THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn C. Matthews

Case No. 12-ALJ-04-0798-IJ

Michael Jones, # 237769,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

November 19, 2013

South Carolina Department of Corrections

Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508

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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 Michael Jones ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of the inmate disciplinary offense of possession of a cell phone, offense 898 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 450 days of good time due to the disciplinary conviction. (R.p._____).

Appellant filed a Step One Grievance on July 10, 2012, challenging his disciplinary conviction. This grievance was investigated and denied. (Step One Grievance) Appellant filed a Step Two Grievance on November 8, 2012, which was also denied. (Step Two Grievance). 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).[1]

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 call witnesses and present testimony. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence. (Order filed Sep. 26, 2013).

Appellant now appeals the ALC's decision. For the reasons that follow, SCDC

[1] Appellant filed his Notice of Appeal in the ALC before receiving the agency's final decision. However, following SCDC's issuance of a final decision, the ALC reviewed the appeal on its merits. (Order Denying Respondent's Motion to Dismiss).

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. (Disciplinary Report and Hearing Record). 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. (Transcript pp.1-2). Furthermore, appellant was afforded an opportunity to be heard at the June 26, 2012 hearing. (Transcript pp.3-6).

There was a neutral and detached hearing body at the hearing, an SCDC disciplinary hearing officer. (Transcript p.1). Appellant was provided counsel substitute and disclosure of the written statement of the hearing officer's findings. (Disciplinary Report and Hearing Record).

Appellant claims he was denied the right to present witness testimony and documentary evidence at the disciplinary hearing. Specifically, appellant argues that another inmate provided a written statement claiming ownership of the cell phone involved in the case. However, at the disciplinary hearing, counsel substitute stated he spoke with counsel substitute for the other inmate, and the only statement was one provided by appellant. (Transcript p.5; Declaration). Therefore, because counsel substitute presented the substance of the available evidence at the hearing, there was no due process violation. See Wolff, 418 U.S. at 556 (acknowledging the full panoply of due process right does not apply to prison disciplinary proceeding and that there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application). Moreover, based on counsel substitute's indication the other inmate had not claimed the cell phone, the exclusion of witness testimony was not prejudicial. See State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("Error is harmless when it could not reasonably have affected the result of the trial.").

There was ample evidentiary support for the disciplinary conviction. Corporal Mosher reported that while he was conducting a controlled strip-out of appellant's cell, he placed appellant's property, along with the property of appellant's roommate, in the sally-

port area. When he placed it on the floor, a cell phone and charger fell on the floor. (Transcript p.2). At the hearing, Mosher explained the cell phone fell from appellant's property. (Transcript p.7). Based upon Mosher'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.

The disciplinary hearing officer stated he found appellant was guilty based upon Mosher's report and testimony. (Transcript p.8).

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

Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508

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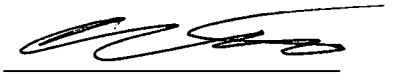
CERTIFICATE OF SERVICE

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, November 19, 2013 addressed to the Appellant as follows:

Michael Jones, # 237769
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669



Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent