) meet with an advisor, and (c) otherwise prepare a defense." After clearly requesting BOTH by way of the 8/14/15, Regular Request form to the L.H.O. (see attached) and being DENIED was in violation of this section.

= section (c) XI C #7 & XI D #3; Clearly States: "If the offender requests the review of a video/audio recording... the need to review such is determined by the L.H.O." Since the L.H.O. simply determined that the Request for Documenting Evidence form was the wrong form to request such review (disregarding the 8/14/15, Request Submitted by offender (see attached #2) & Request at the hearing) nor stated "WHY" this evidence requested was determined NOT to be necessary or relevant for review was also, in violation of XI D #3; which states: "The L.H.O. SHALL Rule on all matters of evidence." This important dispositive evidence requested not only supports my defense of the ~~accusations~~ initial description of Offense Given by the Reporting Officer... (Continued on Next)

Level I Appeals Only: Staff must sign and date below and provide a copy of this form within two working days to the offender as a receipt of their Level I appeal.

Date Appeal Received

9/18/15

Staff Signature:

J. Ellis

Additional pages may be attached as needed.

Revision Date: 8/4/14

Per Operational Procedure #80.5; transfers; facility reassessment, section IV J# 8 (a) (ii) (b), states the SENDING facility will conduct a I.C.A. BEFORE transfer or the Reporting Officer will provide a signed written statement describing the pertinent facts & actions and Section II #8 (a) (iii) (a) through (c), also states: "the following documents are to be forwarded to the RECEIVING facility with the offenders records at the time of transfer:

- (2) I.C.A. indicating the reason for transfer;
- (b) Reporting officers original written statement;
- (c) Any untimed disciplinary infractions as well as the originals of any infractions; and
- (4) —

(5) Other pertinent documents, statements and/or reports concerning the incident and/or transfer.

I believe, since I never received an I.C.A. (or Notice thereof) prior to my transfer to W.R.S.P. on 8/11/15, the signed written statement from the Reporting Officer(s), were used at W.R.S.P. to generate the disciplinary offense reports without conducting any of Bld. 1 section IX F#5, because the Rapid-Eye Security Camera footage at R.O.S.P. could NOT be reviewed at W.R.S.P. to confirm any of the allegations by the Reporting Officers statements or obtain any additional relevant witnesses information (because they too were at R.O.S.P. in KLEAT-100 pod).

I humbly ask that the Level-I, review the available video footage to see this was NOT an offender on staff assault as alleged but in assault on an offender.

September 16<sup>th</sup> 2015

Jerry Wolf #1193-149  
Respectfully Submitted

Attached page to Disciplinary Appeal  
Level-I, for a 105-A Change



Mr. Gary Wolf #1133149  
c/o Red Onion State Prison  
Post Office Box 1900  
Pound, Virginia 24279-1900

RECEIVED

DEC 19 2015

OFFENDER DISCIPLINE UNIT

dated: December 13<sup>th</sup> 2015

To: Henry J. Ponton, Regional Administrator  
Disciplinary Appeals Unit  
Post Office Box 26963  
Richmond, Virginia 23261

Mr. Ponton;

I'm waiting because in or about September 21<sup>st</sup> 2015, I sent in a Level-II, appeal to your Office from Wallens Ridge State Prison concerning a ROA-Aggravated Assault upon a non-offender that occurred at Red Onion State Prison (Disciplinary Hearing Case # ROSP-2015-1503, Tape number was uploaded on CORIS as ROSP-2015-1203)

Since I have yet to receive any form of response to this appeal at the second level I'm waiting to know the status of this appeal since the time-frame provided for a Level-II, response has expired.

Please let me know if your response has been sent to Wallens Ridge State Prison since my transfer back to Red Onion on 11/13/15, after you upheld another Level-II, appeal for Case # 1431.

Any information you can provide concerning my appeal would greatly be appreciated

Thank you kindly  
Gary Wolf #1133149

#### CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of December 2015, I mailed the foregoing letter concerning appeal to Case # 1503; to respondents: Henry J. Ponton; Disciplinary Appeals Unit, Post Office Box 26963, RICHMOND VIRGINIA 23261, by Institutional Bulk Mail

Gary Wolf #1133149  
Respectfully Submitted

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF CORRECTIONS  
P. O. BOX 26963  
RICHMOND, VIRGINIA 23261-6963

Red Onion State Prison  
10800 H. Jack Rose Highway  
P. O. Box 970  
Pound, VA 24279

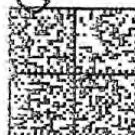
Gary Wall 1133749

2427950970-8099



9/22

RECEIVED  
JAN 21 2015  
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02 1187121 JAN 14 2015

ARDCAS CORPUS  
(Exhibit #120)



# COMMONWEALTH OF VIRGINIA

Department of Corrections  
Western Regional Office

Henry J. Ponton  
Regional Administrator

5427 Peters Creek Road,  
Suite 350  
Roanoke, Virginia 24019-3890  
(540) 561-7050

Log #	36056	Case #	ROSP-2015-1503
Offense Code	105A	Offense Title	AGGRAVATED ASSAULT UPON A NON-OFFENDER
Offense Date	August 14, 2015	Hearing Date	August 25, 2015
Disposition	Guilty - Hearing	Penalty	Loss of 90 Days SGT

December 8, 2015

Gary Wall, #1133749  
Wallens Ridge State Prison  
272 Dogwood Drive  
P. O. Box 759  
Big Stone Gap, VA 24219

Dear Mr. Wall:

This letter is in response to your appeal of the above-stated charge. After considering your appeal, the following determinations have been made.

Please be advised that all of the contentions you presented within your Level II Appeal were the exact contentions that you raised within your Level I Appeal. All such contentions, upon review, have already been answered in full within your Level I Appeal Response and/or during your original hearing. This office deems your Warden's response was complete and adequately addressed all of your issues.

Upon review of all documents submitted, this office finds no procedural errors. Thus, based on the preponderance of evidence against you, the charge is **UPHELD**.

Sincerely,

  
Henry J. Ponton  
Regional Administrator

HJP/msl/klis

cc: Earl Barksdale, Warden





## VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by McCoy, K

Report run on 08/15/2015 at 3:51 PM

Case #: ROSP-2015-1481 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
Offense Date: 8/14/2015 Time: 4:05 PM Location: N/A - A-1-GP

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On the above date and approximate time while trying to place restraints on Offender G. Wall #1133749, offender spun around and tried to strike me. This resulted in trying to gain control of the offender Wall at which point Offender Wall did strike me in my eye with his right fist. Offender charged per D.O.P. 861.1

☐ Description Continued on attached

Witnesses: Rasnick, E

Submitted by Reporting Officer: \_\_\_\_\_

Hicks, J J

Date: 8/15/2015

Time: 1:35 PM

☐ Witnesses continued on attached

Title: Correctional Officer

☐ Investigation Completed

Date: \_\_\_\_\_

☐ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/15/2015

Time: 3:45 PM

Print Name: \_\_\_\_\_

McCoy, K

Title: Lieutenant

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a WAIVER of the first three rights. The following forms are available to the offender UPON REQUEST in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within 48-HOURS of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING? Advisor Name: <u>Cene Dandieru R6</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided <u>Lt. C. King 8/16/15</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided <u>Lt. C. King 8/16/15</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer. <input type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Offender Received Penalty Offer Form <input type="checkbox"/> Advisor provided	
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/16/15

Time: 7:47 AM

Date set for Hearing: 8/24/2015

Revised Date: \_\_\_\_\_

9-2-15

Revised Date: \_\_\_\_\_

9-8-20

*All paperwork provided on 8/16/15 to King*





## VIRGINIA DEPARTMENT OF CORRECTIONS

861.1 A-2

## Penalty Offer

Report generated by McCoy, K

Report run on 08/15/2015 at 3:52 PM

Case #: ROSP-2015-1481  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender  
Offense Date: 8/14/2015 Time: 4:05 PM Location: N/A - A-1-GP

## Part I

I have reviewed the facts and circumstances of this offense and your institutional record.  
I offer the following penalty:

Days Suspended: \_\_\_\_\_

A fine up to \$12.00 - Imposed Value: 8 Dollars

☒ for the above listed offense, or

☐ Penalty continued on attached

☐ for a lesser-included offense of

Staff Signature: \_\_\_\_\_

Date: 8-15-15Time: 3:45 PM

Print Name: \_\_\_\_\_

McCoy, KTitle: Lieutenant

NOTE: All three copies of the penalty offer form are to be served on the offender. After completing Part II of this form, the third copy of the form is to be forwarded to the Hearings Officer. The first and second copies are to be given to the offender.

## Part II

By signing below, I indicate that I have been advised of my rights to enter into or refuse this penalty offer. I understand that I accept the penalty offer indicated above:

1. I will waive my right to a Disciplinary Hearing, including any right I may have to present witnesses or other evidence in my behalf, as well as any right I may have to ask questions of anyone who may have given a statement against me; and
2. I will plead guilty to the offense specified in the offer and accept the penalty indicated; and
3. Any appeal of this offense will be limited to a determination of whether there was an acceptance of a penalty offer and whether there was any serious procedural error. No other reasons for an appeal will be considered;
4. I have 24-hours from the date the charge is served to accept this offer and I will be provided the opportunity to consult with an advisor, upon request;
5. If I do not accept the penalty offer, this offense will be referred for a Disciplinary Hearing; I will have the right to enter a not guilty plea at the hearing and this penalty offer will in no way influence the outcome of the hearing or the severity of any penalty imposed as a result of the hearing;
6. If I fail to respond to this offer within the time limit specified, the offer will be terminated and the offense will be referred for a Disciplinary Hearing as indicated in #5 above.

Offender Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Serving Officer Signature: \_\_\_\_\_

Date: 8/16/15Time: 747H

Print Name: \_\_\_\_\_

Title: Lieutenant

This offender has refused to sign in the space above. I certify that this agreement was served, and that the offender has been advised of the conditions of acceptance.

Staff Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Print Name: \_\_\_\_\_

## Part III

Choose only one (1) option and sign below. Refusal to choose an option and sign constitutes refusal of the offer.

☐ I ACCEPT the penalty offer as indicated in Part I and I understand and accept the conditions as stated in Part II above. My acceptance of this offer is totally voluntary. NOTE: Your signature accepting this offer must be in the presence of a staff member.

☒ I DO NOT ACCEPT the penalty offer and understand that I will be afforded a Disciplinary Hearing.

☐ The offender has failed to respond to this penalty offer within the specified time limits.

Offender Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

I certify that I have received this form and that the above offender has signed in my presence.

Staff Signature: \_\_\_\_\_

Date: 8/16/15Time: 747H

Print Name: \_\_\_\_\_

Note: After the offender accepts/declines the offer, the original is forwarded to the Hearings Officer by the witnessing staff member and the second copy is given to the offender.

Report run on 08/15/2015 at 3:52 PM

Page 1 of 1

Rev. 03/30/2009



VIRGINIA  
DEPARTMENT OF CORRECTIONS

Request for Documentary Evidence 861\_F6\_2-15

Request for Documentary Evidence

One of 2 Request for Documentary Evidence forms with 2 witness request form for 105\*

Case Number: 205P 2015 1481

Offender Name: Craig Wall

Offender Number: 1133746

Housing: A-10P 1061

\*\*\*\*\*

Part I - Offender Request for Documentary Evidence

Complete this form and submit to the Hearings Officer within 48-hours (excluding weekends and holidays) of service of the charge. If you are in need of assistance to complete this form, request the services of an advisor. Only written documentary evidence or photographs can be requested using this form.

Note: This form shall not be used to obtain information outside of the institution, to obtain information restricted for security reasons such as video and audio recordings, to request physical evidence, or otherwise restricted by procedure.

I request the following documentary evidence for the above offense:

Describe documentary evidence: Review of ALPHA-100 pods Three (3) RAPID-EF Security Cameras on 8/14/15, at 2:00pm - 4:00pm until 5:00pm

Who possesses this information: RBSF Supervisor Unit Manager or Investigator Unit

Describe how this information is relevant to your charge: This requested should show with show I never approached Officer Hicks while at the vestibule door nor tried to strike him - I simply ask him about this unusual directive to "go into the vestibule" after I was going door to workman

Medical Release:

As the person signing this consent, I understand that I am giving permission to Medical Department staff to release the requested information from my medical record directly to the Hearings Officer.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: A witnessing signature is only necessary when the offender is requesting information from his medical record. Any employee of the institution can witness the offender's signature.

