

FILED

JUL 28 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Jerome Whiteside, 314529,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 14-ALJ-04-0250-AP
Grievance No.: MCCI 755-13

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ORDER

SEP 24 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 March 7, 2014, by Jerome Whiteside ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("the Department" or "SCDC"). Appellant appeals the decision of the Department convicting him of Possession of Any Cell Phone or Other Type Communication Device. As a result of the conviction, Appellant received sanctions that included the loss of sixty days of accrued good-time. In this appeal, Appellant asserts he was denied due process because he was not afforded Counsel Substitute although he could not read at a sixth grade level.

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 is whether the Department met the minimum constitutional requirements for procedural due process in this matter where an inmate was disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). Minimum 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).

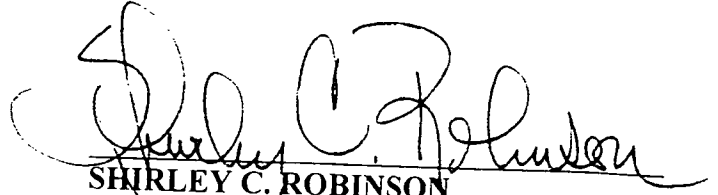
In this matter, Appellant argues he was denied due process because he was not afforded Counsel Substitute although he could not read at a sixth grade level. Applying the five due process requirements to the Record in this case, the Court finds the following:

The Disciplinary Report and Hearing Record shows Appellant was originally given notice of the charge on July 12, 2013, and the disciplinary hearing took place on July 17, 2013, which was more than twenty-four hours later. Importantly, the Record reveals Appellant waived his right to be represented by Counsel Substitute, and he requested his accuser not be present at the disciplinary hearing. During the hearing, Appellant did not call witnesses, but he did ask the Hearing Officer to consider a statement by another inmate, which the Hearing Officer reviewed. The Disciplinary Report and Hearing Record shows the Hearing Officer's determination of Appellant's guilt was based upon the Incident Report. The sanctions imposed were based upon the nature of the offense. 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

July ^{28th}, 2014
Columbia, South Carolina

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