

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000352-MR

KEVIN ADAMS

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 13-CI-00239

KENTUCKY DEPARTMENT  
OF CORRECTIONS; CLARK TAYLOR,  
WARDEN; AND DAWN DECKARD,  
ADJUSTMENT OFFICER

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: ACREE, CHIEF JUDGE;, J. LAMBERT AND MAZE, JUDGES.

MAZE, JUDGE: Kevin Adams, Appellant, brings this *pro se* appeal of a December 3, 2014 order of the Oldham County Circuit Court denying his petition for a declaration of rights. After a careful review of the record and the applicable law, we affirm.

## Relevant Facts

On April 24, 2012, correctional officer Durrell St. Clair and Lieutenant Darin Wilder conducted an authorized strip search of Appellant, which revealed an institutionally rolled cigarette in Appellant's pocket. During the course of a cell search, the corrections officers found a pornographic DVD inside Appellant's Playstation console. Appellant was written up for "possession of/ promoting of dangerous contraband" for the DVD. On June 22, 2012, an adjustment officer found Appellant guilty in a hearing, apparently relying on the fact that Appellant admitted to possession of the DVD. Appellant then appealed this decision to Warden Clark Taylor.

On July 26, 2012, Warden Taylor concurred with the finding of the adjustment officer, stating that "DVD's are considered dangerous contraband because they are used to store data and may be overwritten to store information that could [] threaten the security of the facility." Appellant was sentenced to 59 days of disciplinary segregation and forfeited 180 days of good time. On March 27, 2014, Appellant filed a petition for a declaration of rights to the Oldham Circuit Court. On December 3, 2014, the circuit court entered an order dismissing this action, pursuant to a motion to dismiss by the Kentucky Department of Corrections. ("DOC"). This appeal follows.

## Analysis

Appellant argues for the first time on appeal that the DOC should not have been permitted to respond to claims at the circuit court level, because the DOC had not responded to his allegations throughout the disciplinary process.<sup>1</sup> Appellant has not requested palpable error review, and “[a]bsent extreme circumstances amounting to a substantial miscarriage of justice, an appellate court will not engage in palpable error review pursuant to RCr 10.26 unless such a request is made and briefed by the appellant.” *Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008) (citing *Thomas v. Commonwealth*, 153 S.W.3d 772, 782 (Ky. 2004); *Bray v. Commonwealth*, 177 S.W.3d 741, 752 (Ky. 2005)). Because such a miscarriage of justice is not present *sub judice*, we decline to engage in such review now.

Four general issues remain, with each representing one way in which Appellant believes his due process rights were violated; although, sometimes he has given alternative reasons for why he believes a certain type of error occurred. Appellant’s claims are as follows: (1) the adjustment officer failed to provide specific findings of fact in the disciplinary report; (2) Appellant was improperly charged with promoting or possessing dangerous contraband, because a DVD is not dangerous; (3) the circuit judge demonstrated bias when she entered an order

---

<sup>1</sup>Appellant’s brief can be difficult to understand in some places. For example, some numbered sections in Appellant’s brief raise more than one issue. We have carefully reviewed the record in order to respond to each of his claims.

stating that the court did not have a motion before it; and (4) the DOC failed to fill out a chain of evidence form.

In prison disciplinary proceedings “the full panoply of rights due a [criminal] defendant ... does not apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935 (1974). Furthermore, the United States Supreme Court has stated that procedural due process in this context requires only: “(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 defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” *Superintendent, Mass. Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985).

These due process requirements are generally met “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, 86 L. Ed. 2d 356 (1985). Furthermore, “determining whether ‘some evidence’ is present in the record does not ‘require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence[.]’” and “[e]ven ‘meager’ evidence will suffice.” *Ramirez v. Nietzel*, 424 S.W.3d 911, 916-17 (Ky. 2014) (quoting *Walpole*, 472 U.S. at 455–56; 57, 105 S.Ct. at 2774).