\*\*\*\*\*

Part II - Hearings Officer's Review

Based on the accused offender's statement regarding the above requested information, it is determined that:

- ☐ INFORMATION RELEVANT - Hearings Officer will obtain information, if such information exists.
- ☐ INFORMATION IS NOT RELEVANT - Hearings Officer will not obtain information requested.
- ☒ INFORMATION WILL NOT BE OBTAINED due to being from an outside source, restricted for security reasons such as video and audio recordings, information is not written documentation, or is otherwise restricted to the offender.
- ☐ REQUEST DENIED - offender failed to submit request within 48-hours to the Hearings Officer.
- ☐ REQUEST IS INCOMPLETE and will not be processed

Hearings Officer: Craig Wall

Date: 8-17-15

If the information is relevant, an attempt will be made to locate the information requested. If the information is not relevant, an attempt will not be made to locate the information. This form will be made a part of the disciplinary record regardless of the disposition. The offender will be advised of the disposition of this request at least one half hour prior to the hearing.

Revision Date: 2/3/15





VIRGINIA  
DEPARTMENT OF CORRECTIONS

Request for Documentary Evidence 861\_F6\_2-15

Request for Documentary Evidence

two #2; Request for documentary  
evidence from Scott with 2,  
witness form for 1054

Case Number: ROSP-2015-1481

Offender Name: Gary Wall

Offender Number: 1133749

Housing: A-1 GP-1067

\*\*\*\*\*

Part I - Offender Request for Documentary Evidence

Complete this form and submit to the Hearings Officer within 48-hours (excluding weekends and holidays) of service of the charge. If you are in need of assistance to complete this form, request the services of an advisor. Only written documentary evidence or photographs can be requested using this form.

Note: This form shall not be used to obtain information outside of the institution, to obtain information restricted for security reasons such as video and audio recordings, to request physical evidence, or otherwise restricted by procedure.

I request the following documentary evidence for the above offense:

Describe documentary evidence: any written VDOC or LOP Policy, written memo, or Directive, concerning a Population Offenders Agreement

Who possesses this information: Operations Officer of R.O.S.P. or Unit Manager of ALPAC Building

Describe how this information is relevant to your charge: Prison ticks alleges while trying to place restraints on offender Gwall, I spun around and tried to strike him. This requested document evidence will describe in detail the protocol in VDOC, Redmond's Custom or Practice, for escorting a Population Offender. Does he need to be restrained to talk to a Subpoena

Medical Release:

As the person signing this consent, I understand that I am giving permission to Medical Department staff to release the requested information from my medical record directly to the Hearings Officer.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Note: A witnessing signature is only necessary when the offender is requesting information from his medical record. Any employee of the institution can witness the offender's signature.

\*\*\*\*\*

Part II - Hearings Officer's Review

Based on the accused offender's statement regarding the above requested information, it is determined that:

- ☐ INFORMATION RELEVANT - Hearings Officer will obtain information, if such information exists.
- ☐ INFORMATION IS NOT RELEVANT - Hearings Officer will not obtain information requested.
- ☒ INFORMATION WILL NOT BE OBTAINED due to being from an outside source, restricted for security reasons such as video and audio recordings, information is not written documentation, or is otherwise restricted to the offender.
- ☐ REQUEST DENIED - offender failed to submit request within 48-hours to the Hearings Officer.
- ☐ REQUEST IS INCOMPLETE and will not be processed

Hearings Officer: [Signature] Date: 8-17-15

If the information is relevant, an attempt will be made to locate the information requested. If the information is not relevant, an attempt will not be made to locate the information. This form will be made a part of the disciplinary record regardless of the disposition. The offender will be advised of the disposition of this request at least one half hour prior to the hearing.

Revision Date: 2/3/15



VIRGINIA  
DEPARTMENT OF CORRECTIONS

Witness Request Form 861\_F5\_2-15

Witness Request Form

Two off 2; Witness Requested for 1st  
with 2; Request for Disciplinary Hearing  
Prison for 105A

Case Number: 205P-2015-1481  
Offender Name: James Hall Offender Number: 935749 Housing: A-1 GP 1467  
Offense Code: 105A Offense Title: Aggravated Assault upon a Woman - Offender  
Offense Date: 8/4/2015 Approximate Time: 4:05 PM Location: W/A - A-1 GP

PART I - OFFENDER REQUEST FOR WITNESS

Complete a separate form for each witness requested and submit this form directly to the Hearings Officer within 48-hours (excluding weekends and holidays) of service of the charge. You may request the assistance of an advisor if needed.

I request the following person to provide a statement for the above offense:

A. Name of Offender: \_\_\_\_\_ Offender Number(if known): \_\_\_\_\_ Housing: \_\_\_\_\_  
B. Name of Staff: Det. 100 POD BOSTA (Control Officer) Title (if known): C/O  
C. Name of Outside Witness: \_\_\_\_\_  
Address: \_\_\_\_\_

Offender Signature: James Hall Date: 8/16/15

PART II - WITNESS STATEMENT

You have been requested as a witness for the above-referenced offender. In the space below, please provide a statement as to your direct knowledge of the incident pertaining to the accused offender. OFFENDER WITNESS ONLY - I do not wish to be a witness ☐

The hearing is scheduled for: \_\_\_\_\_ Return to the Hearings Officer no later than: \_\_\_\_\_

STATEMENT:

I could not see anything due to where the  
incident happened

Witness Signature: E. Hensley Date: 8-19-15

PART III - HEARINGS OFFICER REVIEW

- ☐ Statement is relevant to the offense, and the statement will be addressed in the Disciplinary Hearing.  
☒ Statement is NOT relevant to the offense, and the statement will NOT be addressed in the Disciplinary Hearing.  
☐ Request DENIED - offender failed to submit request within 48-hours to the Hearings Officer.  
☐ Request is incomplete and will not be processed.

Hearings Officer: WR Hensley Date: 8-20-15  
Print Name: WR Hensley

Revision Date: 2/3/15





VIRGINIA DEPARTMENT OF CORRECTIONS

## Notice of Postponement Report

861.1 A-5

DOC Location: WRSP Wallens Ridge State  
Prison

Report generated by Franks, C W

Report run on 08/28/2015 at 8:05 AM

0-102

Offender Name: Wall, Gary L Case: ROSP-2015-1481 DOC #: 1133749  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender (Aug 1 2007 - Dec 31 9999)  
Offense Date: 08/14/2015 Reporting Officer: Hicks, J J  
Title: Correctional Officer

### NOTICE OF POSTPONEMENT: (revised hearing date)

This is to inform you that your Disciplinary Hearing for the above listed offense has been rescheduled for: (The hearing is still within the authorized timeframe.)

Date: 09/02/2015

Offender's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Notice Served By: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Original to Hearings Officer – Copy to Offender



VIRGINIA DEPARTMENT OF CORRECTIONS

## Notice of Postponement Report

861.1 A-5

DOC Location: WRSP Wallens Ridge State  
Prison

Report generated by Franks, C W

Report run on 09/02/2015 at 7:55 AM

*0-102*

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Offender Name: Wall, Gary L Case: ROSP-2015-1481 DOC #: 1133749  
Offense Code: 105A Offense Title: Aggravated Assault upon a non-offender (Aug 1 2007 - Dec 31 9999)  
Offense Date: 08/14/2015 Reporting Officer: Hicks, J J  
Title: Correctional Officer

---

### NOTICE OF POSTPONEMENT: (revised hearing date)

This is to inform you that your Disciplinary Hearing for the above listed offense has been rescheduled for: (The hearing is still within the authorized timeframe.)

Date: 09/08/2015

Offender's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Notice Served By: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Original to Hearings Officer - Copy to Offender

**DISCIPLINARY OFFENSE REPORT (continued)**

Case Number: ROSP-2015-1481 Offender Name: Wall, Gary L DOC #: 1133749 Housing: A-1-GP-106T  
 Facility: Red Onion State Prison Reference:

**OFFENDER'S PLEA AND RIGHTS**

Hearing Location: Wallens Ridge State Prison Date: 9/8/2015 Time: 9:50 AM  
 Plea: ☐ Guilty ☒ Not Guilty ☐ No Plea Offender's Signature: \_\_\_\_\_  
 Advisor's Name: CIRC Advisor's Signature: \_\_\_\_\_  
 If the Offender is absent from hearing, explain why: \_\_\_\_\_

Is the Reporting Officer present at the hearing? ☒ Yes ☐ No  
 Has there been a denial of requested Witnesses? ☐ Yes ☐ No  
 Has there been a denial of Documentary Evidence Forms? ☐ Yes ☐ No

**DECISION OF THE HEARINGS OFFICER**

☒ Guilty ☐ Not Guilty ☐ Dismissed ☐ Accepted Penalty Offer within 24 Hours of Service  
☐ Informal Resolution ☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty  
☐ Vacated - Offender waived rewrite/serve of offense ☐ Vacated for Rewrite/Re-serve  
☒ For the Offense of: 105A - Aggravated Assault upon a non-offender  
☐ For the lesser included offense of: \_\_\_\_\_

Reason for Decision:

OFFICER HICKS STATED THAT HE WAS ATTEMPTING TO CUFF OFFENDER WALL TO TAKE HIM TO SEGREGATION AND HE THEN WAS ASSAULTED BY OFFENDER WALL. HE STATED THAT OFFENDER WALL STRUCK HIM IN THE EYE WITH HIS FIST REQUIRING THREE STITCHES. DURING THE HEARING OFFENDER WALL STATED THAT HE WAS THE ONE WHO WAS ASSAULTED AND IF HE STRUCK OFFICER HICKS HE DID NOT MEAN TO. OFFENDER WALL STRUCK OFFICER HICKS WITH A CLOSED FIST. THEREFORE I FIND OFFENDER WALL GUILTY OF AGGRAVATED ASSAULT UPON A NON-OFFENDER.

Penalty: Loss of SGT of up to 180 days - Imposed Value: 180 Days

Comment: \_\_\_\_\_

Hearing Officer's Signature: WRH Date: 9/8/2015  
 Print Name: Hensley, WR

**INSTITUTIONAL REVIEW:**

☒ Approved ☐ Dismissed ☐ Suspended Penalty ☐ Informal Resolution  
☐ Reduced Penalty ☐ Rehear ☐ Reduced to Lesser-Included Offense  
☒ For the Offense of: 105A - Aggravated Assault upon a non-offender  
☐ For the lesser included offense of: \_\_\_\_\_

Comments: \_\_\_\_\_

Penalty: Loss of SGT of up to 180 days - Imposed Value: 180 Days

Signature: Capt. N. Cope Date: 9/8/2015  
 Print Name: Cope, NP Title: Captain





# Disciplinary Appeal

From: Offender Name: Mr. Grant Wall # 1134749 3612-102  
Facility: Wallens Ridge State Prison

Case #: R.O.S.P. 2015-1481 Offense Date: 8/14/15  
Offense Code: 105-A Offense Title: Aggravated Assault upon non-offender  
Hearing Date: 9/8/15 Penalty: loss of 180 days of SGT

## ☒ LEVEL I APPEAL - SEND TO THE FACILITY UNIT HEAD

NOTE: The appeal to the Facility Unit Head must be submitted within 15 calendar days from receipt of the completed Disciplinary Offense Report. Staff can access all disciplinary documents in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

## ☐ LEVEL II APPEAL - MAIL TO:

Offender Discipline Unit Department of Corrections, P. O. Box 26963, Richmond, VA 26963

NOTE: Only Category I convictions can be appealed to Level II. Category II convictions cannot be appealed to Level II, except for a reason specified in the Appeal to Regional Administrator (Level II) section of Operating Procedure 861.1, Offender Discipline.

New appeal issues will not be considered at this level. Only those issues raised by the offender in the Level I appeal to the Facility Unit Head or in the response from the Facility Unit Head will be considered.

