

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Appeal From Administrative Law Court
Administrative Law Judge, Carolyn C. Matthews
CASE NO.: 2014-002356

Michael Gains ----- Appellant

v.

South Carolina Department of Corrections ----- Respondents.

APPELLANT'S INITIAL BRIEF

Dated: November 19, 2014

Pro Se Litigant,
Michael Gains #302385
430 Darktown Rd.
Pelzer, SC 29669

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

- I. Was Appellant Afforded all constitutionally required due process?
- II. Was Respondent's final agency decision supported by substantial evidence?

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the Appeal of Michael Goins ("Appellant"), an inmate incarcerated within the South Carolina Department of Corrections ("SCDC"). Appellant was convicted of Threatening to inflict harm on an Employee and/or Member of the Public, offense 209 under SCDC Policy DP-22.14, Inmate Disciplinary system, following a disciplinary conviction. Appellant lost 6 days good time.

Appellant filed a step one grievance on October 8, 2013, that was supposedly investigated but denied. Appellant filed a step two grievance on November 12, 2013, that grievance was also supposedly investigated but denied. Appellant filed his Notice of Appeal in the Administrative Law Court ("ALC"), pursuant to Al-shabazz v. State, 527 S.E.2d 742 (2000), on January 17, 2014.

The ALC affirmed SCDC's final decision, finding the disciplinary hearing supportedly comported with due process. Specifically, the ALC determined appellant was given appropriate notice of the disciplinary hearing; there was an impartial hearing officer; Appellant was afforded counsel substitute; and appellant had an opportunity to present evidence and call witnesses and confront his ~~accuser~~ accuser. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence.

Appellant now seeks review of the ALC's decision. For the reasons that follow, Appellant respectfully requests that the ALC's decision be reversed.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantive evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-380(5); Loke v. Reeder Constr. Co., 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See Code Ann. § 1-23-610(B). A reviewing court shall not substitute its ~~own~~ judgment for that of the ALC's as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or clearly erroneous in view of the substantial evidence on the ~~whole~~ record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C. Dept. of Health & Environmental Control, 604 S.E.2d 704, 706 (Ct. App. 2004).

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS NOT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS

Prison disciplinary cases are not barred from procedural due process rights stipulated by the Federal Constitution, S.C. state constitution, or the South Carolina statutes. Although prison disciplinary cases are not criminal trials, they should still be treated with strict scrutiny. The Appellant has rules to abide by as well as the respondents. Due process requires the following, but not limited to, in prison disciplinary cases:

- a) Notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were not adequately and effectively complied with in this case. The appellant did receive a notice of the charges. The appellant also received proper disclosure of evidence due to the fact that the Disciplinary offense report as well as an anonymous request to staff member being read into the record. Appellant was partially denied the opportunity to be heard because his witness was not present at the hearing or did not have a chance to write a statement on ~~my~~ ^{his} behalf. The hearing body was only partially neutral and detached. Appellant's counsel substitute did not "Aid" him in any way because had she "Aided" him, his witness would have been present or notified to write a statement to be presented at the hearing. Furthermore, Appellant was provided a written statement of the hearing officer's arbitrary findings.

Appellant was denied his due process right to call witnesses and produce documented evidence in his behalf. Appellant's counsel substitute did not have his witness present at the hearing nor did she have the witness write a statement on behalf of the appellant. The Administrative Law Court, Judge Carolyn C. Matthews, just Reversed and Remanded an disciplinary conviction for this same exact reason. (See Record on Appeal pages 23-25). Grains v. SCDC, 04-ALJ-04-0056-AP. SCDC Policy DP-22.14 "Inmate Disciplinary System", section 8.2.4 states that if the accused has witnesses, and they are unavailable to be present at the hearing, the counsel substitute is to get an written statement from them of their testimony. Just as the conviction in Grains v. SCDC, 04-ALJ-04-0056-AP was reversed and remanded for this procedural error, this conviction should also be reversed and remanded. See also McDaniel v. SCDC, 09-ALJ-04-00025-AP (While this court recognizes the mischief that might be worked if this right is extended to extremes, in the case at hand the witness sought was an employee of respondent and there is no excuse for his absence. That alone is ground for reversal.) The due process right to call witnesses and present documented evidence is well established. That right was infringed in this case. therefore, the conviction should be reversed.

