

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

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

Billy Lisenby, # 200273,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

February 28, 2014

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. HAS APPELLANT FAILED TO SHOW THE NOTICE OF APPEAL WAS TIMELY FILED?**

- II. SHOULD THE AGENCY'S FINAL DECISION UPHOLDING APPELLANT'S DISCIPLINARY CONVICTION BE AFFIRMED?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal Billy Lisenby (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of the inmate disciplinary infraction of threatening to inflict harm on/assaulting an employee and/or members of the public, offense 809 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 60 days of good time credit due to the disciplinary conviction. (Supp.R.p.4).¹

Appellant filed a Step One Grievance on March 12, 2012, challenging his disciplinary conviction. This grievance was investigated and denied. (Supp.R.p.5). Appellant filed a Step Two Grievance on March 30, 2012, which was also denied. (Supp.R.p.6). Appellant filed a notice of appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). (Supp.R.p.7).

By way of an order dated April 12, 2013, Administrative Law Judge Deborah Brooks Durden ruled the appeal should be dismissed because it had not been timely filed. Specifically, Judge Durden found appellant received notice of SCDC’s final decision on May 22, 2012, but did not file his notice of appeal until July 16, 2012. Therefore, Judge Durden dismissed the appeal because appellant had failed to properly invoke the jurisdiction of the ALC. (R.pp.7-8).

Appellant now seeks review of the ALC’s decision. For the reasons that follow,

¹ The pages of the Supplemental Record on Appeal are not each numbered sequentially. Instead, the documents contained in the Record on Appeal are numbered. For example, the four-page transcript is labeled as page three. Citations to the supplemental record

SCDC respectfully requests that the ALC's decision be affirmed.

refer to the pages as they have been numbered, despite this flaw.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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 have been prejudiced because 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.

See also S.C. Code Ann. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. See S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC 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. Id. In determining whether the ALC'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 ALC reached. Durant v. S.C. Dep't of Health & 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. APPELLANT HAS FAILED TO SHOW THE NOTICE OF APPEAL WAS TIMELY FILED.

Appellant has failed to provide sufficient evidence demonstrating he timely filed the notice of appeal.

In order to appeal SCDC's final decision in response to an inmate grievance, an inmate must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of SCDC's final decision. See Al-Shabazz v. State, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000); SCALC Rule 59.

In the case at hand, the ALC found appellant received notice of SCDC's final decision on May 22, 2012, but did not file his notice of appeal until July 16, 2012. Therefore, the ALC dismissed the appeal because the Notice of Appeal was not timely filed. (R.p.8).

Appellant now claims he filed the Notice of Appeal on May 27, 2012. In support, he points to a receipt from the ALC accepting payment for three appeals. The receipt does not specify which appeals the payments were connected with. (R.p.15).

Based on the information available in the Record it is impossible to determine the

date on which appellant's Notice of Appeal was filed in the ALC. Therefore, the ALC's ruling dismissing the appeal should be upheld. See State v. Frieburger, 366 S.C. 125, 134, 620 S.E.2d 737, 742 (2005) (explaining the appellant has the burden to provide a sufficient record for review).

II. THE AGENCY'S FINAL DECISION UPHOLDING APPELLANT'S DISCIPLINARY CONVICTION SHOULD BE AFFIRMED.

As an additional sustaining ground, appellant's disciplinary conviction should be affirmed because all due process requirements were met and the disciplinary conviction was supported by substantial evidence.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due Process 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.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were complied with in this case. The Disciplinary Report and Hearing Record demonstrate that appellant had notice of the charge. (Supp.R.p.4). The record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing.

(Supp.R.p.3). Furthermore, appellant was afforded an opportunity to be heard through counsel substitute at the March 6, 2012 hearing. (Supp.R.p.3). There was a neutral and detached hearing body at the hearing, an SCDC disciplinary hearing officer.

(Supp.R.p.3). Appellant was provided a written statement of the hearing officer's findings. (Supp.R.p.4).

There was ample evidence to support appellant's disciplinary conviction. Officer Channell reported that appellant attempted to go to the evening pill line using a pass from earlier in the day. When appellant was told that the nurse would reschedule his medicine pick-up because he missed the movement, appellant said he would beat Officer Channell.

(Supp.R.p.3). Consequently, the disciplinary conviction was sufficiently supported by the evidence. 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

Because appellant's disciplinary conviction comported with all due process requirements, SCDC respectfully requests the Court uphold SCDC's final agency decision.

CONCLUSION

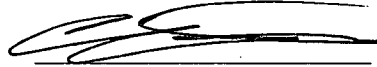
WHEREFORE, for all the reasons stated above, SCDC respectfully requests the Court affirm the decision of the ALC.

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

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



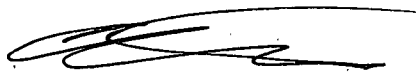
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omitted).

CERTIFICATE OF COMPLIANCE

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



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