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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000785-MR

NEWELL STACY APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 15-CI-00018

STEVE HANEY, WARDEN APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Newell Stacy (Stacy) brings this *pro se* appeal of an order of the Boyle Circuit Court dismissing his petition for a declaration of rights. Because we hold that Stacy's claim is barred by the statute of limitations and each of his claims fails on the merits, we affirm.

Relevant Facts

The facts surrounding Stacy's criminal conviction were provided by our Supreme Court in Stacy's direct appeal:

> On August 21, 2009, a riot broke out in Northpoint Training Center, a prison facility in Burgin, Kentucky. That evening, Kentucky Department of Corrections Officer Tim Peavyhouse responded to a fire alarm in dormitory # 6 of the complex. As he began the process of evacuating the inmates from their dorm, the fire alarm in dormitory # 3 began to sound. When Peavyhouse went to dorm # 3, he noticed inmates had set fire to a trash can and several of them began throwing rocks at the responding officers.
>
> Thereafter, inmates from dorm # 6 broke through a chain link fence and gained access to one of the prison's restricted areas. While attempting to quell the riot, Peavyhouse noticed that inmates from dormitory # 2 were also outside of their quarters.
>
> He also saw Appellant Newell Stacy attempting to break the locks off the multipurpose center's doors with a concrete gutter slab. Although Appellant was unsuccessful in gaining entry, he broke some of the windows, lit toilet paper on fire, and threw it inside the building. He also set a trashcan on fire and threw it on top of the roof. According to additional witnesses, other inmates also participated in lighting the fires that eventually led to the complete destruction of the multipurpose building.
>
> Appellant was thereafter indicted for first-degree arson, first-degree riot, and for being a first-degree PFO. Although the jury was unable to come to a unanimous determination as to the arson charge, it rendered a guilty verdict for the first-degree riot charge and found Appellant to be a first-degree PFO. The trial court subsequently adopted the jury's recommended sentence of five years for the first-degree riot conviction, enhanced

> to twenty years as a result of Appellant being a first-degree PFO.

Stacy v. Commonwealth, 396 S.W.3d 787, 790-91 (Ky. 2013) (footnote omitted).

A prison disciplinary action, which is the subject of the present case, also arose from these events. On December 23, 2009, Stacy was found guilty in a prison disciplinary hearing of "deliberately or negligently causing a fire," pursuant to CPP[1] 15.2(II)(C)(VI)(3). Warden Gary Beckstrom (Warden Beckstrom) denied his appeal on January 13, 2010. On August 7, 2014, over four years after his disciplinary hearing, Stacy filed a request for a reconsideration of the outcome of that hearing. Warden Beckstrom denied that request on August 14, 2014.

Stacy filed a petition for a declaration of rights in the Boyle Circuit Court on January 15, 2015. On March 16, 2015, the circuit court dismissed Stacy's action on the grounds that Stacy had failed to exhaust his administrative remedies, his petition was barred by the statute of limitations and he had failed to state a claim upon which relief could be granted. This appeal follows.

Analysis

Stacy makes three arguments on appeal. First, Stacy argues that because the jury was unable to come to a verdict as to his arson charge in his criminal trial, he could not be subject to prosecution for the same conduct in a prison disciplinary proceeding. Second, Stacy argues that the adjustment officer applied the incorrect evidentiary standard in his prison disciplinary proceeding. Third, Stacy argues that

[1] Kentucky Correctional Policies and Procedures

the evidence below was insufficient to meet the "some evidence" standard for prison disciplinary actions.

The circuit court correctly ruled that Stacy's claim is barred under the applicable statute of limitations. In *Million v. Raymer*, 139 S.W.3d 914 (Ky. 2004), our Supreme Court held that the statute of limitations for petitions for declarations of rights which allege constitutional claims runs one year from the date that the warden affirms the inmate's conviction. *Id.* at 919. The action was filed more than five years after the date that the warden affirmed Stacy's conviction, and so Stacy's petition was untimely filed.[2]

Appellee claims that Stacy failed to exhaust his administrative remedies under KRS[3] 454.415, because Stacy attempted to "revive" his appeal by filing a motion for reconsideration on August 7, 2014. This Court is not persuaded that an inmate's attempt to "revive" an action results in his failure to exhaust his administrative remedies. Stacy complied with the provisions of CPP 15.6(F) when he filed his appeal to Warden Beckstrom.

