

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Derrick A. Young, #273562,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0809-AP

Grievance No. PCI 1018-13

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ORDER

JAN 16 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 by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC or Department).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Threatening to Inflict Harm on an Employee and/or Members of the Public (809) SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed, which resulted in a loss of 48 days good time credit. Inmate appeals on the grounds that there were due process violations because: 1) Counsel Substitute failed to obtain documentary evidence for the hearing; 2) Appellant alleges he was denied the opportunity to make a statement at the hearing; and 3) Appellant argues that his Counsel Substitute failed to properly cross-examine witnesses.

**STANDARD OF REVIEW**

The Court'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 Court'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 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 Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. 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 Inmate received the process he was due. It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for

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serious misconduct. Al-Shabazz, 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 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 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.

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).

In this case, Appellant was served with notice of the charge on April 12, 2013 and the hearing was held on April 16, 2013. The Disciplinary Hearing Officer relied upon the Offense Report written by Lieutenant Robertson, the supporting report of Officer Morgan, the testimony given by the Appellant at the hearing, and the testimony of counsel substitute in reaching his decision. Appellant was represented by counsel substitute. Counsel substitute testified that he initiated contact with each of Inmate's witnesses. One correction officer told counsel substitute that she had nothing to contribute to Appellant's hearing. Counsel substitute also questioned another inmate, who stated that he did not want to be involved in Appellant's disciplinary matter. There is nothing in the record to suggest that the Hearing Officer was otherwise than neutral or detached. Thus, Inmate's due process rights were protected by the process utilized by the Department in this case.

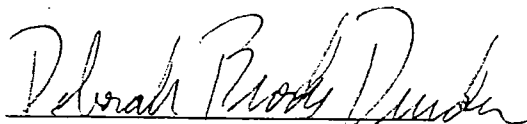
Appellant also contends Counsel Substitute failed to obtain Officer Morgan's supplemental report, therefore violating Appellant's due process rights. However, in Appellant's Step 1 Grievance he merely mentions the supplemental report. There is no evidence in the record that Appellant asked Counsel Substitute to obtain, or that Counsel Substitute failed to obtain, the supplemental report prior to his disciplinary hearing. Therefore, this argument has no merit.

Next Appellant contends that he was not allowed to make a statement at his disciplinary hearing. A review of the hearing transcript demonstrates that Appellant did in fact testify. He told the Hearing Officer that the correctional officers fabricated the entire incident. Appellant also stated that he "never said anything threatening...of a threatening nature." The Appellant was afforded the minimal due process as required by Wolff. For that reason, I find this argument is also without merit.

Finally, Appellant alleges that Counsel Substitute failed to properly cross-examine witnesses. Notably, in Wolff, supra, the U.S. Supreme Court did not require that an inmate must be provided a counsel substitute. Rather, the Court held that: "Where an illiterate inmate is involved, however, or whether the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff." Wolff, 94 S.Ct. at 2982. Here, Appellant did not allege or establish that he was illiterate or that this case was of sufficient complexity to necessitate assistance in presenting his case. Therefore, the Department was not constitutionally required to afford counsel substitute to assist the Appellant in his defense. Appellant provided his counsel substitute a list of questions to ask of any witnesses called. Furthermore, the record reflects that counsel substitute attempted to contact all the witnesses and found that Officer Greco stated she had nothing relevant to add to the case and inmate Roosevelt Bryant stated that he did not wish to become involved in Appellant's disciplinary matter. I find the Department complied with the minimal due process required by Wolff, and Appellant is entitled to no more.

Where an inmate has received the minimal due process required in an inmate disciplinary matter, no further inquiry is needed 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, the Court will not substitute its judgment for that of the agency because there is substantial evidence to support the conviction which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

**THEREFORE, IT IS ORDERED** that the decision appealed from is **AFFIRMED**.  
**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

December 3, 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 heretof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).  
This 3<sup>rd</sup> day of December 2014  
By: D.S.C.  
Federal Law Clerk