

RENDERED: MAY 9, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2013-CA-000415-MR

TRAVIS WHITAKER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 12-CI-01428

DARRELL K. HALSEY;  
DAPHNE BENTLEY;  
JOHN R. HOLLOWAY;  
AND LADONNA THOMPSON

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Travis Whitaker brings this *pro se* appeal from a February 1, 2013, Order of the Franklin Circuit Court dismissing his petition for declaration of rights. We affirm.

Appellant is an inmate at the Eastern Kentucky Correctional Complex. He was charged with a disciplinary violation – inciting to riot. A hearing officer adjudicated appellant guilty of the violation based largely on correctional officers observing appellant in a physical altercation with other inmates. On appeal to the warden, he affirmed the hearing officer’s decision.

Thereupon, appellant filed a petition for declaration of rights in the Franklin Circuit Court challenging the hearing officer’s finding of guilt as to the violation of inciting to riot. By order entered February 1, 2013, the circuit court dismissed the petition and found that “some evidence” supported the hearing officer’s finding that appellant committed the violation. This appeal follows.

Appellant contends that the circuit court erroneously dismissed his petition for declaration of rights. Appellant specifically argues that there existed insufficient evidence to support the finding of guilt, that he was charged with the incorrect disciplinary violation, and that the violation of inciting to riot is unconstitutionally vague.

Having reviewed the record and applicable legal authority, we attach no merit to appellant’s arguments. As set forth by the Commonwealth, and as duly noted by the circuit court, the record contains “some evidence” to support the hearing officer’s finding that appellant committed the violation of inciting to riot. *See Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). In particular, the Commonwealth points out:

Under [Correction’s Policy and Procedure] CPP 15.2(I) “Riot” is defined as “incites, instigates, organizes, plans causes, aids, abets, assists or takes part in any disorder, disturbance, strike, or other organized disobedience to the rules of the institution.” In this instance [appellant] was involved in an attack involving four other inmates. A corrections officer witnessed the appellant in an altercation with four other inmates. . . . Therefore, “some evidence” indicates that [appellant] “assist[ed]” in a “disorder” or “disturbance.”

Appellees’ Brief at 4. Additionally, we cannot say appellant demonstrated that the disciplinary violation of riot is unconstitutionally vague as fair notice is provided as to what conduct is forbidden and sufficient guidelines are provided to prevent arbitrary enforcement. *See Com. v. Kash*, 967 S.W.2d 37 (Ky. App. 1997). In sum, we conclude that the circuit court did not err by dismissing appellant’s petition for declaration of rights.

For the foregoing reasons, the Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Travis Whitaker, *Pro Se*  
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BRIEF FOR APPELLEES:

J. Todd Henning  
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