

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Administrative Law Judge John D. McLeod

Case No. 13-ALJ-04-0530-AP

Michael Goins, # 302385,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

December 6, 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. DID THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISS THE APPEAL FOR FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS?**

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

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Michael Goins (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of the inmate disciplinary offense of possession of unauthorized drugs, including prescription drugs, offense 903 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 3 days of good time due to the disciplinary conviction. (Disciplinary Report and Hearing Record).

Appellant filed a Step One Grievance on December 21, 2012, challenging his disciplinary conviction. This grievance was investigated and denied. (Step One Grievance) Appellant filed a Step Two Grievance on April 16, 2013, 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).

After SCDC filed the Record, the ALC dismissed the appeal *sua sponte* in an order dated October 4, 2012. The ALC noted that appellant’s brief was due on or before September 30, 2013, but appellant had not filed a brief. The ALC therefore dismissed the appeal due to failure to comply with applicable rules of procedure. (Order filed Oct. 4, 2013).

Appellant now appeals 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. THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE APPEAL FOR FAILURE TO COMPLY WITH PROCEDURAL REQUIREMENTS.

The ALC correctly dismissed the appeal because appellant failed to timely serve and file his brief.

Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals. Rule 62, SCALC Rules. Unless otherwise ordered, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment. Rule 60(A), SCALC Rules.

In the case at hand, appellant claims he timely served and filed his brief. However, neither the ALC nor SCDC received a copy of the brief appellant claims to have mailed. Consequently, appellant has not shown the dismissal of his appeal was in error. Therefore, SCDC respectfully submits the decision of the ALC should be upheld.

II. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

As an additional sustaining ground pursuant to Rule 220(c), SCACR, the ALC's decision should be affirmed because the disciplinary hearing comported with due process

requirements.

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 December 20, 2012 hearing. (Transcript pp.3-4). 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 argues the disciplinary hearing officer could not have been neutral

because he convicted appellant based on the evidence presented. However, appellant's is without merit because there is nothing in the record to substantiate that the disciplinary hearing officer was biased. See State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (noting it is not enough to simply alleged bias; a party must actually show evidence of bias).

There was ample evidentiary support for the disciplinary conviction. Sergeant Eich reported that he discovered four different pills on the window sill of appellant's cell during a routine search. (Transcript p.2). Appellant claimed he had been authorized to retain possession of the medication. (Transcript p.3). However, a statement from medical personnel revealed the medication was administered dose-by-dose, meaning appellant should not have possession of pills that had not been taken. (Controlled Substance and Disposition Form). Therefore, the evidence submitted properly supported the disciplinary conviction. See Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) (explaining the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence).

Because appellant's disciplinary conviction comported with all due process requirements, SCDC respectfully requests the decision of the ALC

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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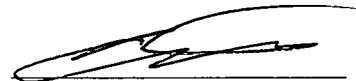
v.

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

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 6, 2013 addressed to the Appellant as follows:

Michael Goins, # 302385
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