

if Appellant received the due process to which he was entitled. *Al-Shabazz*, 338 S.C. at 369-70, 527 S.E.2d at 750. The South Carolina Supreme Court enunciated the following five requirements which, if established, show that minimum constitutional requirements for procedural due process have been met in inmate disciplinary matters: (1) the inmate was given advance written notice of the charge at least twenty-four hours before the hearing; (2) the fact finder prepared a written statement of the evidence relied on and reasons for the disciplinary action; (3) the inmate was allowed to call witnesses and present documentary evidence; (4) counsel substitute was allowed to help the inmate if the inmate was illiterate or if the case was too complex for the inmate to handle alone; and (5) the person who heard the matter, who may be prison officials or employees, was impartial. *See id.*; 338 S.C. at 371, 527 S.E.2d at 751 (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-72 (1974)). Applying these five requirements, as gleaned from the Record in this case, this Court concludes the following:

Appellant was given notice of the charge on October 25, 2021, and the disciplinary hearing in the matter took place on October 28, 2021, more than twenty-four hours later. Based on the hearing transcript, Appellant was represented by counsel substitute during the hearing. Appellant participated in the hearing and was given the opportunity to present witnesses and documentary evidence. Additionally, at Appellant's request, his accuser was present to testified at the hearing. The hearing transcript and report show that the Hearing Officer's determination of Appellant's guilt was based upon the narrative and testimony of Officer Myers. There is nothing in the Record indicating the Hearing Officer was otherwise than neutral. Therefore, this Court concludes that Appellant was afforded the minimum due process required in prison disciplinary proceedings.

Furthermore, when reviewing the Department's decisions in inmate grievance matters, this Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. *Al-Shabazz*, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, this Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly

erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

As part of his appeal, Appellant contends he should not have been charged with assault and battery because he was previously found not guilty of these charges in general sessions court. As the Hearing Officer aptly explained when Appellant raised the issue during the disciplinary hearing, evidentiary standards in general sessions court are not the same as the evidentiary standards applied in prison disciplinary matters. For a finding of guilt in a prison disciplinary case, the hearing officer must find that there is a preponderance of the evidence proving the inmate's guilt. In Appellant's case, a thorough review of the Record shows that there was ample evidence presented at the hearing to support the Hearing Officer's finding.

Accordingly, because Appellant was afforded the minimum due process required and there is substantial evidence in the Record to support Appellant's disciplinary conviction, the Department's decision must be affirmed. *See* S.C. Code Ann. § 1-23-380(5) ("The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced.").

Appellant further contends the Department violated its own policy when more than 21 days passed before he was brought before a disciplinary hearing officer. He contends the delay violated his right to due process. However, a prison official's failure to follow the Prison's own policies does not on its own constitute a violation of procedural due process. *See Myers v Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996).


Finally, Appellant argues that although he was given credit for "time served," he is still housed in SMU. Pursuant to *Brown v. Evatt*, Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a constitutional right or exceeds the limits of his sentence. 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996). In addition, "...the security and custody classification of state prison inmates is a matter of state prison-official discretion whose exercise is not subject to federal procedural due process constraints." *Slezak v. Evatt*, 21 F.3d 590, 594 (4th Cir. 1994). Appellant has no liberty interest in having a particular security or custody status unless the security or custody status implicates a

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constitutional right or exceeds the limits of his sentence. *See Brown*, 322 S.C. at 194, 470 S.E.2d at 851.

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

November 3, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that I have caused to be 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 handwriting, and to be addressed to the person(s) or their attorney(s).



Administrative Law Judge

The State of South Carolina
FILED
NOV - 3 2022
Administrative Law Court