

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Alexander, #194748)
Appellant,)
vs.)
South Carolina Department of Corrections,)
Respondent.)

Docket No.: 14-ALJ-04-0927-AP

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court ("ALC" or "court") pursuant to the Notice of Appeal filed October 16, 2014, by John Alexander, the Appellant, an inmate incarcerated with the South Carolina Department of Corrections (Department). The Appellant appeals the decision of the Department denying his grievance in which the Appellant complains he was wrongfully convicted of Trafficking, Use, and/or or Possession of Narcotics, Marijuana or Unauthorized Drugs, Including Prescription Drugs or Inhalants, (903) SCDC Policy OP-22.14 Inmate Disciplinary System. As a result of the conviction, the Appellant received sanctions that included the loss of sixty days good-time.

Because a state-created liberty interest is involved in this case, it is necessary to determine if the Appellant received the process he was due. 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 issue in this appeal is not whether the Department complied with its own policies or regulations, but whether it met the minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). These requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the 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 inmate

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the Hearing Officer ^{could} no longer rely solely on the charging officer's report and testimony.

The record in this case establishes that this Court relied ~~on~~^{on} evidence the Respondent claims exist, without more. Emphatically, there is no evidence ~~of consisting~~ of testimony from Dr. McRee. Likewise, there is no evidence ~~existing~~ of a lab report / testing ~~asserting~~^{asserting} Petitioner tested positive for THC. In the event ~~it~~^{such evidence} did exist, the due process right clause guaranteed the Petitioner the right to ~~confronted~~^{see; hear} and refute such evidence at a disciplinary hearing. See 6, 14th Amendment; S.C. Const. Art 1 Sec. 3. ~~Denial of such right~~^{the denial of such} would ~~send~~ for this court to condone ~~such~~^{the denial of such} guaranteed right, it opens the door for the respondents to try ~~an accused~~ and convict an accused in his absence, as long as the Respondents notify him of the charge, ~~and sentence~~ exclude the accused during the presentation of ~~evidence~~^{the accuser's}, and ~~not~~ inform the accused of his sentence.

SCDC Policy DP-22.14 Sec. 14.7 precludes

~~The accuser's report and testimony~~ ~~wholly precluded~~ the Hearing to convict the Petitioner ~~solely~~ on the accuser's testimony and report without more. As such, there is no other evidence to support a conviction. Likewise, no evidence exist to support the Department's final agency decision. Consequently, this court can and should under S.C. Code Ann. (1976) Statute Section 1-23-380 (6)(a)(b)(c)(d) and (e) reverse the decision because a substantial rights of the Petitioner have been prejudiced and violated.

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, 563-72, 94 S.Ct. 2963, 2978-82 (1974).

Applying the five due process requirements to the record in this case the court finds that the Appellant was provided with written notice of his charge on September 5, 2014. At the time of notification, the Appellant requested that his accuser be present at the hearing. The Appellant's requests were granted in a hearing held before a Disciplinary Hearing Officer on September 8, 2014. The Disciplinary Report and Hearing Record show reliance on the charging officer's report and testimony. The accuser was a trained drug testing officer, who testified that the Appellant's primary test was positive for THC, as well as the confirmation test. The Appellant's sample was then sent to the drug testing laboratory for further confirmation, which is included in the Record. (Transcript at 3). The Disciplinary Report and Hearing Record show that the sanctions imposed were a result of the nature and severity of the offense. There is nothing in the record to suggest that the Hearing Officer was not neutral or detached. The record supports a finding that the Appellant was afforded the minimum due process in his disciplinary proceeding, as required by Wolff.

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. The court may not substitute its 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) (Supp. 2014). As the South Carolina Supreme Court has held, "Due Process in prison drug testing does not require that a prisoner be afforded duplicative testing, nor does it require utilizing a testing method chosen by the prisoner." Skipper v South Carolina Department of Corrections, 370 S.C. 267, 277; 633 S.E. 2d 910, 916 (2006).

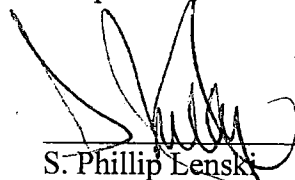
Where an inmate has received the minimal due process due in an inmate disciplinary matter, no further inquiry is required and the decision of the Hearing Officer should be affirmed unless the decision is arbitrary, capricious or based on personal bias or prejudice, none of which is evident in the record.

The record in this case establishes that there was substantial evidence to support the

Department's final agency decision. The court will not substitute its judgment for that of the agency because there is adequate 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.



S. Phillip Lenski
Administrative Law Judge

July 17, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in 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 17th day of July 2015

By: [Signature]

Judicial Law Clerk