

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
EUGENE A. LOISEL III, APPELLANT

VS.
STATE OF MISSISSIPPI

FILED
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SUPREME COURT
COURT OF APPEALS

APPELLEE

REPLY BRIEF FOR THE APPELLANT
APPELLANT REQUESTS ORAL ARGUMENT

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No: 2007-CP-1807-COA

COPY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

SUMMARY OF ARGUMENT

ARGUMENT

CONCLUSION

CERTIFICATE OF SERVICE

ii	
i	
1-5	
5	
6	

TABLE OF AUTHORITIES

EDWARDS V. BOOKER, 796 So.2d 991 (Miss. 2001)

UNITED STATES V. BOSWELL, 605 F.2d 171 (5th Cir. 1979)

UNITED STATES V. TAYLOR, 444 Cir. 1963, 321 F.2d 339

STATE STATUTES

MISS. CODE ANN. 99-39-11 (Supp. 1999)

MISS. CODE ANN. 47-5-801 - 47-5-807

3

2

2

4

4

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

EUGENE A. LOISEL, III

APPELLANT

VS.

No. 2007-CP-1807-COA

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR APPELLANT

STATEMENT OF THE CASE

THIS IS AN APPEAL FROM THE SUMMARY DENIAL OF A POST-CONVICTION RELIEF SOUGHT IN HARRISON COUNTY CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT. HON. STEPHEN B. SIMPSON, CIRCUIT JUDGE, PRESIDING.

STATEMENT OF FACTS

ON OCT. 5, 2005, APPELLANT, A TWENTY-ONE (21) YEAR-OLD CAUCASIAN MALE WITH A 9TH GRADE EDUCATION (C.P. AT 84-85), ENTERED A PLEA OF GUILTY TO ROBBERY.

A PART OF APPELLANT'S SENTENCE WAS TO SERVE TWO (2) YEARS, FOLLOWED BY THREE (3) YEARS POST RELEASE SUPERVISION, FINE, COURT COST, AND RESTITUTION."

WHILE IT IS TRUE, THAT APPELLANT WAS REQUIRED BY THE LOWER COURT TO SUCCESSFULLY COMPLETE THE RESTITUTION PROGRAM, AND WAS A CONDITION OF HIS PROBATION. AND APPELLANT DID ~~ADMIT~~ ADMIT IN HIS BRIEF TO RELIEVING THE RVR'S, BUT, WHEN HE REQUESTED A COPY OF THE RVR'S FROM M.D.O.C. THEY STATED THAT THEIR IS "NO SUCH RVR'S ON FILE." APPELLANT THEN REQUESTED THEM FROM THE CIRCUIT COURT, AND THEIR IS "NO SUCH RVR'S ON FILE," EXCEPT AN RVR FROM MARCH 11, 2006, WHICH I WAS FOUND "NOT GUILTY," AND THIS HAPPEND BEFORE APPELLANT WAS RELEASED FROM INCARCERATION ON AUGUST 6, 2006. (APPELLANT'S EXHIBIT A, ATTACHED)

ON NOV. 7, 2006, WHEN APPELLANT FULFILLED THE FINAL REQUIRE-
MENT OF THE ARP, WHEN AN ADMINISTRATOR FOUND THAT HAD FAILED TO
PROVIDE ENOUGH EVIDENCE TO SUPPORT HIS CLAIMS. THE NOVEMBER 7,
2006, AND ~~THE~~ APPELLANT'S CLAIMS FROM AUGUST 20, 2006, FROM
THE RESTITUTION CENTER, ARE TWO (2) DIFFERENT KIND OF CLAIMS
AS CAN BE SEEN BY THE DIFFERENT FILE OR CASE NUMBERS. ~~THE~~
~~(APPELLANT'S CLAIMS ARE TWO (2) DIFFERENT KIND OF CLAIMS)~~ (C. P. at 71-72)

SUMMARY OF ARGUMENT

APPELLANT FEELS AGGRAVED BECAUSE HIS PROBATION WAS
REVOKED BECAUSE HE WAS UNABLE TO SUCCESSFULLY COMPLETE THE
RESTITUTION CENTER, AT NO FAULT OF HIS OWN. SEE, IN, UNITED
STATES V. SAVAGE, 5th CIR. 1971, 440 F.2d 1237, IT WAS HELD THAT A [AND]
DEFENDANT "CAN NOT BE HELD TO BE IN VIOLATION OF THE CONDITION
(OF HIS PAROLE) UNLESS HE IS CLEARLY AT FAULT." ID. AT 1239.

IT WAS THERE FURTHER STATED THAT [HND] "THE TRIAL

COURT CAN NOT REVOKE APPELLANT'S PROBATION UNLESS IT IS POSI-
TIVELY AND CLEARLY SHOWN THAT FAILURE TO MEET THE CONDITIONS
WAS DUE TO THE APPELLANT'S NEGLECT OR DEFAULT;" CASE CITED

FROM: UNITED STATES V. BOSWELL, 605 F.2d 171 (5th CIR. 1979). SECOND CASE
CITED FROM: U.S. V. BOSWELL; SEE, UNITED STATES V. TAYLOR, 4th CIR. 1963,
381 F.2d 339; ON THE OTHER HAND, IF "APPELLANT" BOSWELL DID HAVE
THE RESOURCES AVAILABLE, THEN THE ISSUE IS REDUCED TO WHETHER,
IN FACT, HE EITHER NEGLIGENCELY OR DILIGERENTLY ALLOWED THEM TO BE
DISBURSED OR DISSIPATED IN A MANNER THAT RESULTED IN HIS INABILITY
TO PAY. IT MUST BE REMEMBERED, HOWEVER, THAT REVOCATION MAY NOT
BE INFLICTED FOR OCCURRENCES, EVENTS, OR CONDITIONS OVER WHICH
"APPELLANT" BOSWELL NO CONTROL.