The Level II appeal must be submitted within 15 calendar days from receipt of the response from the Facility Unit Head. Staff can access all disciplinary documents including the Facility Unit Head's response in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

List your issues for appeal: I have my appeal on the clearly established DUE PROCESS Violations in Operational Procedure 861.1 XII #2, 861.1 XL C #7 & D #3, 861.1 IX A #1 & 2, 861.1 B #4 (2 & 3), and 861.1 IX #5, governing Offender Discipline in the Virginia Department of Corrections.  
\* Violation of 861.1 XII #2, which clearly states in plain language: "15 days to conduct hearing for PWD... on my other Detention Status for the Hearing." Since I was removed from General population at R.O.S.P. and was immediately transferred to W.R.S.P. on 8/14/15, the (Attached) I.C.A. form I presented during the disciplinary hearing clearly indicated I was being placed in "SPECIAL HANDLING," a General term for Special purpose and assignment including... General Detention and Pre-hearing Detention as stated in 861.1 II (Definitions) for the W.A. being per 861.5 II J #8 (a) (ii) (h), and II J #8 (a) (iii) (2) through (c), governing Emergency Transfers clearly states: "if an offender is transferred BEFORE the sending facility conducts an I.C.A., the Receiving Office will provide a signed written statement describing the pertinent facts & actions." Since the justification for my emergency transfer was the Aggravated Assault on a non-offender & I DID NOT have an I.C.A. before being transferred, the Report Given by Officers Hoke was used for this purpose (transfer) and my initial assignment to Special Handling upon my arrival to W.R.S.P. on 8/14/15. Therefore, under Section 861.1 IX G #1 & 2, the 8/14/15, I.C.A. placed me in (General on Pre-hearing).

Level I Appeals Only: Staff must sign and date below and provide a copy of this form within two working days to the offender as a receipt of their Level I appeal.

Date Appeal Received 9/14/15 Staff Signature: J. Keller

Additional pages may be attached as needed.

Revision Date: 8/4/14



(Continuation of Level-I, appeal of 195-A charge)

... Detention.

Since I was never given an Authorized Continuance by the I.H.O. by way of the NOTICE OF CONTINUANCE form per 861.1 III A, to conduct my hearing outside of the 15 days prescribed in ~~Violation~~ 861.1 III #2, and I was NOT allowed to meet with my advisor (upon request dated: 8/17/15) per 861.1 IX G #3 (i.e.), was also violated, violating BOTH of these clearly established DUE PROCESS rights.

= Violation of 861.1 IV C #7 & #8; which clearly states: "if the offender request the review of a Video/audio recording ... the need to review such is determined by the I.H.O." Since the I.H.O. simply determined that the Documentary Evidence Request form was the wrong form to request such, disregarding the 8/14/15 request form submitted by me and several verbal request during the hearing — then stating I needed to convince him to do such (after pointing out several distinctive actions testified to that could ONLY be confirmed or contradicted by reviewing the incontestable evidence requested) nor did he state "WHY" this dispositive evidence was not necessary for review to adequately present & or confirm my defense to these allegations.

= Violation of 861.1 XI A #1 & #2; which clearly states "At the offender's request ... in of other limitations that may interfere with their ability to prepare for ... the disciplinary hearing the I.H.O. ... SHALL appoint an advisor to assist the offender. (Not to be mistaken for XIV D, Rights). The (attached #2) 8/17/15 request clearly shows while in Medical with a fractured bone in my left (writing) hand and without ANY of my property, including access to the 861.1, (which was ALSO requested) were ALL DENIED.

= Violation of 861.1 X B #4 (2 & 3); which clearly states "the right to request ... assistance from an advisor with completing the Witness Request & Documentary Evidence Request forms" which were also DENIED with the 8/17/15 request to the I.H.O.

= Violation of 861.1 IX F #5; clearly states "The I.H.O. will ... Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer, or any relevant witnesses to obtain additional information, if necessary to determine if sufficient information exists to notify the offender a Disciplinary Offense Report is being placed against him (4-4234)." but this WAS NOT nor could have been done because additional witnesses (in ALPHA-100 pd) and the Rapid-Eye Video footage (were) at Red Onion (and) is NOT accessible at W.R.S.P. to investigate my claims (of assault) or officer Hicks allegations to have a Charge Generated at Walkers Ridge State Prison.

Dated: September 13<sup>th</sup> 2015

*Manny Wolf #41735A9*  
Respectfully Submitted

Attachment page to Level-I, Disciplinary Appeal of 195-A Charge  
Plus 2, Attachment Pages (BOTH ON RECORD WITH PRIOR APPEALS)

1 - 8/14/15, I.C.A.

2 - 8/17/15, Request to I.H.O.

RECEIVED  
WALLENS RIDGE STATE PRISON

SEP 28 2015

## MEMORANDUM

Wallens Ridge State Prison

Warden: Leslie J. Fleming

To: Wall, Gary #1133749

From: L. J. Fleming, Warden

Subject: Disciplinary Hearing Appeal

Offense Code: 105A Dated: 08-14-15 Tape # ROSP-VR-2015-1481

Date: September 21, 2015

I have reviewed your appeal of the conviction of the above-stated offense, including your statement of appeal, the tape recording of the disciplinary hearing, and all other relevant material.

{On what do you base your appeal?}

**You state:** I base my appeal on the clearly established due process violations in OP 861.1 XII #2, XV. C. #7 & D. #3, XV. A #1 & 2, X. B. #4 (2 & 3) and IX F. #5 Governing Offender Discipline in the Virginia Department of Corrections. Violation of XII. #2 which clearly states in plain language: 15 days to conduct hearing if on PHD ...or any other detention states for the charge. Since I was removed from General Population at ROSP and was immediately transferred to WRSP on 8/14/15, the (attached) ICA Form I presented during the disciplinary hearing clearly indicated I was being placed on Special Housing. A general forum for special purpose bed assignment including general detention and pre-hearing detention as stated in 861.1 III (Definitions) for the 105A. Being per OP 830.5 IV. J. #8 (a) (ii) (b) and IV J # (a) (iii) (a) through (e) governing Emergency transfers clearly stated, "If an offender is transferred before the sending facility conducts an ICA, the Reporting Officer will provide a signed written statement describing the pertinent facts and actions." Since the justification for my emergency transfer was the aggravated assault on two, non-offenders and I did not have an ICA before being transferred the Report given by C/O Hicks was used for this purpose (transfer) and my initial assignment to Special Housing upon my arrival to WRSP on 8/14/15. Therefore under Section OP 861.1 IX. G. 1 & 2 the 8/14/15 ICA placed on me (General or Pre-Hearing Detention). Since I was never given an Authorized Continuance by the IHO by way of the Notice of Continuance Form per OP 861.1 XII. A, to conduct a hearing outside of the 15 days prescribed in XII #2 and I was not allowed a meeting with an advisor (upon request dated 8/17/15 per IO 861.1 IX. G. #3 (b & c) was also violated, violating both of these clearly established due process rights.

HABEAS CORPUS



Wall, Gary #1133749  
Offense Code: 105A Dated: 08-14-15  
Page: 2  
Date: September 21, 2015

Disciplinary Appeal Hearing  
Tape #: ROSP-2015-1481

*Hearings Officer Hensley explained during the hearing that the Disciplinary Offense Report did not indicate that you were placed in Pre-Hearing Detention. Mr. Hensley can only go by what is presented before him. You were placed in PHD from one of the numerous charges that you received but it was not this particular case. The hearing must then be conducted within 30 calendar days before an Authorized Continuance would be required. You were served Notices of Postponement and you signed each one and both were within the authorized timeframes per policy. Concerning OP 830.5 the Reporting Officer was at the hearing via speaker phone and you had the opportunity to ask him the questions you submit in this forum. C/O Hicks was available at the hearing to give his testimony and to respond to any questions that you or your advisor posed to him. The issue of the ICA was not known by Hearings Officer Hensley and he handled your hearing in accordance with OP 861.1. According to the Disciplinary Offense Report for this charge, you were assigned an advisor to assist you at the hearing, and Lt. King confirmed in writing that he advised you concerning the witnesses and documentary evidence. You submitted disciplinary documentation that was read into the record.*

*The Request Form that you wrote to the Hearings Officer was answered appropriately by that department. You had several charges on this date and you did not specify which charge you were referring to.*

Violation of OP 861.1 XV. C #7 & D #3 which clearly states if the offender request the review of a video/audio recording...the need to review such is determined by the IHO. Since the IHO simply determined that the documentary Evidence Request form was the wrong form to request such, disregarding the 8/16/15 Request Form submitted by me and several verbal request during the hearing, then stating I needed to convince him to do such (after pointing out several distinctive actions testified to that could only be confirmed or contradicted by reviewing the irrefutable evidence requested nor did he state why this dispositive evidence was not necessary for review to adequately present or confirm my defense to these allegations.

*The Hearings Officer has the authority to review the security tape or not. Mr. Hensley explained during your hearing that a form was not required to request a review of the camera and that he need only be convinced to do so during the course of the hearing. After hearing both your testimony and that of C/O Hicks, the Hearings Officer did not feel that he needed to review the security camera. That decision may have been based, in part, on the fact that two certified officers were injured to the extent that C/O Hicks was off at least two weeks from work. C/O Rasnick had to be treated at the local hospital due to the severity of his injuries. The evidence indicated that the altercation was so intense that all three participants received injuries due to the violent interaction*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

Page: 3

Date: September 21, 2015

Disciplinary Appeal Hearing

Tape #: ROSP-2015-1481

***of those involved. Your stance that you never struck either of the officers was not a credible defense.***

Violations of XI. A #1 & 2 which clearly states at the offender's request....or if other limitations that may interfere with their ability to prepare for....the disciplinary hearing the IHO .... Shall appoint an advisor to assist the offender (Not to be mistook for XIV. D rights). The attached #2 8/17/15 request clearly shows while in medical with a fractured bone in my left (writing) hand and without any of my property, indicating access to the OP 861.1 (which was also requested) were all denied.

***Lt. King acted as your advisor concerning the disciplinary documentation that you requested. You were able to submit the necessary documentation which was made a part of the record during the hearing. The Request Form that you sent to the Hearings Officer was answered adequately. You did not express any concerns about OP 861.1 during this hearing nor did you indicate that your request for information was denied. As previously stated you received several charges during the same time frame but you made no statements during the hearing that you had not received the documentation that you requested for this particular hearing.***

Violation of OP 861.1 X. 3 & 4 (2 & 3) which clearly states the right to request...assistance from an advisor with completing the Witness Request and Documentary Evidence Request Forms which were also denied and the 8/17/15 request to the IHO.

***This concern has been previously addressed. The Request Form that the Hearings Officer received was answered. You submitted both a Witness Statement and Requests for Documentary Evidence which were read into the record.***

Violation of OP 861.1 IV. F. #5 clearly stated the OIC will "Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer or any relevant witness to obtain additional information, if necessary to determine if sufficient information exists to notify the offender a DOR is being placed against him." But this was not nor could have been done because additional witnesses (in A-100 pod) and the Rapid Eye video footage were at Red Onion and is not accessible at WRSP to investigate my claims of assault on Officer Hick's allegations to have a charge generated at WRSP.

***The OIC did review the charge and found that it met the standard for the case to be heard by the Hearings Officer. The OIC may interview the accused offender, the Reporting Officer or any other witness but that is not a requirement for every case.***

Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

Page: 4

Date: September 21, 2015

Disciplinary Appeal Hearing

Tape #: ROSP-2015-1481

*The Hearings Officer has the authority to review the security camera but chose not to do so in this case. The Reporting Officer was available to give his testimony and you were given ample opportunity to ask him questions during that hearing. Also if Mr. Hensley deemed it necessary to review the Rapid Eye camera, accessibility would not have been an issue.*

**Offense:**

*On the above date and approximate time while trying to place restraints on Offender G. Wall #1133749 offender spun around and tried to strike me. This resulted in trying to gain control of Offender Wall at which point Offender Wall did strike me in my eye with his right fist. Offender charged per OP 861.1 (105A – Aggravated Assault upon a non-offender).*

For this hearing you requested an advisor which was CIRC Pendleton. You did request witnesses. You did request documentary evidence.

