

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001060-MR

JOHNNY CISSELL

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 14-CI-00168

GREGORY HOWARD, WARDEN; AND
TIMOTHY FORGY, HEARING OFFICER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

DIXON, JUDGE: Johnny Cissell appeals the Oldham Circuit Court's dismissal of his declaratory judgment action challenging a prison disciplinary proceeding. We affirm.

On March 15, 2013, Cissell was an inmate at Luther Luckett Correctional Complex. The prison's security surveillance video showed Cissell's cellmate,

Scottie Roberts, stumble from the cell and grab a chair for support. Cissell appeared on the video three minutes later exiting the cell. Sergeant Jason Fisher investigated the incident as a possible physical altercation, and he found Roberts with multiple scalp wounds, facial bruising, and a large laceration on his finger. The prison nurse recommended emergency treatment for Roberts, and he was subsequently transported to the University of Louisville Hospital. Cissell was questioned and refused to give a statement regarding the incident. Cissell received a disciplinary write-up for physical action against an inmate resulting in serious injury and pled not guilty to the charge. A hearing was held before the prison's disciplinary adjustment committee, and an inmate legal aide assisted Cissell. Cissell called Roberts as a witness; however, Roberts refused to make any statements. Cissell testified on his own behalf, asserting that Roberts had a medical issue that caused him to injure himself. Cissell acknowledged that he and Roberts were the only people in the cell at the time of the incident. The committee found Cissell guilty of the charge and imposed punishment of 180 days in disciplinary segregation, loss of two years' good time credit, and restitution for Roberts's medical treatment. Cissell appealed the decision to the warden, who concurred with the committee.

Cissell filed a petition for declaration of rights in Oldham Circuit Court, alleging the committee's decision deprived him of due process because there was no evidence Cissell assaulted Roberts. Cissell requested that the court dismiss the disciplinary charge, restore his good-time credit, and award him damages of

\$10,000.00 for pain and suffering due to the arbitrary action of the adjustment committee. The circuit court determined Cissell was not entitled to relief and dismissed the petition. This appeal followed.

A prison disciplinary hearing where an inmate's good time credit is at risk must comply with procedural due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2974-75, 41 L. Ed. 2d 935 (1974). At minimum, the prisoner is entitled to written notice of the charges, the opportunity to present evidence in his defense, and a report by the committee of its reasoning and conclusions. *Id.* at 564-66, S. Ct. at 2978-80. On judicial review of a disciplinary action, "the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board." *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356 (1985). The Kentucky Supreme Court has held "that the 'some evidence' standard of review provides courts with a sufficient check upon adjustment committee fact-finding." *Smith v. O'Dea*, 939 S.W.2d 353, 358 (Ky. App. 1997).

In the case at bar, Cissell challenges the evidence relied upon by the adjustment committee, pointing out that there were no medical records to substantiate Roberts's injuries. Cissell also believes the committee improperly disregarded his explanation that Roberts had a medical condition that caused him to injure himself. While we acknowledge Cissell's contentions, our review is

concerned only with whether there was “some evidence” supporting the committee’s decision.

Cissell has failed to demonstrate that he was denied due process during the disciplinary process, as 1) he had notice of the charges against him, 2) he had the opportunity to call witnesses; and 3) he received a written statement to support the committee’s findings of guilt. It is clear that an investigation was conducted and that the committee properly relied on the investigating officer’s statements to find Cissell guilty of the charges. Sergeant Fisher’s report indicates he observed Roberts’s injuries, accompanied Roberts to see the nurse, and learned that Roberts required outside medical treatment at a hospital. Further, Sergeant Fisher reviewed the institutional video recording that showed Roberts stumble from the cell followed by Cissell exiting the cell. After reviewing the record, we conclude there was sufficient evidence before the adjustment committee to support finding Cissell guilty of physical action against an inmate resulting in serious injury. Here, the disciplinary proceedings afforded Cissell the constitutional protections to which he was entitled; accordingly, the circuit court properly dismissed Cissell’s petition.

Finally, the court properly dismissed Cissell’s claim for damages for pain and suffering. Pursuant to KRS 454.405(5), “No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.” Here, the record clearly shows Cissell did not suffer a physical injury; consequently, he cannot establish a claim for damages.

For the reasons stated herein, we affirm the Oldham Circuit Court's
order of dismissal.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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