

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000236-MR

CHRISTOPHER LLOYD

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 97-CI-00436

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, EMBERTON, AND SCHRODER, JUDGES.

EMBERTON, JUDGE. Christopher Lloyd, an inmate at Northpoint Training Center, appeals pro se from an order of the Boyle Circuit Court dismissing his Petition for Declaratory Relief brought pursuant to Kentucky Revised Statutes (KRS) 418.040 and Kentucky Rules of Civil Procedure (CR) 57. We affirm.

In April 1997, Lloyd was incarcerated at the Frankfort Career Development Center (FCDC), a minimum security facility that does not employ fencing but merely posts signs near the boundary areas. On Sunday, April 27, 1997, several prison guards (Corrections Officers) observed Lloyd walking away from the

dormitory area in the direction of the Vietnam Memorial and the State Library and Archives Building complex, which abut the FCDC. When Correction's Officers Barry Courtney and Sergeant Moyers went to the area of the Vietnam Memorial in search of Lloyd, they saw a car in the parking lot containing Lloyd's wife. After waiting a few minutes, the two officers observed Lloyd exit a wooded area behind the Vietnam Memorial and begin waving in an apparent attempt to gain the attention of his wife. As the officers approached Lloyd, he ran back into the wooded area and hid. After a short search, Sgt. Moyers apprehended Lloyd hiding behind a tree. At some point, Lloyd's wife had left the area. She returned to the prison facility a few hours later and asked to visit with her husband, but she refused to speak with prison authorities about the escape incident.

Following investigation, Lloyd was charged with escape in violation of Category VI-2 of the Corrections Policies and Procedures (CPP). During the investigation, Lloyd requested a copy of a taped telephone conversation he had with his wife on the morning of April 27. On April 29, 1997, Lloyd was given a copy of the disciplinary report and investigation form, and a disciplinary hearing was scheduled for May 6, 1997.

At the disciplinary hearing, Lloyd testified that he was attempting to meet with his wife, but did not intend to escape or leave the area with her. Sgt. Moyers testified that he saw Lloyd leave the grounds of the prison facility and that when Lloyd was apprehended he was approximately 300 yards beyond the FCDC boundary lines. Sgt. Moyers also testified that Lloyd

attempted to avoid apprehension and that the Corrections Officers had to search for him in the wooded area that was part of the property of the State Library and Archives complex. The prison hearing officer found Lloyd guilty of escape and imposed a sanction of a loss of 120 days good-time credit and 60 days of disciplinary segregation with the disciplinary segregation being suspended for a period of 90 days. Upon administrative appeal, the prison warden concurred with the decision of the Adjustment Officer.

In September 1997, Lloyd filed a Petition for Declaratory Relief alleging that the prison disciplinary action violated his right to due process under the 14th Amendment. In December 1997, the Department of Corrections filed a response with an attached affidavit of the Adjustment Officer, the disciplinary report forms, and the hearing report form. The Department maintained that there were no due process violations and requested dismissal of the action. In January 1997, the trial court issued an order dismissing the petition for failure to state an actual controversy. This appeal followed.

On appeal, Lloyd challenges the factual underpinnings of the disciplinary action. He contends that he did not go outside the boundaries of the FCDC, that he had no intention of escaping from the facility, and that his conduct did not constitute "escape" under the state penal statutes, KRS Chapter 520. Lloyd asserts that he was merely trying to meet temporarily with his wife. He argues that all of the Corrections Officers

lied about various aspects of the incident in order to entrap him.

In Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985), the United States Supreme Court set out the substantive quantum of evidence required to support a decision in a prison disciplinary proceeding. Given the deference that necessarily applies to judicial review of prison disciplinary situations, the Court held that in situations involving prison disciplinary proceedings, due process requires a somewhat lesser standard of proof and that a disciplinary committee's decision to impose sanctions for violations of prison rules must be supported by merely "some evidence in the record." Id. at 454, 105 S.Ct. at 2773. In applying this modicum of evidence, the Supreme Court indicated that courts should refrain from second-guessing the prison officials' 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 The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies to this context.

Id. at 455-56, 105 S.Ct. at 2774 (citations omitted). The "some evidence" standard delineated in Superintendent v. Hill has been

adopted as the appropriate standard under Section 2 of the Kentucky Constitution as well. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997).

In the case at bar, Lloyd has failed to demonstrate that the prison officials violated due process. Lloyd admits that he was attempting to meet with his wife without permission, and that she was in a car parked in a lot on the property of the State Library and Archives complex, which was beyond the grounds of the FCDC. Sgt. Moyers stated that Lloyd was apprehended in a wooded area that was outside the boundary of the prison facility. Lloyd's attempt to flee from the Correction's Officers and avoid apprehension also is some evidence of guilt. Cf. Bush v. Commonwealth, Ky. App., 726 S.W.2d 716, 717 (1987) (flight of defendant is admissible evidence of guilt); Chumbler v. Commonwealth, Ky., 905 S.W.2d 488, 496 (1995) (same). Lloyd's reliance on criminal statutes dealing with escape is unavailing because the disciplinary proceeding involved violation of a prison regulation, which as the Supreme Court indicated, requires a lesser standard of proof. Based on the record, there is some evidence to support the decision of the Adjustment Officer.¹

Lloyd also argues that the prison authorities violated due process by not allowing him to submit into evidence at the disciplinary hearing an audiotape recording of his telephone conversation with his wife on the morning of April 27, 1997. He

¹We note that under the Correction's Policies and Procedures, an inmate may be found guilty of a substantive offense, such as escape, if he "attempts to commit the offense." CPP 15.2, Inchoate Offenses.

contends that this violated his right to call witnesses, which is a procedural right required by due process as recognized by the Supreme Court in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, Lloyd did not raise this issue before the Adjustment Officer during the disciplinary hearing, so he is precluded from asserting that issue in an action for judicial review of the prison disciplinary action. See O'Dea v. Clark, Ky. App., 883, S.W.2d 888, 891-92 (1994). Moreover, Lloyd was allowed to submit a written statement by his wife during the hearing concerning the incident.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Lloyd, Pro Se
Burgin, KY

BRIEF FOR APPELLEE:

No brief