

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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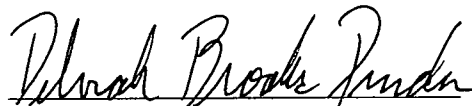
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testimony would be irrelevant, or cumulative, or would threaten to undermine prison authority. See, Segarra v. McDade, 706 F.2d 1301 (4th Cir. 1983); Ward v. Johnson, 690 F.2d 1098 (4th Cir. 1982)(en banc); Brown v. Frey, 889 F.2d 159 (8th Cir. 1989). 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.



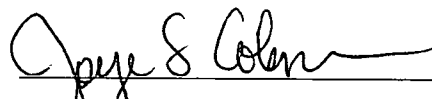
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

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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