

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Albarr Ali Abdullah, #191449,

Docket No. 16-ALJ-040393-AP
Grievance No. KRCI 051606

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Albarr Abdullah (Appellant), who is incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals the final decision of the Department, wherein the Department concluded that Appellant's conviction for a disciplinary offense was supported by sufficient evidence and that Appellant was afforded due process. For the offense, Appellant was sanctioned eighteen days of accrued good time.

BACKGROUND

On January 27, 2016, Appellant made a phone call that was recorded and then reviewed by Lieutenant Price on February 1, 2016. Lieutenant Price recounted that Appellant stated, "I will have to call you on the wall phone now [due] to the other one had a bad misfortune today." Based on Appellant's continued conversation and the fact that a cell phone was found that day in an area where Appellant worked, Lieutenant Price charged Appellant with Possession of Any Communication Device.¹

The charge against Appellant was referred for a disciplinary hearing. On February 6, 2016, Appellant was given notice of the hearing, but refused to sign the hearing notice, as verified by two officers. Appellant averred that he did sign the first hearing notice he received, but not the second one that was prepared to correct the date. On February 22, 2016, a hearing was held and Appellant was found guilty based on the Lieutenant's report and the recording of the phone call. Because Appellant refused to sign the hearing notice, he was denied the witnesses he requested

¹ "898 The Possession of Any Communication Device: The possession, receipt, use, concealment, storage, purchase, sale or facilitation of cellular phones or other communications equipment and/or any components thereof. This includes, but is not limited to, MP3 players, I-pods, e-readers or any like devices." SCDC Policy OP-22.14, "Inmate Disciplinary System" 32 (Feb. 2, 2015).

(Attachment A)

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SC ADMIN. LAW COURT

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Doesn't mention 24 notice, Issue #1

via the kiosk system, based on Department policy. See SCDC Policy OP-22.14, “Inmate Disciplinary System” 10, ¶7.1 (Feb. 2, 2015). Appellant challenges the conviction on the basis that he was denied the opportunity to build a defense because he was not informed of the time of the call, allowed to review the evidence prior to the hearing, or allowed to call witnesses.

ISSUES ON APPEAL

1. Whether the Department erred in denying Appellant the opportunity to review the evidence.
2. Whether the Department erred in denying Appellant the opportunity to call witnesses.

STANDARD OF REVIEW

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). The Court’s jurisdiction in inmate appeals includes cases in which an inmate has lost a state-created liberty interest due to a major disciplinary hearing. Al-Shabazz, 338 S.C. at 369, 526 S.E.2d at 750.

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. Id., 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 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.

DISCUSSION

Disclosure of Evidence

Appellant argues that he was denied due process because he was not given the opportunity to review the evidence against him prior to the hearing. It is well settled that the Department must meet certain minimum constitutional requirements for procedural due process in matters where an inmate is disciplined for serious misconduct. See Al-Shabazz, 338 S.C. at 370, 527 S.E.2d at 750. These requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. Weighing the protections of the Constitution against the needs of the Department, the South Carolina Supreme Court enunciated the following five requirements to 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, provided there is no undue hazard to institutional safety or correctional goals;
- (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 571 (citing Wolff v. McDonnell, 418 U.S. 539, 563–72, 94 S.Ct. 2963, 2978–82 (1974)). In selecting the minimal factors necessary to provide procedural due process in inmate disciplinary hearings, the U.S. Supreme Court based its conclusions on a review of the factors necessary in parole violation hearings, laid out in a case from two years earlier. See Wolff, 418 U.S. at 561, 94 S. Ct. at 2977 (referencing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 (1972)). In their review, the Court noted the qualitative and quantitative difference in the liberty interest at stake in a parole violation hearing and a prison disciplinary hearing. Id., 418 U.S. at 560–61, 94 S. Ct. at 2977. In Morrissey, the Court did conclude that disclosure of the evidence was a necessary component of due process in a parole violation hearing.² However, in Wolff, disclosure of the evidence was not one of the factors deemed necessary to due process in an inmate disciplinary hearing. See Wolff, 418 U.S. at 558–

² The necessary factors “include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” Morrissey, 408 U.S. at 489, 92 S. Ct. at 2604 (1972).

