

The State of South Carolina

In The Court of Appeals

Appeal From Administrative Law Court

Deborah Brooks Dunder, ALJ

Billy Lee Lisenby JR, #200273,

Appellant

v.

South Carolina Department of Corrections,

Respondent

Appellate Case No. 2013-000958

Record ON Appeal

Billy Lee Lisenby JR, #200273

990 Wisacky Hwy.

Bishopville S.C. 29010

Pro-Se

General Counsel

P.O. Box 21987

Columbia, S.C. 29221

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NOV 01 2013

SC Court of Appeals

United States District Court
District of South Carolina

Dear Sir/Madam:

This office has received your correspondence.

Under Article III of the Constitution of the United States, federal district courts, such as the United States District Court for the District of South Carolina, have jurisdiction over cases or controversies. As a result, a case must be filed before a federal district court can act on or consider a matter. Also, a federal district court cannot issue an advisory opinion.

If you wish to file a Section 2241 habeas corpus case about the matters mentioned in your letter, please complete the enclosed forms. In order to assure that your petition is processed without delay, please comply with the following procedures:

- Please place an original signature on the petition. **(Copies of the petition are not required.)**
- Please complete the application/motion to process *in forma pauperis*.

Truly yours,

LARRY W. PROPES, Clerk of Court

Enclosures

Return Completed Forms to:
Clerk, U.S. District Court
District of South Carolina
901 Richland Street
Columbia, South Carolina **29201**

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any parties and not any other material.

Oct. 26th 2013

Billy Lee Higby Jr.
Billy Lee Higby Jr., #200213
990 Wisacky Hwy.
Bishopville S.C. 29010

Petitioner also requests any other relief to which petitioner may be entitled in this proceeding. (Money damages are not an available remedy in habeas corpus cases.)

I declare, certify, verify, and state **under penalty of perjury** that the foregoing is true and correct.

Signed this _____ day of _____, 20_____.
(day) (month) (year)

Signature of petitioner

Signature of Attorney(if any)



NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

October 17, 2012

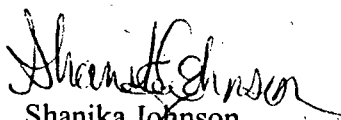
The Honorable Deborah Durden
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: Billy Lee Lisenby, Jr., #200273 v. SCDC
Docket No. 12-ALJ-04-0606-AP

Dear Judge Durden:

Please find enclosed an original and a copy of respondent's brief in the above referenced matter. Please file the original and returned a clocked copy to me in the enclosed self-addressed envelope. Please do not hesitate to contact me with any questions. We greatly appreciate your assistance in this matter.

Sincerely,


Shanika Johnson
Staff Attorney

cc: Mr. Billy Lisenby, # 200273
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Billy Lee Lisenby, Jr., # 200273,)	Docket No.: 12-ALJ-04-0606-AP
)	
Appellant,)	RESPONDENT'S BRIEF
)	
v.)	Honorable Deborah Durden
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") pursuant to the appeal of Billy Lee Lisenby, Jr. ("appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on March 12, 2012, challenging his disciplinary conviction for Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public, 809 under SCDC Policy OP-22.14, Inmate Disciplinary System. This grievance was investigated and denied. Appellant filed a Step Two Grievance on March 30, 2012. This grievance was also investigated and denied. Appellant now appeals, claiming his disciplinary conviction is the result of due process violations. For the reasons that follow, SCDC respectfully requests the disciplinary conviction be upheld.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. SCDC, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's en banc decision of McNeil v. SCDC, 02-ALJ-04-00336-AP

(September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to cases in which inmates contend prison officials have erroneously calculated their sentences, sentence-related credits, or custody status; cases in which SCDC has taken inmates' state-created liberty interest as punishment in major disciplinary hearings; or cases in which inmates' confinement implicates a state-created liberty interest.¹ See Sullivan at 443, 586 S.E.2d at 127.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. 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. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. 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. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (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 S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT WAS AFFORDED DUE PROCESS

Prison disciplinary cases are not criminal trials in federal or state courts; they are

¹ As the Court notes, such an interest "will generally be limited to freedom from restraint which...imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." Sullivan, at 128 n.5 (citing Sandin v. Conner, 515 U.S. 472, 484 (1995)). This analysis had previously been applied by the ALC in determining whether an inmate's custody status implicated the inmate's due process rights.

administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than in a trial before a court. Due Process, as the Supreme Court has noted in Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2978-2982 (1974), requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

These requirements were complied with in this appeal. The Disciplinary Report and Hearing Record shows appellant had notice of the charges (Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public), disclosure of evidence (Disciplinary Offense Report was read), opportunity to be heard (hearing on March 6, 2012), a neutral and detached hearing body (hearing officer), and a written statement of findings (Major Disciplinary Report and Hearing Record).

