

Commonwealth Of Kentucky

Court Of Appeals

No. 1997-CA-001625-MR

THOMAS BLACK

APPELLANT

V.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 97-CI-0161

STEVE BERRY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON, GARDNER and GUIDUGLI, JUDGES.

GARDNER, JUDGE. Thomas Black (Black) appeals pro se from an order of the Oldham Circuit Court entered on June 23, 1997, dismissing for failure to state a claim in his petition for declaratory judgment brought pursuant to Kentucky Revised Statute (KRS) 418.040. We affirm.

Black currently is an inmate at the Kentucky State Penitentiary at Eddyville. While an inmate at Luther Lockett Correctional Complex, he was found guilty on two separate occasions in November 1996 and January 1997 of violating Corrections Policies and Procedures (CPP), Category IV-21, which prohibits pursuing or

developing a relationship that is unrelated to correctional activity with a non-inmate. More specifically, Black was found guilty of pursuing a relationship with a female corrections officer. Based on the November 1996 incident, the prison Adjustment Committee (the Committee) imposed a penalty of forty-five days in disciplinary segregation and forfeiture of sixty days good time. Based on the December 1996 incident, the Committee imposed a penalty of ninety days disciplinary segregation, forfeiture of one hundred twenty days good time, and restriction of telephone privileges for one hundred eighty days. Upon administrative appeal, Steve Berry, the warden, concurred with the Adjustment Committee's decision.

In April 1997, Black filed a petition for declaratory judgment in circuit court challenging the November 1996 disciplinary action, and later in a supplemental filing added a challenge to the January 1997 disciplinary action. In June 1997, Berry filed a response to the petition for declaratory judgment and asked the circuit court to dismiss the action. Incorporated in the response were several attachments including an affidavit by the Committee chairperson describing the Committee's actions involving the two disciplinary hearings, the investigation reports, and the disciplinary hearing forms associated with the two incidents. In June 1997, the circuit court issued an order dismissing the petition for failure to state a claim. This appeal followed.

As an initial matter, we note that while the trial court dismissed the action for failure to state a claim upon which relief

may be granted, when parties file exhibits and affidavits in support of their positions, as was done here, and these documents are not excluded by the trial court, we shall treat the request for dismissal and the circuit court order dismissing as a summary judgment. Kentucky Rule of Civil Procedure (CR) 12.02; Moss v. Robertson, Ky. App., 712 S.W.2d 351 (1986); Cabinet for Human Resources v. Women's Health Services, Inc., Ky. App., 878 S.W.2d 806 (1994). We may affirm the order dismissing on grounds other than those stated by the circuit court. See Haddad v. Louisville Gas and Electric Company, Ky., 449 S.W.2d 916, 919 (1969); Old Republic Insurance Company v. Ashley, Ky. App., 722 S.W.2d 55, 58 (1986) (appellate court may affirm judgment if record on appeal discloses any ground on which the decision could properly have been made). As the court noted in Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997), inmate declaratory judgment suits challenging prison disciplinary proceedings invoke the court's authority as a body reviewing the administrative agency's action. Under these circumstances, the Smith court recognized a modified standard for summary judgment. "[W]e believe summary judgment for the Corrections Department is proper if and only if the inmate's petition and any supporting materials, construed in light of the entire agency record (including, if submitted, administrators' affidavits describing the context of their acts or decisions), does not raise specific, genuine issues of material fact sufficient to overcome the presumption of agency propriety, and the Department is entitled to judgment as a matter of law." Id. at 356. With this

standard in mind, we review the specific circumstances of this case.

In Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), the Supreme Court held that prison inmates may not be deprived of statutory good time without a meaningful opportunity to challenge the deprivation. The Court held that although inmates are not entitled to the full panoply of procedural safeguards, the due process clause protects an inmate's state-created liberty interest in good-time credits, and therefore they are entitled to certain minimum requirements of procedural due process. The Court held that prison officials must provide the following: 1) advance written notice of the disciplinary charges; 2) the opportunity to call witnesses and present documentary evidence when consistent with institutional safety and correctional goals; 3) a written statement of the evidence relied upon and the reasons for the disciplinary action; and 4) an impartial decision-making tribunal. Id. 418 U.S. at 563-67, 94 S. Ct. at 2978-82. See also Hewitt v. Helms, 459 U.S. 460, 465 n.3, 103 S. Ct. 864, 868 n.3, 41 L. Ed. 2d 935 (1983).

While Wolff outlines certain minimal procedures required by due process, in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985), the Court articulated the quantum of evidence required to support a decision in a prison disciplinary proceeding. The Court held that due process requires that a disciplinary committee's decision to revoke good-time credits must be supported

by "some evidence in the record." Id. at 454, 105 S. Ct. at 2773. In applying this lesser degree of evidence, the Supreme Court indicated that courts should refrain from second guessing the administrative decision.

