

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Van Starling, #226109,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0174-AP

Grievance No.: PCI 1560-13

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ORDER NOV 11 2014

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC”) pursuant to the Notice of Appeal filed February 18, 2014 by Van Starling (“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 sixty (60) days of good time, therefore a liberty interest is involved. Appellant now appeals, claiming 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.

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.

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 **FILED** where an inmate is disciplined for serious misconduct. Id. at 369-70, 527 S.E.2d at 750. However, these

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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 15, 2013¹ and the hearing was held on July 26, 2013. The Disciplinary Report and Hearing Record show reliance on the incident report, testimony of Captain Mattox, and pictures 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, Captain Mattox, reported that during a routine shakedown of Appellant's cell, a homemade handcuff key was found. Captain Mattox testified that the homemade handcuff key was found in a hole in the wall, which the Appellant was the only inmate who had access to the hole. Appellant claimed that another inmate placed the homemade handcuff key in the hole. After hearing all the evidence presented, the Hearing Officer found Appellant guilty based on Captain Mattox's incident report, testimony, and photographs of the evidence. 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

¹ The Disciplinary Report and Hearing Record has the date notified as July 12, 2013, however, at the hearing, the Hearing Officer noted that Appellant was notified of the charge on July 15, 2013.

