RENDERED: April 1, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000951-MR

JAMES NICK HARRISON — APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 99-CI-00027

BILL CASE, LONNIE MATLOCK,
JAMES MITCHELL, JOHN THOMPSON,
ROGER SOWDER, ALAM SIMS,
RAYMOND CANTERBERRY, CARL JONES,
CHARLES RADER, DANNY BOTTOM,
JAMES MORGAN, CHARLES HOWELL,
ANTHONY CLARK, DOUG SAPP,
JUDITH MORRIS, CLARK TAYLOR,
CAROL WILLIAMS, AND JOHN DOE(S) — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: SCHRODER, TAYLOR, AND VANMETER, JUDGES.

SCHRODER, JUDGE: James Harrison appeals the trial court's granting of the appellees' motion to dismiss for failure to state a claim, on some counts, and for granting summary judgment against Harrison on the remaining counts. A detailed analysis

of Harrison's claims confirms the trial court's decision was not in error, hence, we affirm.

On January 22, 1999, Harrison filed a complaint, pro se, in the Boyle Circuit Court against various Kentucky Department of Corrections personnel employed at the Northpoint Training Center prison facility in Burgin, Kentucky. The complaint sought relief pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986, based upon various alleged incidents relating to disciplinary matters and to Harrison's treatment as an inmate of the Department of Corrections. On February 19, 1999, Harrison filed an amendment to the original complaint. The amendment sought to add additional defendants and also alleged additional incidents in support of his original claims.

On March, 22, 1999, the appellees filed a motion to dismiss for failure to state a claim upon which relief could be granted. On April 29, 1999, the trial court entered an order granting the appellees' motion to dismiss. On May 17, 1999, Harrison filed a "Motion to Amend Judgment and Order Pursuant to CR 59."

On August 3, 2001, after an appeal to this Court,[1] the trial court allowed Harrison to amend his complaint and it was filed August 30, 2001. An answer was filed October 18, 2001.

[1] 1999-CA-001613-MR.

Harrison moved for partial summary judgment on November 26, 2001. On December 17, 2001, appellees filed a "Motion To Dismiss, For Summary Judgment, And Response To Plaintiff's Motion For Partial Summary Judgment". On January 2, 2002, Harrison filed additional grounds in support of summary judgment and a reply to appellees' motion to dismiss and for summary judgment. On January 3, 2002, the trial court denied Harrison's request for partial summary judgment and granted the appellees' motion to dismiss and summary judgment. Harrison's motion to alter, amend, or vacate was also denied.

On appeal, Harrison contends the trial court erred in dismissing his complaint for failure to state a claim or for summary judgment without addressing each paragraph of his claims. For a comprehensive understanding of this appeal, we will describe the amended complaint, which is part of the record. The pro se amended complaint is typed and divided into seventy-one numbered paragraphs (there are two paragraphs 41). The first five paragraphs deal with jurisdiction, venue, and the parties. Harrison's "Cause of Actions" begin with paragraph six, which paragraph incorporates by reference, the actions, inactions, intentional conduct, negligent conduct, statutory, regulatory and constitutional violations of each appellee to Harrison. Paragraphs seven through fifty-five briefly described numerous facts or allegations which Harrison contends give rise

to his causes of action. Paragraph fifty-six incorporates the original complaint by reference. Paragraph fifty-seven accuses the appellees of harassing Harrison. Paragraph fifty-eight cites a number of constitutional, statutory, and regulatory provisions which Harrison contends were violated, although there is no cross reference between the actions or inactions of the appellees to the law violated. Paragraphs fifty-nine and sixty are under "Claims" which attempts to create joint and several liability among the appellees and includes a claim for mental duress caused by violation of Harrison's civil, vested, regulatory, statutory, and constitutional rights. A string citation of Constitutional rights are also alleged to have been violated, but again, without any reference to particular acts. Paragraphs sixty-one through seventy-one are listed under "Relief" and appear to be a demand for relief, but again, there is no cross reference to the specific claims in paragraphs seven through fifty-five.

