STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Patrick Booker, 297590, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No.: 15-ALJ-04-0077-AP Grievance No.: TCI 0450-14 ORDER

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Notice of Appeal filed February 11, 2015, by Patrick Booker ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant appeals the Department's decision convicting him of Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants. As a result of the conviction, Appellant received sanctions that included the loss of eighteen (18) days of accrued good time. In this appeal, Appellant asserts the evidence used against him during his disciplinary hearing was insufficient to convict him.

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 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 Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants 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 September 15, 2014, and the disciplinary hearing in the matter took place on September 30, 2014, more than twenty-four hours later. The Record reveals Appellant was represented by Counsel Substitute during the disciplinary hearing. Appellant and his accuser provided testimony for consideration by the Hearing Officer. The Disciplinary Report and Hearing Record shows the Hearing Officer's determination of Appellant's guilt was based upon the charging officer's report. The sanctions imposed were based upon this incident being Appellant's second conviction of this type. 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.

In this case, the charging officer witnessed Appellant give pills to another inmate after Appellant had gone through the prescription pill line. The officer directed the other inmate to give the pills to her. Before the inmate could do so, Appellant retrieved the pills from the other inmate and swallowed them. The officer was never able to view, take possession or identify any of the pills.

Appellant asserts that the Department has failed to prove him guilty of trafficking prescription medication. Appellant does admit that he is guilty of trafficking and trading. However, Appellant asserts that the pills he gave to the other inmate were only Geritol multi-vitamins, which are approved by the Department for inmate possession and are sold in the canteen for inmate purchase. He argues further that the medication he received from the pill line, he

ingested prior to encountering the other inmate. To support his argument, Appellant provided a statement from the head nurse who oversaw the pill line on the date of the incident. The statement reflects that, per the nurses' documentation, Appellant took his prescription medication that afternoon.

When asked why he did not give the pills to the officer when she directed the inmates to do so, Appellant answered that he "knew she was gonna take the pills." Appellant was questioned further and Appellant replied, "The [other inmate] had a knife on him." Appellant explained that by retrieving the pills, he anticipated that the officer would focus her attention on him and not think to shake down the other inmate, who was in possession of a weapon. Appellant cites several cases to support his argument that the evidence was insufficient to prove his guilt.

In Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L.Ed.2d 356 (1985) the United States Supreme Court addressed the issue of whether the findings of disciplinary hearing officers that result in the loss of good time credits must be supported by a certain amount of evidence in order to satisfy due process. The Court ultimately held that "the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits." Id. at 455. Additionally, the Court held that "[a]scertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board... The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction...and neither the amount of evidence necessary to support such a conviction." Id. at 455-456.

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 27, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served in a proper case the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the interagency mail Service addressed to the party/ies or their attorney(s).

This 29 day of July 2015

By: _____
Judicial Law Clerk