There was ample evidentiary support for the disciplinary conviction. Officer Channell reported that he observed Appellant in the evening pill pass line with an expired pass. When Officer Channell informed Appellant that the nurse would reschedule his medicine pick-up, Appellant made threats to physically harm Officer Channel. After hearing all of the evidence presented, the disciplinary hearing officer found Appellant was guilty based on Officer Channel's report. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455-56 (1985) ("The relevant question is whether there is any evidence in the record that could support the conclusion

reached by the disciplinary board.”).² Additionally, Appellant argues that he did not have adequate notice of his charges. However, the SCDC 19-69 form entered into the record shows that Appellant was notified of his charges on February 29, 2012 (several days before the hearing) with his signature as confirmation.

Therefore, because the disciplinary hearing complied with due process requirements, SCDC respectfully requests its final agency decision be upheld.

**RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the “substantial evidence on the whole record” supports SCDC’s final agency decision. The hearing officer found Appellant guilty based on the evidence. Appellant cannot show that the decision of SCDC was clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. See Porter v. Public Service Comm’n, 333 S.C. 12, 507 S.E. 2d 328 (1998).

CONCLUSION

Based on the foregoing reasons and legal authorities, SCDC respectfully requests that the final agency decision be affirmed and this matter be dismissed with prejudice.

² In Hill, the Court further elaborated, “The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.” Id. (citations omitted).

SHANIKA JOHNSON
Staff Attorney

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS

BY: Shanika Johnson
Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-1943

October 17, 2012
Columbia, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, Jr., #200273,

Petitioner,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0606-AP

Grievance No. KRCI 0369-12

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Threatening to Inflict Harm on/Assaulting an Employee and/or Members of the Public (809 SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate appeals on the grounds that his conviction was the result of due process violations. Inmate was sanctioned with the loss of sixty days of good time, so a liberty interest is implicated in this disciplinary matter.

In the above-captioned matter, the Appellant failed to file the notice of appeal with this Court within thirty (30) days of his notice of the Department's final decision in this matter, and as a result, the Court does not have jurisdiction over the Appellant's appeal.

Based upon a fundamental rule of appellate practice, it is well established that a court does not have the authority to extend the time for taking an appeal from a decision of an administrative agency. See, e.g., Sadico of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Burnett v. S.C. State Highway Dept., 252 S.C. 568, 167 S.E.2d 571 (1969). Further, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), the ALC sits in an appellate capacity when reviewing final decisions of the Department regarding inmate grievance matters, and in order to perfect an appeal, "[t]he inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of [the] Department's final decision." Id. at 377, 527 S.E.2d at 754. (emphasis added). ALC Rule 59 sets forth, in relevant part, that:

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SC ADMIN. LAW COURT

The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken.

ALC Rule 59 (emphasis added). In this matter, the Appellant received notice of the Department's final decision concerning his disciplinary conviction on May 22, 2012, but did not file his notice of appeal with the Court until July 16, 2012. The Appellant was given notice of the Department's decision as well as the opportunity to pursue "judicial or quasi-judicial" review of that decision before becoming bound by the terms of such a decision. S.C. Const. art. I, § 22. ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . and he shall have in all such instances the right to judicial review."). *Id.* By his own inaction, the Appellant simply failed to take advantage of his right to judicial review in this matter. Zaman v. S.C. State Bd. of Medical Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it."). Therefore, this Court finds that the Appellant did not file his notice of appeal in a timely fashion with the Court, and thus failed to properly invoke the jurisdiction of the ALC. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this state. See McClain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (1994). Accordingly, this matter must be dismissed. Therefore,

IT IS HEREBY ORDERED that this appeal is **DISMISSED, WITH PREJUDICE.**
AND IT IS SO ORDERED.

April 12, 2013
Columbia, South Carolina


Deborah Brooks Durden
Administrative Law Judge

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 12th day of April 2013
By: R. E. [Signature]
Judicial Law Clerk

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, #200279,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0547-AP
Grievance No. KRCI 0235-12

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs (903 under SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate was sanctioned with the loss of sixty (60) days good time credits so a liberty interest is involved. Appellant contends this disciplinary conviction should be overturned because he is innocent of the violation, his due process rights were violated, and finally that SCDC failed to abide by its own policies and procedures.

Inmate testified that he had submitted a written request for Correctional Officers Moore and Lee to be present as witnesses. Inmate's accuser, Officer Hunt, testified that Officers Moore and Lee were present at the time of the incident that formed the basis of the disciplinary charge. The Hearing Officer stated that Officers Moore and Lee were part of the Agency Search Team and that they would not be contacted. The Hearing Officer made no attempt to contact the witnesses nor offered any explanation as to why the witnesses would not be allowed to testify.

