

JUL 17 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Kenneth Peigler, 162631,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
)

Docket No.: 15-ALJ-04-0155-AP
Grievance No.: TYRCI 0557-14

ORDER RECEIVED

AUG 19 2015

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed March 30, 2015, by Kenneth Peigler (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the Department’s decision convicting him of Possession of Any Communication Device. As a result of the conviction, Appellant received sanctions that included the loss of two hundred (200) days of accrued good time. In this appeal, Appellant asserts in his Notice of Appeal that the evidence used against him during his disciplinary hearing was insufficient to convict him.¹

Because a state-created liberty interest is involved in this case, it is necessary to determine if Appellant received the due process to which he was entitled. 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 (4th Cir. 2009) (citing Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)). Therefore, the only issue is whether the Department met the minimum constitutional requirements for procedural due process in this matter where an inmate was disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). To that end, the South Carolina 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 the 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

¹ A Brief of Appellant was not filed in this matter. Therefore, this appeal was decided without consideration of an appellant’s brief.

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, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)).

Further, 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. An Administrative Law Judge may not substitute their 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).

In this matter, Appellant argues he was wrongly convicted of Possession of Any Communication Device because the evidence relied upon in determining his guilt was insufficient. Applying the five due process requirements to the Record in this case, the Court finds the following:

Appellant was given notice of the charge on October 2, 2014, and the disciplinary hearing in the matter took place on October 8, 2014, more than twenty-four hours later. The Record reveals Appellant was represented by Counsel Substitute at the hearing. Appellant and his accuser provided testimony. The Disciplinary Report and Hearing Record shows the Hearing Officer's determination of Appellant's guilt was based upon the charging officer's report and testimony and a photograph of the evidence. The sanctions imposed were based upon this incident being Appellant's first conviction of this type; as well as, the quantity and nature of the evidence. Finally, there is nothing in the Record indicating the hearing officer was otherwise than neutral or detached. Thus, Appellant has been afforded the minimum due process required in prison disciplinary proceedings under Wolff. 418 U.S. at 563-72.

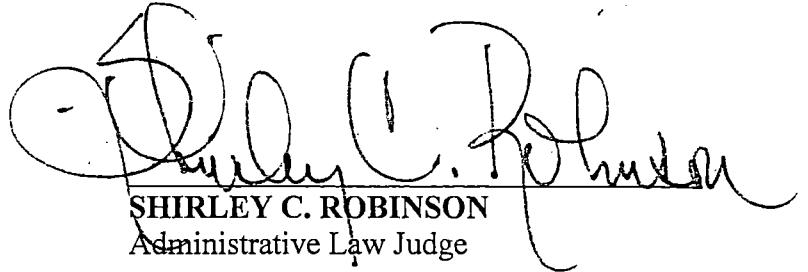
Appellant argues that the Department failed to prove that he was in actual or constructive possession of the communication devices. However, the charging officer stated in the incident report and in testimony that the Appellant was observed at a recycling trailer acting suspiciously before climbing into the trailer and pulling out a white trash bag. When the officer yelled at Appellant, he stopped and upon further investigation, another white trash bag was found in the trailer. The first white trash bag contained approximately eighteen pounds of tobacco and the second trash bag contained eight cell phones and four 1.75 liters of alcohol. Based upon the evidence in the Record, there is sufficient evidence to support Appellant's conviction.

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

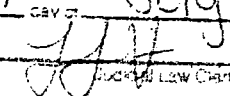
unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the Record before me now. In the case at hand, the Court will not substitute its judgment for that of the agency because there is substantial evidence to support the conviction which is clearly not arbitrary, capricious, or affected by any personal bias or prejudice.

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

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

July ^{17th} 17, 2015
Columbia, South Carolina

DEPARTMENT OF SERVICE
This is to certify that the undersigned has on a date served in accordance with the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail postage paid at the appropriate post office and addressed to the party (ies) or their attorney(s).
Filed 17 day of July 2015

Law Clerk