## **I. Findings of Fact by the Adjustment Officer**

Appellant first contends that the Kentucky Department of Corrections violated CPP 15.6(II)(D)(3)(d), which provides as follows: “The decision [of the adjustment officer] shall have specific findings of fact. The findings may be based on facts contained in the employee’s report. The findings shall explicitly state which facts were determined to be true if facts in the employee’s report are relied upon.”

The findings issued in the disciplinary report did indeed state specific findings of fact, including the name of the reporting employee, the contraband found in Appellant’s possession after a search of Appellant’s person, and that Appellant admitted to having the DVD in his possession. As the disciplinary report stated findings of fact, there was no violation of CPP 15.6(D)(3)(d).

## **II. A DVD as “Dangerous Contraband”**

Appellant next argues that his due process rights were violated when he was charged with possession of dangerous contraband, because a pornographic DVD cannot constitute dangerous contraband. KRS § 520.010(3) defines “dangerous contraband” as

contraband which is capable of use to endanger the safety or security of a detention facility or persons therein, including, but not limited to, dangerous instruments as defined in KRS 500.080, any controlled substances, any quantity of an alcoholic beverage, and any quantity of marijuana, cell phones, and saws, files, and similar metal cutting instruments[.]

There exists an unpublished case on point. In *Mitcham v. Crews*, No. 2010-CA-001581-MR, 2011 WL 4409346 (Ky. App. 2011), this Court held that a

pornographic DVD could constitute “dangerous contraband” in the prison disciplinary context. *Id.* at \*2. Warden Taylor set out specific facts supporting the finding that the DVD constituted “dangerous contraband.” Additionally, the DOC’s own regulations explicitly list DVDs as constituting “dangerous contraband.” CPP 9.6(II)(A)(6) provides that “dangerous contraband” may include “[a]ny device capable of storing data for review to include personal messages, movies, correspondence concerning illegal activity, or other security risk items (e.g., DVD’s, cellphones, advanced calculators, unsupervised flash drives).” As DVDs may classify as “dangerous contraband,” this argument is similarly without merit.

### **III. Alleged Judicial Bias against Appellant**

On August 11, 2014, the Oldham Circuit Court entered an order which provided that “[t]here is no motion pending before the Court upon which it can act[]” and “[i]t will be necessary for either Petitioner or Respondent to file an appropriate motion before the Court.” Appellant contends that this order violated his due process rights because it demonstrated bias against Appellant. Orders such as these are housekeeping matters necessary for the expedient adjudication of claims. Naked allegations are insufficient to prove judicial bias. *Burkhart v. Commonwealth*, 125 S.W.3d 848, 851 (Ky. 2003) (“Lacking any definitive evidence of judicial bias in the present matter, we find no error in the trial judge’s actions.”). Because Appellant has not stated facts sufficient to prove judicial bias, this argument also fails.

#### IV. Chain of Evidence Form

Finally, Appellant claims that he was denied due process because the DOC failed to fill out a chain of evidence form, as required by CPP 9.8(II)(F)(2)(b)(1). Apparently, no chain-of-custody form was filled out in the present case, and the DOC has not asserted that one was. The fact remains, however, that even if the physical evidence was excluded, Appellant's admission that he owned the DVD in question is sufficient to satisfy the "some evidence" standard. "An admission is 'some evidence' sufficient to uphold the decision of the Adjustment Committee." *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky. App. 2003). *See also Webb v. Sharp*, 223 S.W.3d 113, 121 (Ky. 2007) ("The facts surrounding the three incidents involving marijuana, even with the field test results excluded, are sufficient to conclude there is 'some evidence' of record to support the decision reached by the hearing officers . . ."). As the record in the present case consisted of some evidence, Appellant's due process arguments are without merit. Because we affirm, we need not address the DOC's argument concerning Appellant's alleged failure to exhaust his administrative remedies.

The Oldham Circuit Court's order dismissing Appellant's prison disciplinary action is therefore affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kevin Adams, *Pro Se*  
Eastern Kentucky Correctional  
Complex  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Stafford Easterling  
Justice and Public Safety Cabinet  
Frankfort, Kentucky