A qualified right to call witnesses in one's behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974). Prison officials have considerable discretion in determining whether to permit an inmate's witness to testify. Zaczek v. Hutto, 642 F.2d 74, 76-7 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the

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SC ADMIN. LAW COURT

testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, Segarra v. McDade, 706 F.2d 1301 (4th Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4th Cir. 1982)(en banc); Brown v. Frey, 889 F.2d 159 (8th Cir. 1989). However, prison officials must provide a reason for their refusal to call a witness, and that reason must be logically related to institutional safety or correctional goals. Ponte v. Real, 471 U.S. 491, 1-05 S. Ct. 2192, 85 L.Ed.2d 553 (1985). The burden of persuasion regarding the existence and sufficiency of these institutional concerns rests with prison officials, rather than the prisoner. Smith v. Massachusetts Dep't. of Corrections, 936 F.2d 1390 (1st Cir. 1991).

Prison officials may choose to explain their decision at the hearing, or they may choose to explain it later...[S]o long as the reasons are logically related to 'institutional safety or correctional goals,' the explanation should meet the due process requirements as outlined in Wolff. Ponte v. Real, 471 U.S. at 497.

In this case, the hearing officer offered no explanation for her refusal to allow testimony from the witnesses requested by Inmate. In its brief the Department argues that "it is clear from the record that his requested witnesses would have given testimony that was repetitive to the evidence that had already been presented." When Inmate asked that the two witnesses be called the hearing officer asked him what he expected them to testify about. Inmate simply stated, "That was the three people that found the contraband." One member of the three-person search team had already testified and Inmate did not provide any explanation tending to indicate that the testimony of officers Moore and Lee would not be cumulative. It was within the hearing officer's discretion to limit cumulative testimony.

Therefore, for the foregoing reasons the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.



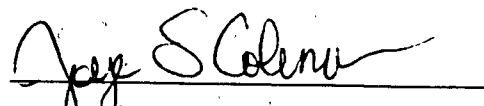
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 22, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Joye S. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 22, 2013
Columbia, South Carolina


Joye S. Coleman
Judicial Law Clerk

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MAR 22 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billy Lee Lisenby, #200279,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0546-AP
Grievance No. KRCI 0233-12

ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC).

Inmate appeals the decision of SCDC in his Step 2 Grievance in which his conviction for Possession of Any Cell Phone or Other Type of Communication Device (898 under SCDC Policy OP-22.14, Inmate Disciplinary System) was affirmed. Inmate was sanctioned with the loss of sixty (60) days good time credits so a liberty interest is involved. Appellant contends this disciplinary conviction should be overturned because he is innocent of the violation, his due process rights were violated, and finally that SCDC failed to abide by its own policies and procedures.

Inmate testified that he had submitted a written request for Correctional Officers Moore and Lee to be present as witnesses. Inmate's accuser, Officer Hunt, testified that Officers Moore and Lee were present at the time of the incident that formed the basis of the disciplinary charge. The Hearing Officer stated that Officers Moore and Lee were part of the Agency Search Team and that they would not be contacted. The Hearing Officer made no attempt to contact the witnesses nor offered any explanation as to why the witnesses would not be allowed to testify.

A qualified right to call witnesses in one's behalf is one of the due process rights accorded in inmate disciplinary proceedings by Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974). Prison officials have considerable discretion in determining whether to permit an inmate's witness to testify. Zaczek v. Hutto, 642 F.2d 74, 76-7 (4th Cir. 1981). Courts have upheld prison officials' decisions to refuse to call witnesses where the

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SC ADMIN. LAW COURT

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Prison officials may choose to explain their decision at the hearing, or they may choose to explain it later...[S]o long as the reasons are logically related to 'institutional safety or correctional goals,' the explanation should meet the due process requirements as outlined in Wolff. Ponte v. Real, 471 U.S. at 497.

In this case, the hearing officer offered no explanation for her refusal to allow testimony from the witnesses requested by Inmate. In its brief the Department argues that "it is clear from the record that his requested witnesses would have given testimony that was repetitive to the evidence that had already been presented." When Inmate asked that the two witnesses be called the hearing officer asked him what he expected them to testify about. Inmate simply stated, "That was the three people that found the contraband." One member of the three-person search team had already testified and Inmate did not provide any explanation tending to indicate that the testimony of officers Moore and Lee would not be cumulative. It was within the hearing officer's discretion to limit cumulative testimony.

Therefore, for the foregoing reasons the Department's decision is **AFFIRMED.**
AND IT IS SO ORDERED.




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

March 22, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Joye S. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 22, 2013
Columbia, South Carolina


Joye S. Coleman
Judicial Law Clerk

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SC ADMIN. LAW COURT

Money
Order
20190759030

RECEIPT

DATE	6-27-12	No.	138547
RECEIVED FROM	Billy Hesenby Jr. Kershaw Ct - 4848 Goldmine Hwy. - Kershaw, SC 29067		\$75.00
			DOLLARS
<input checked="" type="radio"/> FOR RENT	3 - appeal filings		
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ACCOUNT		<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT	75.00	<input type="radio"/> CHECK	
BAL. DUE	0.00	<input checked="" type="radio"/> MONEY ORDER	BY <u>Mary Jane Snelling</u>

15.