OF WHICH APPELLANT HAD NO CONTROL OF HIS MEDICAL CONDITIONS
AT THE TIME OF HIS REVOCATION.

THE HON. JUDGE SIMPSON, ERRORED IN DENYING APPELLANT'S POST-
CONVICTION SOLELY ON THE APPELLANT RECEIVING THE (QVR'S) RULE VIOLATION
REPORTS, SHORTLY AFTER ARRIVING AT THE RESTITUTION CENTER. APPELLANT HAS

REQUESTED COPIES OF THESE SO-CALLED RVR'S FROM M.D.O.C. AND FROM THE TRIAL COURT BUT, THEY CLAIM THAT THEY ARE "NOT ON FILE."

NOWHERE IN APPELLANT'S SENTENCING ORDER FROM OCTOBER 5, 2005, STATES AS A CONDITION OF HIS PROBATION, THAT THE DEFENDANT "SHALL NOT" RECIEVE ANY RULE VIOLATION REPORT'S WHILE HE IS ATTENDING THE RESTITUTION CENTER, (~~APPELLANT'S EXHIBIT B, ATTACHED~~) (C.P. AT 88,89,90)

THE TRIAL COURT VIOLATED DEFENDANT'S DUE PROCESS RIGHTS BY REVOKING APPELLANT'S PROBATION BASED UPON "ALLEGED" RULE VIOLATION REPORT'S; [OF WHICH THE STATE CAN'T FIND ON FILE]; AFTER THE STATE HAS FAILED TO PROVE THAT A CRIME OR ~~VIOLATED~~ RULE VIOLATION HAS BEEN COMMITTED AS "ALLEGED" IN ORDER FOR M.D.O.C. TO HAVE APPELLANT'S PROBATION REVOKED FOR THE "ALLEGED" RVR'S, M.D.O.C. MUST FOLLOW THEIR OWN PRACTICE'S AND PROCIDURE'S THAT ARE SETFORTH FOR SUCH DISCIPLINARY ACTION'S SUCH AS RULE VIOLATION REPORT'S. SEE., EDWARDS V. Booker, 796 SO.2d 991; (MISS. 2001) WHAT THE STATE FAILS TO RECOGNIZE IS THAT [HN4] MDOC REQUIRES A HEARING BEFORA A DISCIPLINARY COMMITTEE WHERE THE ACCUSED CAN BE HEARD AND PRESENT EVIDENCE. MDOC STANDARD OPERATING PROCEDURE ~~18.02.01~~ 18.02.01, DISCIPLINARY PROCEDURES, FORMAL RESOLUTIONS AT 4. ~~[HN5] THE PROCEDURES SPECIFICALLY PROVIDE THAT INMATES~~ (APPELLANT EXHIBIT B AT PAGE 1 OF 29, POLICY # 18-01-01, PAGE 6 OF 29 AND 7 OF 29)

APPELLANT WAS NEVER FOUND GUILTY OR GIVEN A DISCIPLINARY HEARING FOR THE "ALLEGED" RVR'S. [HN6] IF THE DISCIPLINARY COMMITTEE REFUSE'S TO FOLLOW IT'S OWN ADMINISTRATIVE REVIEW PROCEDURES, THEN IT'S DECISION IS BY DEFINITION ARBITRARY AND CAPRICIOUS. THE DISCIPLINARY COMMITTEE ACTED ~~ARBITRARY~~ ARBITRARILY IN REFUSING TO ALLOW EDWARDS TO PRESENT WITNESSES AND EVIDENCE IN VIOLATION OF IT'S OWN ADMINISTRATIVE REVIEW PROCEDURES.

THE POINT THAT APPELLANT IS ARGUING HERE IS THAT, IN THE PRESENT CASE AT BAR IS THAT, HERE THE STATE HAS FAILED TO FOLLOW IT'S OWN WRITTEN POLICY AND PROCEDURES. SETFORTH IN MDOC POLICY # 18.02.01 AND 18.01 THROUGH 18.01.01. (APPELLANT'S EXHIBIT B, ATTACHED)

SHORTLY AFTER APPELLANT WAS TRANSTORTED TO AN MDOC FACILITY HE FILED HIS GRIEVENCE WITH THE FACILITY THAT

HE WAS HOUSED AT, AND IT WAS REJECTED ON 2-9-07, AND STATED THAT THE RELIEF SOUGHT IS "BEYOND ABILITY FOR MDC TO GRANT." (APPELLANT'S EXHIBIT B2, ATTACHED.) APPELLANT THEN REFILED HIS GRIEVANCE WITH MDC AND AGAIN WAS REJECTED ON 3-21-07, AND STATED THAT "30 DAYS TO GRIEVE IS NOT." (APPELLANT'S EXHIBIT B2, ATTACHED.)

APPELLANT HAS ATTEMPTED TO EXHAUST ALL ADMINISTRATIVE REMEDIES AS IS REQUIRED BY M.C.A. 41-5-XOL-41-5-807, TO OBTAIN RELIEF FOR HIS RELEASE AND REINSTATEMENT OF HIS PROBATION.

APPELLEE CLAIMS THAT APPELLANT HAD AN OPPORTUNITY TO HAVE HIS WITNESSES SUMMONED, OF THOSE WHOSE AFFIDAVITS WERE ATTACHED TO HIS MOTION FOR POST-CONVICTION RELIEF. (APPELLEE'S BRIEF AT 6.)

AT THE TIME OF THE REVOCATION HEARING, APPELLANT LACKED THE KNOWLEDGE OF THE LEGAL SYSTEM, AND THE RIGHTS THAT HE WAS ENTITLED TO BY "LAW"; THE TRIAL COURT NEVER TOLD APPELLANT WHAT HE HAD THE RIGHT TO DO, OR THAT APPELLANT HAD THE RIGHT TO CALL ANY WITNESS. AS MENTIONED BEFORE, APPELLANT ONLY HAS A 9TH GRADE EDUCATION, WHICH MEANS HE IS A LAYMAN ON THE LAW.

