

AD

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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MAY 29 2015

Deborah Brooks Durden, *Administrative Law Judge*

SC Court of Appeals

Lower Case No. 13-ALJ-04-0809-AP
Appellate Case No. 2015-000060

Derrick A. Young, #273562,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

May 28, 2015

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

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STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**
- II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Derrick A. Young (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). On April 16, 2013, Appellant was convicted of disciplinary offense 809, *i.e.*, “Threatening to Inflict Harm on an Employee and/or Members of the Public.” (R. 1). As a result of this conviction, Appellant forfeited 48 days of good time credit. (R. 41).

Appellant appealed his April 16, 2013 conviction by filing a Step One grievance on April 20, 2013. (R. 18). The Department denied this grievance on May 9, 2013. (*Id.*). Subsequently, Appellant filed a Step Two grievance on May 18, 2013, and the Department denied the grievance on September 10, 2013. (R. 6). Thereafter, pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), Appellant timely filed a notice of appeal to the Administrative Law Court (ALC), which issued a final order on December 3, 2014 affirming the April 16, 2013 conviction. (R. 1). The ALC’s order comprehensively addressed each of Appellant’s argument, ultimately finding them all to be without merit. (R. 1–3).

From the ALC’s final order, Appellant appealed to this Court, filing his notice of appeal on January 14, 2015. Although Respondent does not see where Appellant has, as of March 25, 2015, filed a copy of his initial brief and designation of matter with the Court, Respondent received a copy of both on March 10, 2015; the certificate of service date was listed as February 25, 2015. Therefore, Respondent’s Initial Brief

and Designation of Matter are timely.

Appellant now seeks review of the ALC's decision. For the reasons that follow, the Department respectfully requests that this Court affirm the ALC's December 3, 2014 order.

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 of 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.

See also S.C. Code Ann. § 1-23-380(5); *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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.*

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due process requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974). The requirements enumerated in *Wolff* were complied with in this case.

The Disciplinary Report and Hearing Record demonstrate that Appellant had notice of the charge. (*R.* 8). The Record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing. (*R.* 41). Furthermore, Appellant was afforded an opportunity to be heard at the April 16, 2013 hearing. (*R.* 8). There was a neutral and detached hearing body at the hearing, along with a neutral administrative hearing officer. (*R.* 20). Appellant was provided counsel substitute and disclosure of the written statement of the hearing officer's findings. (*R.* 8).

Appellant claims (1) that counsel substitute failed to obtain proper evidence; (2) that Appellant was denied the opportunity to make a statement at the hearing; and (3) that his counsel substitute failed to properly cross-examine witnesses. (*R.* 23–27).

As to the first claim, the ALC correctly concluded that “[t]here is no evidence in the record that Appellant asked Counsel Substitute to obtain, or that Counsel Substitute failed to obtain, the supplemental report prior to his disciplinary hearing.” (*R.* 2). As to the second claim, Appellant is simply incorrect that he did not get an opportunity to make a statement at his hearing. (*Id.*). In fact, page four of the transcript shows where Appellant made a statement immediately after the hearing officer stated: “This is your opportunity to tell us why you feel you’re not guilty.” (*Id.*). As to the third claim, the ALC correctly noted that due process was not violated by Appellant’s perception that his counsel substitute should have done more. (*Id.*). Here, counsel substitute “attempted to contact all the witnesses and found that Officer Greco stated

she had nothing relevant to add to the case [,] and inmate Roosevelt Bryant stated that he did not wish to become involved in Appellant's disciplinary matter." (R. 3).

None of Appellant's due process arguments had merit at the ALC. Accordingly, the ALC properly affirmed the Department's final agency action, which upheld Appellant's April 16, 2013 disciplinary hearing. Therefore, this Court should affirm the ALC's decision below.

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Serv. Comm'n*, 332 S.C. 20, 503 S.E.2d 739 (1998).

All credible evidence presented at Appellant's hearing indicates Appellant was guilty of this disciplinary offense. The record conclusively establishes that the "substantial evidence on the whole record" supports Respondent's final agency decision. (R. 3). Here, Lieutenant Robertson reported that when he arrived at SMU, he observed Appellant standing in the lobby while the other kitchen worker was working. (R. 20). Robertson then gave Appellant a directive to sit down on the bench until Appellant could be escorted off the unit. (*Id.*). Instead of complying, Appellant became aggressive and refused to comply. (*Id.*). As a direct result of his recalcitrance, mechanical security restraints were placed on him. (*Id.*). In a further display of aggression and obstinacy, Appellant then lunged at Lieutenant Robertson in a threatening manner that prompted Second Responders to arrive on the scene to assist. (R. 20–21). Moreover, Officer Morgan witnessed the entire event and reported that Appellant verbally and physically threatened Robertson. The disciplinary hearing officer stated he found Appellant was guilty based upon Lieutenant Robertson's and Officer Morgan's reports and the testimony. (R. 21).

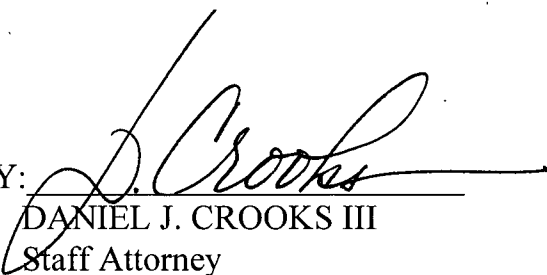
Appellant has not carried his burden of proving that the decision of the Department was clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See *Porter v. S.C. Public Serv. Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Accordingly, the ALC properly affirmed the Department's final agency action, which upheld Appellant's April 16, 2013 disciplinary hearing. Therefore, this Court should affirm the ALC's decision below.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the ALC's December 3, 2014 final order.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, the undersigned, certify that to the best of my ability, this Final Brief of the Department complies with Rule 211(b), SCACR and the April 15, 2014 Order from this Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Dated: May 28, 2015


DANIEL J. CROOKS III, ESQ.

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South Carolina Department of Corrections Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on today's date I placed a copy of the foregoing

Final Brief of Respondent in the U.S. Mail, addressed as follows:

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