

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Chief Administrative Law Judge Ralph King Anderson, III

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Case No. 12-ALJ-04-0261-AP

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Gabriel Randolph, # 248729,.....Appellant,

v.

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

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**INITIAL BRIEF OF RESPONDENT**

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June 17, 2013

South Carolina Department of Corrections

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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 Gabriel Randolph (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of exhibitionism and public masturbation, offense 854 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 20 days of good time due to the disciplinary conviction. (R.p.\_\_\_\_).

Appellant filed a Step One Grievance on August 9, 2011, challenging his disciplinary conviction. This grievance was investigated and denied. (R.p.\_\_\_\_). Appellant filed a Step Two Grievance on September 22, 2011, 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.\_\_\_\_).

The ALC affirmed SCDC’s final decision, finding the disciplinary hearing comported with due process. Specifically, the ALC determined appellant was given appropriate notice of the disciplinary hearing; there was an impartial disciplinary hearing officer; appellant was afforded counsel substitute; and appellant had an opportunity to present evidence and confront his accuser. 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 August 9, 2011 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 present witness testimony and documentary evidence at the disciplinary hearing. However, the record reflects that counsel substitute presented the witness testimony appellant had requested. (R.p. \_\_\_\_). In addition, although appellant requested a copy of the cell check log, he offered no explanation how the log could have affected the outcome of the hearing. See State v. Brayboy, 401 S.C. 207, 214-15, 736 S.E.2d 679, 683 (Ct. App. 2012) ("Error is harmless if it could not reasonably have affected the result of the trial.").

There was ample evidence to support appellant's disciplinary conviction. Corporal Sloan reported that while she was conducting a security check, she observed appellant standing in the left corner of his cell door masturbating. (R.p. \_\_\_\_). She explained she identified appellant by matching his name with the roster inside of the control room. Based upon Sloan's report and testimony, 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 he found appellant was guilty based upon Sloan’s report and testimony. (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

Attorney for Respondent



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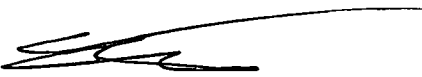
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**CERTIFICATE OF SERVICE**

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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, June 17, 2013 addressed to the Appellant as follows:

Gabriel Randolph, # 248729  
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