

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable Carolyn C. Matthews

Case No.: 12-ALJ-04-0115-AP

Richard Ridley, # 285091Respondent,

v.

South Carolina Department of Corrections.....Appellant.

FINAL BRIEF OF THE APPELLANT

June 6, 2013

South Carolina Dept. of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

I. DID THE ADMINISTRATIVE LAW JUDGE ERR BY REVERSING THE DECISION OF THE DEPARTMENT?

STATEMENT OF CASE

This case came before the Administrative Law Court ("ALC") pursuant to the appeal of the Respondent, an inmate incarcerated with the South Carolina Department of Corrections ("SCDC" or "*Appellant*" herein). Respondent filed a Step-One Grievance on October 6, 2011, which challenged his SCDC disciplinary conviction for Possession of Any Cell Phone or Other Communication Device, offense 898, under SCDC Policy OP-22.14, Inmate Disciplinary System. Specifically, Respondent asserted that there was insufficient evidence to support his conviction. (R.p. 17). This grievance was investigated and denied.

Respondent filed a Step-Two Grievance on December 8, 2011. (R.p. 18). This grievance also was investigated and denied. Respondent lost one hundred (100) days of good time due to this conviction. Respondent received the final agency decision on February 14, 2012. (R. 18). Subsequently, Respondent filed a *Notice of Appeal* with the ALC, which again alleged there was insufficient evidence to support his conviction.

However, on November 2, 2012, the Honorable Carolyn C. Matthews reversed the decision of the Appellant in this matter and overturned the Respondent's disciplinary conviction for Possession of Any Cell Phone or Other Type of Communication Device, offense 898, under SCDC Policy OP-22.14, Inmate Disciplinary System. (R.p. 1-3). The ALC based the decision to overturn the Appellant's decision in the matter on the erroneous assertion that, "The Department fails to cite the language from the policy that would include the evidence in this case as supporting the charge." (R.p. 3). The Appellant has subsequently appealed that determination to this Honorable Court.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(C) 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 has been prejudiced because of 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. (*emphasis added*)

See also S.C. Code Ann. § 1-23-380(A)(5) *and Lake v. Reeder*, 330 S.C. 242, 498 S.E.2d 650, 653 (1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALJ's findings are supported by substantial evidence. *See* S.C. Code Ann. § 1-23-610(C). A reviewing Court shall not substitute its judgment for that of the ALJ as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. S.C. Code Ann. § 1-23-380(A)(5). In determining whether the ALJ's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALJ reached. *Durant v. S.C. Dept. of Health and Environmental Control*, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The

mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Id.* at 420.

ARGUMENT AND CITATION OF AUTHORITY

I. THE ALC ERRED BY REVERSING THE DECISION OF THE APPELLANT.

A. The ALC impermissibly substituted its judgment for that of the agency.

Courts in this state have traditionally taken a “hands off” approach when it comes to the day to day management of prisons within this state. *Skipper v. South Carolina Dept. of Corrections*, 370 S.C. 267, 633 S.E.2d 910 (2006) at 274. The Supreme Court of South Carolina has expressly held, “We intend to adhere to this “hands off” doctrine when reviewing the outcome of any major or minor disciplinary hearing in which an inmate has a protected liberty interest due to the potential loss of sentence-related credits”. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000); *See also Skipper v. South Carolina Dept. of Corrections*, 370 S.C. 267, 633 S.E.2d 910 (2006) at 274; *See also Furtick v. South Carolina Dept. of Corrections*, 374 S.C. 334, 649 S.E.2d 35 (2007) at 339.

Additionally, S.C. Code Ann. § 1-23-380(A)(5) statutorily *prohibits* the Administrative Law Court from substituting its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. In this case, the ALC has disregarded the traditional “hands off” approach taken by Courts of this state and impermissibly substituted it’s judgment as to the facts of this case for that of a fair and impartial SCDC hearing officer.

