

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002152-MR

STEVE L. MONROE

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 97-CI-00111

WARDEN, EASTERN KENTUCKY
CORRECTIONAL COMPLEX (EKCC)

APPELLEE

OPINION

AFFIRMING

* * * * *

BEFORE: HUDDLESTON, KNOFF and MILLER, Judges.

HUDDLESTON, Judge. Steve Monroe appeals pro se from a Morgan Circuit Court order that dismissed his Petition for Declaration of Rights brought pursuant to Kentucky Revised Statute (KRS) 418.040. Finding no error, we affirm.

Monroe currently is an inmate at the Eastern Kentucky Correctional Complex (EKCC) at West Liberty, Kentucky. On the morning of April 23, 1997, EKCC Corrections Officers J. Justice and J. Hill conducted a search of Monroe's prison cell. During the search, the officers found 20 packs of KOOL cigarettes and a gold-colored watch. When questioned about these items by the officers,

Monroe stated that he was holding the cigarettes for another inmate and that he had bought the watch from another inmate.

Officer Hill prepared a Disciplinary Report Form and reported the incident to Correctional Supervisor John Underwood on the afternoon of the same day. Corrections Officer Sargent Prater conducted an investigation of the reported incident. After completing his investigation, Sgt. Prater charged Monroe with stealing or possession of stolen property valued at less than \$100 in violation of Corrections Policies and Procedures (CPP), Category IV-14.

On April 25, 1997, Monroe was given a copy of the Disciplinary Report Form and he requested a hearing before the prison Adjustment Committee. The hearing was originally scheduled for April 29th, but was postponed until May 6, 1997.

After conducting a hearing at which Monroe testified and was assisted by an inmate legal aide, the three-member Adjustment Committee found Monroe guilty of violating the prison regulations, but it amended the charge to unauthorized transfer of money or property. The Adjustment Committee assessed several penalties including forfeiture of 60 days good-time credits, revocation of a prior suspended forfeiture of 60 days good-time credits (for a total forfeiture of 120 days good-time credits), and a restriction of canteen privileges for a period of 60 days.¹ On May 12, 1997, Monroe filed an appeal of the disciplinary action to the prison Warden alleging the prison authorities had violated CPP 15.6 by not holding the disciplinary hearing within a seven-day period as

¹The Adjustment Committee noted on the hearing form that this was the fifth incident report involving Monroe since December 1996.

prescribed by the prison policies and procedures. On May 29, 1997, the acting warden rejected the appeal finding there was no violation of due process or CPP 15.6.

In July 1997, Monroe filed a Petition for Declaration of Rights under KRS 418.040 alleging a violation of due process under the 14th Amendment of the United States Constitution and Section 11 of the Kentucky Constitution. Monroe again claimed that the Adjustment Committee failed to hold the hearing within a seven-day period or provide written justification for the delay as required by CPP 15.6. The Department of Corrections on behalf of the Warden filed a response to the petition requesting dismissal of the action. The Corrections Department attached an affidavit from the Chairman of the Adjustment Committee and the prison disciplinary forms in support of its response. On August 20, 1997, the circuit court summarily dismissed the petition. This appeal followed.

Monroe contends that the Adjustment Committee violated his right to due process by not complying with the disciplinary hearing procedures set out in the prison policies and procedures. CPP 15.6(IV)(D)(1) provides: "[T]he hearing shall be held within seven (7) working days after the completion of investigation. Any delays beyond this time shall be justified and documented in writing." Monroe contends that his disciplinary hearing on May 6, 1997, was held on the eighth working day following the investigation, rather than the seventh day, with no written justification for the delay. He argues that strict compliance with prison regulations is mandatory because CPP 15.6(IV)(D)(1) uses the term "shall".

In response, the Department of Corrections argues that the Adjustment Committee complied with CPP 15.6(IV)(D)(1). It maintains that the disciplinary hearing in fact was held on the seventh working day after completion of the investigation because the time period did not start until April 26, 1997, the first full working day following completion of the investigation. On the other hand, Monroe asserts that the seven working day period begins on the day that the investigation was completed, so that the time period accrued on April 25, 1997.

Monroe's position is inconsistent with the statutorily prescribed method for calculation of procedural time limitations. KRS 446.030 provides in relevant part that:

(1)(a) In computing any period of time prescribed or allowed by order of court, or by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the public office in which a document is required to be filed is actually and legally closed, in which event the period runs until the end of the next day which is not one (1) of the days just mentioned

(b) When a statute, regulation, or order of court requires an act to be done either a certain time before an event or a certain time before the day on which an event occurs, the day of the event shall be excluded in computing the time. If the day thereby computed on which

or by which the act is required to be done falls on a Saturday, Sunday, legal holiday, or a day on which the public office in which the act is required to be completed is actually and legally closed, the act may be done on the next day which is none of the days just mentioned. (Emphasis supplied.)

The Department of Corrections' prison policies and procedures constitute regulations promulgated pursuant to KRS 196.035 and KRS 197.020. See also 501 KAR 6:020 et seq. CPP 15.6 deals with prison disciplinary proceedings and provides time guidelines for various phases of the process involving investigations, giving an inmate an opportunity to confer with a legal aide and receive a copy of the charging documents at least twenty-four hours prior to the hearing, and conducting the hearing. CPP 15.6(IV)(D)(1) states that the disciplinary hearing shall be held within seven working days after completion of the investigation. Under KRS 446.030, the day that the investigation is completed is not counted toward the seven-day time period for holding a hearing. As a result, the prison officials' interpretation and application of CPP 15.6(IV)(D)(1) is consistent with KRS 446.030. In the case at bar, Monroe has failed to establish a violation of CPP 15.6(IV)(D)(1) because the disciplinary hearing was held on the seventh working day following completion of the investigation. Thus, the trial court did not err in dismissing the petition for declaratory judgment.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Steve L. Monroe, Pro se
Greenup, Kentucky

BRIEF FOR APPELLEE:

No Appearance