

FILED

FEB 24 2017

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Eugene Davis, 252831,)
)
Appellant,)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No.: 16-ALJ-04-0719-AP
Grievance No.: KRCI 962-16

ORDER RECEIVED

MAR 27 2017

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to the Notice of Appeal filed October 3, 2016, by Eugene Davis (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“Department”). Appellant requests review of Appellant’s disciplinary conviction for Threatening to Inflict Harm on an Employee and/or Members of the Public. 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 due process.

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. 2016). 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. 2016). 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, among other things, 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;
- (2) the fact finder(s) prepared a written statement of the evidence relied on and reasons for the disciplinary action;
- (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.

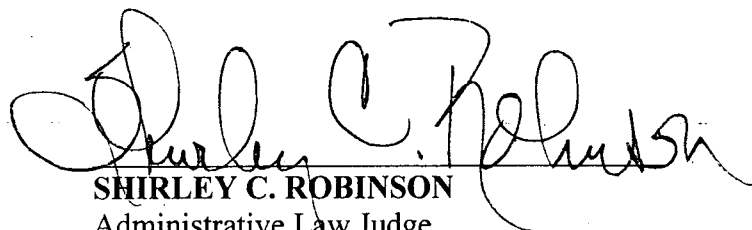
See id., 338 S.C. at 371, 527 S.E.2d at 751 (citing Wolff v. McDonnell, 418 U.S. 539, 563–72 (1974)). Applying the five due process requirements to the Record in this case, the Court concludes the following:

Appellant was given notice of the charge on June 8, 2016 and the disciplinary hearing took place on June 22, 2016, more than twenty-four hours later. The disciplinary report states the

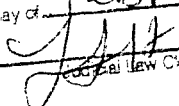
evidence relied on in reaching a decision, including the officer's report and the letters in the record, as well as, the hearing officer's reasoning for the sanctions imposed. Appellant presented his own testimony as evidence in his defense. Counsel substitute was present and assisted Appellant with the questions he asked his accuser. 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.

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

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

February 24, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has on 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 emergency Mail Service addressed to the party(ies) or their attorney(s).
This 24 day of February 2017
By: 
Legal Clerk