NEXT APPELLEE CITED M.C.A. 99-39-11(2) (APPELLEE'S BRIEF AT 9). APPELLANT ARGUES THAT ON MAY 28, 2007, HON. JUDGE LISA P. DODSON ENTERED AN ORDER PURSUANT TO M.C.A. 99-39-11(3) (SUPP. 1999) READS, IN IT ENTIRELY, AS FOLLOWS:

M.C.A. 99-39-11(3); IF THE MOTION IS NOT DISMISSED UNDER SUGGESTION (2) OF THIS SECTION, THE JUDGE SHALL ORDER THE STATE TO FILE AN ANSWER OR OTHER PLEADING WITHIN THE PERIOD OF TIME FIXED BY THE COURT OR TO TAKE SUCH OTHER ACTION AS THE JUDGE DEEMS APPROPRIATE;

ON MAY 22, 2007, HON. JUDGE DODSON ENTERED AN ORDER REQUIRING THAT THE STATE OF MISS. SHALL RESPOND TO THE MOTION FOR POST-CONVICTION COLLATERAL RELIEF IN THIS CAUSE WITHIN THIRTY (30) DAYS OF THE DATE HEREOF. IT IS FURTHER ORDERED THAT THIS MATTER IS HEREBY SET FOR HEARING ON JULY 9, 2007, AT 9:00 A.M. (~~P.C. 99-39-11(3)~~) (C.R. AT 98)

APPELLANT'S POST-CONVICTION CLAIMS WERE MERITORIOUS, AND ON SEPTEMBER 17, 2007, APPELLANT'S POST-CONVICTION WAS ~~REVERSED~~ IMPROPERLY

DENIED BY HONORABLE JUDGE STEPHEN B. SIMPSON. AFTER THE CASE WAS REASSIGNED TO HIM ON MAY 30, 2007, APPELLANT WAS PREJUDICED BY HIS CASE BE REASSIGNED TO ANOTHER JUDGE.

CONCLUSION

APPELLANT'S CLAIMS HAD MERITS. HON. JUDGE DODSON ENTERED AN ORDER ON MAY 22, 2007, PURSUANT TO M.C.A. 99-39-11, SUBSECTION (3). APPELLANT PRAYS THAT THIS HON. COURT WILL ENTER JUDGEMENT IN HIS FAVOR, AND OR ANY OTHER RELIEF THAT THIS HONORABLE COURT DEEMS TO BE PROPER.

ALTERNATIVELY, APPELLANT PRAYS THAT THIS HONORABLE COURT WILL ENTER AN ORDER GRANTING APPELLANT'S POST-CONVICTION, AND GIVING HIM CREDIT FOR TIME SERVED.

RESPECTFULLY SUBMITTED,

Eugene A. Loisel

EUGENE A. LOISEL JR. #115731

SMCT C1 BZONE # 111

POST OFFICE BOX 1419

LEAKESVILLE, MISS. 39451

APPELLANT, PRO SE

Appellant's Exhibit A

0406

(MSP) ☐ (CWC) ☐
(CMCF) ☒ (SMCI) ☐
(OTHER) ☐

MISSISSIPPI DEPARTMENT OF CORRECTIONS

RVR# 375720

RULE VIOLATION REPORT

(Unit Admin. Init.) ✓

A-2
Zone/Tier

720 B-1
Unit

39
Cell/Bed#

Offender Loisel, Eugene MDOC# 115731 Violated Rule # 2 Entitled
Fighting with another person... Date 3/11/06 Approx. Time 0046 hours

by the specific act of Fighting with another offender

Circumstances and Details on the above date and time while manning B-1/Bldg. Tower,
I, Ofc. Cook did witness offender Eugene Loisel #115731 fighting with
another offender, therefore, offender Loisel #115731 is receiving this R.V.R.
This Report was then filed — end of Report —

Reporting Employee's Signature: [Signature] Title: Correctional Officer #8918 Date 3/11/06
Evidence ✓ No — Yes-Located — Placed in Seg-PDA ✓ No — Yes-Location —

I request investigation and witness(es) — No ✓ Yes - Witness(es) 1) Joe Carpenter

2) David Hair I waive the right to a Hearing ✓ No — Yes —

Accused: Eugene Loisel Del. Employee: penl park Date 3-11-06 Time 0930

Unless waived, you are hereby notified that a hearing will be held within no less than 24 hours and no more than seven (7) working days in the appropriate hearing office.

Heard by: SHO Disciplinary Committee — Hearing Officer —

Working days between date of violation and hearing 6 If more than seven (7) working days, explain: —

Print Full Name of Persons at Hearing - Accused Loisel, Eugene Chairperson Leon Shields

Member — Member — Member —

Other —

Accused — Admit ✓ Deny — Accused Statement: —

Documents read and discussed ✓ RVR ✓ Investigation ✓ Witness(es) Statement —

Other (specify) —

Findings: — Guilty ✓ Not Guilty — Punishment, if Guilty: no punishment

Reason(s): Offender Abraham did admit to Lt. bank that he
did assault offender Loisel

Signature: [Signature] Date: 3/24/06

CHAIRPERSON/HEARING OFFICER

Disciplinary Committee Members: —

Appeal may be filed with Institutional Superintendent within 15 days after receipt of disciplinary decision.

Offender Signature: [Signature] Date: —

Signature of Reviewing Warden/Designee: [Signature] Date: 3/23/06

Loss of Earned Time — Approved — Disapproved —

APPELLANT, PRO SE

EUGENE A. LOISEL III, # (15731)

Eugene A. Loisel III

THIS THE 7th DAY OF MAY, 2008.