The original complaint, incorporated by reference by paragraph fifty-six, is also part of the record and covers the same causes of action as the amended complaint, but adds a few facts. After reading numerous paragraphs in the amended complaint and the complaint, we realize many paragraphs add facts or refer to other paragraphs, which if read together,

support a particular count or cause of action[2]. Harrison's appellate brief takes this approach (although we recognize the trial court did not have the benefit of this grouping). The appellate brief contains arguments (a) through (n) and groups the paragraphs as if together they support a particular count, or argument. Therefore, below is listed the argument or count, together with a summary of the paragraphs in the amended complaint, referred to as "P-[_]", and a summary of the counts in the original complaint, referred to as "C-[_]".

After listing both the argument and its supporting paragraphs, we will give our analysis. Our analysis will review the paragraphs in the amended complaint, and the original complaint to see if they contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . ." CR 8.01(1)(a). This requirement is for facts, not just for conclusions. See Pike v. George, 434 S.W.2d 626 (Ky. 1968); Security Trust Co. v. Dabney, 372 S.W.2d 401 (Ky. 1963); Bank of Marshall County v. Boyd, 308 Ky. 742, 215 S.W.2d 850 (1948). Where there is a claim for relief stated, we will then review the subsequent materials (i.e. affidavits, depositions, etc.) under CR 56.02 to see if there is a genuine issue as to material facts and whether the moving party was entitled to a judgment as

[2] See CR 10.02.

a matter of law. See Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

A. PRISON JOBS

Harrison contends KRS 197.070(1) mandates the prison provide employment for all prisoners, including Harrison.

P-32. Westerfield failed and/or refused Harrison a job in violation of CPP 10.1 and other CPP's.

P-49. Sapp by his actions and/or inactions has failed and/or refused to provide employment for all prisoners in the penitentiaries as required pursuant to KRS 197.070(1).

P-52. Morgan and Sapp have failed and/or refused to create jobs for inmates, and/or used the available jobs to punish inmates and/or create an informant-type system.

C-14 & C-19. Duplicates P-49 & P-52.

KRS 197.070(1) does provide that "[t]he Department of Corrections shall provide employment for all prisoners. . . ." Even if we assume the prison is not providing Harrison with a job, his claim must fail for at least two reasons. First, neither the amended complaint nor the original complaint joined the Department of Corrections as a party. The Department of Corrections is an indispensable or necessary party under CR 19.01 in order to be able to grant Harrison's request for relief. Secondly, if the Department of Corrections had been made a party, prisoners do not acquire "rights" or standing to

litigate this issue under this type of statute per the United States Supreme Court. See Sandlin v. Conner, 515 U.S. 472, 115 S.Ct. 229 3, 132 L.Ed. 2d 418 (1985). Therefore, the trial court did not err in dismissing this count.

B. PRISON CLOTHING

Harrison contends KRS 197.070(2) allows prisoners to receive privately furnished clothing and the Department is returning such clothing, contrary to the statute.

P-50. Sapp has implemented CPP 17.1 (effective May, 2000) which prevents Harrison from obtaining privately furnished clothing as provided pursuant to KRS 197.070(2).

The statute imposes a requirement on the prison to furnish uniforms, and all the usual and suitable clothing for all state prisoners. The private clothing exception does not require the prison to allow private clothing but subtracts private clothing from the state requirement of what it has to provide. Also, more importantly, the Department of Corrections runs the prisons and is an indispensable party under CR 19.01, but was not made a party. Therefore, the trial court did not err in dismissing this count.

C. SHAVE & CUT

Harrison contends he was shaved and given a haircut in prison by someone not licensed as a barber in violation of KRS 317.410 et seq.

P-41. Sims, Canterberry, and John Doe(s) threaten to use force against Harrison and did in fact use force against Harrison in violations of the Constitution, regulations, and CPP's, and without notice and/or due process, did shear the hair from Harrison's head and face.

P-41 & C-6. On December 1, 1998, Canterberry and Sims did act as licensed barbers without a barber's license and outside of a licensed establishment when they used tools of the barber's profession and/or without being medically certified when they practiced the use of barbering to forcibly shear the hair from Harrison's head and face in violation of KRS 317 et seq. and CPP.

