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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000612-MR

LAWRENCE ROBERT STINNETT — APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A.WOODALL, III, JUDGE
ACTION NO. 10-CI-00186

PHILLIP PARKER, WARDEN, ET AL. — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, KELLER, AND NICKELL, JUDGES

DIXON, JUDGE: Inmate Lawrence Robert Stinnett appeals, *pro se*, from the dismissal of his petition for a declaration of rights under Kentucky Revised Statute(s) KRS 418.040. Upon review, we affirm the Lyon Circuit Court.

At all times relevant herein, Stinnett was confined at the Eastern Kentucky Correctional Complex. Stinnett claims his procedural due process rights

were violated when he was found guilty of the infraction "Physical Action Against an Employee or Non-inmate" in an Adjustment Committee hearing that occurred on April 8, 2010. Stinnett was found to have thrown clothing out of a cell, striking an officer in the leg with them. Stinnett received 90 days of disciplinary segregation for the infraction. He suffered no other consequence or loss of good time credit.

Stinnett appealed the finding and petitioned the Lyon Circuit Court for a declaration of rights. Stinnett argued in his petition that he was denied due process when he was not permitted to call upon and cross-examine the corrections officer and an eye witness to the incident. Stinnett further alleged in his petition that segregation was inappropriate because he was not a DOC inmate at the time, but a "contract inmate" from a county jail, and also, that the Adjustment Committee's findings were not supported by "some evidence." Stinnett asked the court to grant him a new hearing and expunge the prior disciplinary hearing from his prison record.

The trial court dismissed the petition with prejudice. Stinnett now appeals to this Court.

Upon a review of the record, we are inclined to agree with the trial court that Stinnett failed to allege any facts or circumstances which would demonstrate a procedural due process violation.

As we have often stated before, prison disciplinary proceedings are not part of a criminal prosecution and the full panoply of rights afforded to a

criminal defendant are not afforded to an incarcerated inmate facing prison disciplinary charges. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). Our courts have long held that in order to prevail on a Fourteenth Amendment procedural due process claim, an inmate petitioning for a declaration of rights must establish: "(1) that he enjoyed a protected 'liberty' or 'property' interest" and "(2) that he was denied the process due him under the circumstances." *Marksberry v. Chandler*, 126 S.W.3d 747, 749 (Ky.App. 2004). We have held that disciplinary segregation, where no loss of good time credit is involved, does not in itself implicate a protected liberty interest under the Due Process Clause. *Marksberry*, 126 S.W.3d at 749-750. *See also, Sandin v. Conner*, 515 U.S.472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).

While segregation does not typically implicate due process, a petitioner is entitled to due process where the segregation "imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. In order to determine whether an instance of segregation is "atypical and significant," courts must look to factors such as: (1) the effect of the segregation on the length of prison confinement under the original sentence, (2) the extent to which the conditions of segregation differ from other prison conditions, and (3) the duration of segregation imposed. *Marksberry*, 126 S.W.3d at 750, *citing Sandin*, 515 U.S. at 486.

In the present case, Stinnett suffered 90 days of segregation. He makes no argument that the segregation was atypical compared to normal prison

conditions or that it imposed any significant hardship upon him. Accordingly, having been offered no argument to the contrary, we find that it did not. Further, we find no merit to Stinnett's argument that he was not a DOC inmate at the time of the infraction, as Stinnett was being held at a DOC facility due to overflow at his local county jail and all DOC policies and procedures applied. He has cited no authority to this Court to the contrary.

As no liberty interest of the inmate Stinnett was at stake which would implicate the Due Process Clause, we need not further address the procedural due process arguments raised on appeal.

Stinnett also argues, however, that the evidence against him was insufficient. Again, we must disagree. In prison disciplinary matters, we only review the record for whether "some evidence" exists to support the Adjustment Committee's decision. *Webb v. Sharp*, 223 S.W.3d 113 (Ky. 2007); *Smith v. O'Dea*, 939 S.W.2d 353, 358 (Ky.App. 1997). In making this determination, the relevant inquiry is "whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455-6, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

We agree with the Lyon Circuit Court that Stinnett's allegations raise no genuine issue of fact sufficient to overcome the presumption of agency propriety. The Adjustment Committee's decision was supported by the disciplinary report of Corrections Officer Gina Darnall and an eyewitness account.

This clearly meets the low threshold of the "some evidence" standard espoused in *O'Dea*.

In light of the foregoing, we affirm the Lyon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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