

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Administrative Law Judge Carolyn C. Matthews

Case No: 2014-002417

Van Starling #226104 - - - - - Appellant:

v.

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

Appellant's Final Reply Brief

March 5, 2015

Mr. Van Starling #226104
430 Oaklawn Rd.
Pelzer, S.C. 29669

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SC Court of Appeals

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I. S.C.D.C. Policy/Procedure OP-22.14 (Inmate Disciplinary System)

II. CASES

Ramona V. Kerby, 936 F.2d 1102, 1104 (10th Cir. 1991)

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

Eng v. Coulpin, 858 F.2d 889, 897-98 (2nd Cir. 1988)

Weaver v. South Carolina Coastal Council, 423 S.E.2d 340 (S.C. 1992)

Procunier v. Navarette, 434 U.S. 555 (1978).

III. OTHER

Statutes

S.C. Code Ann. § 1-23-610

Statement OF The Case

This matter comes before this Honorable Court pursuant to the appeal of Van Starting ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("S.C.D.C."). Appellant was convicted of Possession of a Weapon, offense 811 under S.C.D.C. Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 30 days of good time due to the disciplinary conviction.

Appellant filed a step one grievance on August 5, 2013, challenging his 811 conviction. This grievance was heard and denied by the warden on August 16, 2013. And on August 25, 2013, Appellant filed a step two grievance appeal appealing the warden's decision. The responsible officials further denied my step two grievance appeal on November 15, 2013. Appellant then appealed to the Administrative Law Court.

After the parties filed briefs, the ALC affirmed S.C.D.C.'s final decision, finding the disciplinary hearing computed with due process. 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 request that the ALC's decision be Remanded, reversed & Vacated.

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.

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

Argument And Citation Of Authority

The Appellant requested, per S.C.D.C. Policy 07-2214 Section 5.2, to have counsel substitute to obtain K.C.E. (Mou) Monitor camera system footage shown of the date of seizure as evidence on his behalf. Because the same would prove Mou Captain A. Meitox whereabouts and the Appellant was innocent of the charge.

Courts have repeatedly held that refusal to obtain evidence of call witnesses with personal knowledge of the incident in question denies due process. This is especially so when a prisoner faces a credibility problem trying to disprove the charge of a prison guard.

Ramona V. Kestby, 978 F.2d 1102, 1104 (10th Cir. 1992)

Wolff V. McDonnell, 418 U.S. 539 (1974). Inmate who are confined in the SHU . . . are entitled to assistance in "marshaling evidence" and preparing a defense to disciplinary ~~charges~~ charges against them.

Engel V. Cavalieri, 658 F.2d 484, 487-96 (2nd Cir. 1981) such help certainly should include gathering evidence . . . and interviewing witnesses. At a minimum, an assistant should perform the investigatory tasks which the inmate, were he able, could perform for himself. Id. at 484

The respondents, in their response brief, only argued the fact there was substantial evidence that supports the conviction against appellant. The respondents rely on the incident report and the accusers testimony as substantial evidence. The evidence relied upon is erroneous which is totally against S.C. Code Ann. § 23-60 (b) (1). The reviewing court 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 petitioners have been prejudiced because of the findings, 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 the entire record, or 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 (S.C. 1992).

Conclusion

Since it is undisputed that Appellant was neither allowed to present evidence in his own behalf. The same makes the hearing erroneous, Appellants procedural as well as substantive due process rights were violated. *Procunier v. Navarette*, 434 U.S. 555 (1978). The Appellant asks that the conviction be reversed, remanded & vacated and all sanctions be lifted.

March 5, 2015
Petzer, S.C.

Respectfully Submitted,
Van *ling

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Case No: 2014-002417

Van Starling #221009 _____ Appellant;

v.

South Carolina Department of Corrections _____ Respondent.

Proof of Service

I, Van Starling, Appellant, do hereby certify that I did on March 5, 2015, serve a copy of these documents of the following agencies by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following addresses:

1) S.C. Court of Appeals P.O. Box 11029 Columbia, S.C. 29211

2) S.C.D.C. Office of General Counsel P.O. Box 21757 Columbia, S.C. 29221

Sworn to and subscribed before me
this 5th day of March, 2015.

Nancy C. Markant

Notary Public For South Carolina

My Commission expires: 1-23-2027

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