

Dear,

Case: 2019-000013

Shakeen Cabbagestall V. SCDC

Clerk

This is ^① the proof of service

for this case ^② the order from S.C. Administrative Law Courts, all stated is Enclosed

for Case: 2019-000013. (Please let me know

when this Brief is needed.) Matter of

fact I want to notify S.C. Courts of

Appeals that (SCDC is locked down and
we aren't allowed to go to the law

library at all) (See Enclosed Request form

Dated (11/12/18) please consider this do to

over 12 prisoners being murdered by Gang Riots

at Lee C. F. (the entire SCDC locked down do to

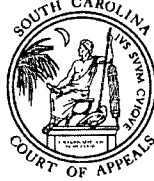
that which got nothing to do with me but I'm punished for
others actions.

Enclosed is the order

RECEIVED

JAN 22 2019

SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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January 07, 2019

Shaheen Cabbagestalk, #295567
Lieber Correctional Institution
P.O. Box 205
Ridgeville SC 29472

Re: Shaheen Cabbagestalk #295567 v. SCDC
Appellate Case No. 2019-000013

Dear Mr. Cabbagestalk:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- ✓ • The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- • The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.
- ✓ • A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- ✓ • A proof of service showing that a copy has been timely served on the Administrative Law Court has not been provided as required by Rule 203(b)(6), SCACR.

↑ Proof of service
1st paper you
use to
appeal
to Administrative
Law Courts
Case #

- Please be advised at this time, the argument you have presented in your notice of appeal is not needed until you file your appellant's initial brief. Therefore, the material presented in your notice of appeal will not be considered at this time.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Christina Catoe Bigelow, Esquire

Emergency

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

RECEIVED

TO: NAME: WARDEN R. Williams	TITLE: Law Library	DATE: 11/12/18
INMATE'S NAME: Shaheen Lobbagesaika (without prejudice, ucc 1-252)	SCDC #: 295567	WARDEN'S OFFICE LIEBERT
INSTITUTION: LIEBERT C.I.	LIVING QUARTERS: E-A #1	

Now I've contacted you and waited patiently didn't cause trouble (or) nothing I got several cases in the courts and you said my name is on the law library list right? o.k. What good is it just on a list when I'm not allowed to go at all and now my court deed case is very near (your staff laziness has caused 2 of my cases to be damaged already civil and criminal that I'll make sure they're held accountable for by the judge! there's no excuses I'm not allowed to make them yell punish me (so you need to get some understanding with your staff they want \$ and to be paid but don't want to do right and work and give me and others the staff we legally and lawfully entitled to, A judge don't want to hear you short of staff because you can request more staff at Liebert (what's the deal with the law library?)

THB
well
over
2
months
now

DISPOSITION BY STAFF MEMBER:

DATE:	SIGNATURE:
-------	------------

Dear Appellant:

6/13/2018

Page 9

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

*Approved this
6-29-18
File #*

Case number	Inmate number	Inmate first name	Inmate last name	Grievance No	Respondent	Filing date	Date Assigned	Judge last name
18C0285	295567	SHAHEEN	CABBAGESTALK	PCI 218-18	DOC	5/29/2018	6/14/2018	DURDEN

*Start work
Approved
6-25-18
to State General
Counsel
and
Judge
Durdan*

8/22/18

had objection

to the Record and

asked for relief

step 2 of PCI-217-18

step 1 of PCI-0188-18 (2 different situations)

serve Admin Court Judge Durdan + served Cheron Hess General Counsel Admin,

You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the *Assistant* Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

Manila Envelope

FILED

JUN 14 2018

SC ADMIN. LAW COURT

*Need to Appeal
for S-C Court of Appeals
12/30/18 Appealed*

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shaheen Cabbagestalk, #295567,
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 18-ALJ-04-0285-AP
Grievance No. PCI 0217-18

ORDER

RECEIVED
JAN 22 2019
SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed on May 29, 2018 by Shaheen Cabbagestalk (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). On March 13, 2018, Appellant was found guilty of violating SCDC Disciplinary Code § 808 ("Fighting With a Weapon")¹ pursuant to SCDC Policy OP-22.14, the Inmate Disciplinary System. Appellant's Step 1 and 2 grievances were filed and denied. On appeal, Appellant argues that there is insufficient evidence to support his conviction, and that he was denied due process.

BACKGROUND

On March 7, 2018, Appellant was timely served with notice of the offense and its description, as well as the date and time of the hearing. Appellant requested counsel substitute and indicated that he wanted Officer Z. Parham (the accusing or charging officer) present at the hearing. A hearing was held on March 13, 2018. Prior to the commencement of the hearing on March 13, 2018, Appellant stated that he did not want his accuser present, but Officer Parham (remained) at the hearing at the request of the hearing officer. The hearing officer read Officer Parham's Incident Report into the record which stated in part that he had observed Appellant and another inmate actively fighting with weapons. An inmate was attacking Appellant with a broom handle, and Appellant was hitting the inmate with a homemade ax. The hearing officer read two other supporting incident reports into the record.