**SUMMARY:**

*This is a Category I Offense and the Reporting Officer, C/O Hicks, was present via speaker phone from Red Onion State Prison for the hearing.*

*Offender Wall asked Hearings Officer Hensley a question concerning PHD which was indicated on the Disciplinary Report had not been utilized for this charge. The offender said C/O Hicks said the offender had been placed on PHD upon the offender's arrival at WRSP. Mr. Hensley responded that the offender had been placed on Pre-Hearing Detention for one of the several charges he had received but it was unclear which charge the PHD had been applied. The Hearings Officer also clarified that since the charge had been received at Red Onion State Prison, that facility would determine if PHD had been utilized or not.*

*Mr. Hensley considered the Witness Statement from C/O Hess at Red Onion. C/O Hess stated that he could not see anything due to where the incident happened. The statement was deemed not relevant by H/O Hensley. Therefore the officer would not be required to testify at the hearing.*

*The Request for Documentary Evidence for any written VADOC, LOP policy, written memo or directive governing a population offender's movement. The request was*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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Tape #: ROSP-2015-1481

*deemed not relevant by Mr. Hensley because the focus was on what happened during the incident and not what lead up to the incident.*

*The Request for Documentary Evidence was the request to review A-100 pod's three Rapid Eye security cameras during the incident. Mr. Hensley explained there had been no need to request review of the camera on a Documentary Evidence Form. The Hearings Officer said the Hearing Officer need only be convinced to review the camera during the course of the hearing. Mr. Hensley clarified the difference between documentary evidence and physical evidence for the offender's future reference.*

*Offender Wall was asked to give his testimony concerning the incident with clear instructions from Mr. Hensley to only speak about what happened when the offender got to the vestibule and not what occurred prior to the incident. Offender Wall stated that he and C/O's Hicks and Rasnick had been walking toward the vestibule door with the offender in front and the two officers behind him. The offender said that he stopped at the vestibule door and turned around. Offender Wall said C/O Hicks stopped and had the walkie-talkie to his ear while C/O Rasnick continued to come forward toward the offender. It was clarified that the vestibule door never opened. The offender said that C/O Rasnick came forward and grabbed the offender's arm and a scuffle ensued. Offender Wall said C/O Rasnick swung at the offender striking him on his left eye causing the offender to duck to the left in an effort to avoid any further blows. The offender said C/O Hicks came in to assist C/O Rasnick. Mr. Hensley then asked the offender where C/O Rasnick struck the offender who said the officer struck him on the top of his head. Offender Wall said at no time did C/O Hicks ever tell the offender to present himself to be handcuffed.*

*For clarity Hearings Officer Hensley asked the offender to explain which officer attacked him. Offender Wall said C/O Rasnick attacked him and C/O Hicks assisted Rasnick and all three individuals went to the ground with Wall on his back. The offender said C/O Rasnick continued to hit the offender in his face while Wall attempted to avoid the blows by rolling toward his right side. Offender Wall said that he and C/O Hicks collided. The offender said at no time did he attempt to throw or actually threw a punch at either of the officers.*

*Mr. Hensley asked why C/O Rasnick assault the offender out of the blue. The offender said when the officers told him to "shut the fuck up" and go in his cell, Offender Wall said he said, "Shut the fuck up. I'm talking to him." The offender said C/O Rasnick was in an agitated stated and C/O Hicks stopped C/O Rasnick from coming down from the top tier. The offender said he continued to curse back and forth with the officers while he continued to walk toward his cell. Offender Wall said that was the reason he*



Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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*wished to have the security camera reviewed. The H/O asked the offender if he had also been in an agitated stated. The offender said he had only been responding to the officer's "ignorance" and Wall said he also had been ignorant to respond.*

*Mr. Hensley asked if there any injuries to the three people involved in the incident. Offender Wall said he had a cracked bone in his hand, lacerations to his wrist from the handcuffs, two black eyes and several knots to the front and back of his head. The Hearings Officer asked if the scuffle was an all-out brawl. The offender again denied that he ever threw a punch and said that he only saw C/O Rasnick throw punches during the altercation.*

*C/O Hicks was asked to give his statement concerning the incident once the officers and the offender arrived at the vestibule door. The Reporting Officer said that when he arrived at the vestibule door, he ordered the offender to get on the wall. C/O Hicks said he did not want to chance going through the vestibule door in case something occurred and the officers did not have any assistance. It was confirmed that C/O Rasnick had been at the vestibule door as well. C/O Hicks said that when he reached for the offender, Wall spun around and swung on the officer but missed. The Reporting Officer said the offender could have "cleaned my clock" if the blow had connected. C/O Hicks testified that he grabbed Offender Wall around the waist and the two fell to the ground. Hicks said that C/O Rasnick tried to gain control of the offender's feet in order to subdue the offender. C/O Hicks stated that he had Offender Wall's left arm and was attempting to find the right arm when the offender struck the officer in the eye.*

*Hearings Officer Hensley comment that Offender Wall said that the incident began with C/O Rasnick and then C/O Hicks came to Rasnick's rescue. The Reporting Officer replied, "No sir. That is now how I recalled it at all."*

*Offender Wall was given the opportunity to ask questions of C/O Hicks. The offender asked if the R/O sustained any injuries. C/O Hicks said he received injuries to the right eye that required three stiches to close up as well as a fracture to the officer's hand. Mr. Hensley asked how long C/O Hicks was off from work. The R/O responded that he was off for two weeks. The offender asked if the security camera would show if the blow that struck the officer in the face had been intentional or not since the offender had been charged with aggravated assault. Mr. Hensley commented that the only person that would know if the blow had been intentional or not would be Offender Wall. The Hearings Officer explained that neither C/O Hicks nor the video would be able to make that determination. However, Mr. Franks asked C/O Hicks if the officer thought Offender Wall had intentionally struck the officer. C/O Hicks replied that he*

Wall, Gary #1133749

Offense Code: 105A Dated: 08-14-15

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*had been trying to restrain the offender and any activity from Offender Wall would have been intentional in the R/O's opinion. It was determined that during the scuffle the offender had struck C/O Hicks with his fist closed.*

*Offender Wall maintained that he was on the ground and never struck either officer and the video would support his statements.*

*The offender had no further questions from C/O Hicks and the officer was dismissed from the hearing.*

*Offender Wall addressed a concern he had about OP 830.5 about an offender transfer. The offender said that he had not received an ICA before he was transferred to WRSP from ROSP. Offender Wall said he had been told that he was on PHD and should have had the hearing within 15 days according to policy. Mr. Hensley responded that he would not be aware of the offender being in PHD unless the Disciplinary Report indicated such and showed that the box had been checked. The Hearings Officer also said that C/O Hicks had been off work for two week and he could not have conducted the hearing before the R/O came back to work.*

*Offender Wall said that an authorized continuance would have to have been enforced either way. Mr. Hensley replied that according to the DOR, Pre-hearing Detention had not been recommended for this particular case. Concerning the review of the security camera, Mr. Hensley said he would not look at the footage because C/O Hicks said he had been struck in the eye that required stitches and had received a fractured hand. The Hearings Officer opined those injuries had been consistent with an assault upon the officer.*

*Therefore based on the evidence that was submitted, Mr. Hensley found Offender Wall guilty of the offense as charged. The penalty was set at 180 days loss of good time.*

#### CONCLUSION:

*I have listened to the taped hearing and have carefully considered both the oral and written evidence that was submitted therein. Offender Wall denied that he ever threw a punch at either Officer Hicks or Rasnick. In fact the offender said that he had been the one that was assaulted by the officers and the security camera would support his statements. However, C/O Hicks's version of events indicated that Offender Wall had struck him in the eye during the time that he and the offender were scuffling on the ground. During that struggle both officers received injuries that caused them to lose*

Wall, Gary, #1133749

Offense Code: 105A Dated: 08-14-15

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Tape #: ROSP-2015-1481

*time from work. All three individuals received injuries which would indicate that a fight took place that required considerable effort by the officers to subdue Offender Wall while the offender forcefully rebuffed the officer's attempt to restrain the offender. I therefore agree with Mr. Hensley's finding of guilt in this case.*

It is my findings that sufficient evidence was presented to support the finding of guilt in your case. Additionally, you were provided with a fair and equitable hearing with all due process rights afforded. I have also reviewed the penalty assessed and find that it is appropriate and within the range of allowable penalties per OP #861.1. Therefore, this charge will not be dismissed.

In accordance with OP 861.1 only issues not addressed by the Warden may be appealed to the Regional Administrator on Category II Charges. This must be done within fifteen calendar days, to the following address:

Henry J. Ponton, Regional Administrator  
Disciplinary Appeals Unit  
PO Box 26963  
Richmond, VA. 23261

LJF Warden/jae

cc: Hearings Officer  
Records



36097

## Disciplinary Appeal

RECEIVED

From: Offender Name: Mr. Gary Wall

OCT 07 2015

SEP 14 2015 JBLA-102

Facility: Wallens Ridge State Prison

OFFENDER DISCIPLINE UNIT

Case #: R.O.S.P. - 2015-1481

Offense Date: 8/14/15

Offense Code: 105-A

Offense Title: Aggravated Assault upon non-offender

Hearing Date: 9/8/15

Penalty: loss of 130 days of SGT

☒ LEVEL I APPEAL - SEND TO THE FACILITY UNIT HEAD

NOTE: The appeal to the Facility Unit Head must be submitted within 15 calendar days from receipt of the completed Disciplinary Offense Report. Staff can access all disciplinary documents in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

☒ LEVEL II APPEAL - MAIL TO:

Offender Discipline Unit Department of Corrections, P. O. Box 26963, Richmond, VA 26963

NOTE: Only Category I convictions can be appealed to Level II. Category II convictions cannot be appealed to Level II, except for a reason specified in the *Appeal to Regional Administrator (Level II)* section of Operating Procedure 861.1, *Offender Discipline*.

New appeal issues will not be considered at this level. Only those issues raised by the offender in the Level I appeal to the Facility Unit Head or in the response from the Facility Unit Head will be considered.

The Level II appeal must be submitted within 15 calendar days from receipt of the response from the Facility Unit Head. Staff can access all disciplinary documents including the Facility Unit Head's response in VACORIS. Therefore, the only document that will be accepted for review and consideration is this Disciplinary Appeal.

List your issues for appeal: I bore my appeal on the clearly established DUE PROCESS Violations in Operational Procedures 361.1 XII #2, 361.1 XV C #7 & D #3, 361.1 XI A #1 & #2, 361.1 B #4 (2 & 3), and 361.1 IX F #5 governing Offender Discipline in the Virginia Department of Corrections.

\* Violation of 361.1 XII #2; which clearly states in plain language: "15 days to Containment for PMS... on any other Detention Status for the Offender; Since I was removed from General population at R.D.S.R. and was immediately transferred to W.R.S.R. on 3/14/15, the (attached) I.C.L. form I presented during the disciplinary hearing clearly indicated I was being placed in "SPECIAL HOUSING", a General form for Special purpose had assignment including... General Detention and Pre-hearing Detention as stated in 361.1 III (Definitions) for the 105-L. Being Per 330.5 IV J #8 (a) (ii) (b), and IV J #8 (a) (iii) (a) through (c), governing Emergency transfers clearly states: "if an offender is transferred BEFORE the hearing facility conducts an I.C.L., the Reporting Officer will provide a signed written statement describing the pertinent facts & actions." Since the justification for my emergency transfer was the Logged Assault on a non-offender & I DID NOT have an I.C.L. before being transferred, the Report Given by Officer Hicks was used for this purpose (transfer) and my initial assignment to Special Housing upon my arrival to W.R.S.R. on 3/14/15. Therefore, under Section 361.1 B #1 & #2, the 3/14/15, I.C.L. placed me in General on Pre-hearing...

Level I Appeals Only: Staff must sign and date below and provide a copy of this form within two working days to the offender as a receipt of their Level I appeal.

Date Appeal Received 9/14/15 Staff Signature: \_\_\_\_\_

Additional pages may be attached as needed.

Revision Date: 8/4/14

(Continuation of Level-I, appeal of 195-A charge)

... Detention.

Since I was never given an Authorized Continuance by the I.H.O. by way of the NOTICE OF CONTINUANCE form per 861.1 III A, to conduct my hearing outside of the 15 days prescribed in ~~Section~~ 861.1 III #2, and I was NOT allowed to meet with an advisor (upon request dated: 8/17/15) per 861.1 ICG #3 (b.c), was also isolated, Violating BOTH of these clearly established DUE PROCESS rights.

= Violation of 861.1 III C #7 & D #3; which clearly states: "if the offender request the review of a video/audio recording ... the need to review such is determined by the I.H.O." Since the I.H.O. simply determined that the Documentary Evidence Request form was the wrong form to request such, disregarding the 8/14/15, Request form submitted by me and several Verbal Request during the hearing — then stating I needed to convince him to do such (after pointing out several distinctive actions testified too that could ONLY be confirmed or contradicted by reviewing the incontestable evidence requested) now did he state "WHY" this dispositive evidence was not necessary for review to adequately present & or confirm my defense to these allegations.

