

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gabriel Randolph, #248729,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-ALJ-04-0396-IJ
Grievance No. PCI 0297-15

ORDER

RECEIVED

FEB 24 2016

STATEMENT OF THE CASE **SC Court of Appeals**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Gabriel Randolph (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). On March 24, 2015, Appellant filed a Step 1 Grievance with the Department, which the Department denied. On July 27, 2015, Appellant filed a Notice of Appeal with this Court, containing the Step 1 Grievance. On September 2, 2015, this Court dismissed the appeal for failure to exhaust administrative remedies, because no final Step 2 decision was provided to the Court. On September 10, 2015, Appellant filed a motion to correct the final decision, including a copy of the July 17, 2015 Step 2 decision referenced in his notice of appeal. On September 22, 2015, the Court reinstated the appeal. Thereafter, the record was filed and the parties briefed the case. The Court now affirms the Department's Step 2 decision.

BACKGROUND

On March 3, 2015, an incident report was filed by M. Harris stating that she observed an inmate identified as Appellant masturbating in cell #111 and directed Officer Fubio to address the situation. Appellant was notified of his disciplinary hearing on this matter on March 18, 2015. On March 24, 2014, a hearing was held. Appellant was found guilty by the hearing officer of disciplinary offense 854 Exhibitionism and Public Masturbation, SCDC Policy OP-22.14, "Inmate Disciplinary System." The hearing officer imposed several sanctions, including the loss of 60 days' good time credit, noting in the report that this conviction was Appellant's fourth 854 conviction since April 14, 2014. Following the conviction, Appellant filed a Step 1 and Step 2 grievance with the Department. In denying both grievances, the Department found that Appellant received due process and that his conviction was based on substantial evidence.

FILED

FEB 09 2016

SC ADMIN. LAW COURT

ISSUES ON APPEAL

1. Whether the Appellant was afforded due process at his disciplinary hearing.
2. Whether the Department's decision is supported by substantial evidence on the record.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker, 360 S.C. at 424, 602 S.E.2d at 58 (citation omitted). Such a liberty interest is implicated when an inmate loses sentence-related credits as the result of a disciplinary hearing conviction. See Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750.

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the Court's review in appellate cases is limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Appellant first argues that he was not afforded due process. In an inmate disciplinary hearing case, the Court applies the following five factors, enunciated by the Supreme Court, to ensure procedural due process:

- (1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing;
- (2) that factfinders 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, provided there is no undue hazard to institutional safety or correctional goals; (4) that counsel substitute (a fellow inmate or a prison employee) 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, 338 S.C. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563–72, 94 S.Ct. 2963, 2978–82 (1974)). Appellant does not contest that he received the required notice, that there was a written statement by the factfinder, that he had the opportunity to call witnesses and present evidence, and that he was represented by counsel substitute. Appellant does argue that the hearing officer was biased and displayed open hostility. However, a review of the record, including the transcript of the hearing shows no evidence that the hearing officer was biased. The hearing officer noted Appellant's status as a mental health patient, allowed Appellant to question witnesses and present evidence through his counsel substitute, and explained the evidence introduced and the ruling and sanctions imposed. Because the Court can find no evidence of bias or partiality on the record, the Court must conclude that Appellant was accorded due process.

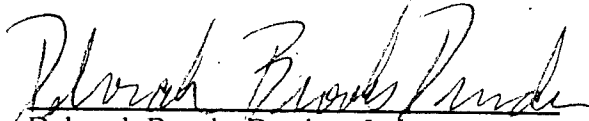
Appellant also argues that the evidence relied upon by the fact-finder was fabricated and contradicted by other witness statements. In an appeal, the Court reviews the record to determine if the Department's decision is supported by substantial evidence. Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached" Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Id., 276 S.C. at 136, 276 S.E.2d at 307. Moreover, because prison officials are in the best position to decide inmate disciplinary matters, the Court takes a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757.

Upon review of the record, the Court finds that there is substantial evidence to support the Department's decision. While there is some conflict between the statements of Harris, Officer Fubio, and Inmate Francis Simmons, reasonable minds could reach the conclusion of the hearing

officer. Harris witnessed Appellant's punishable behavior in cell #111. Although Officer Fubio did not see the behavior, he did testify that Appellant was the inmate in that cell at the time, even if the Officer did not provide the Appellant's identity to Harris. It appears that the hearing officer gave more weight to the testimony of these two employees regarding Appellant's location, than the statement of Simmons. Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. See S.C. Code Ann. § 1-23-380(5) (Supp. 2015); see also Houston v. Deloach & Deloach, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). Thus, the Court concludes that the decision of the Department is supported by substantial evidence on the record.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 9, 2016
Columbia, South Carolina

NOTICE OF SERVICE
This is to certify that the undersigned has this date served this order in the above captioned action upon all parties to this cause by depositing a copy hereof, by the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
Date 9th day of February 2016
By: R. E. Co
Judicial Law Clerk

LEGAL MAIL

RECEIVED
FEB 12 2016
PCI Mailroom

Gabriel Randolph, #248729
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

C48

2966938704 0099

