

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000111-MR

JAMES DINGUS

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 97-CI-00423

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: COMBS, DYCHE, and GUIDUGLI, JUDGES.

DYCHE, JUDGE. James Dingus (Dingus) appeals from an order of the Boyle Circuit Court dismissing his Petition for Declaration of Rights filed pursuant to Kentucky Revised Statute (KRS) 418.040 and Kentucky Rule of Civil Procedure (CR) 57. We affirm.

Dingus is an inmate at the Northpoint Training Center in Burgin, Kentucky. In September 1997, he filed a petition for declaratory judgment asking the circuit court to order the Department of Corrections to amend his institutional classification status. More specifically, he sought removal of points that were added to his custodial classification score because of a prior history of institutional violence which

resulted in his receiving a medium, as opposed to a minimum, security classification.

In November 1997, the Department of Corrections filed a response challenging the merits of the petition and asking the court to dismiss the action for failure to state an actual controversy. Attached to the response was an affidavit of the Classification Branch Manager for the Division of Adult Institutions of the Department of Corrections, various documents related to Dingus's attempt to obtain administrative relief, court records from Pike Circuit Court involving Dingus's misdemeanor conviction on fourth-degree assault, two jail incident reports, and the Corrections Resident Record Card setting out the time calculations for Dingus's prison sentence. Dingus filed a response to the pleading filed by the Department of Corrections and its request for dismissal. On December 9, 1997, the trial court issued an order dismissing the petition for failure to state a claim. Dingus filed a motion for reconsideration, which the trial court denied. This appeal followed.

Initially, 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, we shall treat the request for dismissal and the circuit court order dismissing as a summary judgment. See Hoke v. Cullinan, Ky., 914 S.W.2d 335, 339 (1995); Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 355 n.1 (1997); CR

12.02. As the court noted in Smith v. O'Dea, supra, inmate declaratory judgment suits invoke the circuit court's authority as a body reviewing administrative agency 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 the 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." 939 S.W.2d at 356.

Dingus contends that prison officials violated his right to due process under the 14th Amendment of the United States Constitution and Section 11 of the Kentucky Constitution in assigning his custody status classification. He argues that the prison Classification Committee improperly imposed the higher medium level security classification score, rather than a score that would have allowed him to be placed in a minimum level facility.

Under the security classification procedure, prison inmates are evaluated for purposes of assigning them to various security level facilities based on a numerical score that takes into account the inmate's history of institutional violence, as well as other factors. Under this procedure, Dingus was given points that increased the level of his security classification

for a past history of institutional violence. When Dingus inquired about his classification, he was told by prison officials that the history of past violence concerned an incident at the Pike County Jail for which he received a misdemeanor conviction for assaulting a fellow inmate. While Dingus does not dispute the facts of the conviction, he argues that prison classification policies required prison officials to have documentation of any violent or disciplinary incident in order to consider it for custody status. Although the Corrections Department included in its responsive pleading documentation of the fourth-degree assault conviction and two incident reports related to his conduct at the Pike County Jail, Dingus states the Northpoint Classification Committee did not actually have these documents prior to determining his security classification.

Prison officials have discretion in the management of prisons and the placement of prisoners. See, e.g., KRS 197.065. It is well-established that an inmate has no constitutional right to be housed in a particular institution, and an inmate may be transferred for any reason, or no reason at all. Olim v. Wakinekona, 461 U.S. 238, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983); Meachum v. Fano, 427 U.S. 215, 224-25, 96 S. Ct. 2532, 2538, 49 L. Ed. 2d 451, 459 (1976). An inmate has no inherent constitutional due process right to a particular security classification. Moody v. Daggett, 429 U.S. 78, 88 n.9, 97 S. Ct. 274, 279 n.9, 50 L. Ed. 2d 236, 244 n.9 (1976); Beard v. Livesay, 798 F.2d 874, 876 (6th Cir. 1986). In Mahoney v. Carter, Ky.,

938 S.W.2d 575 (1997), the Kentucky Supreme Court held that the Kentucky Department of Corrections' policies and procedures did not create a due process liberty interest giving an inmate a right to a particular security classification or to be housed in a particular prison facility. Thus, Dingus has no protected liberty interest in a particular security classification. Moreover, it is not unreasonable that the Department of Corrections should take into consideration an inmate's behavior in other prison facilities, including county jails, in assessing an inmate's security classification. Because the Department of Corrections was entitled to summary judgment as a matter of law, the trial court did not err in dismissing the action.

We affirm the order of the Boyle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Dingus, pro se
Burgin, Kentucky

BRIEF FOR APPELLEE:

No Brief