HON. BILLY L. GORE
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISS. 39205-0220

HON. CONN. CARANNA
DISTRICT ATTORNEY, DISTRICT 2
POST OFFICE BOX 1180
GULFPORT, MISS. 39507


HONORABLE STEPHEN B. SIMPSON
CIRCUIT COURT JUDGE, DISTRICT 2
POST OFFICE BOX 1570
GULFPORT, MISS. 39506

THE FOLLOWING:

I, EUGENE A. LOISEL III, APPELLANT, DO HEREBY CERTIFY THAT I HAVE THIS DAY MAILED, POSTAGE PREPAID, A TRUE AND CORRECT COPY OF THE ABOVE AND FOREGOING, REPLY BRIEF FOR THE APPELLANT TO

CERTIFICATE OF SERVICE

APPELLANT'S EXHIBIT B

 <p>MISSISSIPPI DEPARTMENT OF CORRECTIONS</p>	POLICY NUMBER 18-01	
	AGENCY WIDE	
DISCIPLINARY SYSTEM		INITIAL DATE 10-01-1997
ACA STANDARDS: 4-4226 thru 4-4248, 4-ACRS-3A-01 thru 4-ACRS-3A-03, 4-ACRS-6C-01 thru 4-ACRS-6C-04		EFFECTIVE DATE 01-01-2007
STATUTES: 47-5-99, 47-5-104, 47-5-801	NON-RESTRICTED	Page 1 of 4

POLICY:

It is the policy of the Mississippi Department of Corrections (MDOC) to maintain and enforce rules of conduct for offenders.

DEFINITIONS:

Rule Violation Report (RVR) – A report that will include the violation charge, essential facts supporting the alleged violation, processing action taken (including requests for investigation and lists of requested witnesses), findings and disciplinary action taken (if any). The reporting form will be configured so that proper distribution can be made with the original becoming part of the offender's permanent MDOC record.

PRECEPTS:

Offender rules and disciplinary regulations describe violations, sanctions, and penalties [4-ACRS-3A-01]. Written rules of inmate conduct specify acts prohibited within the institution and penalties that can be imposed for various degrees of violation; the written rules are reviewed annually and updated if necessary [4-4226] and will be established by the Deputy Commissioner of Institutions and the Deputy Commissioner of Community Corrections. If an inmate violates any specific prohibited act, he will be issued a Rule Violation Report (RVR) which will become part of his institutional record.

Facility rules and regulations are reviewed at least annually and updated, if necessary [4-ACRS-3A-02]. There is a written set of disciplinary procedures governing inmate rule violations. These are reviewed annually and updated if necessary [4-4227].

All program rules and regulations pertaining to offenders are conspicuously posted in the facility or included in a handbook that is accessible to all offenders and staff [4-ACRS-3A-03]. A rulebook that contains all chargeable offenses, ranges of penalties, and disciplinary procedures is given to each inmate and staff member and is translated into those languages spoken by significant numbers of inmates. Signed acknowledgement of receipt of the rulebook is maintained in the inmate's file. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator assists the inmate in understanding the rules [4-4228].

All personnel who work with inmates receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available [4-4229] through the MDOC Training Department.

TITLE: DISCIPLINARY SYSTEM		POLICY NUMBER 18-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 3 of 4

Written policy, procedure, and practice provide that inmates charged with rule violations are scheduled for a hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation. Inmates are notified of the time and place of the hearing at least 24 hours in advance of the hearing [4-4238].

Written policy, procedure, and practice provide for postponement or continuance of the disciplinary hearing for a reasonable period for good cause [4-4239].

Written policy, procedure, and practice provide that disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. A record of the proceedings is made and maintained for at least six months [4-4240].

Written policy, procedure, and practice provide that inmates charged with rule violations are present at their hearings unless they waive that right in writing or through their behavior. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence; the reasons for the inmate's absence or exclusion are documented [4-4241].

Written policy, procedure, and practice provide that inmates have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf; the reasons for denying such a request are stated in writing [4-4242].

Written policy, procedure, and practice provide that a staff member or agency representative assists inmates at disciplinary hearings if requested. A representative is appointed when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf [4-4243].


Written policy, procedure, and practice provide that the disciplinary committee's decision is based solely on information obtained in the hearing process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents [4-4244].

Written policy, procedure, and practice provide that a written record is made of the decision and the supporting reasons, and that a copy given to the inmate. The hearing record and supporting documents are kept in the inmate's file and in the disciplinary committee's records [4-4245].

Written policy, procedure, and practice provide that if an inmate is found not guilty of an alleged rule violation, the disciplinary report is removed from all of the inmate's files [4-4246].

Written policy, procedure, and practice provide for review of all disciplinary hearings and dispositions by the warden/superintendent or designee to assure conformity with policy and regulations [4-4247].

Written policy, procedure, and practice grant inmates the right to appeal decisions of the disciplinary committee to the warden/superintendent or designee. Inmates have up to 15

	MISSISSIPPI DEPARTMENT OF CORRECTIONS		SOP NUMBER 18-01-01
			AGENCY WIDE
DISCIPLINARY PROCEDURES		INITIAL DATE 10-01-1997	
ACA STANDARDS: 4-4226 thru 4-4248, 4-ACRS-3A-01 thru 4-ACRS-3A-03, 4-ACRS-6C-02 thru 4-ACRS-6C-04		EFFECTIVE DATE 01-01-2007	
STATUTES: 47-5-99, 47-5-104, 47-5-801	NON-RESTRICTED	Page 1 of 29	

APPLICABILITY:

This procedure applies to all offenders incarcerated by the Mississippi Department of Corrections (MDOC) and employees participating in the disciplinary process.

POLICY STATEMENT:

It is the policy of the Mississippi Department of Corrections (MDOC) to discipline all offenders who commit and/or participate in prohibited activities.

DEFINITIONS:

Administrative Remedy Program – A program by which an offender may request administrative remedy for situations arising from policies, conditions or events within MDOC that affect them personally.

Criminal Violations – Any incident in which an offender allegedly commits an act covered by criminal law.

