

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Billy Lisenby, 200273, )  
)  
Appellant, )  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No.: 14-ALJ-04-0409-AP

ORDER RECEIVED

JAN 08 2015

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“ALC” or “court”) pursuant to the Notice of Appeal filed May 5, 2014 by Billy Lisenby (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). The Appellant appeals the decision of the Department denying his grievance in which the Appellant complains he was wrongfully disciplined for Use or Possession of Narcotics, Marijuana, or Unauthorized Drugs, Including Prescription Drugs, or Inhalants. As a result of the conviction, the Appellant received sanctions that included the loss of Thirty (30) days of accrued good-time.

Because a state-created liberty interest is involved in this case, it is necessary to determine if the Appellant received the process he was due. 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)). Therefore, the issue in this appeal is not whether the Department complied with its own policies or regulations, but whether it met the minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). 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 fact finders 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)

FILED

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 the five due process requirements to the record in this case the court finds that the Appellant was provided with written notice of his charge on February 5, 2013. The Appellant's signature appears on the notice, indicating that he received notice of the hearing. At the time of notification, the Appellant requested that his accuser be present at the hearing and that he be represented by counsel substitute. A hearing was held before a Disciplinary Hearing Officer on February 11, 2013. The Appellant was not present at the hearing. Captain B. Tucker, the accusing officer, was present at the hearing and testified that he twice asked the Appellant if he would like to attend the hearing and the Appellant refused to attend on both occasions. Based on Captain Tucker's testimony and the signed notice indicating that the Appellant had been given proper notice of the date and time of the hearing, the hearing was conducted in the Appellant's absence. Counsel substitute for the Appellant was also present at the hearing. The Disciplinary Report and Hearing Record show reliance on the charging officer's report and testimony. The Disciplinary Report and Hearing Record show that the sanctions imposed were slightly greater than a second offense of this nature warranted. However, the Department reduced the Appellant's sanctions as a result of his Step 2 Grievance so that the sanctions were more in line with the severity and nature of the offense. There is nothing in the record to suggest that the Hearing Officer was not neutral or detached. The record supports a finding that the Appellant was afforded the minimum due process in his disciplinary proceeding, as required by Wolff.

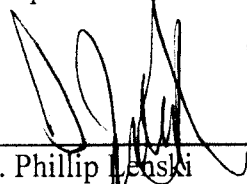
When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. Consequently, the review in inmate grievance cases is limited to the Record presented. The court may not substitute its judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

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 this case, the court will not substitute its 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.

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**



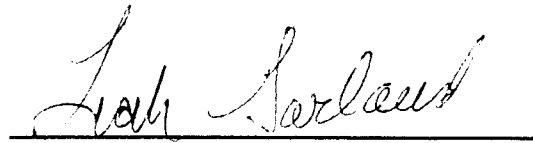
---

S. Phillip Lenski  
Administrative Law Judge

December 23, 2014  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Leah E. Garland  
Judicial Law Clerk

December 23, 2014  
Columbia, South Carolina

**RECEIVED**  
JAN 08 2015  
**SC Court of Appeals**

**FILED**  
DEC 23 2014  
SC ADMIN. LAW COURT