

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

FEB 12 2016

Administrative Law Judge John D. McLeod

SC Court of Appeals

ALC Case No. 15-ALJ-04-0324-AP
Appellate Case No. 2015-002639

T. TERELL BRYAN, # 254638

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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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.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of T. Terrell Bryan, an inmate in the custody of the South Carolina Department of Corrections. On March 31, 2015, Appellant was convicted of disciplinary offense number 854, "Exhibitionism and Public Masturbation." On April 3, 2015, Appellant submitted a Step 1 Grievance seeking reversal of his disciplinary conviction on the basis of insufficient evidence and lack of due process. This grievance was assigned grievance number LCI 274-15. SCDC denied the grievance on April 30, 2015. On May 12, 2015, Appellant submitted a Step 2 Grievance again alleging insufficient evidence and lack of due process. The Step 2 Grievance was denied on June 2, 2015, and Appellant appealed to the Administrative Law Court. On December 14, 2015, Administrative Law Judge John D. McLeod filed an order affirming SCDC's final agency decision. This order concluded that Appellant received the due process to which he was entitled and that his 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.

iS.C. Code Ann. § 1-23-380(5).

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.

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, if permitting this 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.

At issue in this appeal is the opportunity to call witnesses. Appellant's sole complaint on appeal is that the Administrative Law Judge erred in concluding Appellant had an opportunity to call witnesses where Appellant raised this issue “no less than five times.” (Brief of Appellant, p. 4). Appellant claims in his Brief that he raised this issue in a request to staff, to his counsel substitute, to the disciplinary hearing officer before the recording began, and in his Step 1 Grievance. He also asserts that he raised this issue to the

disciplinary hearing officer “while recording;” however, the transcript does not bear out this claim. (See Brief of Appellant, p. 5; see Disciplinary Hearing Transcript, p. 2).

In his order, the Administrative Law Judge found that Appellant “was given the opportunity to call witnesses and present evidence” and that Appellant did not call any witnesses. (Order Affirming Decision, p. 3). The Administrative Law Judge further found that despite Appellant’s claim that he requested his roommate as a witness, the roommate in fact declined to provide a written statement on Appellant’s behalf. (Order, p. 3). Finally, the Administrative Law Judge found that because Appellant failed to object to his lack of the roommate witness at the disciplinary hearing, he failed to preserve this issue for review. (Order, p. 3).

The Administrative Law Judge’s order should be affirmed. Initially, the Administrative Law Judge properly concluded that Appellant waived and failed to preserve the issue of the lack of his roommate witness. Appellant failed to properly preserve this issue because Appellant failed to raise this issue to the disciplinary hearing officer at the critical time – the time of the disciplinary hearing. (See Disciplinary Hearing Transcript, p. 1-6). Because Appellant failed to ensure the disciplinary hearing record reflected his purported desire to call his roommate as a witness at the hearing – and because he failed to receive a ruling on the issue from the disciplinary hearing officer – Appellant waived and failed to preserve his appellate issue for review. See generally Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to

inform the trial court of the point being urged by the objector.”) (citation omitted).

Additionally, the Administrative Law Judge properly concluded that Appellant had an opportunity to call witnesses and present evidence at his March 31, 2015 disciplinary hearing but failed to do so. This finding is supported by the record, as is the finding that Appellant’s witness was asked to provide a statement on Appellant’s behalf but he declined to do so. (See Disciplinary Hearing Transcript, p. 3; see generally p. 1-6).

In sum, the record supports that Appellant’s disciplinary hearing complied with Wolff’s due process requirements. 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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February 12, 2016

STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

ALC Case No. 15-ALJ-04-0324-AP
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SC Court of Appeals

T. TERELL BRYAN, # 254638

APPELLANT,

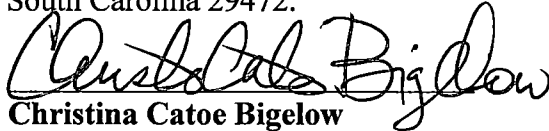
v.

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 and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **T. Terell Bryan, # 254638**, Lieber Correctional Institution, Post Office Box 205, Ridgeville, South Carolina 29472.



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February 12, 2016



OFFICE OF GENERAL COUNSEL

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

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: T. Terell Bryan, # 254638, v. South Carolina Department of Corrections
Appellate Case No. 2015-002639

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
Deputy General Counsel
South Carolina Department of Corrections

cc: T. Terell Bryan, # 254638
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