THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE JOHN D. McLEOD

Case No. 2013-002277

Michael Goins - - - - - - - - - - - - Appellant

V.

South Carolina Department of Corrections - - - Respondents

APPELLANT'S INITIAL BRIEF

Dated: October 31, 2013

Pro Se Litigant
Mr. Michael Goins #302385
430 Oaklawn Rd.
Pelzer, S.C. 29669

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. STATUTES

II. CASES

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?

III. Did Administrative Law Judge err in decision to dismiss Appellant's Appeal?

IV. Did Respondent's follow their own rules, policy & procedure stipulated in SCDC policy OP-22.14 "Inmate Disciplinary System"?

[redacted]

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Michael Gains ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of Exhibitionism and public masturbation, offense 354 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 36 days of good time due to the disciplinary conviction.

Appellant filed a step one grievance on June 7, 2012 that sent straight to the Inmate Grievance Branch because of condition of the case, challenging his disciplinary conviction. This grievance was supposedly investigated but denied for no substantial reason. The Appellant did not have to file a step two grievance because of the matters of the case. Appellant filed 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).

The ALC affirmed SCDC's final decision, finding the disciplinary hearing comported, supposedly, 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.

Appellant now seeks review of the ALC's decision. For the reasons that follow, Appellant respectfully requests that the ALC's decision be reversed.

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 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. Dept. of Health & Environmental Control, 361 S.C. 416, 42, 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. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?

Prison disciplinary cases are not barred from procedural due process rights stipulated by the Federal constitution, S.C. state constitution or the South Carolina statutes. Although prison disciplinary cases are not criminal trials, they should still be treated with strict scrutiny. The Appellant has rules to abide by as well as the Respondents. Dese process requires the following, but not limited to, 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 not adequately and effectively complied with in this case. The Appellant did recieve an adequate and effective notice of the charge. The Appellant also recieved proper disclosure of evidence due to the fact that the Disciplinary offense Report was as well as an anonymous Request to staff member being read into the record. The only problem that the Appellant has with the disclosure of evidence is they're both erroneously submitted into the record. Appellant's right to be heard was prejudiced by his accuser not being present. The Appellant had no adequate and effective right to cross-examine and confront his adverse witness(s). The hearing body was only partially neutral and detached. Furthermore, the Appellant was indeed provided a counsel sustitute. Even though the counsel substitute was very inadequate and ineffective, they were provided. Lastly, Appellant was provided an written statement of the hearing officer's arbitrary findings.

Appellant was denied his due process right to call witnesses and produce documented evidence in his behalf. The Hearing officer alleged that the appellant did not submit a Request To staff Member requesting witnesses or documented evidence. The Appellant stated that he did submit an Request to staff Member requesting witnesses and documented evidence. AS THE APPELLANT STATED IN HIS BRIEF TO THE ALC (see designation of Matter), WOULD IT HAVE BEEN OF A GOOD PENOLOGICAL INTEREST FOR THE HEARING OFFICER TO CONDUCT AN "CONTINUANCE" OF THE HEARING TO ALLOW THE APPELLANT TIME TO RE-SUBMIT AN REQUEST TO STAFF MEMBER TO HAVE HIS KEY WITNESS PRESENT AT THE HEARING??? SCDC Policy OP-22.14 "Inmate Grievance System", section 29 stipulates that the hearing officer could have called an "continuance" for this very exact reason. Furthermore, as the appellant pointed out in his brief to the ALC, DHO Turner always uses "continuances" to contact an accuser if their unavailable at the first hearing (Example: Byron Spivey #316537; Case #35; Hearing date: 8/29/13 and continuance until date 9-5-13 because DHO could not contact an accuser against an inmate at first hearing). Would the calling of an continuance have prejudiced anyone besides the accused in anyway??? It was impartial, bias & unfair for the DHO not to have an continuance to allow the appellant to re-submit his request to staff member for his key witness since the DHO didn't recieve the first Request To staff Member and the appellant made it very clear at the hearing that he did want his key witness and he did want his accuser present. Such failure to make just & fair decisions must be viewed as an refusal to call key witness and allow appellant to confront his accuser. The Appellant's due process rights to confront his accuser and have his key witness testify on his behalf was purposely infringed by the DHO.

DISCLOSURE OF EVIDENCE AGAINST DEFENDANT

As stated on the disciplinary report and hearing record form, the disclosure of evidence that was used to find Appellant guilty was an erroneous incident report written by the accuser & an anonymous Request to staff member statement supposedly written by the Appellant to the accuser admitting to the offense (see designation of Matter). As for the incident report, it was erroneously accepted into the record. SCDC Policy OP-22.14 "Inmate Disciplinary System" section 4.1 & 4.2 strictly stipulates that the "Major/Responsible Authority" should sign and date the incident report and check whether to informally resolve, Administratively resolve, or Refer to a disciplinary hearing within (9) nine calendar days of

the offense date. In this case, No Major / Responsible Authority signed and dated the incident report nor checked neither box in how to handle the offense. This is a clear, undisputed fact of an violation of SCDC's own Policy/Procedure. The incident was erroneously read into the record. Therefore, Appellant was erroneously found guilty with erroneous evidence and made upon unlawful procedure in violation of SC Code Ann. § 1-23-610 (B)(b)(c)(e). As for the anonymous Request to staff member supposedly written by the Appellant to the accuser, the appellant never acknowledged his supposed writing of the statement and the DHO never asked appellant if he wrote the statement nor asked the ~~case~~ counsel substitute to verify the Appellants signature or his SCDC number. The DHO took it into his own perogative to read the statement into the evidence without first verifying it through the appellant or his counsel substitute. This error was very harmful to appellants case. State v. Brayboy, 401 S.C. 207, 214-15 (Ct. App. 2012) ("Error is harmless if it could not reasonably have affected the result of the trial") These two errors were indeed harmful because they affected the results of the hearing.

