

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001510-MR

TERRY COMER

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT  
HONORABLE REBECCA K. PHILLIPS, JUDGE  
ACTION NO. 08-CI-00139

LADONNA THOMPSON, DEPARTMENT OF  
CORRECTIONS/COMMISSIONER; JOSEPH P. MEKO,  
DEPARTMENT OF CORRECTIONS/WARDEN-LITTLE SANDY  
CORRECTIONAL COMPLEX; REBECCA KEETON,  
DEPARTMENT OF CORRECTIONS/INMATE  
ACCOUNTS-LITTLE SANDY CORRECTIONAL  
COMPLEX; JAMES STANIFORD, DEPARTMENT OF  
CORRECTIONS/CAPTAIN-LITTLE SANDY  
CORRECTIONAL COMPLEX; JAMES M. DENNIS,  
DEPARTMENT OF CORRECTIONS/CAPTAIN-LITTLE SANDY  
CORRECTIONAL COMPLEX; TERRY WALLACE,  
DEPARTMENT OF CORRECTIONS/LIEUTENANT-LITTLE  
SANDY CORRECTIONAL COMPLEX; AND BEVERLY LEWIS,  
DEPARTMENT OF CORRECTIONS/SERGEANT-LITTLE  
SANDY CORRECTIONAL COMPLEX

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MOORE, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Terry Comer appeals from an Order of the Elliott Circuit Court dismissing his Petition for Declaration of Rights. Comer argues that the Elliott Circuit Court erred in failing to rule that the Little Sandy Correctional Complex improperly froze Comer's inmate account. He also contends that the court erred in concluding that he failed to exhaust his administrative remedies arising from an inmate disciplinary proceeding. We find no error, and accordingly affirm the Order on appeal.

Comer is an inmate at the Little Sandy Correctional Complex in Little Sandy, Kentucky. In early September of 2008, Comer's mother purchased a money order in the amount of \$400 and mailed it to the Correctional Complex for the purpose of funding Comer's inmate account. After receipt, the funds were then deposited in Comer's account and he began using them to purchase food items at the inmate canteen. About six months later, officials noted that the money order was purchased in Kentucky, but was mailed to the Complex in an envelope with a Florida return address. Complex officials became suspicious because of this apparent discrepancy, and barred Comer's access to the funds in order to investigate the matter.

An investigation ensued, where upon Lieutenant Wallace asked Comer why the money order was purchased in Kentucky but had a Florida return address on the envelope. Comer apparently responded that his mother lived in Florida but

purchased the money order when she was in Kentucky for a family reunion.

Wallace then sought to have Comer demonstrate the veracity of this claim by offering for Comer to call his mother from Wallace's office so that she could confirm Comer's claim. Comer stated that his mother did not have a phone.

Wallace then offered Comer the opportunity to obtain a receipt for the money order from his mother, or to seek written confirmation from his mother by way of the United States Postal Service. According to the record, Comer was either unable to comply or refused to comply.

Comer was then told that the funds would be held until he was released from custody, at which time he would receive them. Additionally, Comer was charged with the institutional offense of using the mail to obtain money by fraud, "Category 5 Item 8." On March 31, 2009, the matter went before an Adjustment Officer, Sergeant Rebecca Lewis, who found Comer guilty of the violation and assessed a penalty of 60 days disciplinary segregation, and the forfeiture of 61 days of good time credit. Sergeant Lewis reiterated that the \$400 at issue would remain frozen until it was returned to Comer at the time of his release.

Comer then prosecuted an unsuccessful administrative appeal of the decision to freeze the funds. Thereafter, he filed a *pro se* Petition with the Elliott Circuit Court seeking a Declaration of Rights. Therein, Comer sought redress of the decision to freeze the \$400 in his inmate account as well as the finding of guilty on the institutional offense. After taking proof, the circuit court determined that Comer had properly exhausted his administrative remedies on the issue of the

frozen inmate account, but that he nevertheless was not entitled to relief on that issue. As to his claim of being improperly found guilty on the institutional offense, the court determined that Comer had not offered any proof that he exhausted his administrative remedies on this issue, and as such denied his claim for relief. This appeal followed.

Comer now argues that the circuit court erred in denying his Petition for Declaration of Rights. Specifically, Comer first maintains that the court improperly determined that he failed to exhaust his administrative remedies in his appeal of the disciplinary charge. In support of this claim, Comer contends that the record reveals that those administrative remedies were exhausted. He also argues that the court improperly failed to direct the Department of Corrections to release the frozen funds. In sum, he seeks an Order reversing the administrative finding of guilt on the offense of obtaining the money order by false pretenses, and he seeks to have the funds unfrozen.

We have closely studied Comer's arguments, and find no error in the Order on appeal. As to Comer's contention that the circuit court improperly failed to conclude that he exhausted his administrative remedies on the charge of obtaining a money order by false pretenses, Comer is bound by administrative regulation and statute to follow an institutional grievance procedure before proceeding in circuit court. See 501 KAR 6:020; Correction Policy and Procedure ("CPP") 15.7 (C)(2). KRS 454.415 states in relevant part that,

(1) No action shall be brought by or on behalf of an inmate, with respect to:

- (a) An inmate disciplinary proceeding;
- (b) Challenges to a sentence calculation;
- (c) Challenges to custody credit; or
- (d) A conditions-of-confinement issue;

until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted.

(2) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.

(3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.

(4) A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies, and may include as part of its order an assessment of court costs against the inmate as the court may deem reasonable and prudent. The correctional facility may enforce this assessment against the inmate's canteen account and against any other assets of the inmate through any other mechanism provided by law.

The burden rests with Comer to demonstrate that he exhausted his administrative remedies before proceeding in circuit court. *Houston v. Fletcher*, 193 S.W.3d 276 (Ky. App. 2006). He did not do so, and such we find no error on this issue.

Comer's related argument is that the circuit court erred in failing to determine that the funds at issue should be unfrozen or otherwise released for his usage at the inmate canteen. As a basis for this argument, Comer appears to

contend that he was denied procedural due process, and/or that the Adjustment Officer improperly failed to investigate the facts. In concluding that the Department of Corrections acted within its authority in freezing these funds, the circuit court found that once the account was frozen for investigative purposes and disciplinary action, it was proper for the prison to consider the funds as contraband. We find no error in this conclusion.

Inmates retain rights under the Due Process Clause of the United States Constitution, subject to restrictions imposed by the nature of their lawful imprisonment. *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, the full panoply of rights due a defendant in a criminal prosecution is not applicable in a prison disciplinary proceeding. *Id.* The inmate's interest in the procedural protections required by due process must be balanced against the legitimate institutional needs of assuring safety and control of inmates, avoiding burdensome administrative requirements and preserving the disciplinary process as a means of rehabilitation. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); *Wolff, supra*. In the matter at bar, Comer received procedural due process which resulted in his inmate account being frozen, and the circuit court went so far as to conclude that he had exhausted his administrative remedies on this issue. Ultimately, however, we find persuasive the circuit court's reasoning that the Department of Corrections acted within its authority to maintain institutional control by barring Comer's access to the funds as part of the Department's

investigation and subsequent disciplinary action. Accordingly, we find no error on this issue.

For the foregoing reasons, we affirm the Order Dismissing Petition of the Elliott Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Terry Comer, *pro se*  
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Wesley W. Duke  
Frankfort, Kentucky