STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Anthony Williams, Jr., 285056, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No.: 15-ALJ-04-0706-AP Grievance No.: ECI 504-15

ORDER

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Notice of Appeal filed December 30, 2015, by Anthony Williams, Jr. ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant requests review of the Department's decision following Appellant's disciplinary conviction for Striking an SCDC Employee or Other Government Employee, Contract or Employee or Volunteer.[1] As a result of the conviction, Appellant received sanctions that included the loss of six (6) days of accrued good time. In this appeal, Appellant asserts that he was denied procedural due process and that the evidence does not support his conviction.

The Court's jurisdiction to hear this matter is derived 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 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 v. S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such a liberty interest is implicated when an inmate has lost accrued good time due to a major disciplinary hearing. See Al-Shabazz, 338 S.C. at 369, 526 S.E.2d at 750; Howard v. S.C. Dep't of Corrs., 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012).

When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 377-80, 527 S.E.2d at 754-56. Consequently, the Court's review is limited to the record. 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

[1] Appellant was also convicted of Possession of Any Communication Device. The appeal of that conviction is also before this Court and may be found under docket number 15-ALJ-04-0705-AP.

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.

In this case, Appellant argues that the Department failed to follow policy and procedure. However, a prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of procedural due process, if constitutional minima are nevertheless met. See Weatherholt v. Bradley, 316 Fed. Appx. 300, 303 (4th Cir. 2009) (not selected for publication) (quoting Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)) ("'[F]ailure to follow prison rules or regulations does not, without more, give rise to a constitutional violation . . . .'"). Thus, the Court must only determine whether Department met the minimum requirements for procedural due process in this matter where an inmate was disciplined for serious misconduct. Al-Shabazz, 338 S.C. at 369-70, 527 S.E.2d at 750. The South Carolina Supreme Court has enunciated the following five requirements which, if established, show the minimum constitutional requirements for procedural due process have been met in inmate disciplinary matters:

> (1) the inmate was given advance written notice of the charge at least twenty-four hours before the hearing;
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> (2) the fact finder(s) prepared a written statement of the evidence relied on and reasons for the disciplinary action;
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> (3) the inmate was allowed to call witnesses and present documentary evidence;
>
> (4) counsel substitute was allowed to help the inmate if the inmate was illiterate or if the case was too complex for the inmate to handle alone; and
>
> (5) the person(s) who heard the matter, who may be prison officials or employees, were impartial.

See id., 338 S.C. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563–72 (1974)). Applying the five due process requirements to the Record in this case, the Court concludes the following:

Appellant was given notice of the charge on June 12, 2015, and the disciplinary hearing in the matter took place on June 25, 2015, more than twenty-four hours later. Appellant alleges that the hearing was continued because the hearing officer could not contact the accusing officer and that this is evidence that Appellant was denied his right to witnesses. However, there is no evidence on the record that Appellant requested any witnesses be present. Indeed, there is substantial evidence on the record that Appellant specifically denied wanting the accusing officer to be present at the hearing. Further, Appellant has not argued any specific prejudice that resulted from the alleged denial of witnesses. See Tall Tower, Inc. v. S.C. Procurement Review Panel, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987) (citing Palmetto Alliance v. S.C. Pub. Serv. Auth., 282 S.C. 430, 319 S.E.2d 695 (1984)).

The Record reveals that Appellant was initially present at the disciplinary hearing, but was removed by the hearing officer for refusal to cooperate. Based on the transcript of the case, the Court finds that Appellant was warned that he would be removed if he failed to conduct himself properly. The Court concludes that Appellant's removal from the hearing was justified by the Department's need to maintain an orderly and safe prison environment. See id., 338 S.C. at 370, 527 S.E.2d at 750. In his absence Appellant was represented by his counsel substitute. The counsel substitute provided Appellant's statement regarding the case. The Record further shows the hearing officer's determination of Appellant's guilt was based upon the incident reports read into the record. The sanctions imposed were based upon the Hearing Officer's finding that this was Appellant's first offense of this type. Finally, there is nothing in the Record indicating the hearing officer was otherwise than neutral. Therefore, the Court concludes that Appellant was afforded the minimum due process required in prison disciplinary proceedings.

Appellant also argues that the evidence in this case does not support his conviction. 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). Under the substantial evidence rule, an appellate court "will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark

v. Bi–Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)). When reviewing the available evidence, it is within the discretion of the hearing officer to place greater weight on the evidence he or she deems most credible. See Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (citations omitted) (trial judge is in the best position to observe demeanor and veracity of witnesses); see also Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757 (establishing a "hands-off" doctrine in reviewing inmate disciplinary convictions). In this case, the hearing officer placed greater weight on the credibility of the incident reports than on Appellant's statement. The report of Officer Hooper, who conducted the search and was pushed and threatened by Appellant, and Captain Ford, who was called to assist, constitute substantial evidence on the record to support Appellant's conviction.

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

May 19, 2016
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 Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 19 day of May 2016
By: ______
Judge's Law Clerk