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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court
Appeal From Administrative Court

RECEIVED

FEB 25 2016

John D. McLeod, Judge
Case No. 15-ALJ-04-0458-AP SC Court of Appeals

S.C. Dept. of Corrections

Respondent

v.

Retrice L. Funderburk

Appellant,

Proof of Service

I certify that I have served this Notice of Appeal on the Court of Appeals in the S.C. Supreme Court by depositing a copy of it in the United States Mail postage pre-paid on February 3, 2016 addressed to P.O. Box 11629 Columbia, S.C 29211.

February 3, 2016

Retrice L. Funderburk

Retrice h. Funderburk #297581
S.C.D.C. - R.C.I. - CA-19
P.O. Box 2039
Ridgeland, S.C. 29936

February 18, 2016

S.C. Court of Appeals

Jenny Abbott Kitchings, Clerk

P.O. Box 11629

Columbia, S.C. 29211

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FEB 25 2016

SC Court of Appeals

Re. S.C.D.C. v. Retrice Funderburk

Appellate Case No 2016-000216

Dear Ms. Kitchings:

I received a letter from you dated February 10, 2016. Upon reviewing it I now respond to the allegation that I failed to include my proof of service with my notice of appeal when indeed I placed them both in the mail box here at R.C.I. postage prepaid, but did fail to include a copy of the order challenged. The notice and proof of service were dated February 3, 2016. I will now include another proof of service back dated to the third of February and a copy of the Order challenged. As to the issue of the filing fee I am considered an indigent by the state and would request an application to proceed in forma pauperis. Your assistance and maybe an extension of time would be greatly appreciated.

Respectfully submitted,

1/31 Retrice h. Funderburk

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U.S. COURT OF APPEALS

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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FEB 25 2016

Retrice Lamont Funderburk, #297581,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 15-ALJ-040458-AP
SC Court of Appeals

ORDER AFFIRMING DECISION

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated in the South Carolina Department of Corrections (Department or SCDC). His conviction for Unauthorized Inmate Organization Activity or Participation in a Security Threat Group ("STG") or STG Activity (832), SCDC Policy OP-22.14, Inmate Disciplinary System, was affirmed.¹ He was sanctioned with the loss of good time credits, so a state created liberty interest is involved. He asserts violations of due process and lack of substantial evidence.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these inmate grievance cases is limited to the Record presented.

An Administrative Law Judge may not substitute his judgment for that of an agency

¹ The amount of good time taken remained the same, however, other loss of privileges were reduced.

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SC ADMIN. LAW COURT

"as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2014). Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See S.C. Code Ann. § 1-23-380(5); See also Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); South Carolina Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "'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 or must have reached in order to justify its action." Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, 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. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

Additionally, in Superintendent, Massachusetts Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 2774 (1985), the United States Supreme Court held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board."

LAW/ANALYSIS

Since a state created liberty interest is involved, it is necessary to determine if Inmate received the process he was due.

It is well settled that SCDC must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. Al-Shabazz, 338 S.C. at 370, 527 S.E.2d at 750 (internal citations omitted). However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has prescribed 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 factfinders 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, 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)).

To facilitate checking against the record, the requirements of Wolff are summarized as follows:

- 1.) 24 hours advance written notice of charges;
- 2.) Written statement by factfinder as to evidence relied upon;
- 3.) Written statement by factfinders as to reason for disciplinary action taken;
- 4.) Opportunity to call witnesses and present documentary evidence;²
- 5.) Counsel substitute allowed if inmate illiterate or if case is complex; and
- 6.) Impartial hearing tribunal.

Applying those requirements to the record in this case we find the following:

1.) **24 hours advance written notice of charges;**

Inmate was served with notice of the charge on January 22, 2015, and the hearing was held on February 6, 2015.

2.) **Written statement by factfinder as to evidence relied upon;**

Evidence relied upon was the Officer's Report and two photographs.

3.) **Written statement by factfinders as to reason for disciplinary action taken;**

First charge of this nature

4.) **Opportunity to call witnesses and present documentary evidence;**

Inmate was given the opportunity to call witnesses and present evidence. Inmate did not call any witnesses or present any evidence. Inmate did discuss the two photographs that were in evidence.

5.) **Counsel Substitute allowed if inmate illiterate or if case is complex;**

Inmate was not represented by a counsel substitute.

6.) **Impartial hearing tribunal;**

There is nothing in the record to suggest that the Hearing Officer was anything other than neutral or detached.

It is thus clear that Inmate has been afforded the minimal process due in prison disciplinary

² Right to call witnesses and present documentary evidence is limited if it will be unduly hazardous to institutional safety or correctional goals.

proceedings as required by Wolff. Additionally, it is clear that the conviction is supported by substantial evidence. Inmate, in his brief, argues that he was wrongfully convicted of the charge. Inmate notes that the pictures went through the SCDC mailroom and were not found to be STG material. The definition of this charge reads:

Any participation of any inmate in any organization which has not been approved or any informal organization, association, or group of three (3) or more inmates that has a common name, and whose members or associates engage or have engaged in activities that include planning, organizing, threatening, soliciting, or committing unlawful acts of misconduct classified as serious threats or potential threats to the safety and security of the public, the Department, employees, visitors, and/or other inmates, or any other group that has been designated a Security Threat Group by the Agency Director. Possession of STG material is sufficient to warrant this charge.

Inmate argues that once the material passes through the mailroom and was not found to be STG material, then he should not be charged with Unauthorized Inmate Organization Activity or Participation in a Security Threat Group or STG Activity once he was possession. However, this is not how the definition of the charge reads. Mere possession of STG material is sufficient for the charge, which means that material could pass through the mailroom and go to an inmate. Just because the mailroom does not find the pictures to be STG material does not render the Inmate immune from facing a charge for Unauthorized Inmate Organization Activity or Participation in a Security Threat Group or STG Activity. After review of the evidence and testimony at the hearing, the Hearing Officer concluded that based upon the Officer's Report and two photographs, Inmate was guilty of Unauthorized Inmate Organization Activity or Participation in a Security Threat Group or STG Activity (832), SCDC Policy OP-22.14, Inmate Disciplinary System. Substantial evidence in the Record supports the decision of the Hearing Officer.

Inmate also argues that the search which yielded the STG material was conducted as retaliation against him. Inmate claims that he is being targeted because he has made a claim against SCDC personnel for use of racial slurs. However, there is nothing in the record to corroborate this contention by the Inmate.

CONCLUSION

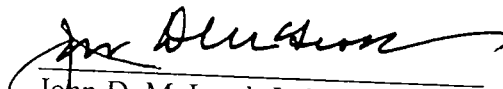
In the case at hand, I will not substitute my judgment for that of the agency because there is substantial evidence to support the conviction which is clearly not arbitrary, capricious or affected by any personal bias or prejudice. Further, I conclude that the procedure used met the requirements of Wolff; that there was substantial evidence to support the findings of the lower

tribunal; and, that Appellant's arguments, which are without showing of meaningful prejudice, are without merit.

Therefore, the order appealed from is **AFFIRMED** and this appeal **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

January 5, 2016
Columbia, S.C




John D. McLeod, Judge
S.C. Administrative Law Court

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 Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 5 day of January, 2016

By: 

Judicial Law Clerk