= Violation of 861.1 III A #1 & #2; which clearly states "At the offenders Request ... in if other limitations that may interfere with their ability to prepare for ... the disciplinary hearing the I.H.O. ... SHALL appoint an advisor to assist the offender. (NOT to be mistaken for ~~IV~~ D, Rights). The (attached #2) 8/17/15, Request clearly shows while in Medical with a fractured bone in my left (writing) hand and without ANY of my property, including access to the 861.1, (which was ALSO requested) were ALL DENIED.

= Violation of 861.1 I B #4 (2 & 3); which clearly states "the right to request ... assistance from an advisor with completing the Witness Request & Documentary Evidence Request forms" which were also DENIED with the 8/17/15, request to the I.H.O.

= Violation of 861.1 III F #5; clearly states "The O.I.C. will ... Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officers, or any Relevant witnesses to obtain additional information, if necessary to determine if sufficient information exists to notify the offender a Disciplinary Offense Report is being placed against him (4-4234)". But this WAS NOT nor could have been done because additional witnesses (in ALPHA-100px) and the Rapid-Eye Video footage (were) at Red Union (and) is NOT accessible at W.R.S.D. to investigate my claims (of assault) or Officer Hicks allegations to have a Charge Generated at W.R.S.D. State Prison.

Dated: September 13th 2015

Manny Wolff # 175599  
Respectfully Submitted

Attachment page to Level-I, Disciplinary Appeal of 195-A Charge.  
Plus 2, attached pages (BOTH on RECORD WITH PRIOR APPEALS)

1 - 8/14/15, F.C.A.

2 - 8/17/15, Request to I.H.O.





## COMMONWEALTH OF VIRGINIA

### Department of Corrections Western Regional Office

Henry J. Ponton  
Regional Administrator

5427 Peters Creek Road,  
Suite 350  
Roanoke, Virginia 24019-3890  
(540) 561-7050

Log #	36097	Case #	ROSP-2015-1481
Offense Code	105A	Offense Title	AGGRAVATED ASSAULT UPON A NON-OFFENDER
Offense Date	8/14/2015	Hearing Date	9/8/2015
Disposition	Guilty – Hearing	Penalty	Loss of SGT – 180 days

November 9, 2015

Gary Wall, #1133749  
Wallens Ridge State Prison  
272 Dogwood Drive  
P. O. Box 759  
Big Stone Gap, VA 24219

Dear Mr. Wall:

This letter is in response to your appeal of the above-stated charge. After considering your appeal, the following determinations have been made.

**ISSUE #1: Operating Procedure 861.1 sections XII.2, XV.C.7&D.3, XV.A1&2, X.B.4.2&3, and IX.F.5 were violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #2: Since the justification for your emergency transfer was the aggregated assault on two non-offenders, and you did not have an ICA before being transferred, the report given by Correctional Officer Hicks was used for this transfer and initial assignment to Special Housing upon your arrival to Wallens Ridge State prison on 8/14/2015.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #3: You were never given an Authorized Continuance by the Hearings Officer by way of the Notice of Continuance Form per Operating Procedure 861.1 section XII.A to conduct a hearing outside of the 15 days prescribed in section XII.2 and you were not allowed a meeting with an advisor which also violated your Due Process Rights.**

Contention was adequately addressed by the Facility Unit Head; refer to number one (1).

**ISSUE #4: Operating Procedure 861.1 sections XV.C.7 and D.3 was violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number two (2).

**ISSUE #5: Operating Procedure 861.1 section XI.A.1&2 were violated. In addition, the attached request on 8/17/2015 clearly showed that while in medical with a fractured bone in your left hand and without any of your property indicating access to Operating Procedure 861.1 were all denied.**

Contention was adequately addressed by the Facility Unit Head; refer to number three (3).



**ISSUE #6: Operating Procedure 861.1 section X.3&4 (2&3) were violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number four (4).

**ISSUE #7: Operating Procedure 861.1 section IX.F.5 was violated.**

Contention was adequately addressed by the Facility Unit Head; refer to number five (5).

Please be advised that all of the contentions you presented within your Level II Appeal were contentions that you raised within your Level I Appeal. All such contentions, upon review, have already been answered in full within your Level I Appeal Response and/or during your original hearing. This office deems your Warden's response was complete and adequately addressed all of your issues.

Upon review of all documents submitted, this office finds no procedural errors. Thus, based on the preponderance of evidence against you, the charge is **UPHELD**.

Sincerely,

A handwritten signature in black ink that reads "Henry Ponton/ap". The signature is written in a cursive, flowing style.

Henry J. Ponton  
Regional Administrator

HJP/jvl/kl

cc: Earl Barksdale, Warden – Red Onion State Prison  
Leslie Fleming, Warden – Wallens Ridge State Prison



VIRGINIA  
DEPARTMENT OF CORRECTIONS

Offender Request 801 F3 7-12

### Offender Request

#### DIRECTIONS

1. Fill in your Name, Number, Full Housing Assignment
2. Please Print your request; KEEP IT BRIEF
3. Drop in the appropriate Mail Box
4. Requests may be returned unanswered if addressed to the wrong department or if duplicate requests are sent.

YOUR LAST NAME	FIRST	MI	NUMBER	BLDG/CELL
WALL	Er.		7135749	CHALL6-216
WORK ASSIGNMENT	ASSIGNED COUNSELOR	TODAY'S DATE		
n/a	Mrs. E. Savard	September 25 <sup>th</sup> 2016		

TO: ☐ Unit Manager ☐ Medical ☐ Personal Property ☐ Law Library ☐ Security  
☐ Treatment ☐ Mental Health ☐ Education ☐ Enterprise Shop ☐ Accounting  
☐ Chaplain ☐ Assistant Warden ☐ Warden ☒ Other *Operations Officer of R.O.S.D.*

CHECK PURPOSE ☐ Appointment Request ☐ Question/Statement

*Operations Officer Mrs. S. Stancinich;*  
 I was informed I should write to you to receive a copy of the following  
 Memorandum Concerning the Revision of the Operations Procedure, Appt. 1, Offense Discipline:  
 - Memorandum from WILLIAM (Director H. Clarke) dated 11/24/15, indicating the revised  
 Bldg. 1, would not come into effect until 2/10/16.  
 Your assistance with obtaining this memorandum would greatly be appreciated.  
 Thank you kindly

DO NOT ATTACH ADDITIONAL PAGES; DO NOT WRITE BELOW THIS LINE

### RESPONSE

Request sent to correct department ☐ Yes ☐ No; Routed to: \_\_\_\_\_ Date: \_\_\_\_\_

*My notes indicate this revision became effective 2/17/16, but I don't have a copy of the memo from Mr. Clarke*

*S. Stancinich*

*926-16*

Offense 7117-0006-EKD-RSB Document 1 Filed 11/14/16 Page 78 of 96

*(EXHIBIT 22)*

**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 10/15/2014 11:49AM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1

<b>Current Class Level:</b> 2	<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b> 43 Years 19 Months 290 Days	<b>Parole Rev. Date:</b> <b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 07/28/2025  
**Good Time Release:** 12/13/2025  
**Adjusted Discharge:** 28 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 04/27/2010

<b><u>Date</u></b>	<b><u>Description</u></b>
09/06/2014	<b>Class Level:</b> 2

*ALBERT J. JORDAN*  
*(EXHIBIT # 22)*



**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 04/27/2010 3:24PM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1
<b>Current Class Level:</b> 4		<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b> 43 Years 19 Months 290 Days		<b>Parole Rev. Date:</b>
		<b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 11/16/2032  
**Good Time Release:** 06/16/2033  
**Adjusted Discharge:** 30 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 04/09/2010

<u>Date</u>	<u>Description</u>
03/17/2010	<b>Memo:</b> This update was generated for administrative purposes.

*(Handwritten signature)*

*HABEAS CORPUS  
(EXHIBIT # 24 (3))*

**Virginia Department of Corrections**

**OSC-105**

**Legal Update**

<b>DOC #:</b> 1133749	<b>Offender:</b> Wall, Gary Lamont	<b>Date:</b> 03/14/2016 1:52PM
<b>Status:</b> Active	<b>Location:</b> Red Onion State Prison	<b>Page:</b> 1 of 1
<b>Current Class Level:</b> 4		<b>CRD:</b> 09/06/1995
<b>Total Sentence:</b>	43 Years      19 Months      290 Days	<b>Parole Rev. Date:</b> <b>Parole Violations:</b> 0

**Projected Dates**

**Discretionary Parole Eligibility:** 10/11/2013  
**Mandatory Parole Release:** 12/17/2032  
**Good Time Release:** 07/17/2033  
**Adjusted Discharge:** 30 days applied to MPRD

The projected dates are based on the assumption that the offender will continue to earn good time at the present earning level and will not have earned good time taken from the offender as a result of misbehavior. Loss of earned good time, a change in good time earning level, or any other event that impacts the service of the total sentence may cause the projected dates to change.

Events listed below may impact the projected dates of eligibility and/or release since the last Legal Update dated 10/15/2014

<u>Date</u>	<u>Description</u>
08/14/2015	<b>Disciplinary:</b> 105A - Aggravated Assault upon a non-offender Lost: 90 days SGT Applied: 90.00 days lost for Release U, Loss of Good Time for 90 days
08/14/2015	<b>Disciplinary:</b> 105A - Aggravated Assault upon a non-offender Lost: 180 days SGT Applied: 180.00 days lost for Release V, Loss of Good Time for 180 days
08/31/2015	<b>Class Level:</b> 4
09/06/2015	<b>Class Level:</b> 4 Change in GCA from 2 to 4.



#12974

## COMMONWEALTH OF VIRGINIA

COMMONWEALTH'S ATTORNEY FOR WISE COUNTY & THE CITY OF NORTON

**C.H. "Chuck" Slemp, III**  
*Commonwealth's Attorney*

206 E. Main Street, Suite 123  
P.O. Box 69, Wise, VA 24293

March 31, 2016

Lonnie Kern, Esquire  
1719 2<sup>nd</sup> Avenue East  
Big Stone Gap, VA 24219

RE: Commonwealth v. Gary Lamont Wall; F16-55

Dear Lonnie:

Please find enclosed all discoverable materials for the above styled case. I have also included the sentencing guidelines and prior worksheets. Should I receive any further discovery, I will forward that to you.

I will efile a copy of this letter to the Wise County Circuit Court Clerk's Office advising them of our compliance with discovery.

If you should have any questions or concerns, please do not hesitate to contact me.

Very Truly Yours,

Berlin Skeen, Deputy  
Commonwealth's Attorney

/dl

Cc: Wise Circuit by efile  
Enc: As stated above

DAVID S. COOPER  
EXHIBIT #15



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF CORRECTIONS  
SPECIAL INVESTIGATIONS UNIT

INVESTIGATIVE INTERVIEW

CASE #: 1240423 RED

NAME: Elijah T. Rasnick INMATE # / SSN / EIN: # 6180190

INSTITUTION OR POST OF DUTY:	<u>RED</u>	SEX: (M/F)	<u>MALE</u>
LOCATION OF INTERVIEW:	<u>459 Stearns Ridge</u>	D.O.B.:	
EMPLOYER:	<u>Clinched VA</u>	JOB TITLE:	<u>Corrections Officer</u>

RESIDENCE: (City/County, State)	
HOME TELEPHONE #:	
WORK TELEPHONE#:	
ALTERNATE TELEPHONE#:	

WITNESS(ES) PRESENT: S/A. Wood

STATEMENT / DETAILS OF INTERVIEW:

Page 1

on 8/14/15 at approximately 4:00 PM I S/O Rasnick and S/O J Hicks was talking with offenders at the phone. Then I S/O E Rasnick heard S/O Holbrook tell offender G. Wall #1133749 to go back to his cell the offender wall stated to S/O Holbrook "fuck you I aint doing shit". S/O Hicks gave offender G. Wall a direct order to lock down he then stated "fuck you i aint locking down" then S/O Hicks and myself S/O Rasnick told the rest of the pod to lock down they complied. S/O Hicks then gave G. Wall an order to go the vestibul at which time he went in that direction. When myself S/O Rasnick and offender wall was near the wall and under the gun we then gave him

