STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Perry Gilmore, #344879, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No. 14-ALJ-04-0019-AP **ORDER AFFIRMING DECISION**

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 in the South Carolina Department of Corrections. His conviction for Exhibitionism and Public Masturbation (854), SCDC Policy OP-22.14 Inmate Disciplinary System was affirmed. He was sanctioned with the loss of good time credits so a state created liberty interest is involved.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived entirely 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 inmate grievance cases is limited to the Record presented. 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(5) (Supp. 2013).

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 Section 1-23-380(5); 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); South Carolina Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, 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. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

Additionally, in Superintendent. Massachusetts Corr. Inst., Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768 (1985), the U.S. Supreme Court held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board."

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 certain 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 (internal citations omitted). 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 prescribed 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).

To facilitate checking against the record, the requirements of Wolff are summarized as follows:

1.) 24 hours advance written notice of charges;

2.) Written statement by factfinder as to evidence relied upon;

3.) Written statement by factfinders as to reason for disciplinary action taken;

4.) Opportunity to call witnesses and present documentary evidence;[1]

5.) Counsel substitute allowed if inmate illiterate or if case is complex; and

6.) Impartial hearing tribunal.

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

1.) 24 hours advance written notice of charges;

Inmate was served with notice of the charge on 4-12-2013 and the hearing was held on 4-17-2013. See Disciplinary Report and Hearing Record (DRHR).

2.) Written statement by factfinder as to evidence relied upon;

DRHR shows that conviction was based upon the report of officer and statement made by the officer at hearing that the report was true and correct.

3.) Written statement by factfinders as to reason for disciplinary action taken;

8th charge of this nature.

4.) Opportunity to call witnesses and present documentary evidence;

Appellant did not seek to call witnesses nor did he seek to introduce any documentary evidence.

5.) Counsel substitute allowed if inmate illiterate or if case is complex;

Inmate was represented by counsel substitute (Yeldell). See Hrg. Trans. at 1.

6.) Impartial hearing tribunal.

There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached.

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[1] Right to call witnesses and present documentary evidence is limited if it will be unduly hazardous to institutional safety or correctional goals.

It is thus clear that Inmate has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff. Additionally, it is clear that the conviction is supported by substantial evidence.

CONCLUSION

In the case at hand, I will not substitute my 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. Further, I conclude that the procedure used met the requirements of Wolff, id.; that there was substantial evidence to support the findings of the lower tribunal; and, that Appellant's arguments, which are without showing of meaningful prejudice, are without merit.

Therefore, the order appealed from is **AFFIRMED** and this appeal **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.

Columbia, S.C.
April 14, 2014

John D. McLeod, Judge
S.C. Administrative Law Court

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 14 day of April, 2014

By: Cynthia R. Goldman
Judicial Law Clerk