72, 94 S. Ct. at 2976–82 (enunciating the reasons for choosing the factors later adopted in Al-Shabazz, listed *supra*).³ Because disclosure of the evidence is not a factor adopted in either Wolff or Al-Shabazz, Appellant was not constitutionally entitled to an opportunity to review the evidence against him prior to the hearing.

Denial of Witnesses

Appellant argues that he was denied due process because the hearing officer refused him the opportunity to call witnesses. Pursuant to Al-Shabazz, an inmate has a right to call witnesses on his behalf unless there is “undue hazard to institutional safety or correctional goals.” Al-Shabazz, 338 S.C. at 371, 527 S.E.2d at 571 (citing Wolff, 418 U.S. at 563–72, 94 S.Ct. at 2978–82). To deny an inmate’s right to call a witness, the hearing officer must offer an explanation of the reason and that reason must concern institutional safety or correctional goals. See Ponte v. Real, 471 U.S. 491, 497, 105 S. Ct. 2192, 2196, 85 L. Ed. 2d 553 (1985).

In this case, the Department argues that its policy regarding inmates who refuse to sign the hearing notice justifies the denial of witnesses. See SCDC Policy OP-22.14, “Inmate Disciplinary System” 10, ¶7.1 (Feb. 2, 2015) (“Should the inmate refuse to sign SCDC Form 19-69, ‘Inmate Disciplinary Report and Hearing Record’, s/he will forfeit the opportunity to request that their accuser and/or witness(s) be present at their scheduled hearing.”). By relying on the policy, the Department creates for review the question of whether application of the policy to Appellant comports with the constitutional requirements set forth in Wolff and Al-Shabazz. See Al-Shabazz, 338 S.C. at 373, 527 S.E.2d at 752 (reviewing the Department’s disciplinary policy for compliance with Wolff). Since the standard set forth in Al-Shabazz allows Appellant’s right to call witnesses to be curtailed where there is a “hazard to institutional safety or correctional goals,” the question is whether obtaining an inmate’s signature on a hearing notice is an important enough correctional goal to warrant what would otherwise be an infringement on Appellant’s qualified right to call witnesses to support his case.

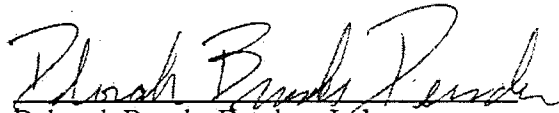
In this case, Appellant states that he did sign the first hearing notice he was served, but refused to sign the second one, which had a corrected date. This is clearly a pointless act of defiance, which not only has the potential to disrupt the prison environment, but prevents the

³ The Court notes that the Department incorrectly stated and cited the Wolff factors in its brief, including “disclosure of evidence against the defendant (may be limited).” The Court can only assume that the Department mistakes the Morrissey factor as one applicable to this case.

Department from easily demonstrating compliance with the Wolff factors. See Wolff, 418 U.S. at 563, 94 S. Ct. at 2978 (“Some [inmates] may be incorrigible and would merely disrupt and exploit the disciplinary process for their own ends.”). Under such circumstances, where the inmate has no valid reason (such as illiteracy or mental health problems) for his lack of cooperation, the Court concludes that the smooth operation of the prison and the disciplinary process is an important enough correctional goal to justify the denial of witnesses as a disincentive. Therefore, the Department did not err in refusing Appellant the opportunity to call witnesses at his hearing.

ORDER

IT IS THEREFORE ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 27, 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 heretofore in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).
This 27th day of September 2016
By: [Signature]
Judicial Law Clerk