In the Appellant's brief submitted to the ALC, the Appellant properly pointed out to the ALC the standard of review to be used by the ALC when reviewing an agency decision by noting:

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. **Pearson v. JPS Converter & Industry Corporation**, 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997). "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. South Carolina State Budget and Control Board**, 325 S.C. 413, 481 S.E.2d 159 (S.C. App. 1996). 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. South Carolina Coastal Council**, 319 S.C. 348, 461 S.E.2d 388 (S.C. 1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. **Heater of Seabrook, Inc. v. Public Service Commission of South Carolina**, 332 S.C. 20, 503 S.E.2d 739 (S.C. 1998).

These cases make it clear that the ALC is prohibited from substituting its judgment for that of the agency where the record would allow a reasonable mind to reach the same conclusion that administrative agency reached. *Hendley v. South Carolina State Budget and Control Board*, 325 S.C. 413, 481 S.E.2d 159 (1996). However, the ALC's decision in this matter has done just that.

All credible evidence introduced at the October 5, 2011 disciplinary hearing showed the Respondent was guilty of Possession of Any Cell Phone or Other Type of Communication Device, offense 898, under SCDC Policy OP-22.14, Inmate Disciplinary System. A "reasonable mind" could have certainly reached the same conclusion as the hearing officer in this case.

In this case, during the hearing, the hearing officer referenced the evidence, acknowledging the language “edit phone number” within the instructions the Respondent had within his possession. (R.p. 9). The hearing officer referenced additional language in the instructions, “hit okay. Then prompt.” (R.p. 10). After considering the Respondent’s testimony and the evidence, the hearing officer concluded the Respondent had instructions on how to use a cell phone. (R.p. 11-12). The hearing officer further correctly interpreted the policy when she stated in the transcript that possession of “instructions on how to work a cell phone” is a violation of said policy.

B. The Appellant cited the language from the disciplinary policy that governs the Respondent’s conviction.

Although the November 2, 2012 order that is the subject of this case purports to base the reversal of the Appellant’s well reasoned decision in the matter on the assertion that “the Department fails to cite the language from the policy that would include the evidence in this case as supporting the charge,” this assertion is clearly erroneous. The language in its entirety defining Possession of Any Cell Phone or Other Type of Communication Device reads “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,” offense 898, under SCDC Policy OP-22.14. It was appropriate for the hearing officer to find the evidence for Respondent’s charge was supported by the policy. The policy states that “facilitation” of a cell phone amounts to a violation of said offense. The Appellant provided in its brief to the Administrative Law

Court that if someone "facilitates" a cell phone's use or possession, his/her actions are covered by the charge. In this case, the Respondent was found with directions on how to activate a cell phone. The plausible deduction is that he was either going to use the directions to enable himself or another inmate to activate a cell phone, thus, facilitating its use. Therefore, it is the Appellant's position that it did directly cite the language from the policy that pertained to the evidence in this case.

Accordingly, because the lower court erred in finding that the Appellant failed to cite policy language that supports the charge in this case, SCDC respectfully requests that this honorable Court reverse the ALC's decision.

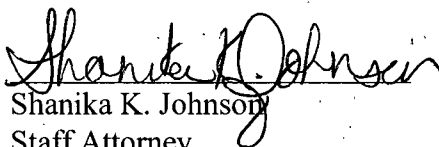
CONCLUSION

WHEREFORE, for all the reasons stated above, SCDC respectfully requests that this honorable Court reverse the ALC's decision, and reinstate the Respondent's disciplinary conviction and sanctions.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

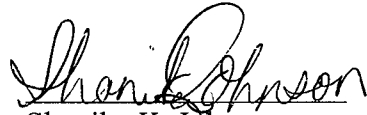
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Columbia, SC
June 6, 2013

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.

A handwritten signature in cursive script, appearing to read "Shanika K. Johnson", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have served Respondent a copy of the Appellant's *Final Brief* by depositing a copy of same in the United States Mail, postage prepaid, on June 6, 2013, addressed to the Respondent as follows:

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