

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Patrick L. Booker, #297590,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0038-AP

Grievance No. ACI 0824-13

ORDER

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SEP 24 2014

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 with the South Carolina Department of Corrections (SCDC or Department).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Disrespect (836) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed, which resulted in a loss of 30 days good time credit. Inmate appeals on the grounds that the Disciplinary Hearing Officer (DHO) violated Appellant's First Amendment right of free speech in not allowing Inmate to refer to himself as the "Honorable Patrick Booker." Appellant also contends that the DHO violated Appellant's Fourteenth Amendment right of due process during the disciplinary hearing. Appellant argues that the DHO acted arbitrarily and capriciously during the disciplinary hearing for removing Appellant for failure to comply with instructions from the hearing officer. Appellant also alleges that SCDC Regulation/Procedure 14.1 of the SCDC Disciplinary Policy is unconstitutional as applied to Appellant's case. Finally, Appellant argues that the DHO violated Appellant's rights to call witnesses.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived 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

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sits in an appellate capacity. Id. at 756. Consequently, the review in these cases is limited to the record presented.

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. 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 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 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).

In this case, Appellant was served with notice of the charge on October 10, 2013 and the hearing was held on October 15, 2013. Hearing Officer Brown relied upon the Offense Report written by Officer James Davis and the testimony of counsel substitute in reaching his decision. Appellant was represented by counsel substitute. Counsel substitute testified that Inmate denied the charges during their preliminary interview. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

As to Appellant's remaining issues, his allegations of violations of the First Amendment right of free speech and the Fourteenth Amendment right of due process do not constitute a violation of minimal due process as required by Wolff. Appellant first contends that the Hearing Officer acted arbitrarily and capriciously by excluding him from the hearing. The record reflects that Appellant was removed from the hearing for failing to comply with the Hearing Officer's request that the Appellant state his name and inmate number. Rather than complying with the request of the Hearing Officer, Appellant repeatedly stated his name as "The Honorable Patrick

Booker.” When Appellant continued to use the title “Honorable” rather than stating his legal name for the record, the Hearing Officer excluded him from the hearing. Therefore, Appellant was excluded from the hearing because of his own behavior. I find that the Hearing Officer acted within her discretion in excluding Appellant from the hearing and did not act arbitrarily or capriciously.¹

Appellant’s argument that his First Amendment rights were violated when the Hearing Officer did not acknowledge him by the title “Honorable” must also fail. There is no evidence in the record that Appellant legally changed his name to “The Honorable Patrick Booker,” nor does he contend that he has adopted this name for religious reasons. When a prisoner adopts a new name, for religious or any other reasons, but fails to legally change his name, he cannot claim that his First Amendment rights are violated when prison officials do not recognize his adopted name. See, e.g., Rahman v. Stephenson, 626 F. Supp. 886 (W.D. Tenn. 1986) (plaintiff inmate had no right to impose his informal name change upon prison officials).

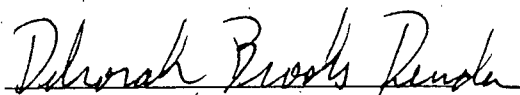
Appellant also contends he was not allowed to call witnesses, in violation of his Fourteenth Amendment right to due process. As noted above, Appellant’s inability to call witnesses stems partially from his own misconduct at and subsequent exclusion from the hearing. The record reflects, however, that Appellant was represented by counsel substitute. Notably, in Wolff, supra, the U.S. Supreme Court did not require that an inmate must be provided a counsel substitute. Rather, the Court held that: “Where an illiterate inmate is involved, however, or whether the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff.” Wolff, 94 S.Ct. at 2982. Here, Appellant did not allege or establish that he was illiterate or that this case was of sufficient complexity to necessitate assistance in presenting his case. Therefore, the Department was not constitutionally required to afford counsel substitute to assist the Appellant in his defense. Furthermore, Appellant did not provide his counsel substitute a list of questions

¹ Appellant also contends that SCDC Regulation/Procedure 14.1 of the SCDC Disciplinary Policy (which allows a hearing officer to exclude an inmate from a disciplinary hearing) is unconstitutional as applied to his case. This contention is without merit, since, as discussed herein, Appellant has no First Amendment right to impose his adopted title upon prison officials. Furthermore, the South Carolina Supreme Court has found that the Department’s disciplinary and grievance procedures, including the policy which allows a hearing officer to exclude the inmate from attending the hearing, comply with the standards set forth in Wolff. Al-Shabazz, 338 S.C. at 372-73, 527 S.E.2d at 751-52.

to ask the witnesses he wanted to call. Accordingly, counsel substitute's inability to ask the witnesses any questions also stems directly from Appellant's own conduct. I find the Department complied with the minimal due process required by Wolff, and Appellant is entitled to no more.

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.

THEREFORE, IT IS ORDERED that the decision appealed from is **AFFIRMED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

August 25, 2014
Columbia, South Carolina

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 25th day of August 2014

By: R. C. Lo
Judicial Law Clerk