Formal Resolution – Resolution of a rule infraction resolved by a Hearing Officer.

Disciplinary Hearing – An impartial classification hearing composed of a Disciplinary Hearing Officer or staff member whose name appears on the Executive Order approved by the Commissioner.

Disciplinary Hearing Officer – Staff member whose name appears on the Executive Order approved by the Commissioner who will hear all pertinent information surrounding an alleged rule violation and base their final decision solely on a preponderance of evidence presented at the hearing, renders a factual finding and a fair and just punishment.

Informal Resolution – Resolution of a minor rule infraction at the unit level.

Inmate Legal Assistance Program (ILAP) – Provides offenders with reasonable and adequate opportunity to present conditions of confinement and post convictions claims.

Rule Violation – An act or omission of an act contrary to the rules and regulations of MDOC, laws of the State of Mississippi, or the United States.

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 2 of 29

Rule Violation Report (RVR) – A report that will include the violation charge, essential facts supporting the alleged violation, processing action taken (including requests for investigation and lists of requested witnesses), findings and disciplinary action taken (if any). The reporting form will be configured so that proper distribution can be made with the original becoming part of the offender's permanent MDOC record.

PROCEDURES:

Offender rules and disciplinary regulations describe violations, sanctions, and penalties [4-ACRS-3A-01]. Written rules of inmate conduct specify acts prohibited within the institution and penalties that can be imposed for various degrees of violation; the written rules are reviewed annually and updated if necessary [4-4226].

Facility rules and regulations are reviewed at least annually and updated, if necessary [4-ACRS-3A-02]. There is a written set of disciplinary procedures governing inmate rule violations. These are reviewed annually and updated if necessary [4-4227].

All program rules and regulations pertaining to offenders are conspicuously posted in the facility or included in a handbook that is accessible to all offenders and staff [4-ACRS-3A-03]. A rulebook that contains all chargeable offenses, ranges of penalties, and disciplinary procedures is given to each inmate and staff member and is translated into those languages spoken by significant numbers of inmates. Signed acknowledgement of receipt of the rulebook is maintained in the inmate's file. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator assists the inmate in understanding the rules [4-4228].

All personnel who work with inmates receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available [4-4229].

There is a process for informal resolution of minor infractions of facility rules [4-ACRS-6C-01]. There are written guidelines for resolving minor inmate infractions, which include a written statement of the rule violated and a hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation; inmates may waive their appearance at the hearing [4-4230].

Formal Resolution Process

An offender charged with a major rule violation receives a written statement of the alleged violation(s), including a description of the incident and specific rules violated [4-ACRS-6C-02]. Written policy, procedure, and practice provide that when rule violations require formal resolution, staff members prepare a disciplinary report and forward it to the designated supervisor [4-4232].

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 4 of 29

Indication should be made on the RVR if the offender was placed in Administrative Segregation pending disciplinary hearing.

After all essential information has been recorded by the reporting employee, the RVR will be reviewed by the Unit Administrator or designee for completeness and to ensure the incident could not be handled by Informal Resolution.

If approved, the Unit Administrator or designee will initial the top left corner of the RVR and immediately forward it to the Facility Disciplinary Authority or designee who will ensure the RVR is entered as "pending" in Alert on Offendertrak.

Pre-Hearing Status

Within the disciplinary procedures document there is provision for pre hearing detention of inmates who are charged with a rule violation. The inmate's pre-hearing status is reviewed by the warden/superintendent or designee within 72 hours, including weekends and holidays [4-4235]. Refer to procedures for Offender Segregation.

Investigation

Written policy, procedure, and practice specify that, when an alleged rule violation is reported, an appropriate investigation is begun within 24 hours of the time the violation is reported and is completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation [4-4234]. Exceptional circumstances may include, but not be limited to the following:

- The accused offender is not available to give a statement (i.e., medical reason, away from facility)
- Other offender witnesses are not available to give statements for the same reasons
- Staff witnesses are not available to give statements
- Inclement weather conditions
- Institutional emergency
- Any extraordinary circumstances approved, in writing, by the Superintendent/Community Corrections Director

Note: Such exceptions will be noted in the completed investigation package.

The Superintendent/Community Corrections Director or designees will approve such exceptions in writing.

Investigator

- The Disciplinary Investigator will be neutral and unbiased in conducting interviews and gathering information.

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 6 of 29

Disciplinary Hearing

Written policy, procedure, and practice provide that disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. A record of the proceedings is made and maintained for at least six months. [4-4240].

- The Hearing Officer will hear all pertinent information surrounding an alleged rule violation.
- The Hearing Officer will question the accused offender, witnesses and any other person appearing at the hearing.
- Written policy, procedure, and practice provide that inmates have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf; the reasons for denying such a request are stated in writing [4-4242].
- The Hearing Officer will exercise control of all questioning to prevent harassment, abuse, repetition, deficiency of relevancy, and to maintain order.
- The accused, any witnesses and the accuser, if present, may be excused from the hearing during deliberation.
- Written policy, procedure, and practice provide that the disciplinary committee's decision is based solely on information obtained in the hearing process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents [4-4244]. The final decision will be based solely on a preponderance of the evidence presented at the hearing.
- The Hearing Officer will render a fair and just punishment for a factual finding and must sign his/her name to each RVR.
- A copy of written findings will be given to the offender as soon as reasonably possible after the hearing.
- The accused will be advised of his appeal rights.
- Written policy, procedure, and practice provide that an inmate may waive the right to a hearing provided that the waiver is documented and reviewed by the chief executive officer or designee [4-4237]. An offender may waive the right to a hearing, provided the waiver will be documented and reviewed by the Superintendent, Warden or designee and/or Community Corrections Director or designee.

Written policy, procedure, and practice provide that a written record is made of the decision and the supporting reasons, and that a copy is given to the inmate. The hearing record and supporting documents are kept in the inmate's file and in the disciplinary committee's records [4-4245]. The hearing will be recorded and a record of the proceedings will be maintained for a minimum of three (3) years.

