**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Shaun Wiles, #284696 | ) | |
| | ) | Docket No. 13-ALJ-04-0953-AP |
| Appellant, | ) | |
| | ) | |
| v. | ) | **ORDER** |
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| South Carolina Department of Corrections, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal of Shaun Wiles (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals his July 11, 2013 disciplinary conviction for Offense 904, "Possession of Escape Tools and/or Paraphernalia." (Offense 904).[1] Appellant argues that at the hearing, the Department procedurally erred by failing to carry its burden of proving by a preponderance of the evidence that the two-in-one homemade handcuff keys that Department officers found in his cell were in his possession and could have been used by him to plan or execute an escape.

## FACTS/PROCEDURAL BACKGROUND

On June 20, 2013, a group of SCDC officers, collectively referred to as the "Search Team," conducted a routine search of Appellant's cell, and discovered and confiscated two-in-one homemade handcuff keys,[2] along with wires, pieces of metal, homemade weapons, and a homemade hook. All of these items were located inside Appellant's concrete bed. In order to retrieve these items from Appellant's bed, the Search Team drilled a hole into Appellant's bed and vacuumed out the contents. Some of the items had been accessible to Appellant, but in the

[1] Appellant had also been charged with, and convicted of Offense 811, "Possession of a Weapon" and had been charged with Offense 825, "Refusing or Failing to Obey Orders." However, Appellant did not appeal his conviction for Offense 811, and the hearing officer dismissed the Offense 825 charge.

[2] Appellant contends in his brief that the Record reflects that there was only one key. There is language in the hearing transcript that suggests that only one two-in-one key was presented at the hearing, but the hearing officer referred to two (2) two-in-one handcuff keys. However, regardless of whether there was one or two sets of handcuff keys, it was still contraband and does not affect the analysis in this Order. But the Court will refer to "keys" because even one (1) two-in-one set contains multiple keys.

process of drilling, the Search Team pushed these items into the bed while trying to retrieve them.

Appellant was charged with, *inter alia*, Offense 904. The hearing officer found Appellant guilty of this charge, relying "on the narrative and testimony of Sergeant Gandy; and the physical evidence, which was a handmade . . . handcuff key." The hearing officer added that "[Appellant] is guilty of having in his concrete bed, handcuff keys, which could be used to escape from a correctional institution."

On July 26, 2013, Appellant filed a Step 1 Grievance, in which he alleged procedural errors, including a lack of evidence that Appellant ever had knowledge or possession of the handcuff keys, or that the keys even worked.[3] On August 13, 2013, Warden McKie denied Appellant's Step 1 Grievance. On August 15, 2013, Appellant filed a Step 2 Grievance, again alleging procedural errors, specifically violations of Policy OP-22.14, Sections 3, 3.2, 9.6, 15.3, and 16.1. He also alleged that the Department failed to show by a preponderance of the evidence that he ever possessed the handcuff keys. On November 14, 2013, SCDC denied Appellant's Step 2 Grievance, after which Appellant filed this appeal with the ALC.

## ISSUE ON APPEAL

Whether there was substantial evidence to support the Department's finding that Appellant was guilty of Offense 904.[4]

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[3] Appellant also alleged that a hack saw blade was used as a basis for his Offense 904. However, the hearing officer said that the basis for the hearing officer's decision concerning Appellant's guilt as to this offense were the homemade handcuff keys and Officer Gandy's testimony. Also, Appellant claimed that the charging officer failed to include "at least 4 other witnesses, 3 search team members and 1 maintenance man, involved in the finding and recovery of the contraband items." However, at the end of the hearing, the hearing officer clearly explained to Appellant the Department's policy and reasoning behind having each institution designate an employee to serve as an accusing official in lieu of calling in the entire team. The hearing officer explained that "[w]ith the volume of searches performed and the volume of contraband found during these searches, the [Agency Search Team] would become ineffective if they were required to participate in inmate Disciplinary Hearings." At any rate, these arguments are not preserved on appeal because they were not raised in Appellant's brief; therefore, they are deemed abandoned.

[4] Appellant lists four issues on appeal in his Appellant's Brief. However, two of those issues essentially restate the other two issues; and the remaining two issues collapse into one, which is stated above. The Court also notes that the Department, in its Respondent's Brief, argues that Appellant received due process throughout his hearing, detailing how each of the requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974) was satisfied. However, Appellant did not appear to raise a denial of due process as an issue in his brief. Instead, the error that Appellant alleges relates to the Department's failure to meet its burden of proof of his guilt.

## STANDARD OF REVIEW

This Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2012) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2011).

