

THE STATE OF SOUTH CAROLINA

In the Court of Appeals
[In the Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

case/docket No. 11-ALT-04-0580-AP

South Carolina Department of Corrections

Respondent.

v.

Maurice Morant-295174

Appellant.

NOTICE OF APPEAL

I Maurice Morant appeals the decision of the Honorable Judge Shirley C. Robinson dated April 3, 2012. Appellant recieved a copy of this decision on April 6, 2012.

May 1, 2012

51 Maurice Morant
Evans Correctional Inst.
610 Hwy. 9, West
Bennettsville, S.C. 29512

Other Counsel of Record:
Office of General Counsel
4444 Broad River Rd.
Columbia, S.C. 29221

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v.

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Appellant.

PROOF OF SERVICE

I, Maurice Morant the Appellant swears he has served a "Notice of Appeal" and an "Affidavit of Indigency" in the above captioned case on all parties of record on this 1 day of May 2012 by depositing copies of it in the United States Mail postage prepaid addressed to:

S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Office of General Counsel
4444 Broad River Rd.
Columbia, S.C. 29221

Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

Submitted and subscribed before me

On this 1 day of May 2012

Gamba Duggins McDonald

Notary Public of South Carolina

August 18, 2018

My Commission Expires

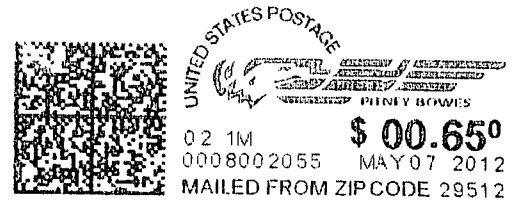
51 Maurice Morant
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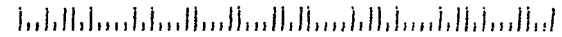
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mattville, S.C. 29512



South Carolina Court of Appeals
Tanya A. Yee - Clerk
P.O. Box 11629
Columbia, S.C. 29211

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Maurice Morant, 285174,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No.: 11-ALJ-04-0580-AP
Grievance No.: TRCI 0428-10

ORDER
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This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed July 7, 2011 by Maurice Morant (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant appeals the decision of the Department denying his grievance in which Appellant complains he was wrongfully convicted of Assault and/or Battery of an SCDC Employee or other Government Employee, Volunteer, or Contract Employee with Means and/or Intent to Kill or Injure without sufficient evidence presented against him. As a result of the conviction, Appellant received sanctions that included the loss of one hundred and eighty (180) days of accrued good-time.

Appellant alleges that his due process rights were violated by the Department. Specifically, Appellant contends that the Department has incorrectly concluded that he pled guilty to the above-referenced disciplinary charge. He also argues that he was denied the opportunity to present and examine witnesses and have his case considered by an impartial disciplinary hearing officer.

Because a state-created liberty interest is involved in this case, it is necessary to determine if 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

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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 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 the following: Appellant was served with notice of the charge on October 13, 2010. At the time of notification, Appellant requested that his accuser be present at the hearing and that he be represented by counsel substitute. The Record reveals that when Appellant's disciplinary hearing was held on October 19, 2010, he was represented by a counsel substitute, and the charging officer was telephonically present. The Disciplinary Report and Hearing Record show that the Disciplinary Hearing Officer relied on the following in determining the Appellant's guilt: the charging officer's report and testimony, a statement by another officer who witnessed the incident, and a statement from a Department nurse concerning the injuries that the charging officer sustained. Furthermore, 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 otherwise than neutral or detached. It is thus clear that Appellant has been afforded the minimal process due in prison disciplinary proceedings as required by Wolff.

Appellant further contends he was denied an opportunity to call another officer, Sergeant Alston, and other inmates as witnesses to contradict the testimony of his accuser. Prison officials have considerable discretion in determining whether to permit an inmate's witness to testify. Zaczek v. Hutto, 642 F.2d 74, 76-7 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, Segarra v. McDade, 706 F.2d 1301 (4th Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4th Cir. 1982) (en banc); Brown v. Frey, 889 F.2d 159

(8th Cir. 1989). However, prison officials must provide a reason for their refusal to call a witness, and that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 1-05 S. Ct. 2192, 85 L.Ed.2d 553 (1985). In this instance, the Record reflects that Sergeant Alston had no knowledge of the incident and that the Appellant did not provide the Disciplinary Hearing Officer with the names of the inmates that he wanted to testify on his behalf at the hearing.

Lastly, the Department argues that the Department's Inmate Disciplinary Grievance Policies prohibit the Appellant from grieving his conviction because he pled guilty to the disciplinary charge at the hearing. In response, the Appellant asserts that it was not his intention to plead guilty to Assault and/or Battery of an SCDC Employee. Instead, he intended to plead guilty to the lesser charge of Striking an SCDC Employee and admitted several times to hitting the charging officer in the back of the head and neck with a cafeteria food tray. Appellant further argues that he should only be held liable for the charge of Striking an SCDC Employee because he believes the charging officer did not sustain any injuries as a result of the incident.

In the instance of this appeal, the Appellant was only charged with Assault and /or Battery of an SCDC Employee and was only given the opportunity to plead guilty or not guilty to this particular charge. The Record reflects that the Appellant averted the Disciplinary Hearing Officer's request for a plea by only responding with "I plead guilty to hitting him, but I was provoked." Contrary to the Appellant's argument, this statement does not constitute pleading guilty to a lesser charge nor does it force the Department to reduce his original charge to a lesser included offense. Nonetheless, there is substantial evidence in the Record to support a conviction of Assault and/or Battery of an SCDC Employee with or without a guilty plea.

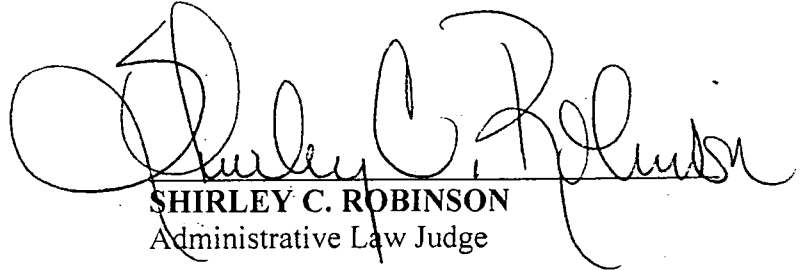
When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Consequently, the review in inmate grievance cases is limited to the Record presented. An Administrative Law Judge may not substitute their judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

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 before me now. In the case at hand, 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.



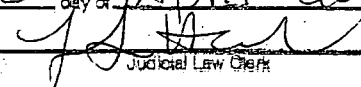
SHIRLEY C. ROBINSON
Administrative Law Judge

April 3rd, 2012
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 Interegency Mail Service addressed to the party(ies) or their attorney(s).

This 3 day of April 2012

By: 
Judicial Law Clerk