KRS 317.420(2) requires a person practicing barbering for the general public to obtain the appropriate license. A prison barber shop is not open to the general public but is a state institution wherein the Department of Corrections sets the standards for who can cut and shave hair. See Commonwealth, Board of Examiners of Psychology v. Funk, 84 S.W.3d 92 (Ky.App. 2002), for a discussion of the professional equivalents for state institutions. Also, the Department of Corrections was not a party under CR 19.01. Therefore, the trial court did not err in dismissing this count.

D. POLYGRAPH EXAM

Harrison complains in one paragraph that he was not given a polygraph examination, and in the next that he was given a polygraph examination. He cites P-51, but that discusses classifications discussed later.

P-29. Sapp and Morgan arbitrarily denied Harrison's request for a polygraph examination, a privilege usually granted other inmates, thus denying Harrison the same treatment, fairness and access as other inmates similar situated.

P-53. Sapp has implemented the use of polygraph examination without proper authority, which is arbitrary and/or without procedural safeguards.

Harrison does not give us enough facts under CR 8.01 to evaluate whether this is an actual controversy. Also, KRS 197.020 allows the Department of Corrections to formulate and prescribe all necessary regulations for discipline in the penitentiaries, and for the government of prisoners in their department and conduct. Even if we had concluded this count attacks a known regulation, the failure to make the Department of Corrections a party under CR 19.01 was fatal, and the trial court did not err in dismissing this count.

E. CLASSIFICATION SCORING

Harrison complains that upon incarceration in 1986, he was given a custody score. In 1992, there was a change in the classification scoring which added fourteen points to his score,

which Harrison contends is in violation of KRS 446.083(3) which prohibits statutes from applying retroactively.

P-51. Morris and John Doe(s) changed the classification policies and/or applied the 1992 classification policies retroactively and in violation of KRS 446.080(3), which has increased Harrison's custody score by adding an additional fourteen points.

Harrison is misreading the statute. KRS 446.083(3) is a rule of construction which does not forbid statutes from being retroactive, but as a rule of construction, statutes shall not "be retroactive, unless expressly so declared." Also, prisoners have no constitutional right to a particular security classification. Moody v. Daggett, 429 U.S. 78, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976). Even if Harrison had a claim under this count, the statute of limitations, KRS 413.120, would bar or extinguish the claim. Therefore, the trial court did not err in dismissing this count.

F. RING CONVERSION

Harrison contends that two prison employees converted or illegally confiscated a gold ring of his.

P-7. On November 17, 1998, Bill Case and Lonnie Matlock confiscated Harrison's gold signet ring and failed to return the ring.

P-8. Doug Sapp and James Morgan failed to direct their subordinates to return Harrison's ring.

P-22. John Doe(s) gave false and misleading information concerning Harrison's ring and caused the confiscation of the gold signet ring.

On first blush, P-7 does appear to present a claim under CR 8.01. However, as the amended complaint reveals, the ring was not kept by the employees but confiscated and introduced into evidence in a disciplinary proceeding. Ownership of the ring will depend on the outcome of the disciplinary proceeding, and be determined therein. Possession of the ring is with the Department of Corrections, not the two employees that confiscated, not converted, the ring. Therefore, the trial court did not err in dismissing this count.

G. CONFIDENTIAL INFORMANTS

Harrison contends the use of confidential informants in prison is limited to use before an adjustment committee or classification committee.

P-23. John Doe(s) and/or misleading information was used against Harrison on or about January, 1999, for the purpose of classification and/or transfer in violation of CPP 9.18.

P-24. Charles Howell used confidential information against Harrison during the December disciplinary hearing on the offense referred to in paragraph 15 knowing he was without authority to use such information pursuant to CPP 9.18.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-43. Morgan and Howell violated CPP 9.18 by using or permitting to be used confidential informant information by a hearing officer and/or by using staff as the source of confidential informant information.

C-18. Doug Sapp permitted the illegal use of informants to allow the other appellees to confiscate the ring.

Again, the Department of Corrections was not made a party under CR 19.01 which would be necessary if we were to prohibit the use of informants. Also, in Gilhaus v. Wilson, 734 S.W.2d 808 (Ky.App. 1987), this Court recognized the legitimate institutional needs of assuring safety and control of inmates, preserving the disciplinary process, and the use of informants. On keeping the informants confidential, we said: "Revealing the names of informants could lead to the death or serious injury of

some or all of them. . . .” Id. at 810. This Kentucky rule of law allows the use of informants as long as the prison provides a method of keeping the informant’s identity confidential, while assuring the inmates that the information is reliable. Id. Therefore, the trial court properly dismissed this count.