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 8 of 29

303 Disposition/Penalties that may be imposed by a Hearing Officer for a rule violation are as
304 follows:
305

306 **RULE #1 ASSAULTING ANY PERSON**

307
308 **1st RVR:**

309 Reclassification if warranted by reclassification instrument
310 Reassignment
311 Loss of Earned Time (all-maximum)
312 Isolation - 20 days (max)
313 Referral to District Attorney
314 Loss of visiting privileges – 30 days (max)
315 Loss of canteen privileges – 30 days (max)
316 Loss of telephone privileges – 30 days (max)
317 Loss of job
318 Pay medical expenses
319

320 **2nd RVR:**

321 Same as 1st RVR
322 Increase loss of privileges up to 60 days (max)
323

324 **3rd RVR:**

325 Same as 1st RVR
326 Increase loss of privileges up to: visiting, telephone & canteen – 6 months
327

328 **RULE #2 FIGHTING WITH ANOTHER PERSON EXCEPT IN SELF-DEFENSE**

329
330 **1st RVR:**

331 Reclassification if warranted by reclassification instrument
332 Reassignment
333 Isolation - 20 days (max)
334 Pay medical expenses
335 Pay for destroyed or damaged property
336 Assignment to extra duty - 16 hours (max)
337 Loss of job
338

339 **2nd RVR:**

340 Same as 1st RVR
341 Loss of earned time – 60 days (max)
342 Loss of visiting privileges - 30 days (max)
343 Loss of canteen privileges – 30 days (max)
344 Loss of telephone privileges – 30 days (max)
345 Increase extra duty to 16 hours – (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 10 of 29

RULE #5: ESCAPE, ATTEMPTING TO ESCAPE OR PLANNING AN ESCAPE

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of Earned Time (all) (if classified as escape)
Isolation - 20 days (max)
Referral to District Attorney
Pay for medical expenses
Pay for destroyed or damaged property
Pay for cost incurred during chase procedures
Loss of job

2nd RVR:

Same as 1st RVR

3rd RVR:

Same as 1st RVR

RULE #6: SETTING A FIRE

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of Earned Time - 30 days (max)
Referral to District Attorney
Pay for destroyed or damaged property
Loss of visiting privileges - 30 days (max)
Loss of telephone privileges - 30 days (max)
Loss of canteen privileges - 30 days (max)
Assignment of extra duty -16 hours (max)

2nd RVR:

Same as 1st RVR
Loss of Earned Time - 60 days (max)
Loss of visiting privileges - 60 days (max)
Loss of canteen privileges - 60 days (max)
Loss of telephone privileges - 60 days (max)

3rd RVR:

Same as 1st RVR
Loss of Earned Time - 90 days (max)
Loss of visiting privileges - 90 days (max)
Loss of canteen privileges - 90 days (max)
Loss of telephone privileges - 90 days (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 12 of 29

RULE #9: UNAUTHORIZED POSSESSION, INTRODUCTION, OR USE OF CONTRABAND INCLUDING BUT NOT LIMITED TO THE FOLLOWING: FIREARM, SHARPENED INSTRUMENT OR KNIFE, OTHER WEAPON, ANY TOOL, ANY EXPLOSIVE OR AMMUNITION, INTOXICANT, MEDICATION, DRUGS OR DRUG PARAPHERNALIA, CELLULAR TELEPHONES, UNAUTHORIZED ELECTRONIC DEVICES OR ANY OTHER PROPERTY NOT INCLUDED ON THE ALLOWABLE ITEMS LIST

LIFE THREATENING

Firearm
Sharp instrument or knife
Other weapon (pieces of metal or glass, gardening tools)
Tool
Explosive/ammunition

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of Earned Time - (0 to max)
Isolation - 20 days (max)
Referral to District Attorney
Restitution
Loss of visiting privileges - 30 days (max)
Loss of canteen privileges - 30 days (max)
Loss of telephone privileges - 30 days (max)
Loss of job

2nd RVR:

Same as 1st RVR
Increase loss of privileges up to 60 days each (max)

3rd RVR:

Same as 1st RVR
Increase loss of canteen privileges to 6 months (max)
Increase loss of telephone privileges to 6 months (max)

DRUGS

Intoxicants
Medication (prescription)
Medication (non prescription)
Illegal Drugs
Drug paraphernalia
Drug related offenses

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 14 of 29

575 3rd RVR:
576 Same as for Life Threatening Violations

577
578 MISCELLANEOUS

579
580 Food items
581 Markers/colored pencils
582 Shoes
583 Gang related materials
584 Radios
585 Televisions
586 Any other non-allowable item

587
588 1st RVR:
589 Reclassification
590 Reassignment
591 Isolation - 20 days (max)
592 Loss of job
593 Loss of visiting privileges - 30 days (max)
594 Loss of canteen privileges - 30 days (max)
595 Loss of telephone privileges - 30 days (max)
596 Assignment to extra duty - not to exceed 16 hours (max)

597
598 2nd RVR:
599 Same as 1st RVR
600 Increase Loss of privileges to 60 days (max.)

601
602 3rd RVR:
603 Same as 1st RVR
604 Increase loss of privileges to 90 days (max.)

