

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Roy Morris, #288777,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0592-AP
Grievance No. MCCI 1175-11

ORDER

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

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Possession or Attempt to Possess a Cell Phone (898 under SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Appellant appeals claiming his disciplinary conviction is the result of due process violations.

Since a state created liberty interest is involved, it is necessary to determine if Inmate received the process he was due. A prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met. Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4th Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)). Therefore, the issue in this appeal is not whether SCDC complied with its own policies or regulations, but whether SCDC met the minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz, 527 S.E.2d at 750. These requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has enunciated the following five requirements which, if established, will ensure procedural due process in inmate disciplinary matters:

- (1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing;
- (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary

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action; (3) that inmate should be allowed to call witnesses and present documentary evidence; (4) that counsel substitute...should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Al-Shabazz, 527 S.E.2d at 751, citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

In this case, Appellant's mother brought four cans of paint and four tubes of caulk to the facility stating that the supplies were donations for the carpentry class. When asked for identification, Appellant's mother denied having any such identification. She gave the correctional officer at the gate, Corporal Arnette, a false name and an address in Aiken County, South Carolina. Arnette scanned the donated items and detected contraband. After further inspection, the correction officers discovered three (3) cell phones, four (4) cell phone charges, one (1) hands free device, and 350 grams of tobacco hidden in the donated items.

After the discovery of contraband, Appellant was interviewed by Investigator Jeff Bentley. Appellant admitted he spoke with his mother the day before the incident and asked his mother to deliver the supplies for donation to the carpentry class. After reviewing Investigator Bentley's report, Major Mursier, a correctional officer, charged Appellant with smuggling and/or conspiracy to smuggle contraband, the use or possession of a cell phone or communication device, and the possession of contraband.

Appellant received notice of his disciplinary hearing on August 30, 2011, more than twenty-four hours prior to his hearing date, September 7, 2011. Contrary to Appellant's argument that he did not have 24 hour notice of the charges, the hearing notice and the incident report included charges for smuggling, possession of a cell phone or communication device, and possession of contraband. The Disciplinary Report and Hearing Record shows reliance on testimony from Major Mursier. The Disciplinary Report and Hearing Record show that the reason for the action taken was that this is Inmate's third conviction of 898 this year and the nature of the offense. Appellant waived the right to have his accuser present, so at the disciplinary hearing the hearing officer relied on the written report, the investigative reports and photographic evidence in determining Appellant's guilt. Appellant waived the right to be represented by Counsel Substitute. There is nothing in the record suggesting the hearing officer was not neutral.

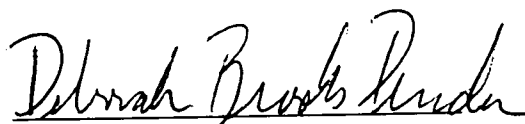
Therefore, all of the constitutional requirements ensuring procedural due process were met in this case.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 756. Consequently, the review in these inmate grievance cases is limited to the record presented. An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2012).

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the hearing officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the record before me now. In the case at hand, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice.

IT IS THEREFORE ORDERED that the final decision of the Department is **AFFIRMED** and the appeal of the Appellant is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

April 16, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

This 16th day of April 2013

By: R. E. G.
Judicial Law Clerk