H. DISCIPLINARY APPEAL (over the ring)

This count involves the gold ring discussed earlier in “F.”

P-15. On December 10, 1998, Bill Case issued a disciplinary report charging Harrison with a category 4 Item-14 infraction knowing it was false and/or not based on reliable evidence. C-7. Unauthorized Transfer of Property. Case states in the disciplinary report as follows:

> “During the course of an investigation, I received reliable information (sic) IM John Carter, #084380 was attempting to sell a ring discribed (sic) as being gold in color with seven (7) white stones surrounded by twelve (12) blue stones. The ring in question was on IM Carter’s property list dated 6-13-97 and 7-4-96 (sic) IM Carter was placed in SMU on 11-18-98 (sic) at which time he did not have possession of the ring. On 11-17-98 (sic) I received information that the ring was in the possession of IM James Harrison, #095435. IM Harrison could not provide documentation as being the owner of the ring nor was this type ring described on any of his forms at R & D. To provide any additional information would reveal the identity of the source of the confidential information. The description of the

> incident is sufficient to serve as the inmates (sic) summary of the confidential information to be used at the adjustment hearing. All information forwarded to the adjustment Officer for his review and determination of reliability. Investigation is still on going (sic)."

P-16. Bill Case withheld exculpatory evidence and added unverified statements in the disciplinary report and threatened Harrison's assigned legal aide and witnesses with disciplinary actions if they assisted in Harrison's defense.

C-11. Adds Charles Rader, and Carl Jones to P-16 and says this occurred between November 17, 1998, through December 17, 1998.

P-17. Danny Bottom, as supervisor in paragraph 15 above, failed and/or refused to conduct any type of investigation.

C-9. Adds December 10, 1998, to P-17.

P-18. Roger Sowder, in charge of the investigator's review referred to in paragraph 15 above, failed and/or refused to collect evidence, knowing that the disciplinary report was false.

C-10. Adds the date, December 12, 1998, to P-18.

P-19. Morgan, Howell, Sowder, and Jones' blanket policies of denying witnesses to inmates in segregation denied Harrison due process and a right to present a defense.

C-8. Case and Matlock used detention orders, segregation, and informants to win.

P-20. Rader, Jones, and Case interfered with Harrison's attempts to have witnesses and prepare a defense for charge alleged in paragraphs 14 and 15.

P-21. On December 17, 1998, Charles Howell, the hearing officer hearing the charge referred to in paragraph 15, found Harrison guilty, knowing it was false.

C-3. Duplicative of P-21.

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted and/or designated to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-47. Howell denied Harrison adequate findings of fact, and other due process raised in Harrison's administrative appeal on the Category 4 item-15 disciplinary report mentioned in paragraph 15 above and in violations of CPP 15.6 and CPP 9.18.

P-55. Bill Case violated Harrison's right for a fair and impartial disciplinary hearing over the offense in paragraph 15 above, by: 1) withholding evidence, exculpatory and otherwise

statements; 2) by threatening Plaintiff's legal aide and other legal aides gaining and confirming information for a defense; 3) by making conclusions and/or allegation as to Harrison's ring and/or the ring mentioned by alleged informants; 4) by bringing a false disciplinary report against Harrison, and 5) by interfering with obtaining statements from other witnesses such as Marion Buris, who could have verified allegations concerning Harrison's ring.

It is obvious to this Court that in this count, and in "M", that Harrison is trying to appeal the disciplinary action involving the gold ring. Appeals from disciplinary actions must be filed in the circuit court within one year of the institutions final action. See Million v. Raymer, 139 S.W.3d 914 (Ky. 2004); and KRS 413.140. With our Court's earlier ruling that the trial court should have filed the tendered amended complaint, the amended filing relates back to the time tendered (May 17, 1999), and thus the appeal was timely. "While technically original actions, these inmate petitions share many of the aspects of appeals. They invoke the circuit court's authority to act as a court of review." Smith v. O'Dea, 939 S.W.2d 353, 355 (Ky.App. 1997). As a court of review, the circuit court reviews the administrative agency's decision for error, not de novo. In Harrison's case, the circuit court

granted summary judgment. O'Dea sets the standard for summary judgment in disciplinary proceedings.

