

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

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ALC Case No. 15-ALJ-04-0706-AP
Appellate Case No. 2016-001297

OCT 14 2016

SC Court of Appeals

ANTHONY WILLIAMS, JR., # 285056,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Kensley E. Collins

Staff Attorney

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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT VIOLATED THE DUE PROCESS TO WHICH HE WAS ENTITLED OR LACKED SUBSTANTIAL EVIDENCE SUPPORTING HIS JUNE 25, 2015 DISCIPLINARY CONVICTION.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Anthony Williams, Jr., an inmate in the custody of the South Carolina Department of Corrections. On July 2, 2015, Appellant submitted a Step One Grievance seeking a reversal of his June 25, 2015 conviction for 807, Striking an Employee. The Step One Grievance was denied on the ground that there were no procedural errors during the hearing and Appellant was convicted of the charge based on credible evidence. On September 9, 2015, Appellant submitted a Step Two Grievance form, which was also denied on the ground that there were no procedural errors committed and evidence was presented supporting the conviction. Appellant filed a Notice of Appeal in the Administrative Law Court on December 30, 2015. On May 19, 2016, the Honorable Shirley C. Robinson issued an order affirming the decision of the Department of Corrections. 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 AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT VIOLATED THE DUE PROCESS TO WHICH HE WAS ENTITLED OR LACKED SUBSTANTIAL EVIDENCE SUPPORTING HIS JUNE 25, 2015 DISCIPLINARY CONVICTION.

The jurisdiction of the Administrative Law Court (“ALC”) 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). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC’s appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC’s *en banc* decision of McNeil v. S.C. Dep’t of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC’s jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate’s state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate’s confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections. Prison disciplinary cases are not criminal trials in federal or state courts; they are administrative hearings in an institutional setting. Therefore, due process in prison disciplinary hearings is substantially less than in a trial before a court. Due process, as the United States Supreme Court noted in Wolff v. McDonnell, 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.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

Here, the Administrative Law Court found that Appellant had notice of the charges. See Order, page 3 of 4. Appellant was served with this notice on June 12, 2105. Id. Appellant argues there was an improper enhancement of the charge. This statement is incorrect. While the accusing officer suggested a charge of 809, "Threatening to Inflict Harm on/ Assaulting an Employee and/or Members of the Public," on his Incident Report, the Major actually charged Appellant with 807. Furthermore, Appellant's June 12, 2015 notification of his charges is for an 807, Striking an Employee.

The lower court further found that Appellant had an opportunity to be heard, present evidence, and "specifically denied wanting the accusing officer to be present at the hearing" by checking the appropriate box on the notice form. Id. Judge Robinson found that Appellant was properly removed from the hearing for security concerns and was then represented by counsel substitute, who "provided Appellant's statement regarding the case." Id. The Administrative Law Court also found that Appellant had the presence of a neutral and detached hearing officer. Id. The hearing officer also provided a written statement of the findings so that Appellant could make an appeal.

Additionally, Appellant argues that there was not substantial evidence to support his

conviction for Striking an Employee. The hearing officer received testimony from Appellant and heard from the charging officer and assisting officer via their Incident Reports. The Administrative Law Court found that “it is within the discretion of the hearing officer to place greater weight on the evidence he or she deems most credible.” See Order, page 4 of 4. The court found that the Incident Reports from Sergeant Hooper, who searched the cell “and was pushed and threatened by Appellant”, and Captain Ford, who assisted, “constitute[d] substantial evidence on the record to support Appellant’s conviction.” Id.

Appellant has failed to show that the Department’s decision was not supported by substantial evidence or that his due process rights were violated in any way.¹ Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

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

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



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¹ Appellant did not properly preserve for appellate review his specific argument that Appellant’s mental health status caused the behavior for which he was charged. See, e.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998).

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v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant's attorney, addressed as follows: Tommy A. Thomas, Esq., Harrington Building, 7588 Woodrow Street, Irmo, South Carolina, 29063.



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South Carolina
Department of
Corrections

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

October 14, 2016

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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RE: Anthony Williams, Jr., # 285056, v. South Carolina Department of Corrections
Appellate Case No. 2016-001297

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kensey E. Collins
Staff Attorney
South Carolina Department of Corrections

cc: Tommy A. Thomas, Esq.
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