

RENDERED: February 13, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-0751-MR

KEVIN COSBY

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 96-CI-0151

BILLY ASHLEY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: ABRAMSON, BUCKINGHAM AND EMBERTON, JUDGES.

EMBERTON, JUDGE. Kevin Cosby, pro se, appeals an order of the Lyon Circuit Court entered on February 20, 1997, dismissing his petition for a declaration of rights brought pursuant to KRS 418.040. We affirm.

In May 1996, Cosby was an inmate at Paducah Community Service Center (PCSC). On May 24, 1996, Cosby was granted a two day furlough to visit with his family. As part of the furlough procedure, Cosby was required to remain in his sister's residence

between 9:00 p.m. and 7:00 a.m., and periodic telephone inquiries by prison personnel were conducted to verify compliance. At 2:25 a.m. on May 25, 1996, a prison employee made a telephone compliance check and was informed by Cosby's sister that he was not at the residence. Cosby telephoned the PCSC monitoring employee a short time later to report, and the monitor ordered Cosby to return to PCSC by 5:00 a.m. on May 26, 1996. After Cosby had not returned to PCSC as ordered, an warrant charging him with escape was issued. At approximately 11:30 a.m. on May 25, 1996, Cosby notified PCSC that he was en route to the Henderson County Jail to turn himself in to the authorities. Cosby was charged with violating prison Corrections Policies and Procedures and transferred to the Western Kentucky Correctional Complex.

On July 3, 1996, after a disciplinary hearing, the prison Adjustment Committee found Cosby guilty of escape and assessed a penalty of sixty (60) days disciplinary segregation and a loss of ninety (90) days good time. Upon administrative appeal, the prison warden concurred in the guilty finding. On October 2, 1996, Cosby filed a petition for declaratory judgment alleging the Adjustment Committee's decision was based on insufficient evidence to support the charge of escape and that there were inadequate findings of fact. On February 20, 1997, the circuit court dismissed the petition stating the findings of

the Adjustment Committee satisfied due process. This appeal followed.

As with most inmate actions alleging violation of due process, we begin with the seminal case of Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), in which the United States Supreme Court held that prison inmates may not be deprived of statutory good time without a meaningful opportunity to challenge the deprivation. The Supreme Court held that the due process clause protects an inmate's liberty interest in good-time credits, and that inmates were entitled to certain minimum requirements of procedural due process. The Court held that a disciplinary committee must provide the inmate with the following: (1) advance written notice of the disciplinary charges; (2) the opportunity when consistent with institutional safety and correctional goals to call witnesses and present documentary evidence in his defense; (3) a written statement of the evidence relied upon and the reasons for the disciplinary actions; and, (4) an impartial decision-making tribunal. Wolff, 418 U.S. at 563-567, 94 S. Ct. at 2978-2982; Hewitt v. Helms, 459 U.S. 460, 465 n.3, 103 S. Ct. 864, 868 n.3, 41 L. Ed. 2d 935 (1983). While the Court in Wolff outlined certain minimal procedures required by due process before revocation of an inmate's good-time credit, the Court in Superintendent, Massachusetts Correctional Institution v. Hill, Walpole, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985), articulated the

quantum of evidence required to support a decision in a prison disciplinary proceeding. The Court held that due process required that the revocation of good-time credits must be supported only by "some evidence in the record." Id. at 454, 105 S. Ct. at 2773.

In the case sub judice, Cosby's primary argument is that the Adjustment Committee failed to make adequate findings of fact. The function of written findings is to protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding and to help insure that administrators act fairly. Wolff, 418 U.S. at 565, 94 S. Ct. at 2979. The written statement of findings may be brief and this Court generally will not interfere with the prison officials' wide discretion in their enforcement of prison discipline. See Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 810 (1987) (citing Ivey v. Wilson, 577 F. Supp. 169, 172-73 (W.D. Ky. 1983)). The disciplinary report explicitly states the Adjustment Committee relied on the reports by the PCSC security monitor and the probation and parole officer. During his investigation, the probation and parole officer interviewed two PCSC security monitors who made telephone accountability checks on Cosby's activity. The probation and parole officer also spoke with the PCSC caseworker who Cosby notified before turning himself in at the Henderson County Jail. The investigative report included evidence from the various PCSC employees, Cosby's wife and the

Henderson County deputy jailer. Cosby's claim that the Adjustment Committee merely adopted the report of the PCSC security monitor rather than conducting independent fact finding is without merit. The written reports of the investigator and prison employees were sufficient to support the Adjustment Committee's decision. Furthermore, the Adjustment Committee's written factual findings in the disciplinary report were sufficient to satisfy the minimal due process requirements associated with prison disciplinary proceedings.

In addition, a review of the record clearly demonstrates that there was "some" evidence to support the Adjustment Committee's decision. Cosby admits that he violated the conditions of his furlough. The furlough authorization form signed by Cosby states that failure to remain "within the extended limits of this confinement, . . . shall be deemed as escape from the custody of the Corrections Department." See also KRS 520.010(5) ("Escape" means departure from custody . . . with the knowledge that the departure is unpermitted, or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period."); KRS 520.030; Commonwealth v. Johnson, Ky. App., 615 S.W.2d 1 (1981); Stroud v. Commonwealth, Ky., 922 S.W.2d 382 (1996) (prisoner's custody status defined by conditions of participation in unsupervised program).

For the foregoing reasons, we affirm the order of the
Lyon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

No brief filed for appellee.

Kevin Cosby
Eddyville, Kentucky