> In these circumstances we 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. The court must be sensitive to the possibility of prison abuses and not dismiss legitimate petitions merely because of unskilled presentations. *Jackson v. Cain*, 864 F.2d 1235 (5th Cir.1989). However, it must also be free to respond expeditiously to meritless petitions. By requiring inmates to plead with a fairly high degree of factual specificity and by reading their allegations in light of the full agency record, courts will be better able to perform both aspects of this task. *Id*. at 356.

Applying this standard, we are considering the arguments in "M" here with "H" because they both cover the disciplinary action over the gold ring. The United States Supreme Court has instructed us that if "some evidence" exists which supports the decision arrived at by the prison disciplinary body, the circuit court may not disturb that decision on appeal. Superintendent Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). Our reading of the record supports the

circuit court's grant of summary judgment affirming the disciplinary action of the Department of Corrections over the ring. To summarize a lengthy record, the Department received information that another inmate's ring ended up with Harrison's property. After the confidential informant's information was taken, an investigation was conducted which revealed John Carter, inmate no. 084380, had in his property list, a gold ring with seven white stones surrounded by twelve blue stones. Harrison was found to have an identical ring which was not so described on his property list. Carter's explanation as to what happened to this ring (placed it on his father's hand at his funeral) was shown by the guard accompanying Carter to not have happened. Harrison's explanation as to how he came into possession of the ring was also questionable (Receipt dated 12-2-98 for the "Underground Jewelry & Repair" from Richmond, Ky., indicated Charley Harrison purchased in May of 97, a gold Ky. Cluster style ring, size 11, saphire (sic) & dimond (sic) stones, paid cash). His property list from that time lists simply three gold rings, no further explanation. We believe the record below contains "some evidence" to comply with Smith v. O'Dea, 939 S.W.2d 353 (Ky.App. 1997) and therefore we affirm the circuit court's grant of summary judgment dismissing Harrison's disciplinary appeal.

I. DISCIPLINARY PROCEEDING (covering the shave and cut)

Harrison was upset that he was punished for not cutting his hair and not shaving. The issue of barber licensing was disposed of in "C" above and will not be considered part of this count. "I", "J", and "L" all deal with his infraction, forced cut, disciplinary proceeding, and punishment.

P-11 & C-3. On November 27, 1998, John Thompson issued Part I of a disciplinary report charging Harrison with a category 3 Item-2 infraction knowing that it was false and/or not based on reliable evidence.

P-12 & C-4. Anthony Clark, in charge of the supervisor's review of disciplinary report referred to in paragraph 11 above, failed and/or refused to conduct any type of investigation to determine if the disciplinary report contained all pertinent data as required by CPP 15.6.

P-13 & C-5. On November 28, 1998, Roger Sowder, in charge of the investigator's review of the disciplinary infraction referred to in paragraph 11 above, failed and/or refused to conduct any investigation, collect any evidence, documents, or statements on Harrison's behalf as required by CPP 15.6 and charged Harrison with an offense knowing it was false and/or not based on reliable evidence as required pursuant to CPP 15.6.

P-14 & C-12. Carl Jones, while acting as the adjustment hearing officer on December 17, 1998, hearing the charge against Harrison referred to in paragraph 11 above, found Harrison

guilty of the offense, knowing that the disciplinary report was false and/or not based on reliable evidence and/or knowing Harrison was not given notice that his conduct violated any procedures and/or knowing the procedures were flawed and/or contrary to established procedures.

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted and/or designated to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-54 & C-15. Morgan implemented NTC policy 12-01-07 without the approval of LRC and/or following KRS 13A et seq., which conflicted with other policies and statutes, and violated Harrison's rights to be free from the use of force and the right of expression.

