

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joshua Reed, #252079,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 19-ALJ-04-0067-AP

ORDER

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed on February 20, 2019 by Joshua Reed (Appellant), an inmate who is incarcerated with the South Carolina Department of Corrections (Department). The Appellant is appealing his conviction for Possession of Any Communication Device (898) because his roommate claimed ownership of the cellular phone and the officer has a statement stating that the phone belongs to a different inmate. The Appellant lost seventy (70) days accrued good time credit as a result of his conviction.

On June 14, 2019 the Department filed a Motion to Dismiss due to the Appellant's failure to file a brief. The Department cited ALC Rules 60 and 62 in support of its motion. ALC Rule 60(A) requires an Appellant to file a brief within ninety (90) days after the date of assignment. The date of assignment in this case is February 2, 2019, therefore, the Appellant's brief was due on or before May 29, 2019. ALC Rule 62 provides that upon motion of any party or on its own motion, an Administrative Law Judge may dismiss an appeal for failure to comply with any of the rules of procedures for appeals. On June 25, 2019, the Appellant filed his response to the Department's motion to dismiss. At that time, he also filed his brief with the court. In his response to the Department's motion, the Appellant argues that he is not required to file a brief but can simply rely on the grievances he submitted with his Notice of Appeal to support his appeal. The Appellant also argues that the Record on Appeal the Department submitted is incomplete because the transcript is missing testimony from Sergeant Ellis, therefore making it improbable for Appellant to brief his issues. In his brief, the Appellant argues that his conviction should be overturned because his conviction is not supported by substantial evidence since his cellmate

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provided a statement that the phone belonged to another inmate.

On July 22, 2019, the Department filed its reply to the Appellant's response to the Department's Motion to Dismiss, stating that there is no missing testimony from Sergeant Ellis because although Sergeant Ellis was in attendance via speakerphone, he did not testify, therefore the transcript of the hearing is complete. The Department also renewed its Motion to Dismiss filed with the court on June 14, 2019.

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 *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). The court's jurisdiction in inmate appeals includes cases in which an inmate has lost a state-created liberty interest due to a major disciplinary hearing. *Al-Shabazz*, 338 S.C. at 369, 526 S.E.2d at 750.

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. *Id.*, 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). 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). 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.*

DISCUSSION

As an initial matter, the court declines to grant the Department's motion to dismiss the Appellant's appeal. While the Appellant's brief was not timely filed, he did file a brief, and it was filed prior to the court ruling on the Department's motion. Therefore, the court denies the motion and will consider the merits of the matter.

Moving to the merits, this court reviews the record to determine if the Department's decision is supported by substantial 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" *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. *Id.*, 276 S.C. at 136, 276 S.E.2d at 307.

The Appellant contends that his conviction is not supported by substantial evidence because his cellmate claimed ownership of the phone and/or because his cellmate provided a statement that the phone belonged to another inmate. However, as stated by the Disciplinary Hearing Officer during the hearing, the phone and charger were found in the Appellant's cell and neither the Appellant nor his cellmate claimed ownership. After reviewing the record in this case, the court concludes that substantial evidence exists to support the Department's decision. The official incident report from the charging officer and testimony at the hearing were consistent and supported by the picture evidence. Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. *See* S.C. Code Ann. § 1-23-380(5); *see also Houston v. Deloach & Deloach*, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). The record contains substantial evidence to support the hearing officer's assessment of the evidence and his finding of guilt.

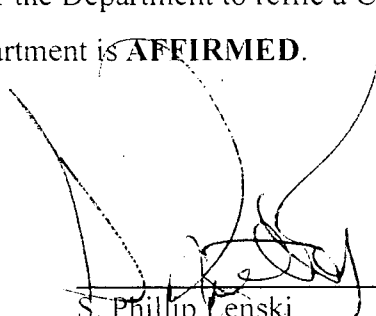
ORDER

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **DENIED**, the Appellant's request for an Order for the Department to refile a Complete Record on Appeal is **DENIED**, and the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This certifies that the undersigned has this date served this order in the above entitled action, per the terms of this order by depositing a copy thereof in the United States Mail, postage paid, or in the emergency case by other means (to be specified on this certificate).
July 23, 2019
Columbia, South Carolina


S. Phillip Lenski
S.C. Administrative Law Court

STATE OF SOUTH CAROLINA
Administrative Law Court
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Joshua Reed, #252079 (SB19)

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