PERSON INTERVIEWED: Elijah T. Rasnick DATE: 11-5-15

INVESTIGATOR: [Signature] DATE: 11-5-15

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF CORRECTIONS  
SPECIAL INVESTIGATIONS UNIT

INVESTIGATIVE INTERVIEW

CASE #: 150423RED

NAME: Elijah T. Rasnick INMATE # / SSN / EIN: #6180190

INSTITUTION OR POST OF DUTY:	<u>RED</u>	SEX: (M/F)	<u>MALE</u>
LOCATION OF INTERVIEW:	<u>459 Stevens Ridge</u>	D.O.B.:	
EMPLOYER:	<u>VADOC</u>	Chincho VA	JOB TITLE: <u>Correction Officer</u>

RESIDENCE: (City/County, State)	
HOME TELEPHONE #:	
WORK TELEPHONE #:	
ALTERNATE TELEPHONE #:	

WITNESS(ES) PRESENT:

S/A Woods

STATEMENT / DETAILS OF INTERVIEW:

Page 2

a direct order to cff up. offender wall then walked to the wall I so  
Rasnick Grapped his hand and pull from me and said "Get your  
fucking hands off me". then So hicks and myself Graped offender  
wall and got him to the ground to get control of his hands  
offender wall struck So hicks in the Right eye cutting it. I so  
Rasnick twisted my Right knee, then Responding staff entered the  
pod and contro / of offender was gained. I then went to medical  
for treatment end of statement

PERSON INTERVIEWED:

Elijah Rasnick

DATE: 11-5-15

INVESTIGATOR:

S/A Woods

DATE: 11-5-15





VIRGINIA DEPARTMENT OF CORRECTIONS

## Internal Incident Report

038:1 A-4

DOC Location: ROSP Red Onion State Prison

Report generated by Lyall, J G

Report run on 08/15/2015 at 2:20 PM

<b>Internal Incident Number:</b>	<b>Date/Time of Incident:</b>	<b>DOC Location:</b>
IIR-ROSP-2015-000979	August 14, 2015 @ 04:05 PM	Red Onion State Prison
<b>Reporting Staff:</b>	Hicks, Jason J	<b>Title/Shift:</b> Correctional Officer Senior, B Break, Day
<b>Date Reported:</b>	08/15/2015	<b>Time:</b> 01:32 PM
<b>Offenders Involved:</b>		
<b>Staff Involved:</b>	Rasnick, Elijah	<b>Corrections Officer</b>
<b>Visitors Involved:</b>	<b>Others Involved:</b>	
<b>Type of Incident:</b> Simple Assault		
<b>Location of Incident:</b>	N/A - A-1-GP	
<b>Gang Related:</b>	No	<b>Confidential:</b> No <b>PREA:</b> No
<b>Description of Incident:</b> On the above date and approximate time I C/O J. Hicks along with C/O E. Rasnick were on the top tier of Alpha 1 speaking with the offenders below us on the phone. I C/O Hicks heard C/O Holbrook who was the gunman give offender G. Wall #1133749 a direct order to lockdown. At that point offender G. Wall screamed, "Fuck you I ain't gotta do shit. Get the Sgt." At this point I C/O Hicks along with C/O Rasnick both gave offender Wall orders to comply and lockdown to which his answer was, "fuck ya'll I ain't doin shit." I C/O Hicks gave all offenders the order to lockdown immediately at which point they complied. I then told Offender Wall to proceed to the vestibule at which point he walked up to me in a intimidating manner at which point i gave him another order to proceed to the vestibule. Offender Wall turned and then began to walk towards the vestibule. When we were close to the wall I gave offender Wall the order to be restrained when I tried to place the first cuff on him he spun around and swung at me and yelled, "don't fucking touch me." at this point I grabbed offender Wall to gain control. Myself and offender and C/O Rasnick went to the floor and struggled with offender to gain control. Offender Walls right fist struck my in the right eye causing me to bleed. Other C/O's arrived and offender was brought under control. end of report.		
<b>Notifications:</b>		
<b>Name:</b>	<b>Title:</b>	<b>Date/Time Notified:</b>
<b>Approved By:</b> Lyall, James G <b>Title:</b> Lieutenant		
<b>Action Taken:</b>	Approved	<b>Review Date:</b> 08/15/2015
<b>Investigation:</b>	No	<b>Assigned to:</b>
<b>Comments:</b>		



IN THE CIRCUIT COURT OF WISE COUNTY VIRGINIA:

name: MR. GARY V. KERN

number: 1133749

Place of confinement: Red Onion State Prison,

Post Office Box 1713, Martinsburg, VIRGINIA 24279-1713

dated: October 16<sup>th</sup> 2016

COMMONWEALTH OF VIRGINIA

v.

Case # 195 CR 16F 000-55-01 & 195 CR 16F 000-55-02

GARY V. KERN #1133749

Mr. Kern,

Your office recently represented me in the above stated Criminal Case in the WISE COUNTY CIRCUIT COURT (Case # 195 CR 16F 000-55-01 & 195 CR 16F 000-55-02) for Violation of Virginia Code § 18.2-57(c), Unlawful because aside from being criminally charged for the alleged act of assaulting an officer, I also had my Sport-time Credits taken and I am STILL on Intensive-Management Segregation at Red Onion State Prison. Since it's clearly evident by the Video Footage on file of this incident on 8/14/15, the injury to Officer J. Hicks' Right eye was caused by a Head-to-Head Collision with his Co-worker, causing it to Bleed profusely (while I was laying on the ground, face-down, fully restrained). In an attempt to correct these wrongs, I'm writing to humbly ask if you or your Daughter (who also watched the Video Footage with me and you on 5/27/16, at the Courthouse and actually pointed this Critical Fact out to us) would be willing to provide me with an AFFIDAVIT indicating this Video Footage does show the injury to Officer J. Hicks' right eye was caused by a head-on Collision with his Co-worker and NOT by me as alleged.

Mr. Kern, I know you and your staff are very busy people but it's hard for me to sit back and do NOTHING while I'm still continuously being unjustly punished for something I did NOT do (and I can actually prove I didn't do this makes it even more harder) so I hope your office would be able to assist me with this request at your earliest convenience because I can not continue to pursue HABEAS relief without this important piece of information.

Your assistance in this matter would greatly be appreciated.

Thank you kindly,

Gary V. Kern #1133749

CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of October 2016, I mailed a copy of the foregoing: LETTER TO LAWYER REQUESTING AFFIDAVIT to be sworn to by; MR. WARREN L. KERN rep. (Attorney at Law) 1719 2<sup>nd</sup> Avenue East, Big Stone Gap, VIRGINIA 24219, by first class mail.

STATE OF VIRGINIA  
CITY/COUNTY OF: Wise

Gary V. Kern #1133749  
Absent Fully Submitted

Subscribed and sworn to before me this 17<sup>th</sup> day of October, 2016.

Emily N. Sowards  
Notary Public  
Commission Expires May 31, 2017

EMILY N. SOWARDS  
NOTARY PUBLIC  
REG. #7580278  
COMMONWEALTH OF VIRGINIA  
COMMISSION EXPIRES MAY 31, 2017

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**CHANGE OF ADDRESS (PRO SE)**

No. 16-7308, Gary Wall v. Jeffrey Artrip  
7:15-cv-00097-JLK-RSB

If your address changes, it is your obligation to notify the clerk. If your address changes and you do not notify the clerk, we will not be responsible for your failure to receive documents from the court.

THE CLERK IS HEREBY NOTIFIED THAT MY ADDRESS SHOULD BE  
CHANGED TO:

Name:
Street/P. O. Box:
City/State/ZIP:
Telephone Number:
Prison (if applicable):
Prisoner's Reg. No. (if applicable):
Release Date (if applicable):
Effective Date for Change of Address:
Signature:

THE LAW OFFICE OF KERN & WILKENS P.C.

1719 2<sup>nd</sup> AVENUE E.

BIG STONE GAP, VIRGINIA 24219  
KERNANDWILKENS@GMAIL.COM

LONNIE L. KERN  
N. LESLIE WILKENS  
JAXON WILKENS



TELEPHONE (276) 523-1281  
FAX (276) 523-1284

October 21, 2016

Mr. Gary Wall  
Inmate #1133749  
C/O Red Onion State Prison  
PO Box 1900  
Pound VA 24279-1900

IN RE: CASE NO. 195CR16F00-55-01 AND 55-00

Dear Mr. Wall:

This is to advise that I no longer represent you in regard to the above cases in the Wise County Circuit Court. Your case was nolle prosequi on June 23, 2016

I am also unable to provide an Affidavit in regard to any video footage.

Thank you very much.

Sincerely yours,

  
LONNIE L. KERN

LLK/AC



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
(ROANOKE DIVISION)

Mr. Gary Wall #11337149

Petitioner,

v.

Civil Action No. \_\_\_\_\_

29 U.S.C. § 2254; HABEAS CORPUS PETITION

EARL BARKSDALE, Warden of Rock Union State Prison  
Defendant(s).

**AFFIDAVIT**

Affiant, Mr. Gary Wall #11337149, do hereby state the following events took place, and this Affidavit is made of my own free will and under PENALTY OF PERJURY, I do hereby state;

On or about,

1) Affiant declares, Statements of Officer J. Hicks (EXHIBIT # 27) and Officer E. RASNICK (EXHIBIT # 28) obtained on or about 5/27/16, Conflict as to "HOW" incident on 6/14/15, in ALPHA-100 pad initiated and what roles each officer played ("Who" was the primary officer and who assisted who)

2) Affiant declares, The written Statement of Officer E. RASNICK (EXHIBIT # 28) and the testimony given by Captain D. Still during the disciplinary hearing on 8/15/15, for Case #1503, never says that offender Wall's action(s) caused the injuries to Officer Rasnick or that those actions were "intentional" for a finding of Guilt of Aggravated Assault as defined in the Virginia Department of Corrections. (EXHIBIT # 5)

3) Affiant declares, The "nonily-reliable evidence" clearly refutes the Reporting Officers' testimony given at the disciplinary hearing for Case #1503, on 8/15/15, as to Captain D. Still basing his investigation on Officer Rasnick's Statement on 6/17/15, because his written Statement was not made until 11/5/15 (EXHIBIT # 28) and as to what was actually reviewed by him in the available Video Footage of the incident in question.

4) Affiant declares, This Video Footage of the incident in question CLEARLY shows offender Wall never threw any punches at either officer as alleged.

5) Affiant declares, The Video Footage of the incident in question (from the ALPHA-100 pads REVERE-EYE camera footage, pulled up to full resolution) CLEARLY shows the injury to Officer J. Hicks' right-eye, causing it to bleed profusely was caused by a head-to-head collision with Officer E. RASNICK while offender Wall was lying face-down, fully restrained in handcuffs and shackles (EXHIBIT # 29)

6) Affiant declares, This "nonily-reliable evidence" of the Video Footage CLEARLY shows offender Wall DID NOT cause the injury to Officer J. Hicks' right-eye as alleged...

(Continued on Next page)

(1)

(Page: one of: 2)

HABEAS CORPUS  
(EXHIBIT # 29) (pages)

Continued from paragraph #6 of AFFIDAVIT OF: G. WALL #1133749, by Reporting Officer d. Hicks during the 9/10/16 disciplinary hearing for Case #1481, resulting in the loss of 180 Days of accumulated Good-Time Credits.

2) Affiant declares, This "newly-reliable evidence" was not obtainable by petitioner through any form of due diligence because petitioner is in the custody of the Virginia Department of Corrections and a Video Disk in his possession is prohibited and all evidence maintained was in the possession of either the Special Investigative Unit or the prosecutor of the WISE COUNTY CIRCUIT COURT until discovery was disclosed to petitioner's counsel on or about 3/31/16, and he was provided those copies and review of the Video footage on 5/27/16, during the Criminal Proceedings for Case #19CR16E000-55-01, and on being unable to obtain a "TRUSTWORTHY EYE-WITNESS" AFFIDAVIT from my appointed counsel as to the content of the Video footage, (he said and was shown to me) (See: Exhibit #20 (a & b)) Petitioner relies on the "newly-reliable evidence" of both officers initial written statements and the item of his "Critical Physical Evidence" of the Video footage of the incident in question, STILL in the possession of the WISE COUNTY prosecutor.

3) Affiant declares, This newly-reliable "Critical Physical Evidence" of the Video clearly shows the injury to Officer d. Hicks right eye was caused by a head-to-head collision with Officer Rasnick, while petitioner was on the ground, face down fully restrained, causing him to bleed profusely (See: Exhibit #29) and the written statement of d. Hicks was clearly initially reported as a SIMPLE ASSAULT (See: Exhibit #27) While the written statement of Officer Rasnick wasn't written until 11/5/16, (See: Exhibit #26) indicating the investigator Captain D. Stiller could not have based his testimony on Officer Rasnick's statement as alleged in the Disciplinary hearing for Case #1503, on 9/15/16, nor was his allegation as to "WHAT HE SAID HE SAW" in the Video footage truthful. Both newly-reliable items clearly contradicted this Reporting Officer's testimony given at the hearing. Officer Rasnick's written statement actually does state (not imply) that I assaulted him or any testimony.