The first supporting report was prepared by Debra Wilson, the unit manager, and stated that she responded to a request for assistance from the charging officer and observed Appellant and another inmate fighting. Both inmates were taken for medical treatment and placed in lockup.

*procedural due process
of evidence
denied by
judge*

FILED

DEC 19 2018

SC ADMIN. LAW COURT

¹ "Any group of two or more inmates who engage in a physical altercation with any instrument used for the purpose of inflicting physical injury on any person."

Ms. Wilson's report noted that the charging officer recovered two weapons including a broom handle covered in blood, and another homemade weapon which she described as a door plate with strips of sheets tied around it. The second supporting report was prepared by Sergeant K. Hall and stated that he responded to the incident and upon his arrival, Appellant was standing underneath the stairs with an object behind his back, and the other inmate was swinging a bloody broken broom handle toward Appellant. Sergeant Hall stepped into a control room and observed the object that Appellant was holding, which appeared to be a shank. (Photographs of the following were introduced into evidence: injuries to the other inmate's head, blood on the floor of the crime scene, and Appellant's homemade ax. *← not my homemade ax (wipes the Evidence Card of this - AT (Disposition Card)*)

Appellant pleaded not guilty and denied attacking anyone with an ax or any other weapon. He testified that he was the one that had been attacked and was simply trying to escape from the other inmate's attack. Appellant also claimed that there were inconsistencies in the incident reports. Upon completion of Appellant's testimony, Appellant's counsel substitute started to present the case on Appellant's behalf when (Appellant interrupted him.) The hearing officer admonished Appellant not to interrupt. Counsel substitute continued by talking about an incident that Appellant alleged occurred with the same inmate (prior to the one that was the subject of the hearing.) After counsel substitute completed his initial argument, the hearing officer stated that he was only concerned with the incident in question.

Appellant was again permitted to testify regarding alleged inconsistencies in the incident reports. Thereafter, counsel substitute stated that he had interviewed Appellant days before the hearing and that Appellant provided him with lists of questions for possible witnesses. Counsel substitute continued by stating that the witnesses were not relevant to the exact charge before the hearing officer but rather, events that happened forty-eight hours before the subject incident. All the while, Appellant interrupted counsel substitute. Counsel substitute provided the hearing officer with two lists of questions to consider during his deliberation. Appellant continued to interject. The hearing officer allowed Appellant to speak again, and patiently explained to Appellant that he had been charged with fighting and not assault, and then re-read the definition for the charge. Appellant was offered the opportunity to ask questions of the charging officer, but had none.

Appellant stated that he had questions for Sergeant Lindsey who was listed as a witness on the unit manager's report (Debra Wilson). The hearing officer (paused the recording) so that Sergeant Lindsey could be retrieved from another dorm, as the telephones were not working in the institution that day. The incident report in which Sergeant Lindsey was identified as a witness was re-read. Appellant began talking over counsel substitute. Counsel substitute proceeded to question

Sergeant Lindsey as to whether he was aware of any foul play involved, as in any of the officers lying or changing their stories. In response to the hearing officer, Sergeant Lindsey testified that the unit manager's report was correct as written, and that Sergeant Lindsey arrived on scene after the incident had occurred. Sergeant Lindsey had no direct testimony relevant to the fighting charge of Section 808. Just prior to the conclusion of the hearing, and in response to the hearing officer's questions, Officer Parham stated that he personally observed Appellant and the other inmate actively engaged in fighting with weapons.

After a brief recess, the hearing officer found Appellant guilty of violating Section 808 based on the incident reports, the testimony of the charging officer that Appellant and the other inmate were actively fighting and yielding weapons, as well as photographs including the broom handle that was covered in blood and the homemade ax. Appellant was sanctioned with three days' loss of good time. *used deep handle and sheets*

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 Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

Furthermore, when reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. Id. at 377; 527 S.E.2d at 754; see also S.C. Code Ann. § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in Section 1-23-380 of the South Carolina Code). Section 1-23-380(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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) (Supp. 2018).

