

JUN 11 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Billy Lisenby, 200273,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
)

Docket No.: 14-ALJ-04-0069-AP
Grievance No.: TYRCI 1553-12

ORDER

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JUL 16 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 January 17, 2014, by Billy Lisenby (“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 Disrespect (8.36). As a result of the conviction, Appellant received sanctions that included the loss of thirty (30) days of accrued good-time. In this appeal, Appellant alleges the Department violated his due process rights by holding a disciplinary hearing in Appellant’s absence.

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).

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 December 12, 2012, and the disciplinary hearing in the matter took place on December 17, 2012, more than twenty-four hours later. Although the Appellant did not personally appear for the disciplinary hearing, the Record reveals that he was represented at the hearing by Counsel Substitute. During the hearing, no witnesses were called or documentary evidence submitted in support of Appellant's defense 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 charging officer's written narrative as provided in the Incident Report. In addition, the Hearing Officer was provided a statement regarding the Appellant's mental status at the time the offense occurred. This statement was provided because of Appellant's classification as mentally ill, and shows that following an assessment it was determined that Appellant "was able to understand the nature and quality of the act committed." The sanctions imposed were based upon the Hearing Officer's finding that this is Appellant's fifth charge of this nature. And finally, there is nothing in the Record indicating the hearing officer was otherwise than neutral or detached.

In this appeal, Appellant argues that his due process rights were violated because the Hearing Officer held the disciplinary hearing in his absence and without his express refusal to attend. According to Appellant, he was never given the opportunity to attend his disciplinary hearing, and in support of this allegation, during his appeal at the Department level, Appellant presented four written statements from other inmates which state that no correctional officer came to Appellant's cell to escort him to the disciplinary hearing. However, the Record in this

