

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Stanley Moultrie, 307351,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 13-ALJ-04-0123-AP
 Grievance No.: ECI 1930-12

ORDER RECEIVED
 DEC 18 2013
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed February 15, 2013 by Stanley Moultrie (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the decision of the Department denying his grievance in which Appellant complains he was wrongfully convicted of Refusing and/or Failing to Obey Orders without sufficient evidence presented against him. As a result of the conviction, Appellant received sanctions that included the loss of ten (10) days of accrued good time credits. In this appeal, the Appellant alleges that his due process rights were violated by the Department. Specifically, the Appellant asserts that he was denied the opportunity to call witnesses and present documentary evidence during his disciplinary hearing.

Because a state-created liberty interest is involved in this case, it is necessary to determine if Appellant received the process he was due. A prison official’s failure to follow the prison’s own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met. Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4th Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)). Therefore, the issue in this appeal is not whether the Department complied with its own policies or regulations, but whether it met the minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). 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 (5) 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 fact finders 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 the five (5) due process requirements to the Record in this case the Court finds the following:

The Appellant was served with notice of the charge on September 25, 2012 and the disciplinary hearing was conducted on September 28, 2012, more than twenty-four hours later. The Record reveals that the Appellant was represented by Counsel Substitute during the disciplinary hearing. The Disciplinary Report and Hearing Record show reliance on the charging officer's report and testimony in determining Appellant's guilt. Furthermore, the Disciplinary Report and Hearing Record show that the sanctions imposed were a result of this being the Appellant's second charge of this nature and severity. Finally, there is nothing in the Record to suggest that the Hearing Officer was otherwise than neutral or detached.

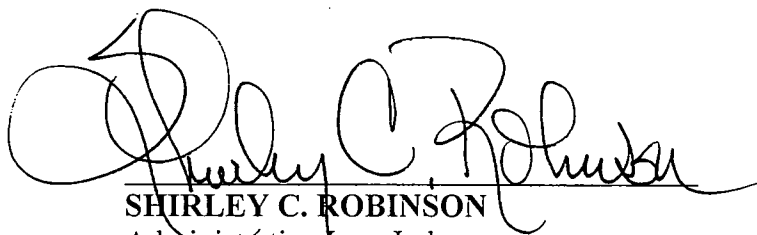
In this instance, the Appellant argues that his due process rights were violated by the Department when he was denied the opportunity to call witnesses to testify on his behalf and present documentary evidence in support of his case. However, there is nothing in the Record that indicates an attempt by the Appellant to call witnesses or offer documentary evidence for review by the Hearing Officer, nor is there an indication that he was denied the opportunity to do so. In fact, the hearing transcript reveals that Appellant was removed from the disciplinary hearing for failing to comply with the directives of the Hearing Officer. The hearing proceeded with Counsel Substitute representing the Appellant in his absence. It is thus clear that Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Consequently, the review in inmate grievance cases is limited to the Record presented. An Administrative Law Judge may not substitute their judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5).

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, the Court will not substitute its 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.

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 10th 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 Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 10 day of December 2013

By: 
Judge Law Clerk