

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

**MOTION TO COMPEL APPELLANT TO
SUPPLEMENT THE RECORD**

Comes Now, respondent, the South Carolina Department of Corrections, and requests that this Honorable Court ORDER appellant to supplement the record on appeal. In support of this request, respondent shows this Honorable Court the following:

1. On November 21, 2013 appellant served respondent with a copy of a document entitled "Record on Appeal" which did not contain certain items listed in respondent's Designation of Matter. Specifically, the following items were not included:
 - a. April 10, 2013 Order Denying Respondent's Motion to Dismiss.
 - b. September 26, 2013 Order by Administrative Law Judge Carolyn C. Matthews
2. A copy of each missing document is included as an attachment to this motion.
3. Rule 210(c), SCACR, provides in part that, "The Record on Appeal shall include all matter designated to be included by any party under Rule 209."

4. Appellant has not complied with the rules of this Honorable Court.
5. Respondent has cited to the materials appellant omitted from the Record in its Initial Brief. To file a Final Brief, respondent must have a Record on Appeal containing complete copies of all items respondent listed in its Designation of Matter.

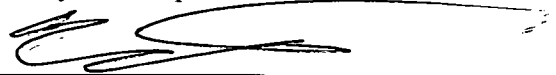
WHEREFORE, respondent respectfully requests that this Honorable Court ORDER appellant to supplement the Record on Appeal with the above listed materials.

Respondent further requests that this Honorable Court ORDER that the final briefs shall be served and filed within twenty days of service of the supplemented Record on Appeal.

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 29221-1787
Attorney for Respondent

Columbia, SC
December 16, 2013

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APR 12 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

GENERAL COUNSEL

Michael Jones, #237769,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No.: 12-ALJ-04-0798-IJ

**ORDER DENYING RESPONDENT'S
MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Appeal filed on September 19, 2012 by the Appellant. The Record on Appeal was filed on December 11, 2012. The Record on Appeal included On February 7, 2012, the Respondent filed a Motion to Dismiss on February 5, 2013 seeking dismissal of this appeal on the basis that the Appellant has failed to file a Step 2 Grievance and that this appeal is not yet ripe for review. On March 21, 2013, the Appellant filed a copy of the Step 2 Grievance form at issue in this appeal. This form shows that the Respondent received the Step 2 Grievance form on or about November 14, 2012. The responsible official made its decision on February 27, 2013 and the Appellant received the Step 2 Grievance form back on March 19, 2013. It appears that this appeal is now ripe for review.

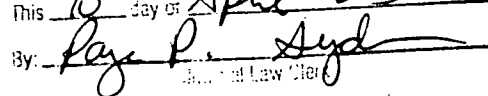
Therefore, based on the foregoing reasons, it is hereby **ORDERED** that the Department's Motion to Dismiss is **DENIED**. Respondents' brief shall be due twenty (20) days from the date of this Order.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

April 10, 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 10 day of April 2013
By: 
State Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SEP 30 2013
GENERAL COUNSEL

Michael Jones, #237769,

Docket No. 12-ALJ-04-0798-~~17~~

Appellant,

ORDER

vs.

South Carolina Department of Corrections,

Respondent.

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Possession of a Cell Phone or any other Type of Communication Device (898) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Inmate lost 450 days of good time, therefore a liberty interest is involved. Inmate appeals on the grounds that his due process rights were violated.

STANDARD OF REVIEW

The Court'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 Court'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 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 Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. 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 Inmate received the process he was due. It is well settled that SCDC must meet

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SC ADMIN. LAW COURT

minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz, 527 S.E.2d at 750. However, these 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 five 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.

Al-Shabazz, 527 S.E.2d at 751 citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

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

Inmate was served with notice of the charge on June 8, 2012 and the hearing was held on June 20, 2012. The Disciplinary Report and Hearing Record shows reliance on testimony from Corporal Mosher. The Disciplinary Report and Hearing Record show that the reason for the action taken is that this is Inmate's first offense of this nature. Inmate was given the opportunity to call witnesses and give testimony. It is clear from the record that Inmate was represented by Counsel Substitute. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

The charging official, Corporal Mosher, reported that while he was conducting a controlled strip-out of Inmate's cell, he placed Inmate's property along with the property of Inmate's roommate in the salty port area. When he placed it on the floor, a cell phone and charger fell on the floor. Inmate was subsequently charged. Inmate raises as an issue the fact that his conviction was the result of due process violations. At the hearing, Corporal Mosher testified that the contraband fell out of Inmate's belongings. 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 review of the record, there is substantial evidence to uphold the decision of the Department.

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 § 1-23-380(6) (Supp. 2010); See also Marietta Garage, Inc. v. South Carolina Dep't of Public 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. It is thus clear that Inmate 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 hereby **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
S.C. Administrative Law Court

September 26, 2013
Columbia, South Carolina

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 26th day of September 2013
By: ABC
Judicial Law Clerk

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v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Motion to Compel Appellant to Supplement the Record by depositing a copy of same in the United States Mail, postage prepaid, on December 16, 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