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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Roy McSwain, #296325,

Docket No. 14-ALJ-04-0234-AP
Grievance No.: KRCI 1165-13

Appellant,

vs.

ORDER

South Carolina Department of Corrections,

Respondent.

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 4, 2014 by Roy McSwain ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant appeals the decision of the SCDC in his Step Two Grievance, in which his conviction for Possession of Escape Tools and/or Paraphernalia (904) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed. Appellant lost nine days of good time, therefore a liberty interest is involved. [Appellant appeals on the grounds that his conviction is unsupported by the evidence and violations of his due process rights.]

STANDARD OF REVIEW

The ALC'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 ALC'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/her 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.

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When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented.

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LAW/ANALYSIS

Since a state-created liberty interest is involved, it is necessary to determine if Appellant received due process of the law. Well established precedent determines that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Id. at 369-70, 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 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. Id. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563-72 (1974)).

Applying these requirements to the record in this case I find the following:

Appellant was served with notice of the charge on July 24, 2013 and the hearing was held on August 2, 2013. The Disciplinary Report and Hearing Record show reliance on the incident report and picture of the evidence. Appellant was given the opportunity to call witnesses and give testimony. Appellant had the assistance of counsel substitute. There is nothing in the record to suggest that Hearing Officer was anything other than neutral or detached. Thus, Appellant's due process rights were protected by the process utilized by SCDC in this case.

The charging official, Corporal Hunt, attempted to conduct a pat down search of Appellant on July 16, 2013. Appellant tried to run, and Corporal Hunt placed Appellant on the floor. Appellant continued to resist and refused to follow directives issued by Corporal Hunt. Three other officers responded to the situation. During the struggle, Appellant threw a homemade key on the floor, which was recovered by Lieutenant Jefferson. After Appellant was taken to the special management unit, a strip search was conducted, which resulted in the recovery of a piece of plastic and a piece of metal that could be used as a handcuff key. In the Incident Report, Corporal Hunt wrote the inmate involved was a black male. Appellant is a white male. The SCDC number on the Incident Report is the number assigned to Appellant. During the hearing, Lieutenant Jefferson testified that although she was unable to see Appellant's face, she

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was certain that the inmate involved in the incident was a white male. Further, Appellant admitted that he was the inmate on the ground during the incident. After hearing all the evidence presented, the Hearing Officer found Appellant guilty based on Corporal Hunt's incident report and a photograph of the incident. As the Wolff Court acknowledged, the full panoply of due process rights does not apply to prison disciplinary proceedings; there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application. Wolff, 418 U.S. at 556. After a thorough review of the record, there is substantial evidence to uphold the decision of SCDC.

An Administrative Law Judge may not substitute her 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 S.C. Code Ann. § 1-23-380(5) (Supp. 2013); see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). In this case, the substantial evidence in the record supports SCDC's decision. The Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

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.

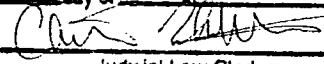
Therefore, for the foregoing reasons, the decision of the SCDC is **AFFIRMED**.
AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

September 10, 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 herof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

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This 10th day of September
BY 
Judicial Law Clerk