

MAY 28 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Michael Simmons, 240526,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No.: 13-ALJ-04-0571-AP
Grievance No.: TYRCI 208-13

ORDER
RECEIVED

JUN 13 2014

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed August 1, 2013, by Michael Simmons (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“the Department” or “SCDC”). Appellant appeals the decision of the Department denying his grievance in which Appellant complains he was wrongfully convicted of Possession of Any Communication Device. As a result of the conviction, Appellant received sanctions that included the loss of twenty-one (21) days of accrued good-time. In this appeal, Appellant alleges his due process rights were violated because he cannot be charged for violating prison rules when he is being unlawfully imprisoned based on fraudulent documents.

Because a state-created liberty interest is involved in this case, it is necessary to determine if Appellant received the due process to which he was entitled. 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 only issue on appeal is whether the Department complied with the minimum constitutional requirements for procedural due process in this matter where an inmate is disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). Due process requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the South Carolina Supreme Court has enunciated 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 fact finders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that the 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 (1974)).

Further, 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).

In this matter, Appellant argues he was originally imprisoned based on fraudulent documents, which renders all subsequent actions taken against him a violation of due process, including this matter, which relates to the discovery of a cell phone in Appellant's legal box. Applying the five due process requirements to the Record in this case, the Court finds the following:

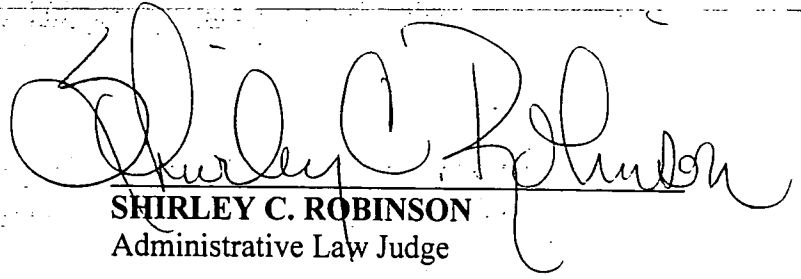
Appellant was given notice of the charge on February 7, 2013, and the disciplinary hearing in the matter took place on February 13, 2013, more than twenty-four hours later. The Record reveals Appellant represented himself at the disciplinary hearing because he was not eligible to be represented by Counsel Substitute. During the hearing, Appellant did not call witnesses and did not submit written statements in support of his argument for the Hearing Officer's review. The Disciplinary Report and Hearing Record shows the Hearing Officer's determination of Appellant's guilt was based upon the Incident Report, testimony of the accuser, and a picture of the evidence. The sanctions imposed were based upon the Hearing Officer's finding that this is Appellant's first charge of this nature. Finally, there is nothing in the Record indicating the hearing officer was otherwise than neutral or detached. Thus, Appellant has been afforded the minimum due process required in prison disciplinary proceedings under Wolff. 418 U.S. at 563-72.

Where an inmate has received the minimal due process required in an inmate disciplinary matter, no further inquiry is needed 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

May 28, 2014
Columbia, South Carolina

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MAY 28 day of May 2014
JHJ
Administrative Law Judge