

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001225-MR

RICHARD MASK

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 05-CI-00262

SGT. ERIC JONES

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * **

BEFORE: DIXON, VANMETER AND WINE, JUDGES.

VANMETER, JUDGE: Richard Mask appeals *pro se* from an order entered by the Bell Circuit Court dismissing his petition for a declaration of rights pertaining to a prison disciplinary proceeding. For the reasons stated hereafter, we reverse the trial court's order and remand this matter for further proceedings.

During March 2005, Mask was an inmate at the Bell County Forestry Camp (BCFC). According to the write up and investigation section of a disciplinary report filed against Mask, on March 6 Sergeant David Hamlin was told by another inmate, F.B., that

Mask had made inappropriate sexual advances toward him. In addition to this report, [Captain Joe Martin] received confidential information that inmate Mask was witnessed acting inappropriately [sic] toward [F.B.] in the shower room.

On March 15 Captain Martin provided Mask with a written “confidential summary,” which stated only that F.B. had reported to Hamlin that Mask

had been coming to the bathroom and acting sexually inappropriate while [F.B.] was showering. [F.B.] was placed in protective custody and the investigation began. [Martin] received other confidential information that Inmate Mask was acting sexually inappropriate toward [F.B.]

Further, according to the investigative section of the disciplinary report, on March 15 Sergeant Bruce Mason read the description of the incident to Mask, who denied that he had “acted inappropriate in any way toward another person.” At 7:30 that evening Mask signed the report, indicating that he had been advised of his rights. Next to the question of whether Mask had “waive[d] 24-hour notice” was a check mark indicating “yes,” while a scratched-out check mark and Mason's initials were next to the answer “no.” A disciplinary hearing then was conducted less than fourteen hours later, at 9:00 a.m. on March 16. According to the hearing/appeal section of the report, the following occurred:

Inmate present, legal aide present and witness statement heard. Inmate enters a not guilty plea. Upon review of all statements made during the committee and the confidential report. The committee finds him guilty and assesses penalty of 180 days good time loss and 90 days disciplinary segregation.

Mask then appealed to the warden, asserting in part that

he was not provided with a summary of the information the confidential informant provided which was sufficient to

prepare a defense from. The summary provided Mask was simply a parroting of the incident report and no details were provided; hence, Mask could not defend against that which he did not know.

The warden affirmed the adjustment committee's findings and penalty on April 8, 2005.

Mask then filed the underlying petition for a declaration of rights, raising several challenges to the constitutionality of the proceedings against him. Appellee¹ responded by filing a motion to hold the matter in abeyance for no more than 180 days, “to allow time for the internal reinvestigation[.]” More specifically, the motion explained that Mask had alleged “a number of procedural deficiencies in the course of the disciplinary action[.]” and that the BCFC warden had “ordered a reinvestigation of the matter” with the intent of curing any procedural defects and ensuring a proper hearing for Mask. Over Mask's objection, the trial court granted the requested abatement.

In February 2006, Mask filed a motion seeking either a default judgment or a summary judgment, as well as an order directing appellee to void the disciplinary order against him, because more than 180 days had passed without action by appellee. Appellee did not respond, and the court granted the motion in March 2006. The court's order was subsequently set aside, however, after appellee sought reconsideration on the ground that the failure to respond had resulted from the misplacing of files. Appellee then asserted that Mask's motion for summary judgment should be denied, as Mask had been afforded the due process guaranteed to prisoners, *see Superintendent, Mass. Corr.*

¹ Appellee Sergeant Eric Jones, the chairman of the adjustment committee which found Mask guilty, was represented by the Justice and Public Safety Cabinet. Appellee filed no brief on appeal.

Inst., Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985), and evidence would be produced at trial to counter his claims. The court denied Mask's motion for summary judgment and appellee sought to dismiss Mask's pending claims, asserting that he had been afforded the requisite due process, and that "some evidence" supported the prison disciplinary body's decision. *See Hill, id.* The court granted the motion, and Mask's petition for a declaration of rights was dismissed. This appeal followed.

On appeal, Mask asserts that the trial court erred by granting appellee's motion for reconsideration and setting aside the March 2006 order granting default or summary judgment in his favor. However, it was within the trial court's prerogative to believe or disbelieve the reasons appellee provided for failing to timely respond to Mask's motion, and to then grant or deny the requested relief. It follows, therefore, that the trial court did not err by granting the motion for reconsideration and by setting aside its earlier order.

Nevertheless, we agree with Mask's contention that he was denied due process during the disciplinary proceedings below. The United States Supreme Court held in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), that due process requires a prison to provide procedural protections before depriving an inmate of his or her protected liberty interest in good time credits. As summarized in *Hill*, 472 U.S. at 454, 105 S.Ct. at 2773, *Wolff* held that

[w]here a prison disciplinary hearing may result in the loss of good time credits, . . . the inmate must receive: (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and

correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

Noting that the flexible requirements of due process depend on the balancing of a prisoner's liberty interest in good time credits against legitimate institutional needs, the Supreme Court held

that the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if “there was some evidence from which the conclusion of the administrative tribunal could be deduced” *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S., at 106, 47 S.Ct., at 304. 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.

472 U.S. at 455-56, 105 S.Ct. at 2774.

Here, as quoted above, the charges against Mask consisted only of claims that he “acted inappropriately” or made “inappropriate sexual advances” toward F.B. in the shower room or elsewhere. Clearly, such broad descriptions could encompass behavior ranging from an ambiguous look to a violent physical attack. As the record contains no additional description of the allegedly inappropriate behavior or other details such as when the behavior allegedly occurred, we are compelled to conclude that there is not “any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.*, 474 U.S. at 455-56, 105 S.Ct. at 2774. It follows, therefore, that

the disciplinary proceeding did not comport with due process, and that the findings and sanctions imposed against Mask must be set aside. We note that while the prevention and punishment of sexual threats and abuse must continue to be a matter of great concern to prison authorities, the due process rights of accused prison inmates cannot be ignored in the process of eliminating other serious harms.

The court's order dismissing Mask's petition for a declaration of rights is reversed and this matter is remanded, with directions to the trial court to remand this matter to appellee to vacate the incident report at issue herein, and to reinstate Mask's 180 days of good time credit.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Richard Mask, *Pro se*
Sandy Hook, Kentucky