An administrative law judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code § 1-23-380(5) (Supp. 2018). Furthermore, an administrative law judge may not reverse or modify an agency's decision unless the record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary or affected by an error of law. S.C. Code Ann. § 1-23-380(5) (Supp. 2018); see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); S.C. Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

Evidence * "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 or must have reached in order to justify its action. Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting Law v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Additionally, in Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455-456, 105 S.Ct. 2768 (1985), the U.S. Supreme Court held that "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Good was Werner's disposition of Carol

LAW/ANALYSIS

Substantial Evidence Supports the Department's Decision

The United States Supreme Court has held that the revocation of good time must be supported by "some evidence [in the record] from which the conclusion of the administrative tribunal could be deduced." Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. at 455. "Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Id. at 455-456. Thus, if reasonable minds could arrive at the Department's conclusion based upon the evidence presented, the Department's decision must be upheld regardless of the derivation of the evidence. See also Smith v. Samu, 54 F.3d 788 (10th Cir. 1995).

The SCDC Disciplinary Code defines a violation of Section 808 Fighting With a Weapon as "Any group of two or more inmates who engage in a physical altercation with any instrument used for the purpose of inflicting physical injury on any person." This Court has reviewed the entire record in this matter and finds that there is substantial evidence in the record as outlined above to support the Department's decision, despite Appellant's assertions that there were inconsistencies in the incident reports, and that prison officers conspired to lie, change their stories, and "set him up." Appellant raised these issues at the hearing and the hearing officer specifically inquired of Officer Parham as to whether the content of his report was truthful and correct, and the officer answered affirmatively. It was within the province of the hearing officer to consider the evidence and make a determination as to the weight of it on questions of fact. As the decision was not arbitrary, capricious, erroneous, or affected by error of law, this Court cannot substitute its judgment as to the credibility of the witnesses and the weight to be ascribed to the evidence; the hearing officer who presided at the hearing and observed the witnesses was in the best position to do so. Grant v. S.C. Coastal Council, supra.

Appellant Received Due Process of Law

Appellant claims that his liberty interests have been violated. Since a state created liberty interest is involved, it is necessary to determine if the Appellant received the process he was due. 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. Al-Shabazz, 527 S.E.2d at 750. However, these requirements must be balanced against the need to maintain an orderly and safe prison environment. Id. To that end, the Supreme Court has enunciated the following five requirements which, if established, will ensure procedural due process in inmate disciplinary matters:

- ① (1) that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing;
- ② (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action;
- ③ (3) that inmate should be allowed to call witnesses and present documentary evidence;
- ④ (4) that counsel substitute... should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone;
- ⑤ (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial.

Can't if you won't produce the Disposition of Evidence card

Al-Shabazz, 527 S.E.2d at 751. (citing Wolff v. McDonnell, 418 U.S. 539, 563-72, 94 S.Ct. 2963, 2978-82 (1974).) Here, all requirements of due process were met.

Appellant was provided with advance written notice of the hearing more than twenty-four hours prior to the hearing. The transcript, and the Department's hearing officer's written notes on the Disciplinary Report and Hearing Record outline the evidence upon which the hearing officer

7 Evidence not fully its only personal can't full record have no Disposition of Evidence card

relied upon in making the decision, as well as the reasons for the disciplinary action that was taken. Prior to the hearing, counsel substitute met with Appellant and developed questions for (two potential witnesses) Counsel substitute made a presentation on behalf of Appellant. Appellant was also permitted to testify and make statements on his own behalf. Appellant's original request that his accuser be present was also accommodated, as was Appellant's mid-hearing request that Sergeant Lindsey be made available. The accusing corrections officer and Sergeant Lindsey were made available, and Appellant was asked if he had questions of them.

Dented witness

While the unit manager was not made available for questioning the questions that Appellant intended to ask of her as evidenced by the list of proposed questions given to the hearing officer, related to an incident that occurred hours prior to the incident that was the subject of the hearing. It was properly within the discretion of the hearing officer to conclude that testimony about things that occurred hours before the subject incident was irrelevant. Irrelevance is one of the reasons for denying a witness, as contemplated by the court in Wolff v. Wolff, 566, 94 S.Ct. 2963, 2980, 41 L.Ed.2d 935 (1974).

wrong I checked

Appellant never alleged or established that he was either illiterate or that his case was of sufficient complexity to necessitate counsel substitute, yet one was provided. A review of the Appellant's Step 1 and 2 grievances, and this appeal indicate that he is literate and capable of understanding the nature of the charges, and the issues involved. Finally, there is no allegation that the hearing officer was biased, and upon review of the transcript, the Court finds no evidence to indicate that the hearing officer was biased. Appellant was afforded due process, substantial evidence exists in the record to support his conviction, there are no errors of law, and the Department's decision is neither arbitrary nor capricious.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the South Carolina Department of Corrections is **AFFIRMED**.

AND IT IS SO ORDERED.

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

December 19, 2018
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 19th day of December 2018
By: *[Signature]*
Judicial Law Clerk

Shaheen Cabbages Task #295567
Lieber C.I. (E-A#1)
P.O. Box 205
Ridgeville S.C. 29472

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JAN 22 2019

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JAN 17 2019

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