605
606 **RULE #10: RIOTING OR ENCOURAGING OTHERS TO RIOT**

607
608 1st RVR:
609 Reclassification if warranted by reclassification instrument
610 Reassignment
611 Isolation -20 days (max.)
612 Referral to District Attorney
613 Restitution
614 Loss of Earned Time – (0 to max)
615 Pay for destroyed or damaged property
616 Loss of visiting privileges - 30 days (max)
617 Loss of canteen privileges - 30 days (max)
618 Loss of telephone privileges - 30 days (max)
619 Loss of job

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 16 of 29

3rd RVR:

Reduced to D-custody for 1 year

Making Intoxicants or Being Intoxicated - Offenders in CWCs/Restitution
Centers & Field Supervision

1st RVR:

MOA—1st positive, refer to A&D Program (3 months maximum)

2nd RVR:

Same as for Life Threatening Violations

3rd RVR:

Same as for Life Threatening Violations

RULE #13: PREPARING OR CONDUCTING A GAMBLING POOL OR GAMBLING

1st RVR:

Reclassification if warranted by reclassification instrument

Loss of visiting privileges - 30 days (max)

Loss of canteen privileges - 30 days (max)

Loss of telephone privileges - 30 days (max)

2nd RVR:

Increase loss of privileges to 60 days (max)

Assignment of extra duty - 16 hours (max)

3rd RVR:

Same as 2nd RVR

Placement to common labor - 90 days (max.)

**RULE #14: GIVING OR OFFERING ANY STAFF MEMBER A BRIBE OR
ANYTHING OF VALUE**

1st RVR:

Reclassification if warranted by reclassification instrument

Isolation - 20 days (max)

Assignment to extra duty - 16 hours (max)

Loss of canteen privileges - 30 days (max)

Loss of telephone privileges - 30 days (max)

Loss of visiting privileges - 30 days (max)

2nd RVR:

Same as 1st RVR

Increase loss of all privileges – 60 days (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 18 of 29

**RULE #17: POSSESSING ANY OFFICER'S OR STAFF MEMBER'S CLOTHING
UNLESS SPECIFICALLY AUTHORIZED OR POSSESSION OF FREE
WORLD TROUSERS UNLESS PROPERLY CONFIGURED AS PRISON
CLOTHING**

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of Earned Time - (0 to all)
Loss of visiting privileges - 30 days (max)
Loss of job

2nd RVR:

Same as 1st RVR

3rd RVR:

Same as 1st RVR
Increase loss of visiting privileges for 60 days (max)

**RULE #18: REFUSING TO WORK OR ENCOURAGING OTHERS TO REFUSE TO
WORK OR PARICIPATION IN A WORK STOPPAGE**

1st RVR:

Reclassification if warranted by reclassification instrument
Loss of visiting privileges - 30 days (max)
Loss of canteen privileges - 30 days (max)
Loss of telephone privileges - 30 days (max)

2nd RVR:

Same as 1st RVR
Reassignment
Isolation -20 days (max)
Loss of Earned Time - (0 to all)
Increase loss of privileges to 60 days (max.)

3rd RVR:

Same as 1st RVR
Increase loss of privileges to 90 days (max.)
Loss of Earned Time - (0 to all)

RULE #19: REFUSING TO OBEY THE ORDER OF ANY STAFF MEMBER

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of visiting privileges - 30 days (max)
Loss of canteen privileges - 30 days (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 20 of 29

RULE #22: BEING IN AN UNAUTHORIZED AREA WITHOUT OFFICIAL PERMISSION
--

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of canteen privileges - 30 days (max)
Loss of visiting privileges - 30 days (max)
Loss of telephone privileges - 30 days (max)
Loss of job

2nd RVR:

Same as 1st RVR
Placement to common labor - 30 days (max)
Increase loss of privileges - 60 days (max)

3rd RVR:

Same as 1st RVR
Increase placement to common labor to 6 months (max)
Increase loss of privileges to 90 days (max)

RULE #23: WILLFULLY USING ANY EQUIPMENT, MACHINERY OR VEHICLE WHICH IS NOT AUTHORIZED OR IS CONTRARY TO INSTRUCTIONS OR POSTED FACILITY STANDARDS OR USING IN SUCH A MANNER AS TO ABUSE THE EQUIPMENT OR MACHINERY OR ENDANGER THE LIVES OF OTHERS

1st RVR:

Reclassification if warranted by reclassification instrument
Reassignment
Loss of visiting privileges - 30 days (max)
Loss of canteen privileges - 30 days (max)
Loss of telephone privileges - 30 days (max)
Pay for destroyed or damaged property
Loss of job

2nd RVR:

Same as 1st RVR
Increase loss of privileges to 60 days (max)

3rd RVR:

Same as 1st RVR
Increase loss of privileges to 90 days (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 22 of 29

939 2nd RVR:
940 Same as 1st RVR
941 Loss of earned time - 60 days (max)
942 Loss of visiting privileges - 30 days (max)
943 Loss of canteen privileges - 30 days (max)
944 Loss of telephone privileges - 30 days (max)

945
946 3rd RVR
947 Same as 1st RVR
948 Increase loss of privileges - 60 days (max)
949

950 **RULE #27: UNAUTHORIZED USE OF TELEPHONE OR TELEPHONE PRIVILEGES OR**
951 **VIOLATION OF MAIL OR VISITING PRIVILEGES, OR FRAUDULENT USE OF**
952 **THE MAIL OR POSTAGE STAMPS FOR PERSONAL GAIN**

953
954 1st RVR:
955 Isolation - 20 days (max.)
956 Loss of telephone privileges - 30 days (max)
957 Loss of canteen privileges - 30 days (max)
958 Loss of visitation privileges - 30 days (max)
959

960 2nd RVR:
961 Same as 1st RVR
962 Loss of job
963 Reclassification if warranted by reclassification instrument
964 Reassignment
965

966 3rd RVR:
967 Same as 1st RVR
968

969 **RULE #28: COUNTERFEITING, FORGING, ALTERING OR UNAUTHORIZED**
970 **REPRODUCTION OF ANY ARTICLE OF IDENTIFICATION, MONEY,**
971 **NEGOTIABLE INSTRUMENT, SECURITY, OR OFFICIAL PAPER OR**
972 **POSSESSION OF ANY OF THE ABOVE**

973
974 1st RVR:
975 Reclassification if warranted by reclassification instrument
976 Reassignment
977 Isolation - 20 days (max)
978 Loss of visiting privileges - 30 days (max)
979 Loss of canteen privileges - 30 days (max)
980 Loss of telephone privileges - 30 days (max)
981 Referral to District Attorney

