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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, *Administrative Law Judge*

Lower Case No. 14-ALJ-04-0173-AP

Appellate Case No. 2014-002418

Van Starling, # 226109,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

February 2, 2015

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

Daniel J. Crooks III
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct]

Counsel for Respondent

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STATEMENT OF THE ISSUE ON APPEAL

**WHETHER THE ADMINISTRATIVE LAW COURT'S DECISION BELOW
WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

STATEMENT OF THE CASE

This matter comes before this Honorable Court pursuant to the appeal of Van Starling, inmate number 226109 (Appellant), an inmate in the custody of the Department of Corrections (Department). The facts that gave rise to the disciplinary hearing about which this appeal is concerned are straightforward.

On June 19, 2013 at approximately 1:40 p.m., Captain A. Mattox, along with members of the Agency Search Team, conducted a routine shakedown in the Maximum Security Unit (MSU) located at Kirkland Correctional Institution. (R.p. ____). During the search, the team found hidden in a hole in the wall the following: a homemade tool, a homemade handcuff key, and a homemade weapon (approximately six inches long). (R.p. ____). As a result of the search team's findings, on July 15, 2013, Appellant was served with two charges: 904 ("Possession of Escape Tools and/or Paraphernalia") and 811 ("Possession of a Weapon"). The appeal before this Court regards the second charge, *i.e.*, the 811 offense; the companion case (appellate case number 2014-002417) addresses the 904 charge. Appellant was convicted of both offenses on July 26, 2013.

Appellant filed a Step One grievance on August 5, 2013 seeking reversal of his disciplinary conviction. (R.p. ____). In response, on August 16, 2013, the warden replied to the Step One and upheld the disciplinary conviction. (R.p. ____). That same day, Appellant filed a Step Two grievance, again requesting a reversal of his disciplinary conviction. (R.p. ____). The Department denied the Step Two on November 15, 2013. (R.p. ____). Thereafter, on February 18, 2014, Appellant appealed to the Administrative Law Court. (R.p. ____). On October 14, 2014, Judge Matthews affirmed the Department's denial of

Appellant's Step Two grievance. (R.p. ____). Subsequently, Appellant appealed Judge Matthews' decision to this Court.

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 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole.

Id. In determining whether the ALC's decision is supported by substantial evidence, this Court need only find, considering the record as a whole, evidence upon which reasonable

minds could rely in reaching the same decision that the ALC reached. *DuRant v. S.C. Dep't of Health & Environ. Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004).

ARGUMENT

THIS COURT SHOULD AFFIRM THE DECISION BELOW BECAUSE THE ADMINISTRATIVE LAW COURT'S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE

In his brief, Appellant argues that he was denied the “right to present non-frivolous evidence which could have proven that he in fact was innocent.” Br. of Appellant, at 6. Appellant’s brief also contains arguments unrelated to the underlying disciplinary hearing; to the extent these arguments fall outside of the record and issue before this Court, they are not appropriately raised in the instant appeal. The ALC’s decision was supported by substantial evidence, and the order adequately captures why Appellant was afforded all of the process to which he was due.

In his brief to the ALC, Appellant argued that the DHO should have obtained evidence from members of the Agency Search Team during the disciplinary hearing. (R.p. ____). However, the transcript clearly reflects that Appellant never requested any witness during the hearing. (R.p. ____). Accordingly, Appellant was precluded from raising that issue for the first time to the ALC. *See Grant v. State*, 395 S.C. 225, 237, 717 S.E.2d 96, 102 (Ct. App. 2011) (“An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon the trial judge to be preserved for appellate review.”). Likewise, Appellant is precluded from raising the same issue before this Court. *See id.*

Judge Matthews reviewed the record and considered Appellant’s arguments, including the same one he is raising in his brief before this Court. (R.p. ____). Judge

Matthews' order addresses Appellant's due process arguments, and her decision was supported by substantial evidence. Appellant's brief fails to prove that Judge Matthews' decision was not based on substantial evidence or was otherwise violative of his constitutional rights. Accordingly, this Court should affirm Judge Matthew's decision.

CONCLUSION

For the foregoing reasons, the Court should affirm the ALC's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:



Daniel J. Crooks III
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct]

Counsel for Respondent

Signed at Columbia, South Carolina

on this 2nd day of February, 2015

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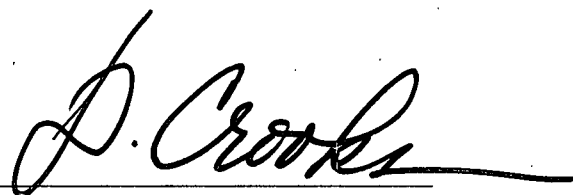
South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I, Daniel J. Crooks III, counsel for Respondent, hereby certify that on today's date I mailed a copy of the foregoing *Initial Brief of Respondent* to Appellant, addressed as follows:

Van Starling, #226109
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669

February 2, 2015



Daniel J. Crooks III
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-1355 [direct]

Counsel for Respondent