STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dariane Coleman, 334551, Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No.: 16-ALJ-04-0114-AP Grievance No.: KRCI 1119-15 **ORDER**

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Notice of Appeal filed February 5, 2016, by Dariane Coleman ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Department"). Appellant requests review of the Department's decision regarding Appellant's disciplinary conviction for Exhibitionism and Public Masturbation. As a result of the conviction, Appellant received sanctions that included the loss of sixty (60) 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, this 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, this 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.

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, or a mistaken case number, 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 the 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;
>
> (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;
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> (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)).[1] Applying the five due process requirements to the Record in this case, this Court concludes the following:

[1] The Court notes that the Department has incorrectly stated and cited these factors in its brief.

Appellant was given notice of the charge on September 3, 2015, and the disciplinary hearing in the matter took place on September 21, 2015, more than twenty-four hours later. Based on the transcript of the case, this Court finds that Appellant was represented by counsel substitute and that Appellant's accuser was present as requested by the Appellant. The Record reveals that Appellant was not present during the disciplinary hearing. However, the transcript reflects that the Appellant was brought up for the hearing but began to act in a disruptive manner and chose to leave on his own before the hearing began. The Appellant then returned and the hearing officer instructed him that he had acted inappropriately and that he had already chosen to leave. When the Appellant began to behave in a disruptive manner again, the hearing officer called First Responders to have him removed. While Appellant argues that he was not afforded due process because his counsel substitute did not present evidence and witnesses in his absence, it was because of his own behavior that Appellant was removed and not present at the hearing. In his absence, Appellant was represented by his counsel substitute who did not give a statement or present any witnesses for Appellant. Appellant's counsel substitute stated on the record that Appellant left no voluntary statement or witness statements in response to the charge.

In normal circumstances, the Appellant should be afforded the opportunity to provide a statement, call witnesses, and present evidence at his disciplinary hearing. However, *Wolff* requires that Appellant be afforded the opportunity to be heard "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." Wolf v McDonnell, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935 (1974). The Appellant in this case first refused to attend the hearing and then was disruptive to the point that he had to be removed by First Responders. This Court concludes that Appellant's due process rights were not violated and his 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. The transcript and report show the hearing officer's determination of Appellant's guilt was based upon the officer's report and the testimony of Officer Crowe. There is nothing in the Record indicating the hearing officer was otherwise than neutral. The sanctions imposed were based upon the Hearing Officer's finding that this was Appellant's fourth offense of this type. Therefore, this 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 written reports and the officer's statements than on Appellant's statements in his grievance. The Appellant forfeited his right to make a statement and present evidence at the hearing when he initially chose not to participate in the hearing and then subsequently behaving in a way which caused him to have to be removed. The report of Officer Crowe and her testimony at the hearing 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

June 14, 2016
Columbia, South Carolina