AID OF COUNSEL SUBSTITUTE

Indeed, the counsel substitute was present at the hearing as required because the appellant is an seriously mental ill patient. The counsel substitute was ineffective because he did not ask for an continuance. Nor did he be sure to speak with the appellant 24 hours before the hearing to make sure the defense was proper. Nor did the counsel substitute ask to verify the anonymous statement. Just because the counsel substitute was provided but was ineffective does not satisfy "Aid" of counsel substitute. Therefore, Appellant was not provided "Aid" of counsel substitute.

THEREFORE, Appellant was not afforded "All" constitutionally required due process.

II. IS RESPONDENT'S FINAL AGENCY DECISION 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 (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.E.2d 304 (1981). Reviewing court may reverse decision of administrative agency if substantial rights have been prejudiced because agency's findings, inferences, conclusions or decision violate constitutional or statutory provisions, exceed statutory authority of agency, are based upon unlawful procedure, are affected by other error of law, are clearly erroneous in light of reliable, probative, and substantial evidence on entire record, or are either arbitrary, capricious, or reflect abuse of discretion or other obvious unwarranted exercise of discretion. Weaver v. South Carolina Coastal Council 423 S.E. 2d 340 (ct. App. 1992); S.C. Code 1976 § 1-23-380.

All evidence relied upon to find appellant guilty (incident report & an anonymous statement) was arbitrarily and erroneously entered into the record. This is an undisputed fact.

III. DID ADMINISTRATIVE LAW JUDGE ERR IN DECISION TO DISMISS APPELLANT'S APPEAL?

On September 13, 2013 Appellant filed his Appellant's Brief to the Administrative Law Court & SCDC. On September 25, 2013 the Respondent's filed their Respondent's Brief. On October 1, 2013 the Administrative Law Judge filed an order dismissing the Appellant's appeal. ALJ McLeod supported the agency's findings of finding the Appellant guilty. Appellant can prove that this decision was arbitrarily, capriciously, erroneously made. Pursuant to rule 60(A) of the SCSAR (South Carolina Special Appeals Rules) the Appellant had sixty-five (65) days to file his brief, which was complied with. The Respondent had twenty (20) days after the filing of the Appellant's brief to file their brief, which was complied with. The ALJ showed that he was bias and unjust in his decision because Pursuant to 60(A) of the SCSAR, the Appellant had ten (10) days from the date the Respondents filed their brief to file an Reply brief. The ALJ denied the Appellant the right to file on Reply brief. On September 25, 2013 the respondent's filed their brief. The Appellant had until October 5, 2013 to file on Reply brief but the ALJ dismissed the Appeal before so on October 1, 2013 (see designation of Matter). Therefore, the ALJ erred in his bias, prejudice, arbitrary decision to dismiss Appellant's Appeal.

III. DID RESPONDENT'S FOLLOW THEIR OWN RULES, POLICY & PROCEDURE STIPULATED IN SCDC POLICY OP-22.14 "INMATE DISCIPLINARY SYSTEM"?

Pursuant to SCDC Policy/Procedure OP-22.14 "Inmate Disciplinary System" section 4.1 & 4.2, the Major/Responsible authority had nine (9) calendar days to informally resolve, Administratively resolve, or refer the charge to a disciplinary hearing. Being that the respondent's did not choose any resolution, nor did not sign and date the incident report (see designation of Matter), the charge should be dismissed with prejudice and the sanctions imposed should be lifted. This case is like an case where no True Bill was stamped on an indictment and no grand jury convened to indict an defendant.

Appellant has carried his burden of proving that the decision of the Department and ALJ is clearly erroneous, arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12 (1998). Consequently, SCDC and and the ALJ's decision should be remanded & reversed.

CONCLUSION

~~WHEREFORE, for all the reasons undisputedly stated above, this court should~~ reverse and remand the ALJ's and Respondents decision in this case.

Pelzer, South Carolina

Respectfully Submitted,

Mr. Michael Goins

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PROOF OF SERVICE

I, Michael Goins, hereby certify that on October 31, 2013 I did serve the following agencies:

1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
2.) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221
by depositing Appellant's Initial Brief & designation of matter in the U.S. Mail, postage prepaid.

October 31, 2013
Pelzer, South Carolina

/s/ Michael Goins
Mr. Michael D. Goins #302385
430 Oaklawn Rd.
Pelzer, S.C. 29669

SWORN to and subscribed before me
this 31st day of October, 2013
Mary C. Mitchell (L.S.)
Notary Public for South Carolina
My commission expires: 1-23-2023