

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Administrative Law Judge Carolyn C. Matthews

Case Nos. 14-ALJ-04-0055-AP

Michael Goins, #302385.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

December 19, 2014

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**

- II. ARE RESPONDENT'S FINAL AGENCY DECISIONS 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 with 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 809, under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. (R.p.____) Appellant lost six days of good time due to the disciplinary conviction. (R.p._____).

Appellant filed a Step One Grievance on October 8, 2013, challenging his 809 conviction. (R.p.____). This grievance was investigated and denied. Appellant filed a Step Two Grievance on November 12, 2013. This grievance was also investigated and denied. (R.p.____). Appellant then appealed to the Administrative Law Court. (R.p.____).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding the disciplinary hearing comported with due process. The ALC also ruled Appellant’s disciplinary conviction was supported by sufficient evidence. (R.p._____).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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 substantial 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); Lake v. Reeder Constr. Co., 330 S.C. 242, 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 S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the 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. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due Process requires the following 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 complied with in this case. The Disciplinary Report and Hearing Record demonstrates that Appellant had notice of the charge. (R.p. ____). The record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing. (R.p. ____). Furthermore, Appellant was afforded an opportunity to be heard at the October 8, 2013 hearing. (R.p. ____). There was a neutral and detached hearing body at the hearing,

an SCDC disciplinary hearing officer. (R.p. ____). Appellant was provided with a counsel substitute, and there was disclosure of the written statement of the hearing officer's findings. (R.p. ____). Additionally, a Disciplinary Mental Health Statement was provided indicating that although Appellant is classified as mentally ill, he was able to understand his actions. (R.p. ____).

There was ample evidence to support Appellant's disciplinary conviction. Ms. Johnson, the Inmate Grievance Coordinator, reported that as she was walking by Appellant's cell, she observed him standing on the toilet in his cell stroking his penis back and forth. After Ms. Johnson gave Appellant a directive to stop masturbating, Appellant replied, "Bitch, I'll get you with it!" During that time, Appellant was looking at Ms. Johnson and pointing his penis. (R.p. ____). During the hearing, the definition of the offense was read, which includes: communications, verbal or written, by an inmate to an individual that he or she intends to injure that person or commit a violent or unlawful act dangerous to human life, presently or in the future. (R.p. ____). Appellant's actions amounted to an unlawful verbal threat as he clearly indicated he would "get" Ms. Johnson with his penis while his penis was exposed. It is reasonable to conclude Appellant was referring to a rape/sexual assault. In her report, Ms. Johnson added that she felt threatened by Appellant's actions and words. (R.p. ____).

The ALC subsequently ruled that Appellant's conviction was sufficiently supported by the evidence. (R.p. ____). Moreover, there was nothing in the record to suggest the agency's decision was arbitrary, capricious, or the result of personal bias or prejudice.

II. RESPONDENT'S FINAL AGENCY DECISIONS ARE 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 v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (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. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented at Appellant's hearing indicates Appellant was guilty of the disciplinary offense. The disciplinary hearing officer stated he found Appellant was guilty based upon Ms. Johnson's report and testimony. Furthermore, the record conclusively establishes that the "substantial evidence on the whole record" supports Respondent's final agency decision. (R.p. _____).

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

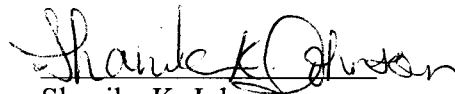
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Administrative Law Court's (and Department of Corrections') decision in this case.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS**

Attorney for Respondent

A handwritten signature in black ink, appearing to read "Shanika K. Johnson". The signature is written in a cursive style with a horizontal line drawn across the middle of the name.

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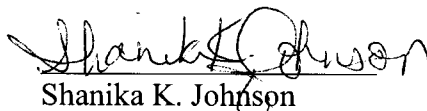
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief
by depositing a copy of same in the United States Mail, postage prepaid, December 19,
2014, addressed to the Appellant as follows:

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