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STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 14-ALJ-04-0927-AP
Appellate Case No. 2015-001761

JOHN ALEXANDER, # 194748,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD APPELLANT'S DISCIPLINARY CONVICTION WHERE APPELLANT RECEIVED THE PROCEDURAL DUE PROCESS TO WHICH HE WAS ENTITLED AND THE DISCIPLINARY CONVICTION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of John Alexander, an inmate in the custody of the South Carolina Department of Corrections. On August 18, 2014, Appellant tested positive for THC following a random drug test. On September 8, 2014, Appellant was found guilty of disciplinary offense number 903, trafficking, use, and possession of narcotics, marijuana, or unauthorized drugs including prescription drugs or inhalants. Part of his punishment was the forfeiture of sixty days of accrued good time credit. Appellant filed a Step One Grievance on September 10, 2014 challenging his disciplinary conviction. This grievance was investigated and denied on September 15, 2014. Appellant then filed a Step Two Grievance which was denied on September 30, 2014. Appellant subsequently filed an appeal with the Administrative Law Court. On July 17, 2015, Administrative Law Judge S. Phillip Lenski entered an order dismissing Appellant's appeal. Judge Lenski's order concluded that Appellant was afforded the procedural due process to which he was entitled and that the disciplinary conviction was supported by substantial evidence. This appeal follows.

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 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD APPELLANT'S DISCIPLINARY CONVICTION WHERE APPELLANT RECEIVED THE PROCEDURAL DUE PROCESS TO WHICH HE WAS ENTITLED AND THE DISCIPLINARY CONVICTION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellant was Afforded Procedural Due Process

Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. As stated by the United States Supreme Court, “[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (citations omitted). Therefore, Due Process in prison disciplinary hearings is substantially less than in a trial before a court of law. Due Process, as the Supreme Court has noted in Wolff, requires the following in prison disciplinary cases:

- a) advance written notice of the charges at least twenty-four hours prior to the disciplinary hearing;
- b) a written statement by the factfinder as to the evidence relied on and the reasons for the disciplinary action;
- c) opportunity to call witnesses and present documentary evidence in his defense, if permitting him to do so would not be unduly hazardous to institutional safety or correctional goals;
- d) no right to confront and cross-examine witnesses due to the potential danger to institutional interests;
- e) limited right to assistance from a counsel substitute in cases where an inmate is illiterate or the issue is highly complex;
- f) a neutral and detached hearing body.

These requirements were complied with in this case. The Disciplinary Report and Hearing Record shows Appellant had appropriate advance notice of the charge. Appellant had a hearing before an impartial hearing officer on September 8, 2014, at which time he had the opportunity to be heard, to present witnesses, and to present documentary evidence. It is

undisputed that Appellant did not qualify for a counsel substitute in this matter. Finally, the hearing officer provided Appellant with a written statement regarding the evidence she relied upon and the reasons for the disciplinary action. Accordingly, Appellant received the procedural due process to which he was entitled.

SCDC's Final Agency Decision is Supported by Substantial Evidence

Furthermore, there was ample evidentiary support for the disciplinary conviction. Lt. McCurry reported that on August 18, 2014, Appellant was randomly selected for a drug test, and Appellant tested positive for THC. The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescription drugs, or Inhalants is defined within the disciplinary policy as follows:

The actual or constructive trafficking, use or possession of drugs of any description (except those prescribed by an authorized physician and within authorized amounts, expiration date, e.g. barbiturates, narcotics, medicines, marijuana and poisons, as well as all drug paraphernalia, such as needles, syringes, etc. Any inmate testing positive for any unauthorized drug, refusing to submit to a drug test, or failing to produce a specimen within three (3) hours, as specified in SCDC Policy GA-03.03, "Inmate Drug Testing/Screening Program." This rules violation encompasses the "hoarding" of prescribed medication by any inmate(s), or inmates who having accepted their medication, then failed to ingest the medication at the time they are issued it at the pill call. Any inmate acting under the influence of any inhalant other than one prescribed by an authorized physician which when inhaled, creates an altered state of physical or mental activity. Sight and smell identification may be used to identify any drug where no available scientific tests have been created and/or confirmed credible.

SCDC Policy OP-22.14 (903) Inmate Disciplinary System.

Appellant was given an initial drug test and a follow-up test. Both tests indicated that Appellant's urine contained THC, a level III controlled substance associated with marijuana. Appellant was neither prescribed nor authorized to take the drug. Therefore, Appellant

violated policy when he tested positive for THC. During the hearing, Appellant argued that his prescribed medication could have affected the results of the test. However, the hearing officer confirmed with Dr. McRee, a physician at Appellant's institution, that none of Appellant's prescriptions would have affected the results of a THC test. (See Disciplinary Hearing Transcript, p. 6). The hearing officer also noted that the external lab to which Appellant's sample was sent would have also checked to be sure none of Appellant's prescriptions could have interfered with the results of the test. (See Disciplinary Hearing Transcript, p. 6).

Appellant's conclusory argument on appeal that his due process and equal protection rights were violated is without merit, since the United States Supreme Court has stated in no uncertain terms that inmates in disciplinary hearings do **not** have the right to confront and cross-examine witnesses due to the "considerable potential for havoc inside the prison walls." Wolff v. McDonnell, 418 U.S. 539, 567-68 (1974). Appellant's argument that Lt. Curry failed to follow one of SCDC's policies is also wholly without merit because even assuming this is true, the fact that Lt. McCurry failed to consult with medical personnel regarding possible cross-reactivity with prescription medications was of little significance considering that both Dr. McRee and the external lab both confirmed that none of Appellant's prescription medications would have affected the results of the drug test.

After hearing all of the evidence presented, the disciplinary hearing officer found Appellant guilty based upon the officer's report and the drug test and lab results. Clearly, substantial evidence supported that Appellant was guilty of the disciplinary offense. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-

56 (1985) (“The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.”).¹ Appellant cannot show that the decision of SCDC was clearly erroneous, arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm’n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

Appellant’s disciplinary hearing complied with due process requirements, and Appellant’s disciplinary conviction was supported by substantial evidence. Accordingly, Respondent respectfully requests its final agency decision be upheld.

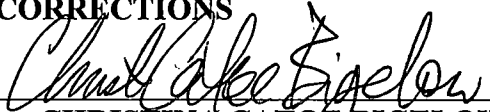
CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court’s decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY:


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November 30, 2015

¹ In Hill, the Court further elaborated, “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, nor any other standard greater than some evidence applies in this context.” Id. (citations omitted).

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v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Initial Brief of Respondent** to Appellant, addressed as follows: **John Alexander, # 194748, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.**



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South Carolina
Department of
Corrections

OFFICE OF GENERAL COUNSEL

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

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SC Court of Appeals

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The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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RE: John Alexander, # 194748, v. South Carolina Department of Corrections
Appellate Case No. 2015-001761

Dear Ms. Kitchings:

Enclosed is the original **Initial Brief of Respondent and Designation of Matter**, along with **Proof of Service**, in the above captioned appeal.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
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South Carolina Department of Corrections

cc: John Alexander, # 194748
McCormick Correctional Institution
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