

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

MAY 16 2016

The Honorable Deborah Brooks Durden, *Administrative Law Judge*

SC Court of Appeals

ALC Case No. 15-ALJ-04-0396-AP
Appellate Case No. 2016-000345

Gabriel Randolph, #248729.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

DATED: May 12, 2016

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF THE ISSUES ON APPEAL

I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?

II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Gabriel Randolph (Appellant), an inmate incarcerated at the South Carolina Department of Corrections (Department or Respondent). Appellant was found guilty of SCDC Disciplinary Offense 854 “Exhibitionism and Public Masturbation” under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. (R.p. ____). Appellant lost sixty (60) days of good time due to the disciplinary conviction. (R.p. ____).

Appellant filed a Step One Grievance on March 24, 2015, challenging his conviction. The warden denied the grievance and advised Appellant that, after a review of the disciplinary hearing, the warden found no reason to overturn Appellant’s conviction. (R.p. ____). Thereafter, Appellant filed a Step Two Grievance on June 11, 2015, again challenging his conviction. (R.p. ____). The responsible official responded to the Step Two by denying the grievance and upholding the conviction and loss of good time. (R.p. ____). Appellant received the final agency determination on July 17, 2015. (R.p. ____).

The Administrative Law Court (ALC) asserted jurisdiction over the appeal below pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). After the parties filed briefs, the ALC affirmed Respondent’s final agency decision, finding the disciplinary hearing comported with due process. The ALC rejected appellant’s arguments that the factfinder in his disciplinary hearing was biased and that the evidence relied upon by that factfinder was fabricated. The ALC also ruled Appellant’s disciplinary conviction was supported by substantial evidence and that he was afforded the due process required in a prison disciplinary proceeding. (R.p. ____). Appellant now seeks review of the ALC’s decision.

For the reasons that follow, the Department respectfully requests that this Court affirm the ALC's order of dismissal.

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 of 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.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial

evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C. Dep't of Health & Environ. Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due process requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were complied with in this case. The Disciplinary Report and Hearing Record demonstrate that Appellant had notice of the charge. (R.p. ____). The record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing and the Charging Official testified. (R.p. ____). Furthermore, Appellant was afforded an

opportunity to be heard at the June 6, 2011 hearing. He was allowed to ask questions of the witnesses and to provide a witness statement of his own. (R.p. ____). There was a neutral and detached hearing body at the hearing, SCDC disciplinary hearing officer Turner. (R.p. ____). Appellant was provided with a counsel substitute, Counsel Substitute Robinson, and there was disclosure of the written statement of the hearing officer's findings. (R.p. ____).

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). 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. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998).

Credible evidence presented at appellant's hearing indicates appellant was guilty of this disciplinary offense. Charging Official Clinical Correctional Counselor Harris testified that she observed Appellant masturbating in the window of cell 111.

(R.p. ____). Officer Fubio testified that just a few moments after CCC Harris's observation he went to cell 111 and saw that Appellant was the only person in the cell. (R.p. ____). A written incident report from CCC Harris that supported her testimony was read into the record. (R.p. ____). Appellant, via Counsel Substitute Robinson, read into the record a witness statement from Inmate Francis Simmons that stated Appellant was with Simmons at the time of the incident. (R.p. ____). The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. (R.p. ____). The disciplinary hearing officer stated he found appellant guilty based upon CCC Harris's report and the testimony of CCC Harris and Officer Fubio. (R.p. ____).

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

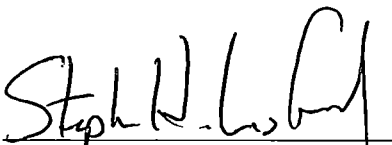
CONCLUSION

For the foregoing reasons, this Court should affirm the ALC's order dismissing Appellant's appeal.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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