Consequently, 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." § 1-23-380(5) (Supp. 2011). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary or affected by an error of law. § 1-23-380(5); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (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) (quoting *Law v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). 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. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

Additionally, in *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455-456, 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." Moreover, in *Al-Shabazz*, the South Carolina Supreme Court underscored that except where there is a possible Constitutional violation, since prison officials are in the best position to decide inmate disciplinary matters, the courts and therefore this tribunal adheres to a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the Administrative Procedures Act.

**DISCUSSION**

Appellant argues that the Department never alleged that he had actual possession of the homemade keys and that there was no evidence presented at the hearing to establish that he was in constructive possession of the keys, i.e. that he had dominion or control over the keys or had the right to do so, or even had access to the keys. He also argues that there was no evidence that the keys actually worked and therefore "could be used to plan or execute an escape" as required by Offense 904. Therefore, he argues that the Department failed to follow its own policy by proving his guilt by a preponderance of the evidence.

In evaluating the evidence presented at the hearing, "[t]he fact finder is imbued with broad discretion in determining credibility or believability of witnesses." *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Moreover, in *Superintendent v. Hill*, 472 U.S. 445, 455-56, 457 (1985), the U.S. Supreme Court held that the revocation of good time must be supported by "some evidence in the record." However, "[a]scertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.* at 455. Thus, if reasonable minds could

arrive at the DHO's conclusion based upon the evidence presented, the Department's decision must be upheld.

Under the Department's Policy Manual, Offense 904 requires "[t]he actual or constructive possession of any tool, device, document, drawing, or any other item that **could** be used to plan or execute an escape from a correctional institution." (emphasis added). I agree with Appellant that the Department never alleged that he was in actual possession of the homemade keys. Indeed, neither party disputes the fact that the keys were found in the concrete bed in Appellant's cell (Cell 48), not on his person.[5] The focus is therefore on whether Appellant had constructive possession of the keys.

"Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared." *State v. Pradubsri*, 403 S.C. 270, 282, 743 S.E.2d 98, 105 (Ct. App. 2013). "Possession requires more than mere presence. The State must show the defendant had dominion or control over the thing allegedly possessed or had the right to exercise dominion or control over it." *State v. Williams*, 346 S.C. 424, 430, 552 S.E.2d 54, 57 (Ct. App. 2001) (quoting *State v. Muhammed,* 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct.App.1999)). However, "**[w]here contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession** which may be sufficient to carry the case to the jury." *Williams*, 346 S.C. at 430, 552 S.E.2d at 57 (Ct. App. 2001) (quoting *State v. Hudson*, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981)) (emphasis added).

In this case, it is beyond reasonable dispute that homemade handcuff keys were found in the concrete base of Appellant's bed in Cell 48. Appellant had control over the premises within Cell 48, and therefore that fact alone would allow the hearing officer, as the factfinder, to draw the inference that Appellant had knowledge and constructive possession of those keys. And it is of no consequence that the Department did not prove whether these handcuff keys worked

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[5] In his Initial Brief, Appellant places "key" in quotation marks to emphasize that it was not established that this object would successfully unlock handcuffs. Also, in his Reply Brief, Appellant states that SCDC's allegation that "there was no dispute about the existence of the [keys] contained on the Incident Report" is incorrect. Appellant then defends his position that the keys were not functional. However, even a dysfunctional key is still a key, just as a car that will not start is still a car. The Record is quite clear that a two-in-one key was retrieved from Appellant's bed and was presented at the hearing; and Appellant does not argue against the existence of this object, only against whether it would successfully open handcuffs. Moreover, this Court finds that there was sufficient evidence by which the hearing officer could have inferred that the keys were intended to open handcuffs, regardless of whether they would have succeeded in doing so.

properly. An "escape tool," as defined in the Department's Policy Manual, only requires that the item "could be used to plan or execute an escape from a correctional institution." (emphasis added). It would be absurd to define "escape tool" to require the tool to be successful before an inmate could be penalized for possessing it. This would be as incongruous as requiring an inmate to develop a successful escape plan before allowing the Department to punish the inmate for attempting to escape. Moreover, based on the testimony that there were some tools that were within Appellant's reach before being pushed down during drilling, and that one of the tools found was a homemade hook with which Appellant could retrieve the other contraband, including the handcuff keys, the hearing officer could reasonably infer that Appellant had access to, and constructive possession of, the handcuff keys.

## CONCLUSION

Having found no constitutional violations, this Court must take a "hands off" approach to this internal disciplinary matter, and will not substitute its judgment for that of the Department as to the weight of the evidence on questions of fact. For the foregoing reasons, the Court concludes that the Record contains sufficient evidence to establish that Appellant was guilty of violating Offense 904.

## ORDER

**IT IS THEREFORE ORDERED** that the Department's final agency decision is **AFFIRMED**.

**AND IT IS SO ORDERED**.

Ralph King Anderson, III
Chief Administrative Law Judge

May 27, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

May 27, 2014
Columbia, South Carolina