Harrison has been in prison for a very long time. The prison has a policy against long hair and beards. Harrison was told to get a shave and cut. He did not. He was punished and still refused to get a shave and cut. It was cut for him,

albeit by force. Harrison was incensed and complains in "I", "J", and "L" that he was disciplined and forced to comply with the prison rules. He appealed his disciplinary proceeding and lost. On appeal to the circuit court, Harrison complained that the charges against him were false, that the appellees never investigated the charges fully, used force, and didn't give him a fair shake below. All the allegations are conclusory. There are no facts in his amended complaint or complaint which support his accusations. The circuit court found:

> Plaintiff has not demonstrated that he has been deprived of any right secured by the constitutional amendments that he claims have been violated. He has demonstrated no violation of his procedural due process rights under the Federal Fourteenth Amendment. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). He has not indicated what penalty was imposed in connection with the disciplinary proceedings to which he was subject, and, therefore, has not demonstrated a loss of a federally protected liberty interest. Confinement in administrative segregation does not represent a deprivation of a liberty interest. Sandin v. Conner, 115 S.Ct. 2293, (1995). Neither has he made any showing of conduct on the part of the defendants "so reprehensible as to 'shock the conscience' of the Court." Rimmer-Bey v. Brown, 62 F.3d. 789, 790 n.4 (6th Cir.1995).

We agree with the circuit court. Harrison does not present us with sufficient facts under CR 8.01. Therefore, there is no issue of fact. Clearly there is no issue of law on

the facts given. Harrison does not like the outcome but gave the circuit court no legal reason to reverse. Therefore, the circuit court did not err in dismissing this count.

J. DISCIPLINARY SEGREGATION

Harrison contends he was held in segregation consecutively while he should have been held on concurrent punishments. The rest of his argument in "J" is discussed in "I".

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

P-36. Morgan and Sims continued to hold Harrison in the segregation unit after January 18, 1999, once Harrison's disciplinary segregation sentence expired without providing Harrison reasons and/or due process.

P-37. Sims increased Harrison's sentence and number of days in disciplinary segregation from forty-five to sixty days without notice and/or due process in violation of CPP 15.6 and contrary to the instructions set out in Part-II of the disciplinary report and final hearing of December 17, 1998, which gave Harrison credit for time served.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted and/or assigned to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-46. Sims, Morgan, and Sapp denied Harrison due process by holding him in a segregation unit without reason, violating CPP 10.2 and CPP 18 et seq.

P-48. Sims falsified documents in an attempt to justify holding Harrison in a segregation unit after the expiration date on his ordered disciplinary segregation sentence.

Harrison is wrong, again. The record does contain the disciplinary actions Harrison is referring to. The discipline for the unauthorized transfer of property (the gold ring) resulted in disciplinary segregation for forty-five days. The incident involving the haircut and shave resulted in another fifteen days disciplinary segregation. There is nothing in either decision from the hearing/appeal that indicates the time is to be served concurrently. He was given credit for time served (CRTS), but that is factually different from time to be served concurrently. Therefore, the circuit court did not err in dismissing this count.

K. CLASSIFICATION DETERMINATION

Harrison contends he was improperly reclassified by a classification committee.

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

P-34. Sims and Canterberry held a classification hearing on or about January 13, 1999, without providing Harrison notice and/or due process as required pursuant to CPP 18.1.

P-35. Sims and Canterberry failed and/or refused to provide the general nature of the alleged confidential informants' information before or during the January 13, 1999, classification hearing in violation on CPP 9.18.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted and/or assigned to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-44. Judith Morris, Carol Williams, James Morgan, and Clark Taylor failed and/or refused to properly investigate complaints made by Harrison and they failed and/or refused to house Harrison in the least restrictive environment pursuant to

Chapter CPP 18 et seq. and they failed and/or refused to ensure that CPP's were followed.

P-45. Sims and Canterberry empanelled a classification committee and had a hearing without providing notice and/or other due process when they conducted such hearing in order to transfer Harrison, and their actions were in violation of CPP 18.1.

P-46. Sims, Morgan, and Sapp denied Harrison due process by holding him in a segregation unit without reason, violating CPP 10.2 and CPP 18 et seq.

The reclassification is alleged to have occurred as a result of Harrison's disciplinary action already discussed in "I". Having affirmed the disciplinary action taken in "I", the argument in "K" becomes moot. Even if Harrison's only complaint is the severity of punishment, to include reclassification, he would lose because decisions as to the custody level and the institution the inmate is to be housed do not trigger any liberty interests that require due process protections. Newell v. Brown, 981 F.2d 880-887 (6th Cir. 1992), cert. denied, 510 U.S. 842, 114 S. Ct. 127, 126 L. Ed. 2d 91 (1993); Mahoney v. Carter, Ky., 938 S.W.2d 575 (1997). Therefore, we still believe the circuit court did not err in "I".