II. RESPONDENT'S FINAL AGENCY DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson, JPS Converter & Indus. Corp., 327 S.C. 393 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Biko, INC., 276 S.E.2d 304 (1981). Reviewing court may reverse decision of administrative agency if substantial rights have been prejudiced because agency's findings, inferences, conclusions or decisions violate constitutional or statutory provisions, exceed statutory authority of agency, are based upon unlawful procedure, are affected by other error of law, are clearly erroneous in light of reliable, probative, and substantive evidence on entire record, or are either arbitrary, capricious, or reflect abuse of discretion or other obvious unwarranted exercise of discretion. Weaver v. South Carolina Coastal Council, 423 S.E.2d 340 (Ct. App. 1992).

The accuser in this case, Ms. Johnson, alleged that Appellant was standing on his toilet masturbating and pointed at his penis and voiced to her, "Bitch, I'll get you with it!" in a threatening tone and she felt threatened. In the transcript of the hearing, page 16 of the Record on appeal, Ms. Johnson stated on lines 4-10 that Appellant's witness, Ofc. Wilson, was walking behind her when the supposed incident took place. In the Record on Appeal, page 22, Appellant submitted a copy of an Request to Staff member form dated January 15, 2014 addressed to his witness, Ofc. Wilson. On this specific RTSM form Ofc. Wilson clarified his statement that would have already been clear had Ofc. Wilson been allowed to be present at the hearing or write an statement on the Appellant's behalf. Ofc. Wilson verified that he was standing "right there" facing Appellant when the supposed incident took place and he did not see Appellant in the act of masturbation or did hear anything that he was accused of saying. This totally contradicts the accusers testimony. Ms. Johnson stated that Ofc. Wilson was following behind her and Ofc. Wilson verified that he was right there and did not hear or see any of the alleged acts so how is this conviction justified by substantial evidence? Ms. Johnson stated in the hearing that she had just wrote the Appellant up for 854 the week before but she could not identify the appellant besides "He's a black male" or she couldn't identify what cell the appellant lived in during this supposed ordeal. How is that substantial evidence? On page 16 of the Record on appeal, lines 15-22, Ms. Johnson clearly stated that she expressed to the Officer that it was an "854" situation and she walked off leaving the wing. With that said and done, when did the "809" happen? If it was an "854" situation when she left, where did it turn into an "809" at? She's blatantly lying and it's evident all through the hearing with her stumbling all over her own words and testimony.

Appellant has carried his burden of proving that the decision of the Department and ALJ is clearly erroneous, arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n. 333 S.C. 12 (1998). Consequently, SCDC and the ALJ's decision should be remanded & reversed.

CONCLUSION

WHEREFORE, for all the reasons undisputedly stated above, this court should reverse and remand the ALJ's and Respondents decision in this case.

Pelzer, South Carolina

Respectfully,
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ADMINISTRATIVE LAW JUDGE, Carolyn C. Matthews

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v.

South Carolina Department of Corrections ----- Respondents.

PROOF OF SERVICE

I, Michael Goins, hereby certify that I did serve the Appellant's Initial Brief on the following agencies by depositing a copy of the same into the U.S. Mail, postage prepaid, to the following addresses:

- 1.) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2.) SCDC Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221-1787

SWORN to and subscribed before me
this 19th day of November, 2014.
Nancy C. Meckant (L.S.)
Notary Public For South Carolina
My commission expires: 1-23-2023

Michael Goins
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S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

In Re: Case No.: 2014-002356

November 19, 2014

Dear Clerk,

Please find enclosed for your filing Appellant's Initial Brief.
with kindest regards.

Respectfully,
Michael Loins

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SC Court of Appeals

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