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 24 of 29

RULE #31: USING ABUSIVE OR OBSCENE LANGUAGE

1st RVR:

Reclassification if warranted by reclassification instrument
 Loss of visiting privileges - 30 days (max)
 Loss of canteen privileges - 30 days (max)
 Loss of telephone privileges - 30 days (max)
 Loss of job

2nd RVR:

Same as 1st RVR
 Increase loss of privileges to 60 days (max)
 Reassignment
 Isolation - 20 days (max)

3rd RVR:

Same as 1st RVR
 Increase loss of privileges to 90 days (max)

RULE #32: BEING LOUD, BOISTEROUS OR DISORDERLY TO THE EXTENT THAT THE NOISE DISTURBS THE TRANQUILITY OF THE INSTITUTION

1st RVR:

Isolation - 20 days (max)
 Placement to common labor - 30 days (max)
 Loss of job

2nd RVR:

Same as 1st RVR
 Increase placement to common labor to 45 days (max)
 Reclassification if warranted by reclassification instrument
 Reassignment

3rd RVR:

Same as 1st RVR
 Increase placement to common labor to 90 days (max)
 Loss of visiting privileges - 90 days (max)
 Loss of canteen privileges - 90 days (max)
 Loss of telephone privileges - 90 days (max)

RULE #33: FAILURE TO CONFORM TO GROOMING STANDARDS

1st RVR:

Assignment to extra duty - 16 hours (max)
 Loss of canteen privileges - 30 days (max)
 Loss of telephone privileges - 30 days (max)
 Loss of visiting privileges - 30 days (max)

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 26 of 29

Special Circumstances

- In some cases a punishment listed will not be adaptable to the rule.
 - i.e., Rule #9 – when the “unauthorized possession” is not a positive drug test, then “pay for Positive Drug Test” should not be used.
 - i.e., Rule #2 – when there is nothing destroyed or damaged then “Pay for Destroyed or Damaged Property” should not be used.
- If the accused offender does not have a job, then “Loss of Job” should not be used.
- Or, if the job is “long line” then that punishment probably should not be used.
- If the accused offender is in the Adult Basic Education Program, it may not be feasible to recommend “Loss of Job” unless the violation is serious enough to place inmate into a lesser custody.

Evidence

Any and all evidence, with the exceptions referenced in policy 16-14, Preservation of Physical Evidence, accompanying a RVR will be recorded, labeled and stored securely at the Central Disciplinary Office. After the RVR is heard and the findings are known and unless further need for same, the evidence will be held ninety (90) days then destroyed in the following manner:

- All drugs or drug paraphernalia seized will be turned over to Corrections Investigation Division (CID).
- All recyclable metals and plastics will be turned over to the Property Office.
- All sharp instruments (i.e., knives and shanks) will be turned over to the K-9 staff for destruction. **Note: weapons used in assaults on staff and/or inmates will be remanded to CID.**
- All paper, cloth and other miscellaneous items will be turned over to the Fire and Safety Inspector.

Offender Not Guilty/Dismissed

Written policy, procedure, and practice provide that if an inmate is found not guilty of an alleged rule violation, the disciplinary report is removed from all of the inmate's files [4-4246].

Assistance to an Offender in a Hearing

When it is apparent that an offender is not capable of effectively collecting and presenting evidence on his own, a representative will be appointed to assist the offender. The Superintendent or designee will make available representatives capable of assisting offenders

TITLE: DISCIPLINARY PROCEDURES		SOP NUMBER 18-01-01
EFFECTIVE DATE: 01-01-2007	NON-RESTRICTED	Page 28 of 29

1214 Program (ARP). Refer to policy and procedures for Grievance Procedures.

1215

1216 Criminal Violation

1217

1218 Written policy, procedure, and practice provide that, where an inmate allegedly commits
1219 an act covered by criminal law, the case is referred to appropriate court or law
1220 enforcement officials for consideration for prosecution [4-4231].

1221

1222 The Hearing Officer will forward a copy of any RVR considered felonious to the Corrections
1223 Investigation Division along with all relevant documents (i.e., Incident Reports, Use of Force
1224 Reports) concerning the violation for consideration of prosecution. This will not interfere with the
1225 processing the rule violation through the administrative disciplinary hearing by the Hearing
1226 Officer.

1227

1228 Restrictions

1229

1230 Disciplinary action will not be capricious or in the nature of retaliation or revenge. Corporal
1231 punishment of any kind is strictly prohibited.

1232

1233 Rule Violation Report Filing

1234

1235 • Designated Disciplinary Staff and Associated Warden or designee (IHO) will enter the rules
1236 Violation Report and findings into the Offendertrak system within twenty-four (24) hours after
1237 the disciplinary hearing is conducted.

1238

1239 • Hearings conducted on weekends/holidays will be entered no later than the next working
1240 day.

1241

1242 • Any punishment (i.e., reclassification, reassignment or assignment to behavior modification,
1243 where beds are limited) a designated employee will edit the information entered into the
1244 Offendertrak system upon completion of movement, class change, or other as specified.

1245

1246 • When an offender is found guilty of committing a rule or regulation violation and punishment
1247 of loss of Earned Time is imposed, the original RVR with all supporting documentation
1248 attached will be forwarded to the Commissioner or designee for final approval.

1249

1250 • Upon approval or disapproval of loss of Earned Time by the Commissioner, the appropriate
1251 staff will be notified in order to edit the entry into the Offendertrak system.

1252

1253 • If the Commissioner or designee approves the penalty, appropriate staff will be notified.

1254

1255 • Designated employees will enter the RVR data in the Offendertrak system to include all
1256 punishment with starting and ending dates for imposed punishment.

1257

1258 • The original copy and documentation will be forwarded to the offender's master file and a
1259 copy will be forwarded to the offender's working file.