

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE COURT OF APPEALS

Carolyn C. Matthews, Administrative Law Judge **S.C. Supreme Court**

Opinion No. 2015-UP-035 (S.C. Ct. App. filed January 14, 2015)

Billy Lisenby, # 200273,.....Petitioner,

v.

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

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Shanika K. Johnson
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, South Carolina 29221
(803) 896-8508
Attorney for Respondent

Other Counsel of Record:
Billy Lisenby, # 200273
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472
Pro se for Petitioner

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QUESTION PRESENTED

Did the Court of Appeals correctly uphold the dismissal of petitioner's appeal from his inmate disciplinary conviction?

STATEMENT OF THE CASE

On November 5, 2012, Petitioner, an inmate incarcerated in the Department of Corrections (SCDC), was convicted of an inmate disciplinary offense for Possession of a Weapon. Petitioner lost 60 days of good time credits. (R.p. 29).

Petitioner filed a Step One Inmate Grievance challenging the disciplinary conviction on November 13, 2012. That grievance was investigated and denied. Petitioner then filed a Step Two Grievance on January 8, 2013, and it was also denied. (R.p. 4).

Petitioner filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). In an Order dated October 4, 2013, the ALC summarily dismissed the appeal, finding petitioner received the minimal required due process and that the conviction was supported by sufficient evidence. (R.pp. 11-13).

Petitioner appealed the ALC's decision to the Court of Appeals. The Court of Appeals affirmed the lower court's decision in an unpublished decision pursuant to Rule 220(b), SCACR. In its decision, the Court of Appeals found no due process violations with Petitioner's conviction and sanctions.

Petitioner has now filed this petition for a writ of certiorari. For the reasons discussed below, SCDC respectfully requests the petition be denied.

ARGUMENT

THE COURT OF APPEALS CORRECTLY UPHELD THE DISMISSAL OF PETITIONER'S APPEAL FROM HIS INMATE DISCIPLINARY CONVICTION.

The Court of Appeals correctly upheld the ALC's decision to dismiss petitioner's appeal based upon S.C. Code Ann. § 1-23-600(D).

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.

In the case at hand, the record reflects that as Lieutenant Lavigne conducted a search of Petitioner's cell on October 19, 2012. (R.p.31). During that search, Lieutenant Lavigne discovered two homemade weapons wrapped in newspaper between the window and wire mesh of Petitioner's cell. (R.p. 31). The record shows there was sufficient evidence to support the disciplinary conviction. Petitioner challenges the sufficiency of

the evidence by claiming the weapons were in his room prior to his assignment to that cell. However, during the hearing, Lieutenant Lavigne testified that the weapons were in a location that could not go undetected by Petitioner. (R.p. 21). Even if the weapons were in the cell prior to Petitioner's arrival as he claims, Petitioner still had a duty to report the weapons. Otherwise, the weapons were ultimately in Petitioner's possession.

Petitioner's disciplinary hearing as a whole complied with due process, despite Petitioner's claim that he was denied effective assistance from his counsel substitute. The counsel substitute submitted multiple statements from employees for Petitioner's defense. (R.p.20). Moreover, during the hearing, Petitioner did not raise any issues regarding not being able to call a requested witness. Therefore, the ALC correctly summarily dismissed Petitioner's appeal based upon S.C. Code Ann. 1-23-600(D).

Because the Court of Appeals properly upheld the ALC's decision dismissing the appeal, SCDC respectfully asks that the petition for a writ of certiorari be denied.

CONCLUSION

WHEREFORE, for all the reasons stated above, SCDC respectfully requests the petition for a writ of certiorari be denied.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent

A handwritten signature in black ink that reads "Shanika Johnson". The signature is written in a cursive style with a large initial "S".

Shanika Johnson
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508

Columbia, SC
March 13, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Opinion No. 2015-UP-035 (S.C. Ct. App. filed January 14, 2015)

Billy Lisenby, Jr, # 200275,.....Petitioner,


v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Petitioner a copy of the Return to the Petition for a Writ of Certiorari by depositing a copy of same in the United States Mail, postage prepaid, on March 13, 2015, addressed to Petitioner as follows:

Billy Lisenby, #200273
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472


Shanika Johnson
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Respondent



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

March 13, 2015

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MAR 16 2015

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

**Re: Billy Lisenby v. SCDC
Appellate Case No.: 2013-002276**

Mr. Shearouse,

Please find enclosed an original and seven copies of the following:

- Return to Petition for a Writ of Certiorari

Please stamp the extra copy "filed" and return it in the enclosed self-addressed envelope. Please do not hesitate to contact me with any questions. I greatly appreciate your assistance in this matter.

Sincerely,

Shanika K. Johnson
Attorney for Respondent

cc:
Billy Lisenby, #200273
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472