

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 19-ALJ-04-0067-AP  
Appellate Case No. 2019-001427

RECEIVED  
JAN 29 2020  
SC Court of Appeals

JOSHUA REED, # 252079,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

**INITIAL BRIEF OF RESPONDENT**

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

**Kensy Evans**

Deputy General Counsel

Office of General Counsel

South Carolina Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-8508

**ATTORNEY FOR RESPONDENT**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF THE ISSUE ON APPEAL .....1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW .....3

ARGUMENTS .....4

CONCLUSION.....6

**TABLE OF AUTHORITIES**

**CASES**

*Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) ..... 4

*Hendley v. Budget & Control*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996) ..... 3

*McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001) .....4

*Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003) ..... 4

*Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963 (1974) ..... 4-5

**STATUTES**

S.C. Code § 1-23-380 ..... 3

S.C. Code § 1-23-610..... 3

**OTHER**

Administrative Law Court Order dated July 23, 2019 ..... 5

**STATEMENT OF ISSUES ON APPEAL**

- 1. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT VIOLATED THE DUE PROCESS TO WHICH HE WAS ENTITLED OR LACKED SUBSTANTIAL EVIDENCE SUPPORTING HIS NOVEMBER 14, 2018 DISCIPLINARY CONVICTION.**

## **STATEMENT OF THE CASE**

This matter comes before the Court pursuant to the appeal of Joshua Reed, #252079, who is currently an inmate in the custody of the South Carolina Department of Corrections. On November 14, 2018, Appellant submitted a Step One Grievance seeking reversal of his November 14, 2018 conviction on the basis of insufficient evidence. On November 21, 2018, SCDC denied the Step One Grievance. Thereafter, on November 28, 2018, Appellant filed a Step Two Grievance alleging, again, insufficient evidence. On January 29, 2019, SCDC denied the Step Two Grievance. Appellant filed a Notice of Appeal in the Administrative Law Court on February 19, 2019. On July 23, 2019, the Honorable S. Phillip Lenski issued an order affirming the decision of the Department of Corrections, concluding that substantial evidence existed to support the decision of the Department of Corrections. This appeal follows.

## 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 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 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.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B); *see also* S.C. Code Ann. § 1-23-380. "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). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

## ARGUMENTS

### **1. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT LACKED SUBSTANTIAL EVIDENCE SUPPORTING HIS NOVEMBER 14, 2018 DISCIPLINARY CONVICTION.**

The jurisdiction of the Administrative Law Court (“ALC”) 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). When reviewing SCDC’s decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC’s appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC’s *en banc* decision of *McNeil v. S.C. Dep’t of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC’s jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate’s state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate’s confinement implicates a state-created liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections. Prison disciplinary cases are not criminal trials in federal or state courts; they are 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 United States Supreme Court noted in *Wolff v. McDonnell*, 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.

418 U.S. 539, 566 (1974). SCDC complied with these requirements in the administrative hearing about which Appellant has filed the present appeal.

The Honorable S. Phillip Lenski ruled that there was substantial evidence to support Appellant's conviction for Possession of Any Communication Device. *See* Order, page 3. The hearing officer, DHO Bittinger, received testimony from Appellant and heard from the charging officer, Sergeant Ellis, via his Incident Report. Sergeant Ellis reported that on October 29, 2018, while performing a search of Appellant's cell, he recovered one LG telephone and one charger. *See* Record to ALC, page 4; *see also* Transcript, page 1. SCDC Policy OP 22.14 clearly defines offense 898 Possession of Any Communication Device as "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."

Appellant has failed to show that the Department's decision was not supported by substantial evidence. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

**CONCLUSION**

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**



---

**Kensey Evans**  
Deputy General Counsel  
Office of General Counsel  
South Carolina Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-8508

January 28, 2020

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

---

ALC Case No. 19-ALJ-04-0067-AP  
Appellate Case No. 2019-001427

---

RECEIVED  
JAN 29 2020  
SC Court of Appeals

JOSHUA REED, # 252079,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

---

**CERTIFICATE OF SERVICE**

---

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: Joshua Reed, #252079, Manning Correctional Institution, 502 Beckman Drive Columbia, SC 29203.



**Kensey Evans**  
Deputy General Counsel  
Office of General Counsel  
South Carolina Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-8508

January 28, 2020



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

January 28, 2020

**RECEIVED**

JAN 29 2020

SC Court of Appeals

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: Joshua Reed, # 252079, v. South Carolina Department of Corrections**  
**Appellate Case No. 2019-001427**

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal in the above caption appeal, along with Proof of Service. Please file the original in your office and return the copy, clock-stamped, to me in the enclosed envelope.

Thank you for your attention to this matter, and please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Kensey Evans  
Deputy General Counsel  
South Carolina Department of Corrections  
S.C. Bar No. 102215

cc: Joshua Reed, #252079  
Manning Correctional Institution  
502 Beckman Drive  
Columbia, SC 29203  
W9-0042-B



**SOUTH CAROLINA**  
 DEPARTMENT OF CORRECTIONS  
*Office of General Counsel*  
 P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787

**RECEIVED**  
 JAN 29 2020  
 SC Court of Appeals

The Honorable Jenny A. Kitchings  
 Clerk of Court, S.C. Court of Appeals  
 Post Office Box 11629  
 Columbia, South Carolina 29211

