

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No. 12-ALJ-04-0377-AP

Andrew Plummer, # 299191,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

May 21, 2013

South Carolina Department of Corrections

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**

- II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Andrew Plummer (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of assault and battery of an SCDC employee with means or intent to kill or injure, offense 801 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 80 days of good time due to the disciplinary conviction. (R.p. ____).

Appellant filed a Step One Grievance on February 13, 2012, challenging his disciplinary conviction. This grievance was investigated and denied. (R.p. ____). Appellant filed a Step Two Grievance on March 16, 2012, which was also denied. (R.p. ____). Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (R.p. ____).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding the disciplinary hearing comported with due process. Specifically, the ALC determined: (1) appellant was given appropriate notice of the disciplinary hearing; (2) the disciplinary hearing officer provided a written statement indicating the evidence the hearing officer relied upon in finding appellant was guilty; (3) appellant was allowed to call witnesses; (4) appellant was represented by counsel substitute; and (5) the disciplinary hearing officer was impartial. The ALC also ruled appellant’s disciplinary conviction was supported by sufficient evidence. (R.p. ____).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

STANDARD OF REVIEW

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

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

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

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

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

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

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due Process requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were complied with in this case. The Disciplinary Report and Hearing Record demonstrate that appellant had notice of the charge. (R.p. ____). The record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing. (R.p. ____). Furthermore, appellant was afforded an opportunity to be heard at the January 31, 2012 hearing. (R.p. ____). There was a neutral and detached hearing body at the hearing,

an SCDC disciplinary hearing officer. (R.p.____). Appellant was provided counsel substitute and disclosure of the written statement of the hearing officer's findings. (R.p.____).

Appellant claims he was denied the right to call witnesses at the disciplinary hearing. However, there is nothing in the transcript to support appellant's contention that he attempted to call additional witnesses at the disciplinary hearing. Consequently, appellant cannot now argue additional witnesses should have been permitted. See State v. Williams, 321 S.C. 455, 461, 469 S.E.2d 49, 53 (1996) (holding the failure to contemporaneously object renders an issue unpreserved for appellate review).

There was ample evidence to support appellant's disciplinary conviction. Officer Stokes reported he gave appellant several directives to step back into his cell. Appellant became verbally aggressive and refused all directives. He approached Officer Stokes in a threatening manner with closed fists. Officer Stokes dispensed chemical munitions, and appellant struck Officer Stokes in the face. First responders arrived and took appellant to the Special Management Unit. (R.p.____).

Officer Brady testified Officer Stokes and appellant got in a verbal argument. Officer Stokes directed appellant to step back into the cell. Appellant stepped into the doorway, but Stokes was unable to close the door. Appellant continued to argue with Stokes, and Stokes dispensed chemical munitions. Appellant then swung at Stokes. (R.p.____). In view of the reports and testimony of Stokes and Brady, the disciplinary conviction was fully supported by the evidence.

Because appellant's disciplinary conviction comported with all due process requirements, SCDC respectfully requests the decision of the ALC

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented at appellant's hearing indicates appellant was guilty of this disciplinary offense. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. (R.p. ____). The disciplinary hearing officer stated she found appellant was guilty based upon Brady's testimony, Stokes' report and testimony, and photographs of Stokes' injuries. (R.p. ____).

Appellant has not carried his burden of proving that the decision of the

Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

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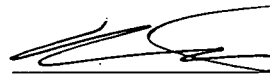
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, May 21, 2013 addressed to the Appellant as follows:

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