

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Christopher Florian as Representative
For the South Carolina Department of Corrections
Respondent, V. Brian Daniels, Appellant Case No. 2013 - 002190
Trial Court Case No. 2012 ALS 040481 AP

Dear Ms. Kitchings:

Enclosed is a notice of Appeal in the Above Case. Also enclosed are
the following:

- 1) proof of service of the notice of Appeal on the respondent
- 2) A copy of the order which is to be challenged on appeal

Sincerely

Brian Daniels
Brian Daniels 253205
Rt 1, SB#5 poB 2039
Ridgeland, S.C. 29936

other Counsel of Record
Christopher Florian
General Counsel of SCDJ
POB 21787
Columbia, S.C. 29221 - 1787

RECEIVED

FEB 18 2014

SC Court of Appeals

State of South Carolina
in the Court of Appeals

Appeal From Administrative Law Court
Shirley C. Robinson, Administrative Law Judge
Docket Number: 12 - ALJ - 04 - 0481 - AP

Brian Daniels,

vs.

Appellant

South Carolina Department
of Corrections [SCDC],

Respondent

Notice of Appeal

Brian Daniels appeals the order of the Honorable Shirley C. Robinson, Administrative Law Judge dated September 9th 2013. Appellant received written notice of entry of the order on September 12, 2013.

October 4th 2013

Respectfully Requested

Brian Daniels

Brian Daniels 253205
RCI, SB #5 POB 2039
Ridgeland, S.C. 29936

Other Counsel of Record
Christopher Florian

General Counsel of SCDC

POB 21787

Columbia, S.C. 29221 - 1787

RECEIVED

FEB 18 2014

SC Court of Appeals

2-5-14

...

...

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Brian Daniels, 253205,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
)

Docket No.: 12-ALJ-04-0481-AP
Grievance No.: ECI 1534-11

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed June 6, 2012 by Brian Daniels ("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 Striking an SCDC Employee or Other Governmental Employee, Contract Employee or Volunteer without sufficient evidence presented against him. As a result of the conviction, Appellant received sanctions that included the loss of sixty (60) days of accrued good-time. In this appeal, the Appellant alleges that the Department did not afford him due process. Specifically, the Appellant argues that he was denied the opportunity to present witness testimony on his behalf.

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:

RECEIVED

FEB 18 2014

Handwritten signature or initials

(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 given notice that his original charge of Assault and Battery would be downgraded to Striking an SCDC Employee on October 12, 2011 and the disciplinary hearing, which began on that date, was continued until October 14, 2011, more than twenty-four hours later. The Record reveals that the Appellant was represented by Counsel Substitute during the disciplinary hearing. Furthermore, the Disciplinary Report and Hearing Record show that the sanctions imposed were based upon the written and verbal testimony of the nurses involved in the incident. Finally, there is nothing in the Record that indicates the hearing officer was otherwise than neutral or detached.

In this case, the Appellant argues that he was not afforded due process because he was denied the opportunity to call a witness. Specifically, the Appellant wanted the officer on duty at the time of the incident to be called to testify during the disciplinary hearing. However, nothing in the Record reveals that the Appellant ever requested that this officer or any other witness be present at the hearing to give testimony on his behalf. The Appellant was allowed to offer the statements of five other inmates but he did not offer any other documentary evidence, nor was he denied the opportunity to do so. It is thus clear that Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

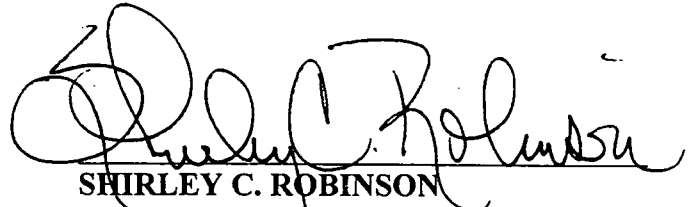
When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Consequently, the review in inmate grievance cases is limited to the record presented. An Administrative Law Judge may not substitute their judgment for that of an agency "as to the weight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

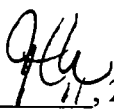
Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the hearing officer should be affirmed

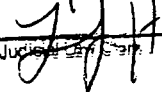
unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the Record before me now. In the case at hand, the Court will not substitute its judgment for that of the agency because there is substantial evidence to support the conviction which is clearly 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


September 11, 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 9 day of September 2013
By: 
Judicial Clerk

Brian Daniels 253205

R.I. 5875

P.O. Box 2039

Ridgeland, S.C. 29936

RIDGELAND CORRECTIONAL
INSTITUTION

FEB 11 2014

MAILROOM

Ridgeland Correctional
Institution

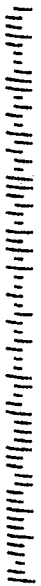
MAR 04 2014



UNITED STATES POSTAGE
Eagle logo
PITNEY BOWES
02 1M
\$ 00.480
0008003003 FEB 11 2014
MAILED FROM ZIP CODE 29936

The Honorable
Ms. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 18629
Columbia, South Carolina 29211

29211+1629



THE DEPARTMENT OF CORRECTIONS HAS NOT RECEIVED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.

LEVERN COHEN, WARDEN
PENNSYLVANIA CORRECTIONAL INSTITUTION
P.O. DEPARTMENT OF CORRECTIONS