

THE HONORABLE JENNY ABBOTT KITCHINGS  
CLERK, SOUTH CAROLINA COURT OF APPEALS  
P.O. BOX 11629  
COLUMBIA SC 29201

JUNE 28, 2013

Re: ANDREW PLUMMER #294141 V. SCDC

Ms. KITCHINGS,

PLEASE FIND ENCLOSED:

- APPELLANTS SUPPLEMENT TO RECORD ON APPEAL (COURT ORDER)

PLEASE CLOCK STAMP - FILE THE DOCUMENT SHOWING PROOF OF SERVICE.

CC: CHRISTOPHER DI FLORIAN

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JUL 03 2013  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Andrew Plummer, 299191, )  
 )  
 Appellant, )  
 vs. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )  
 )

Docket No.: 12-ALJ-04-0377-AP  
Grievance No.: KRCI-0208-12

ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the Notice of Appeal filed May 23, 2012 by Andrew Plummer ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant appeals the decision of the Department denying grievances in which Appellant challenged his disciplinary conviction of assault and/or battery of a Department employee or other government employee, volunteer, or contract employee with means/and/or intent to kill or injure. The disciplinary conviction resulted in Appellant receiving sanctions that included the loss of eighty (80) days of accrued good time.

**BACKGROUND**

On January 12, 2012, the Appellant was involved in what initially began as a verbal altercation with Officer Mark Stokes, an employee of the Department, but that ultimately resulted in Appellant being charged with violating SCDC Disciplinary Code 801, Assault and/or Battery of an SCDC Employee with Means/and/or Intent to Kill or Injure (a level 1 offense). Appellant was served with notice of the charges and of the disciplinary hearing on January 19, 2012, and he requested that his accuser, Officer Stokes, be present for the hearing and that he be appointed a counsel substitute. The disciplinary hearing began on January 31, 2012 and concluded on February 7, 2012. During the January 31, 2012 hearing, the Appellant informed the Disciplinary Hearing Officer (DHO) that he requested that another officer who was present when the incident occurred testify at the hearing, therefore the hearing was extended.

According to Officer Stokes' written report, while he was passing out bag meals to the inmates on Appellant's cell wing, Appellant stepped out of his cell. Stokes states he gave the Appellant several directives to step back into his cell and in response, Appellant became verbally aggressive. He also stated in the report that the Appellant came toward him in a threatening

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manner with closed fists at which point he administered two to three bursts of chemical munition to Appellant's facial area. Correctional Officer Brady, who was distributing bag meals with Officer Stokes when the altercation occurred, provided testimony during Appellant's disciplinary hearing. According to Officer Brady, the Appellant and Officer Stokes were involved in a verbal dispute when Appellant was asked to step back into his cell. Officer Brady stated that Appellant stepped into the cell doorway but not far enough to allow the cell door to close and continued the verbal dispute with Officer Stokes. Brady stepped between Officer Stokes and Appellant at which point Officer Stokes sprayed Appellant with the chemical munition, and according to Brady, the Appellant then reached over him and swung at Officer Stokes. The Appellant disputes that the incident occurred as recounted by Officers Stokes and Brady.

Following the hearings, the DHO issued her report finding the Appellant guilty of the disciplinary charge, and imposed sanctions that included the loss of eight (80) days of accrued good time. Appellant filed a Step 1 Grievance on February 13, 2012 and Step 2 Grievance on March 23, 2012 appealing the DHO's decision. The Department's final decision denying Appellant's grievances was issued on May 11, 2012, and Appellant filed his Notice of Appeal with the ALC on May 23, 2012. In his appeal, the Appellant contends that his due process rights were violated in that there was insufficient evidence to support his conviction.

#### **DISCUSSION**

This appeal is before the Court pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003), and Slezak v. S.C. Dep't of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004).

Because a state-created liberty interest is involved in this case, it is necessary to determine whether the 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 (4<sup>th</sup> Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5<sup>th</sup> Cir. 1996)). Hence, 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, 338 S.C. at 369, 527 S.E.2d at 750 (2000). These requirements must, however, 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 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 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 due process requirements, the Court finds that: (1) Appellant was served with notice of the charge more than twenty-four hours prior to the hearing; (2) following the hearing the DHO prepared a written statement indicating the evidence relied upon in determining the Appellant's guilt, and the reasons for the sanctions that were imposed; (3) the Appellant was allowed to call witnesses, Officers Stokes and Brady; and (4) Appellant was represented by counsel substitute during the hearing. Although the Respondent contends there were deficiencies in the hearing procedures, he does not allege that the DHO not impartial. Therefore, this Court finds that the Appellant was afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

#### **STANDARD OF REVIEW**

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. See Al-Shabazz at 756. Consequently, the review in inmate grievance cases is in accordance with the standards outlined in the Administrative Procedures Act ("APA"). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code (Supp. 2010). See § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). This section states the following:

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:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;

- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

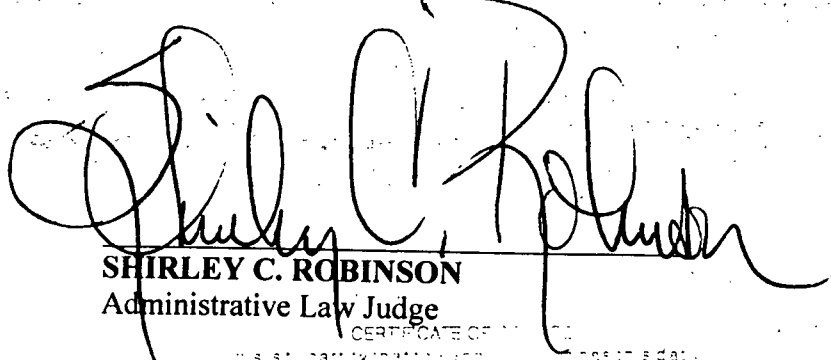
§ 1-23-380(5).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct.

Appellant argues in his appeal that the evidence used to determine his guilt was deficient based upon the inconsistent testimony from Officers Stokes and Brady. Additionally, Appellant questions why Officer Stokes failed to reveal in the incident report that Officer Brady was present when the altercation occurred. However, after thoroughly reviewing the Record, and the briefs submitted by the Appellant and the Department, I find that there is evidence in the Record to support the conclusion reached by the DHO. Specifically, both Officers testified that the Appellant refused to comply with multiple directives to return to his cell and was verbally aggressive. Officer Brady witnessed the Appellant take a swing at Officer Stokes, and Officer Stokes testified that he was assaulted by the Appellant. Their testimony was also corroborated by photographs showing Officer Stokes' injuries.

Based upon the foregoing, the decision of the Department is hereby **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
 Administrative Law Judge

November 8, 2012  
 Columbia, South Carolina

CERTIFICATE OF MAILING  
 This is to certify that the above and foregoing copy of the original and all parties to this cause by separate or joint request, in the United States and to be delivered to the emergency Mail Service addressed to the office of the attorney(s).  
 This 8th day of November 2012  
 By: Michelle W. Under

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE SHERLEY C. ROBERTSON

CASE No. 12-ALJ-04-0377-AP

ANDREW PLUMMER # 299191,

APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;

RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED RESPONDENT A COPY OF APPELLANT'S SUPPLEMENT TO RECORD ON APPEAL (COURT ORDER) BY DEPOSITING A COPY OF SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, ADDRESSED TO THE RESPONDENTS AS FOLLOWS ;

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SC Court of Appeals

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