

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lisenby, #200273,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0200-AP
Grievance No.: TYRCI 1401-12

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 11, 2013 by Billy Lisenby ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant appeals the decision of the SCDC in his Step Two Grievance, in which his conviction for Possession of a Weapon (811) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost 60 days of good time, therefore a liberty interest is involved. Appellant appeals on the grounds that his due process rights were violated.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented.

LAW/ANALYSIS

Since a state-created liberty interest is involved, it is necessary to determine if Appellant received due process of the law. Well established precedent determines that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Id. at 369-70, 527 S.E.2d at 750. However, these

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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 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 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.

Id. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

Applying these requirements to the record in this case we find the following:

Appellant was served with notice of the charge on October 24, 2012 and the hearing was held on November 5, 2012. The Disciplinary Report and Hearing Record show reliance on testimony from Lieutenant Lavigne. The Disciplinary Report and Hearing Record show that the reason for the action taken is that this is Appellant's fourth offense of this nature. Appellant was given the opportunity to call witnesses and give testimony. Appellant was also represented by Counsel Substitute. There is nothing in the record to suggest that Hearing Officer was anything other than neutral or detached. Thus, Appellant's due process rights were protected by the process utilized by SCDC in this case.

The charging official, Lieutenant Lavigne, reported that while he was conducting a search of Appellant's cell, he found two homemade weapons wrapped in newspaper between the window and the wire mesh. Appellant was subsequently charged. Appellant raises as an issue the fact that his conviction was the result of due process violations and the fact that the weapons were there before he moved to that cell. However, as Lieutenant Lavigne testified, the weapons were in a location where Appellant had to be aware of their presence even if he was not the one to place them. As the Wolff Court acknowledged, the full panoply of due process rights does not apply to prison disciplinary proceedings; there must be mutual accommodation between

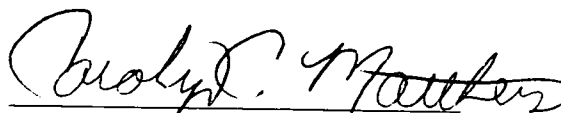
institutional needs and objectives and the provisions of the Constitution that are of general application. Wolff, 418 U.S. at 556. After a thorough review of the record, there is substantial evidence to uphold the decision of SCDC.

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(6) (Supp. 2010). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. See S.C. Code Ann. § 1-23-380(6) (Supp. 2010); see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case, the substantial evidence in the record supports SCDC's decision. The Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

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.

Therefore, for the foregoing reasons this appeal is **DISMISSED, WITH PREJUDICE**.

IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

October 4, 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 4th day of October 2013

By: MBE
Judicial Law Clerk