

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001402-MR

GREG GOETZ

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE RAY CORNS, JUDGE  
ACTION NO. 98-CI-00152

WILLIAM SEABOLD;  
KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: EMBERTON, GUIDUGLI, AND MILLER, JUDGES.

EMBERTON, JUDGE: Greg Goetz appeals from an order of the Oldham Circuit Court dismissing his petition for declaratory judgment brought pursuant to KRS 418.040. After reviewing the record, we affirm.

Goetz is an inmate at the Kentucky State Reformatory at LaGrange, Kentucky. On October 10, 1997, Goetz and another inmate, James Sexton, were together in a courtyard at the prison. At some point, Corrections Officer Phil Brierly allegedly observed Sexton take a sugar packet from his pocket, remove an unknown item from the packet, and give the item to Goetz. Goetz

then gave Sexton several packs of cigarettes. After viewing this activity, Officer Brierly notified Sergeant Patrick Dean of the situation. As Sgt. Dean approached the two inmates to investigate, Goetz allegedly placed the unknown item into his mouth. Upon searching Sexton, the officers found four packs of cigarettes and an opened sugar packet containing a yellow pill. The pill was later identified as an Alprazolam tablet, which is a generic form of Xanax - an illegal controlled substance. See KRS 218A.110 and 902 KAR 55:030. Officer Brierly prepared a disciplinary report charging Goetz with conspiracy to commit two major violations of the Corrections Policies and Procedures (CPP): Category VI-4, possession or promoting of dangerous contraband, and Category IV-15, unauthorized buying, selling, trading, loaning or borrowing of property.

On November 12, 1997, the three member prison Adjustment Committee conducted a disciplinary hearing at which Goetz was assisted by an inmate legal aide. At the hearing, the witnesses included Officer Brierly, Sgt. Dean, Sexton and Goetz. During the hearing, Goetz admitted being in the courtyard but denied receiving anything from Sexton or giving Sexton cigarettes. Sexton also denied exchanging any substances for cigarettes. Following the hearing, the Adjustment Committee found Goetz guilty of both offenses and assessed penalties of 90 days in disciplinary segregation and forfeiture of 180 days good time credit. As part of the reason for the penalties, the Adjustment Committee noted Goetz's history of illegal drug use

while being incarcerated. Upon administrative appeal, the prison warden concurred with the Adjustment Committee's decision.

In March 1998, Goetz filed a Petition for Declaration of Rights alleging that the prison officials violated his right to due process in the proceeding. In May 1998, the Department of Corrections filed a response that included an affidavit by the Chairman of the Adjustment Committee, the prison disciplinary reports, a memorandum from the prison pharmacist, and an affidavit by Officer Brierly. In its response, the Corrections Department asked the trial court to dismiss the action for failure to state an actual controversy. Goetz filed a reply to the Corrections Department's response. On May 14, 1998, the trial court issued written findings stating that Goetz had not been denied due process, and ordering the petition dismissed. This appeal followed.

On appeal, Goetz challenges the factual findings supporting the disciplinary action by the prison officials. He notes that the prison officers found no illegal contraband on his person and did not perform a drug test to prove that he had consumed an Alprazolam tablet. Goetz questions Officer Brierly's ability to have observed the activity between Sexton and himself. He also notes that Sexton denied at the disciplinary hearing having given him any illegal contraband. Goetz contends that there was insufficient evidence to justify the disciplinary action.

Initially, we note that while the trial court dismissed the action for failure to state an actual controversy, 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 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, inmate declaratory judgment actions 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 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." 939 S.W.2d at 356.

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 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, supra.

In the case at bar, the Adjustment Committee discussed several factors leading to its finding Goetz guilty. First, they noted that Goetz admitted being with Sexton in the courtyard. Second, Officer Brierly stated at the hearing that he personally observed Sexton take a sugar packet out of his pocket, remove an item, and then hand the item to Goetz in exchange for four packs of Marlboro cigarettes. Sgt. Dean stated that he saw Goetz place an item in his mouth as he walked toward Goetz. Third, the undisputed fact that upon searching Sexton, the officers found a sugar packet containing an Alprazolam (Xanax) tablet and four

cigarette packs. While Goetz disputes the officers' testimony involving his activity with Sexton, weighing the credibility of the witnesses is an issue primarily for the Adjustment Committee. Moreover, the items found on Sexton provide circumstantial evidence supporting the officers' statements. Based on the entire record, there was sufficient evidence to support the decision of the Adjustment Committee. As a result, the trial court did not err in finding that Goetz received due process and in dismissing his declaratory judgment action.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Greg Goetz  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

No Brief