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

Id. at 455-56, 105 S. Ct. at 2774 (citations omitted). The "some evidence" standard of review set out in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, supra, has been adopted as the appropriate standard under Section 2 of the Kentucky Constitution as well. Smith v. O'Dea, supra.

Black's primary complaint concerns the sufficiency of the evidence supporting the Committee's findings of guilt. He contends that even applying the "some evidence" standard of review, the Committee's decisions in the two incidents at issue were not supported by sufficient evidence. With respect to the November 1996 incident, the record reveals that prison officials conducted an internal investigation in October 1996, concerning a possible relationship between Black and a female corrections officer. On October 25, 1996, the investigators intercepted a letter written by Black prior to his giving it to another inmate because they suspected it actually was intended for a female guard. The investigators placed special powder on the letter, which could be

detected with the use of a blacklight, in order to allow them to determine who had handled it. Shortly thereafter, the investigators did discover the detection powder on the suspected female guard's body and clothing, and inside her personal duffel bag. With respect to the December 1996 incident, the record indicates that prison officials monitored and recorded a personal telephone conversation between Black and a female determined to be the same female guard involved in the earlier incident.

Black argues the evidence available to the Committee in both instances was not sufficiently reliable to establish that he was involved in an improper relationship with a female corrections officer. First, he maintains there was no evidence that the detection powder found on the female guard and her belongings was the same powder placed on his letter. Second, he argues there was inadequate proof that the female he was talking with on the telephone was the same female guard involved in the prior incident.

Black, however, misconceives the quantum of evidence necessary to support prison disciplinary action. As the Court indicated in Superintendent, Massachusetts Correction Institution, Walpole v. Hill, fundamental fairness guaranteed by the due process clause does not require courts to invalidate prison disciplinary decisions that have some basis in fact. 472 U.S. at 456, 105 S. Ct. at 2774. The Court stated, "The Federal Constitution does not require evidence that logically precludes any conclusion but the one reached by the disciplinary board. Instead, due process in this context requires only that there be some evidence to support

the findings made in the disciplinary hearing." Id. at 457, 105 S. Ct. at 2775. The evidence of the detection powder not only on the female guard's person but also on other items of her belongings clearly was sufficient evidence to support the Committee's decision of a rules violation. Similarly, the Committee listened to the recording of the intercepted telephone conversation involving Black and determined he was speaking with the same female guard involved in the earlier incident even after she had been transferred to another prison facility. This was sufficient evidence to find Black guilty of an improper relationship. This Court will not second guess the prison officials' decisions in these instances.

Black also alleges that the statement of reasons provided by the Committee in the disciplinary report form for the decision with reference to the December 1996 incident was inadequate under Wolff v. McDonald, supra. He also asserts that the disciplinary report failed to identify fully each item of evidence relied upon by the Committee. See King v. Wells, 760 F. 2d 89 (6th Cir 1985). But see Brown v. Frey, 807 F.2d 1407 (8th Cir. 1986) (rejecting approach applied in King). First, Black confuses the procedural requirement established in Wolff with the quantum of evidence requirement of Superintendent, Massachusetts Correctional Institution, Walpole v. Hill. While these two requirements are linked, they remain distinct elements. A prison disciplinary committee is required to give a written statement of the evidentiary basis for its decision to administer discipline so that a reviewing court can determine whether the evidence before the

committee was adequate to support its findings concerning the nature and gravity of the prisoner's conduct. Wolff, 418 U.S. at 564-65, 94 S. Ct. at 2978-79; Hudson v. Edmonson, 848 F.2d 682, 685-86 (6th Cir. 1988). The function of the written findings is to protect inmates against collateral consequences based on a misunderstanding of the nature of the original proceedings and to ensure that prison administrators act fairly. Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 810 (1987); Brown v. Frey, 807 F.2d 1407 (8th Cir. 1986). The written statement, however, may be brief, and courts must give prison officials wide discretion in enforcing prison discipline. Id.; Smith v. O'Dea, 939 S.W.2d at 357.

In the present case, the disciplinary report states the Committee listened to the tape recording of the telephone call involving Black and the female guard. The report also states the Committee considered the investigation report describing the circumstances surrounding the monitoring and recording of the telephone call. The disciplinary report clearly provides a sufficient statement of the evidence relied upon and the reasons for the Committee's action.

In conclusion, the disciplinary actions by the prison authorities in both November 1996 and January 1997 were supported by some evidence in the record. Additionally, the disciplinary report provided a sufficient statement of reasons to allow judicial review of the decision. As a result, Berry was entitled to summary judgment as a matter of law.

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

ABRAMSON, JUDGE, CONCURS.

GUIDUGLI, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Thomas Black, Pro Se
Eddyville, Kentucky