L. DETENTION ORDER (November 17, 1998)

Harrison contends he was given a detention order and placed in segregation on November 17, 1998, without notice as to why.

P-9. On August 14, 1998, and November 18, 1998, Lonnie Matlock issued detention orders placing Harrison in administrative segregation without providing sufficient notice to Harrison to articulate a response for a defense or appeal purposes, which denied due process.

C-1. Duplicate of P-9.

P-10. On August 16, 1998, and November 18, 1998, James Mitchell, Deputy Warden, approved Harrison's placement in administrative segregation, knowing that the detention order was not adequate, false and/or based on unreliable evidence.

C-2 Duplicate of P-10.

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

This argument relates back to the shave and haircut discussed in "I". The arguments were fully discussed therein.

M. DUE PROCESS

Harrison contends his rights were violated, the proceedings arbitrary, and his punishment disproportionate as

that given to other inmates. This court refers back to the December 10, 1998, disciplinary action over the gold ring, discussed in “H” above.

P-20. Rader, Jones, and Case interfered with Harrison’s attempts to have witnesses and prepare a defense for charge alleged in paragraphs 14 and 15.

P-25. On March 10, 1999, Bill Case issued Part-I disciplinary report against Harrison for a category 5 Item-4, knowing it to be false and/or not based on reliable evidence.

P-26. Bill Case’s action in paragraph 25 above, was for the sole purpose of harassing Harrison and causing conflicts between other inmates.

P-27. Case interfered with Harrison’s private communication and denied Harrison’s first amendment right of expression by violating CPP 16.1 in prohibiting the processing of Harrison’s mail.

P-28. Case violated Harrison’s right to privacy when Case issued a disciplinary report to other inmates, giving them copies of Harrison’s letter(s), which included family members’ addresses.

P-30. Howell, Morgan, Sapp, and Sims, arbitrarily imposed disciplinary punishment on Harrison that was disproportionate to other similarly situated inmates.

P-33. Morgan, Morris, and Sapp failed and/or refused to investigate the facts and circumstances raised in each of Harrison's administrative appeals, grievances, and/or complaints about the hearing officer's decisions, classification decisions, and/or about improper segregation time.

P-38. Sims issued Harrison a disciplinary report for a major rule infraction of destroying state property, knowing it was false and not based on reliable evidence.

P-39. Rader issued Harrison a disciplinary report for a major rule infraction to obtain goods under false pretenses, knowing it was false and not based on reliable evidence.

P-40. Morris, Clark, Taylor, Morgan, and Sapp failed and/or refused to adequately investigate the claims and the complaints submitted and/or assigned to them about the other appellees' abuse, harassment, and unfair treatments directed toward Harrison.

P-44. Judith Morris, Carol Williams, James Morgan, and Clark Taylor failed and/or refused to properly investigate complaints made by Harrison and they failed and/or refused to house Harrison in the least restrictive environment pursuant to Chapter CPP 18 et seq. and they failed and/or refused to ensure that CPP's were followed.

The issues in the disciplinary action relating to the gold ring were considered in argument "M" and disposed of

therein. P-27 and P-28 do not contain facts, merely conclusions. We do not know if they add an issue to the disciplinary appeal. Therefore, the circuit court did not err in dismissing this count.

N. VENUE

Harrison contends the Boyle Circuit Court dismissed part of his complaint because it was not in the proper venue. His argument does not indicate which counts or causes of actions or claims he is referring to or where they should be, or why. A reading of the order dismissing his suit does not discuss venue except to mention that Harrison has sued the appellees for the same basis in multiple forums.

In reviewing Harrison's "arguments" in his brief to this Court, we note that paragraphs 17, 31, 42, and 57 of the amended complaint are not discussed, nor is C-16 of the original complaint. We will consider those accusations abandoned without further comment.

For the foregoing reason, the order of Dismissal of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
James Nick Harrison, Pro Se West Liberty, Kentucky	Rebecca Baylous Justice and Public Safety Cabinet Frankfort, Kentucky