

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Robert D. Brooks, #216605,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0868-AP

Grievance No. LCI 2058-13

ORDER

**RECEIVED**

SEP 25 2014

**SC Court of Appeals**

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 denying his Step 2 Grievance in which his conviction was affirmed for Possession of any Communication Device (898), SCDC Policy OP-22.14, Inmate Disciplinary System. Inmate was sanctioned with the loss of 340 days good time credit, therefore a liberty interest is involved. Inmate appeals on the grounds that he was denied due process, and that substantial evidence did not support the conviction.

**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 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

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SC ADMIN LAW COURT

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).

Applying those requirements to the record in this case we find the following:

Inmate was served with notice of the charge on July 23, 2013 and the hearing was held on August 1, 2013. The Disciplinary Report and Hearing Record shows reliance on testimony from Sergeant V. Smith. The Disciplinary Report and Hearing Record shows that the reason for the action taken was that this is Inmate's fourth charge of this nature. Inmate was given the opportunity to make any statements and present witnesses. Inmate did not raise an objection to the absence of Counsel Substitute in the Notice of Appeal or Brief. There is nothing in the record to suggest that the Disciplinary Hearing Officer (DHO) was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case; he has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

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." S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary or affected by an error of law. See § 1-23-380(5) (Supp. 2013); See also Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). 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 Court underscored that since prison officials are in the best position to decide inmate disciplinary matters, the Courts, and therefore this tribunal, adhere to a “hands off” approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz at 757; see also, Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) (stating the traditional “hands off” approach of South Carolina courts regarding internal prison discipline and policy).

In this case the evidence in the record supports SCDC’s decision. Sergeant Smith stated that she was distributing the dinner meal when Inmate stuck an envelope out of the food flap. Smith took the envelope from Inmate, and upon opening it, discovered a cell phone battery.

Inmate argues that the DHO violated due process when she did not consider his Request to Staff Member (Request) submitted prior to the hearing. There is nothing in the record to suggest that the Hearing Officer did not consider the Request. It is part of the record of the hearing. It was not necessary for the DHO to read it into the record in order to consider it. The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Rodney v. Michelin Tire Corp. 320 S.C. 515, 466 S.E.2d 357 (1996). Without any evidence to the contrary, this Court presumes that the Hearing Officer considered the evidence properly presented during the hearing and made a part of the record. Her finding of fact in favor of conflicting evidence does not constitute evidence that she ignored the evidence introduced by Inmate.

Inmate next argues that the DHO violated due process when she did not complete the tape section on the Disciplinary Report and Hearing Record giving reference information for review of the hearing tape. 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)). It is not this Court’s duty to arbitrate an Inmate’s claim that SCDC violated its policies in some insignificant manner that does not violate due process.

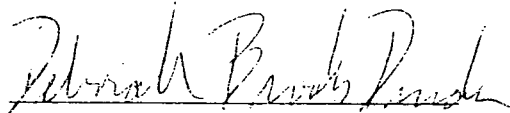
Inmate further argues that the DHO violated his due process rights by imposing sanctions outside of its administrative procedural guidelines. In light of the fact that this was the fourth

similar charge against Inmate, an enhanced disciplinary sentence was appropriate. The sanction imposed is within the range of sanctions the Department has the authority to impose. See SCDC Policy OP-22.14, Section 17 1-5 (2009).

Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required 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, I will not substitute my judgment for that of the agency because there is adequate evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice.

Therefore, for the foregoing reasons, the Department's decision is **AFFIRMED**.

**AND IT IS SO ORDERED.**



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

September 8, 2014  
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entered action upon all parties to this cause by depositing a copy thereof in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 8<sup>th</sup> day of August 2014

by: [Signature]  
Judicial Law Clerk