4) Minor about 6/13/16, (See: Exhibit #22(a)) After bringing the Video footage content to the attention of the WISE COUNTY prosecutor, he decided NOT to continue to prosecute this case after reviewing this irrefutable evidence on tape, repeated requested to be reviewed during both Disciplinary proceedings for AGGRAVATED ASSAULT but was UNEMPLOYMENTALLY DENIED.

Affiant, Mr. Gary Wall #1133749, hereby states the following events were witnessed, and the affidavit is made and signed on affiant's own free will.

Respectfully Submitted,

Gary Wall #1133749

Subscribed and sworn to before me this

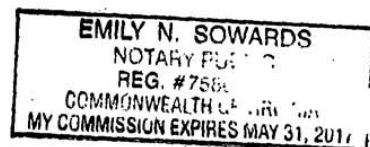
7th day of

November, 2016.

Emily N. Sowards  
Notary Public

My commission expires:

May 31, 2017.



(2)

(page: Two of: 2)





# Operating Procedure

<b>Effective Date</b> April 1, 2015	<b>Number</b> 861.3
<b>Amended</b>	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 861.3 (10/1/11)	
<b>Authority</b> COV §53.1-10, §19.2-316.2, §19.2-316.3	
<b>Subject</b> <b>SPECIAL HOUSING</b>	
<b>ACA/PREA Standards</b> 4-4140, 4-4249, 4-4261, 4-4266, 4-4267, 4-4268, 4-4273	
<b>Incarcerated Offender Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Office of Primary Responsibility</b> Security Operations Manager
<b>FOIA Exempt</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <b>Attachments:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

## I. PURPOSE

This operating procedure provides information to offenders incarcerated in Department of Corrections institutions concerning assignment to and operation of Special Housing Units and provides for the use of holding areas in Community Corrections facilities.

## II. COMPLIANCE

This operating procedure applies to all facilities operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

## III. DEFINITIONS

**At Risk Offender** - An offender identified by a Qualified Mental Health Professional as meeting the criteria in Operating Procedure 730.4, *Offenders "At Risk" in Special Housing*.

**Disciplinary Segregation** - Special purpose bed assignments, in which the offender is confined without privileges - imposed by the Hearings Officer as a penalty for conviction of a disciplinary offense.

**Facility Review Committee (FRC)** - A treatment team of at least three facility staff members; as designated by the Facility Unit Head to review and evaluate the overall progress of an offender; referral to the FRC may be made by the Hearings Officer or any staff member in direct contact with the offender; who feels the offender's behavior requires an intervention. Normally, the FRC includes the offender's Counselor or Probation Officer; Assistant Unit Head or Security Supervisor; and one from the following: Senior Probation Officer, DCE Instructor, or another Counselor. (Community Corrections facilities only)

**General Detention** - Special purpose bed assignments, utilized under proper administrative process, for the immediate secure confinement of offenders pending review for an appropriate assignment

**Institutional Classification Authority (ICA)** - The facility staff person designated to conduct offender case review hearings

**Intractable Behavior** - Behavior which, in the determination of the Department of Corrections, (i) indicates an (offender's) unwillingness or inability to conform his/her behavior to that necessary to his/her successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other offenders. - COV §19.2-311 (applies to youthful offenders) and COV §19.2-316.1 (applies to Community Corrections facilities)

**Pre-Hearing Detention (PHD)** - Special purpose bed assignments, utilized under proper administrative process, for the immediate confinement of offenders who have been charged with an offense under the Offender Disciplinary Procedure, are awaiting a Disciplinary Hearing, and are considered to be a potential threat to persons or property, or for escape.

**Protective Custody Unit** - A special purpose general population housing unit designated by the Director for offenders classified as requiring separation from other offenders as a result of their personal security needs; offenders requesting and requiring assignment to a protective custody unit may be managed in



General Detention and Segregation, as appropriate, pending assignment and transfer.

**Qualified Mental Health Professional (QMHP)** - An individual employed in a designated mental health services position as a Psychologist or Psychology Associate, Psychiatrist, Social Worker (Masters level), or Registered Nurse or an individual with at least a Masters degree in psychology, social work, or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

**Segregation** - Special purpose bed assignments operated under maximum security regulations and procedures, and utilized under proper administrative process, for the personal protection or custodial management of offenders

**Special Housing** - A general term for special purpose bed assignments including segregation, disciplinary segregation, general detention, and pre-hearing detention

**Working Day** - Weekdays, Monday through Friday, except official state holidays

#### IV. COMMUNITY CORRECTIONS FACILITIES

A. Community Corrections facilities do not use special housing units but there is occasional need to detain an offender to preserve the orderly operation of the facility and to ensure the safety of the offender pending the review for possible removal of the offender from the program.

B. Other sections of this operating procedure do not apply to Community Corrections facilities except as specifically referenced in this section.

##### C. Detention of Offenders - General Procedures

1. The Facility Unit Head should delegate in writing those facility employees who may authorize the detention of an offender. This authorization will be posted or maintained in a procedure manual easily accessible to all facility employees.
2. Any offender may be detained in approved restraints (in accordance with Operating Procedure 420.2, *Use of Restraints and Management of Offender Behavior*) or within a secured holding cell as determined by the delegated authority.
3. Any time an offender is detained, the facility Administrative Duty Officer shall be notified immediately, and permission will be secured to continue the use of mechanical restraints and/or placement in a holding cell.
4. An offender should not be detained in restraints for a period greater than four hours. If it becomes necessary to maintain the restraints for a period of more than four hours due to the offender's intractable behavior, the offender will be given the opportunity to use the restroom.
5. Detentions shall not be used for disciplinary or punishment sanctions.

##### D. Use of Holding Cells

1. The Assistant Facility Unit Head shall review any detention of an offender within 72 hours or less and recommend to the Facility Unit Head release of the offender, referral to the Hearings Officer, or referral to the Facility Review Committee for formal review of program continuation/removal. (see Operating Procedure 861.2, *Offender Discipline, Community Corrections Facilities*)
2. Any offender detained in a holding cell through a meal shall be fed the same meals on the same schedule as the rest of the population.
3. Any offender detained in a holding cell shall be given prescribed medication as scheduled.
4. A holding cell used for overnight housing shall be equipped with a bed above floor level, a working toilet, hand basin, appropriate lighting, and ventilation.
5. Any offender detained in a holding cell overnight should be provided with the same bed linens and mattress and pillow as permitted the general population, offender behavior permitting.



## VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by McCoy, K

Report run on 08/15/2015 at 4:07 PM

Case #: ROSP-2015-1485 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 229 Offense Title: Being in an unauthorized area  
Offense Date: 8/14/2015 Time: 4:00 PM Location: Appointment Location - A-1-GP

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On 08-14-2015 at approximately 4:00 PM, I officer Holbrook was observing pod recreation, and saw offender G. Wall #1133749 cross the red line in front of the cell doors in A-1 pod during pod recreation, this area is unauthorized to be in during pod recreation, offender Wall was charged per 861.1.

☐ Description Continued on attached

Witnesses: Hicks, J J  
Rasnick, E

Submitted by Reporting Officer: Holbrook, C C

Date: 8/15/2015 Time: 2:31 PM

Title: Correctional Officer

☐ Witnesses continued on attached☐ Investigation Completed

Date: 8/15/2015

☐ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/15/2015 Time: 4:04 PM

Print Name: \_\_\_\_\_

McCoy, K

Title: Lieutenant

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a **WAIVER** of the first three rights. The following forms are available to the offender **UPON REQUEST** in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within **48-HOURS** of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
Adviser Name: _____	
2. DO YOU WISH TO REQUEST WITNESSES?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
<input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided Lt. C. King 8/14/15	
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
<input checked="" type="checkbox"/> Request the services of an advisor? <input checked="" type="checkbox"/> Advisor provided Lt. C. King 8/14/15	
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER, IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. <input checked="" type="checkbox"/> Offender Received Penalty Offer Form I understand I have 24-hours to consider this offer. <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided	
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/16/15

Time: 2:30 PM

Date set for Hearing: 8/24/2015

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

All paperwork provided on 8/16/15 to J. King

Page 1 of 2

Rev. 03/30/2009





## VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by McCoy, K

Report run on 08/15/2015 at 3:59 PM

Case #: ROSP-2015-1483 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 201 Offense Title: Disobeying an order  
Offense Date: 8/14/2015 Time: 4:00 PM Location: Appointment Location - A-1-GP

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On 08-14-2015 at approx 4:00 PM, I officer Holbrook was observing pod recreation in A-1 pod, I officer Holbrook gave offender G. Wall #1133749 a direct order to return to his cell and lock down, offender Wall refused. offender was charged per 861.1.

☐ Description Continued on attached

Witnesses: Hicks, J J  
Rasnick, E

Submitted by Reporting Officer: Holbrook, C C

Date: 8/15/2015 Time: 2:25 PM

☐ Witnesses continued on attached

Title: Correctional Officer

☐ Investigation Completed

Date: 8/15/2015

☒ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/15/2015 Time: 3:56 PM

Print Name: \_\_\_\_\_

McCoy, K

Title: Lieutenant

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a WAIVER of the first three rights. The following forms are available to the offender UPON REQUEST in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within 48-HOURS of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES? <input checked="" type="checkbox"/> Request the services of an advisor?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE? <input checked="" type="checkbox"/> Request the services of an advisor?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER. I understand I have 24-hours to consider this offer.	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form <input type="checkbox"/> Request the services of an advisor? <input type="checkbox"/> Advisor provided
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me, and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: Lt. C King Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_ Date: 8/16/15 Time: 7:36 AM

Date set for Hearing: 8/24/2015

Revised Date: \_\_\_\_\_

Revised Date: \_\_\_\_\_

*All paperwork provided on 8/16/15 J. King*





## VIRGINIA DEPARTMENT OF CORRECTIONS

## Disciplinary Offense Report

861.1 A-1

Report generated by McCoy, K

Report run on 08/15/2015 at 3:39 PM

Case #: ROSP-2015-1480 Reference: \_\_\_\_\_  
Offender Name: Wall, Gary L DOC #: 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
Offense Code: 129 Offense Title: Gathering around/approaching any person in threatening/intimidating manner  
Offense Date: 8/14/2015 Time: 4:03 PM Location: N/A - A-1-GP

Description of Offense (provide a summary of how the offender violated this offense by using the Formula: Who, what, when, where, and how, and any unusual behavior, any physical evidence and its disposition, and any immediate action taken, including use of force. All pertinent information should be included in the description of the offense to include but not limited to the use of telephone calls, letters, audio/video recordings and the use of confidential information):

On the above date and approximate time as I C/O Hicks was escorting Offender wall to the vestibule to speak with a Supervisor. As we reach the vestibule door He turned and approached me in an intimidating and threatening manner, Resulting in an assault on me.  
Offender charged per D.O.P. 861.1

☐ Description Continued on attachedWitnesses: Rasnick, E

Submitted by Reporting Officer: \_\_\_\_\_

Hicks, J JDate: 8/15/2015Time: 1:49 PM☐ Witnesses continued on attachedTitle: Correctional Officer☐ Investigation Completed

Date: \_\_\_\_\_

☐ Pre-Hearing Detention If yes, attach authorization form

Officer in Charge Signature: \_\_\_\_\_

Date: 8/15/2015Time: 3:35 PM

Print Name: \_\_\_\_\_

McCoy, KTitle: Lieutenant

## ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a WAIVER of the first three rights. The following forms are available to the offender UPON REQUEST in each housing unit: Witness Request Form, Documentary Evidence Request Form, and the Reporting Officer Response Form. The offender must submit these request forms to the Hearing Officer within 48-HOURS of the charge being served.

1. DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Advisor Name: <u>Pendleton</u>	<input type="checkbox"/> Refused To Respond
2. DO YOU WISH TO REQUEST WITNESSES?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Request the services of an advisor?	<input type="checkbox"/> Refused To Respond
<input checked="" type="checkbox"/> Advisor provided <u>H. C. King 8/16/15</u>	
3. DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Request the services of an advisor?	<input type="checkbox"/> Refused To Respond
<input checked="" type="checkbox"/> Advisor provided <u>H. C. King 8/16/15</u>	
4. DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<input type="checkbox"/> Refused To Respond
5. DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	<input type="checkbox"/> Refused To Respond
6. YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER; IN PERSON FOR CATEGORY I OFFENSES; BY SUBMITTING A REPORTING OFFICER RESPONSE FORM FOR CATEGORY II OFFENSES.	
7. YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER.	<input checked="" type="checkbox"/> Offender Received Penalty Offer Form
I understand I have 24-hours to consider this offer.	<input type="checkbox"/> Request the services of an advisor?
	<input type="checkbox"/> Advisor provided
8. YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.	
9. The charge may be vacated and re-served as a different offense, which can be a higher, equivalent or lesser offense code.	
10. YOU may be found guilty of a lesser-included offense code, in accordance with Section XXVI.	

I have been informed of the charges against me; and advised of my rights at the Disciplinary Hearing.

Served and Witnessed By: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_

I certify that this charge was served and the offender refused to sign in the space above:

Offender provided copy of report: \_\_\_\_\_

Date: 8/16/15Time: 7:44 PMDate set for Hearing: 8/24/2015Revised Date: 9-2-15Revised Date: 9-8-2015

All paperwork provided on 8/16/15 J. King

**DISCIPLINARY OFFENSE REPORT (continued)**

Case #: ROSP-2015-1483 Reference: DOC # 1133749 Facility: Red Onion State Prison Housing: A-1-GP-106T  
 Offender Name: Wall, Gary L

**DISCIPLINARY HEARING**

Facility where heard: Wallens Ridge State Prison Date: 8/24/2015 Time: 2:31 PM

Tape No(s): \_\_\_\_\_

Plea: ☐ Guilty ☒ Not Guilty ☐ No Plea Offender's Signature: \_\_\_\_\_

Reason for Absence/Exclusion of the Accused Offender:  
 \_\_\_\_\_

Was the Reporting Officer present at the hearing? ☐ Yes ☐ No

**NOTE:** The personal appearance of the Reporting Officer at the hearing is not required for Category II Offenses.

Was there a denial of requested Witnesses? ☐ Yes ☐ No and/or Documentary Evidence? ☐ Yes ☐ No

If yes, refer to the Witness Request Form or the Documentary Evidence Request Form for the reason why the request was denied.

Decision of Hearings Officer: ☒ Guilty ☐ Not Guilty ☐ Offender Accepted Penalty Offer  
☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty ☐ Vacated for Rewrite/Re-serve  
☐ Vacated Offender waived rewrite/serve of offense ☐ Dismissed

Reason for Decision:

Offender Wall said that he did not refuse to go back to his cell, that he just did not understand what was said. Reporting Officer Holbrook said that offender refused an order to return to his cell, and approached the control booth asking to speak to a sergeant. Officer Holbrook also said that offender Wall started toward his cell and once again turned around and ask for a sergeant. Offender Wall was found guilty on the preponderance of the evidence.

Penalty: Disciplinary Segregation - Imposed Value: 15 Days  
 \_\_\_\_\_  
 \_\_\_\_\_

☒ for the above listed offense, or ☐ Penalty continued or attached  
☐ for the following lesser included offense \_\_\_\_\_

Comment: \_\_\_\_\_

Name of Interpreter/Translator (if applicable): \_\_\_\_\_

Hearing Officer's Signature: [Signature] Date: 8/24/2015

Print Name: Franks, C W

Admitted to Pre-Hearing Detention: \_\_\_\_\_ Date In: 8-14-15 Date Out: 8-28-15

Admitted to Isolation: ☐ Yes ☒ No Date In: \_\_\_\_\_ Date Out: \_\_\_\_\_

**INSTITUTIONAL REVIEW:** ☒ Approved ☐ Dismissed ☐ Suspended Penalty  
☐ Reduced Penalty ☐ Rehear ☐ Reduced to Lesser-Included Offense

Comment: \_\_\_\_\_  
 \_\_\_\_\_

Penalty: Disciplinary Segregation - Imposed Value: 15 Days  
 \_\_\_\_\_  
 \_\_\_\_\_

☒ for the above listed offense, or ☐ Penalty continued on attached  
☐ for the following offense of \_\_\_\_\_

Signature: [Signature] Date: 8/27/2015

Print Name: Cope, N P Title: Captain

**RECEIPT OF APPEAL COPIES:** ☐ Offender intends to appeal ☐ Offender does not intend to appeal

This is to certify that I have received a copy of this report and have been advised of my right to appeal the decision to the Facility Unit Head (Category I and II Offenses) and to the Regional Director (Category I Offenses only).

Offender's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_



## MEMORANDUM OF LAW / BRIEF IN SUPPORT

Federal Courts "May entertain an application for Writ of HABEAS CORPUS Only on the ground that the prisoners' Confinement Violates the Constitution, laws, or Treaties of the United States."

In Murray v. Carrier, 494 U.S. 458, 485 (1990) The Court Stated that Procedural default would be excused even in the absence of Cause, when a "Constitutional Violation has probably resulted in the Conviction of one who is actually 'innocent'." also see: House v. Bell, 126 S.Ct. 2064, 2076-77, ("Prisoners asserting innocence as a gate way to defaulted Claims must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." (quoting: Schulp v. Delo, 513 U.S. 298, 321 (1995))). The Supreme Court Stated in Townsend v. Sain, 372 U.S. 293 (1963) that a federal hearing is mandatory if the petitioner makes a Substantial allegation of newly-discovered evidence that could not reasonably have been introduced in State Court. The evidence must be plausible and must bear on the Constitutional question in issue rather than the guilt or innocence of the petitioner. Thus, a State prisoner who obtains new evidence that was not and could not have been presented at trial (or disciplinary proceeding), and who is barred from moving the State Courts for a new trial because the statutory time limit has expired, is entitled to offer the new evidence in a federal forum.

Since petitioner has recently discovered facts upon which his actual innocence Claims were predicated, in order to establish a "gateway" Claim of actual innocence, and thus, overcome procedural default of Federal Habeas Claim, petitioner must demonstrate using the newly-discovered "Critical Physical Evidence" of the actual Video footage of the incident in question, it is more likely than not any reasonable finder of fact would find petitioner guilty of AGGRAVATED ASSAULT because this Video Clearly Shows the alleged injury to Officer Hicks' right eye was, in fact caused by the head-to-head Collision with Officer Rasnick while petitioner is clearly seen laying face-down, fully restrained in the Disciplinary hearing for Case #1481.

While the written Statement of Officer Rasnick, wrote on 11/5/15, Clearly indicates the investigator Captain D. Still Could not have based his testimony given on Officer Rasnick's Statement as alleged in the Disciplinary hearing for Case #1503, on 8/25/15, nor was his account of "WHAT HE SAID HE SAW", in the Video footage truthful. Both newly-reliable pieces of evidence Clearly Contradicts this Reporting Officers testimony given in this hearing. Both guilty decisions resulting in the total loss of 270 Days of already accumulated Good-Time Credits EARNED during that year, altering the length of petitioners Confinement. This newly-reliable "Critical Physical Evidence" of the Video footage of the incident in question and the written Statements of BOTH Officers were unavailable to petitioner because they were UNCONSTITUTIONALLY DENIED during both disciplinary hearings and in the possession of the Special Investigative Unit, then the WISE COUNTY prosecutor until Discovery disclosure in Criminal Case # 195CE167 000-55-01 & 00.

In Wolff v. McDonnell, 410 U.S. 534 (1974), The Supreme Court established Certain minimum DUE PROCESS rights which must be afforded prisoners in disciplinary proceedings. Among these requirements is an inmates limited right "to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or Correctional Goals." It is well recognized that Video Tapes are a type of Document (or at least, at a minimum exculpatory Evidence) and Courts have held that disciplinary bodies must review relevant Video Tapes, unless there is a specific Security reason not to do so (such reasons need not be explained at the hearing, but in a later lawsuit the officials will have the burden of showing that their action was not arbitrary) because the failure to review a requested Video Tape without "justified" Stated reason does DENY Due process under the 14<sup>th</sup> Amendment. (See: Ngigie v. Cotton, 344 F.3d 674, 678 (7<sup>th</sup> Cir. 2003)). It is also stated in Brooks v. Coughlin, 132 A.D. 2d 1115, 583 N.Y.S. 2d 91 (N.Y. App. Div. 1991) a hearing officers refusal to look at a Video Tape of the incident in question will also Violate and Deny Due process. In Pino v. Dalshheim, 605 F.Supp. 1305, 1317-18 (S.D.N.Y. 1995), the courts also held Due process is also Violated by "failure to check prison logs for relevant information, as done when the Inmate Hearings Officer would not check W.R.S.R. records for the 8/14/15, pre-hearing ~~pre~~ Detention form.

(CONTINUED ON NEXT PAGE)



MEMORANDUM OF LAW / BRIEF IN SUPPORT

Continued from: page: one

In the Fourth Circuit, it has already been established in Young v. Lynch, 846 F.2d 960 (C.A.4 (N.C.) 1988), "Notwithstanding the same evidence standard articulated in Hill and the Silence of Wolff, an inmate still has a fundamental due process right to have... (exculpatory) evidence reviewed when it is the dispositive item of proof, it is critical to the inmate's defense, it is in the custody of prison officials, and it could be reviewed without impairing institutional concerns." Petitioner's claims and review of the record clearly shows, at no time was it ever implied by the hearings officer (prior to the hearing) during the hearing, or afterwards on both levels of appeal) that his request for the hearings officer to review this exculpatory evidence (critical to his defense) would in any way, threaten institutional concerns after clearly pointing out it was necessary and relevant.

Under procedural Due Process, it's clearly established "an offender is entitled to have a hearing before an impartial fact-finder." Landman v. Royster, 333 F.Supp. 627 (E.D. Va. 1971). It is also established law, a fact-finder is required to "consider in good faith the substance of the offender's defense." Hearings officers may display lack of impartiality by their statements (and actions) at the hearings... or in connection with them.

The principal procedural defect complained of by petitioner, would if established, necessarily implies the invalidity of the deprivation of his EARNED Good-time Credits of 270 Days.

This claim is, first of all, that he was completely denied the opportunity to put on a defense through specifically identified exculpatory requested evidence ("At the hearing... On several occasions, Petitioner ask that the Rapid-Eye Security Camera footage of the incident in question be reviewed, hearing officer W.R. HENSLEY replied that the Video was not a document. Therefore, I had used the wrong form or reiterated his "STANDARD" for him to review such evidence at the hearing. That Standard being quote: "TO CONVINCE HIM," even after petitioner pointed out SEVERAL discrepancies in the Reporting Officers testimony that clearly conflicted with this defense presented that could ONLY be resolved by reviewing the requested irrefutable evidence of the video footage of the incident in question, including the very fact of his NOT Guilty plea.

This is an obvious procedural defect, and STATE and FEDERAL Courts have reinstated Good-time Credits (absent a new hearing) when it is established. Petitioner's claim, however, goes even further asserting that the cause of the exclusion of the review of the exculpatory evidence was the bias of the hearing officers themselves. He contends that the hearing officers lied about the "STANDARD" for reviewing such evidence, could be denied, and thus, "intentionally denied petitioner the right to present the extant exculpatory evidence."

A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him (see: Turney v. Ohio, 233 U.S. 510, 535, 47 S.Ct. 437, 445 71 L.Ed. 749 (1927); Arizona v. Fulminante, 499 U.S. 279, 203, 111 S.Ct. 1246, 1264, 113 L.Ed. 2d 302 (1991)). The due process requirements for a prison disciplinary hearing are in many respects less demanding than those for criminal prosecution, but they are not so lax as to let stand the decision of a BIASED hearing officer who dishonestly suppresses evidence of innocence." Edwards v. Balasok, 520 U.S. 641 (1997). Making his Constitutional claims not just based on his innocence, but also on his contention that the withholding of evidence denied him the full panoply of protections afforded offenders by the Constitution of the United States 14th Amendment.

*Harry Wolff #1133749*  
Respectfully Submitted

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cc:file

MEMORANDUM OF LAW/BRIEF IN SUPPORT

Continued from: page one

In the Fourth Circuit, it has already been established in *Young v. Lynch*, 346 F.2d 960 (C.A.4 (12) 1965)