

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 Nos. 13-ALJ-04-0200-AP

Billy Lisenby, # 200273.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

December 17, 2013

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**

- II. ARE RESPONDENT'S FINAL AGENCY DECISIONS SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Billy Lisenby (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of Possession of a Weapon, offense 811 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. (R.p.____) Appellant lost 60 days of good time due to the disciplinary conviction. (R.p.____).

Appellant filed a Step One Grievance on November 13, 2012, challenging his 811 conviction. (R.p.____). This grievance was investigated and denied. (R.p.____). Appellant subsequently filed a Step Two Grievance on January 8, 2013, which was also investigated and denied. (R.p.____). Appellant then appealed to the Administrative Law Court. (R.p.____).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding the disciplinary hearing comported with due process. The ALC also ruled Appellant’s disciplinary conviction was supported by sufficient evidence. (R.p.____).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC 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. (R.p. ____). The record also reveals there was proper disclosure of evidence due to the fact that the Incident Report was read and a photocopy of the evidence was present at the disciplinary hearing. (R.p. ____). Furthermore, Appellant was afforded an opportunity to be heard at the November 5, 2012 hearing. (R.p. ____). There was a neutral

and detached hearing body at the hearing, an SCDC disciplinary hearing officer.

(R.p. ____). Appellant was provided with a counsel substitute, and there was disclosure of the written statement of the hearing officer's findings. (R.p. ____).

There was ample evidence to support Appellant's disciplinary conviction. During the hearing, the hearing officer read the incident report written by Lieutenant Lawrence Lavigne stating that while he conducted a search of Appellant's cell, he found two homemade weapons between the window and the wire mesh wrapped in newspaper.

(R.p. ____). The incident report describes the weapons as approximately five inches long, made of an eye glass frame, and sharpened to a point, and the other that was approximately 12 inches long and appeared to be made from a hot water plunger.

(R.p. ____). A photo of the evidence was submitted as part of the record, reflecting the weapons Lieutenant Lavigne found in Appellant's room. Additionally, Lieutenant Lawrence testified that the weapons were in a location where Appellant would have noticed them. (R.p. ____). Appellant argued that the weapons were in the room before he was assigned to it; however, even if that is the case, Appellant's decision to not report the weapons and keep them in his room amounted to possession of the weapons.

The ALC subsequently ruled that appellant's conviction was sufficiently supported by the evidence. (R.p. ____). Moreover, there was nothing in the record to suggest the agency's decision was arbitrary, capricious, or the result of personal bias or prejudice.

II. RESPONDENT'S FINAL AGENCY DECISIONS ARE 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 the disciplinary offense. The disciplinary hearing officer stated he found Appellant was guilty based upon Lieutenant Lavigne's Incident Report and his testimony, as well as the photograph of the evidence. Furthermore, the record conclusively establishes that the "substantial evidence on the whole record" supports Respondent's final agency decision. (R.p. _____).

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

A handwritten signature in black ink, appearing to read "Shanika K. Johnson", written over a horizontal line.

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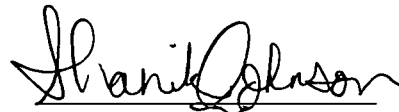
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CERTIFICATE OF SERVICE

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, December 17, 2013, addressed to the Appellant as follows:


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