

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 15-ALJ-04-0426-AP
Appellate Case No. 2016-000086

WILLIAM PIPKIN, # 228810,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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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 AND THE CONVICTION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of William Pipkin, an inmate in the custody of the South Carolina Department of Corrections. On February 18, 2015, Appellant was convicted of disciplinary offense number 807, striking an employee. Appellant lost six days of good time credit as a result of his conviction. On February 25, 2015, Appellant submitted a Step 1 Grievance seeking reversal of his disciplinary conviction. SCDC denied the grievance on April 9, 2015. On April 13, 2015, Appellant submitted a Step 2 Grievance again seeking reversal. The Step 2 Grievance was denied on July 9, 2015, and Appellant appealed to the Administrative Law Court on August 7, 2015. By order dated and filed December 17, 2015, Administrative Law Judge Shirley C. Robinson affirmed 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.

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 AND THE CONVICTION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

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.

As the Administrative Law Judge correctly found, SCDC complied with these requirements in the present case. First, it is undisputed that Appellant had adequate notice of the charge. Second, at the disciplinary hearing, Appellant heard the evidence supporting the charge. The hearing officer read Sergeant McKay’s incident report and Sergeant McKay confirmed the facts contained in the report were true and accurate. (See R. p. 6-10). Third,

Appellant had the opportunity to be heard at his disciplinary hearing. Appellant was free to—and in fact did—speak on his own behalf. (See R. p. 7-8). Appellant complains on appeal that he was denied the opportunity to call witnesses; however, this complaint is totally unpreserved for review because Appellant did not, at any time, express this concern to the disciplinary hearing officer at the time of the hearing. (See R. p. 6-10). 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). Fourth, a neutral and detached hearing body was available in the form of a disciplinary hearing conducted by a neutral hearing officer, DHO Bittinger. (See R. p. 6-10). Fifth, Appellant received the aid of a counsel substitute, Mr. Armstrong. (See R. p. 6-10). Sixth, Appellant was provided a written statement of findings in the form of the hearing transcript and a copy of the final hearing report. (See R. p. 2). DHO Bittinger also provided Appellant with information on how he could appeal his disciplinary conviction. (R. p. 10). Based upon the foregoing, SCDC afforded Appellant the due process to which he was constitutionally entitled at his disciplinary hearing.

Furthermore, substantial evidence supports SCDC’s final agency decision and such evidence is sufficient to uphold Appellant’s disciplinary conviction. The disciplinary hearing officer weighed the evidence based on the facts and testimony presented at the hearing. Appellant has failed to show that his substantial rights have been prejudiced or that the disciplinary hearing officer’s decision was clearly erroneous, arbitrary, or affected by a legal

error. Accordingly, Respondent respectfully requests the Court affirm SCDC's final agency decision.¹

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

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March 18, 2016

¹ In his Brief, Appellant asserts that the Administrative Law Court erred in not conducting an "evidentiary hearing." (See Appellant's Brief, p. 1). In support of this argument, Appellant cites to a federal habeas corpus case and a federal criminal case. (See Appellant's Brief, p. 3-5). However, the instant prison disciplinary case is neither a federal habeas corpus matter nor a federal criminal matter, and, as discussed earlier in this Brief, the due process requirements in prison disciplinary hearings are substantially less than the due process requirements in a trial before a court of law. (See *supra*, p. 4). There is no Administrative Law Court rule authorizing an evidentiary hearing in an Al-Shabazz appeal. (See ALC Rules, Rules 51-66). Notably, Rule 64 of the Rules of Procedure for the Administrative Law Court specifically states that "[o]ral argument will ordinarily not be ordered by the Administrative Law Judge unless the proceeding involves a novel issue or a question of exceptional importance."

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WILLIAM PIPKIN, # 228810,

APPELLANT,

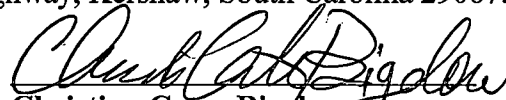
v.

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: **William Pipkin, # 228810**, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina 29067.



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South Carolina
Department of
Corrections

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NIKKI R. HALEY, Governor
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March 18, 2016

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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RE: William Pipkin, # 228810, v. South Carolina Department of Corrections
Appellate Case No. 2016-000086

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: William Pipkin, # 228810
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