Regardless, each of Stacy's claims are meritless. First, Stacy contends that, because the jury was unable to reach a verdict as to his arson charge he could not be subject to prosecution for the same conduct in a prison disciplinary proceeding. As grounds, Stacy cites the Supremacy Clause of the United States Constitution.

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[2] The circuit court stated in its order that "Although the petitioner filed a petition for declaration of rights in Morgan Circuit Court, which was not the proper venue, he admits that following the destruction of the courthouse due to a tornado, he failed to timely re-file his petition, either in Morgan Circuit Court, or properly, in Boyle Circuit Court." We agree with the circuit court's reasoning.

[3] Kentucky Revised Statute.

"The Supremacy Clause, eponymously enough, dictates that the Constitution, Laws of the United States, and United States' treaties shall be the supreme law of the land. In operation, the Supremacy Clause invalidates state laws that interfere with, or are contrary to federal law." *U.S., ex rel. U.S. Attorneys ex rel. E., W. Districts of Kentucky v. Kentucky Bar Ass'n*, 439 S.W.3d 136, 142 (Ky. 2014) (footnotes and internal quotations omitted). The Supremacy Clause has no application to Stacy's argument. Furthermore, it is well-established that prison disciplinary actions have a much lower burden of proof than criminal charges. "In a criminal prosecution, of course, it is the Commonwealth's burden to prove each element of the alleged offense beyond a reasonable doubt." *Quisenberry v. Commonwealth*, 336 S.W.3d 19, 34 (Ky. 2011). Prison disciplinary actions merely require "some evidence" of guilt. *Superintendent, Mass. Corr. Inst., Walpole v. Hill,* 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). A jury might be unable to conclude that it had been provided proof beyond a reasonable doubt as to Stacy's guilt of the arson charge, yet an adjustment officer might still find that "some evidence" supported Stacy's guilt as to the corresponding prison disciplinary offense.

Stacy also challenges the "some evidence" burden of proof established in prison disciplinary proceedings as being insufficient to safeguard an inmate's due process rights. This Court has previously upheld the use of this standard of review in *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997), considering the requirements of procedural due process.

> We note on the one hand the prison administration's compelling interest in order and in authority as a means to order. In a prison, where a state of emergency and high alert is unrelieved, any defect in the administration's authority poses a risk of disruption. On the other hand, inmate declaratory judgment petitions, like the one before us, typically present uncomplicated factual situations and concern relatively minor interests (in slightly reduced sentences, for example, or marginally mitigated conditions of confinement). In light of these disparate interests and the circumstances in which they typically arise, we are persuaded that the "some evidence" standard of review provides courts with a sufficient check upon adjustment committee fact-finding. Section 2 of our Constitution is not compromised by this standard of review nor, in general, is it compromised by judicial deference to the judgments of prison disciplinary committees and administrators in accord with that recognized as appropriate under federal law[.] . . . In reaching this result, we stress that our holding in no way relieves courts of their responsibility to be vigilant in detecting and steadfast in remedying genuine prison abuses.

Id. at 358. We decline to depart from our holding in *O'Dea*.

Third, Stacy asserts that Officer Peavyhouse's testimony was insufficient to meet the "some evidence" standard. We disagree. "The primary inquiry [in a prison disciplinary action] is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board[,]" and "[e]ven meager evidence will suffice." *Ramirez v. Nietzel*, 424 S.W.3d 911, 917 (Ky. 2014) (footnotes and internal quotation marks omitted). Direct testimony from a witness satisfies this standard.

Conclusion

In sum, we hold that the circuit court did not err when it found that Stacy's claim was barred by the applicable limitations or that his claims substantively lacked merit. We also hold that sufficient evidence existed in the record to support the adjustment officer's findings. The Boyle Circuit Court's order denying Stacy's prison disciplinary petition is therefore affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Newell Stacy, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Brenn O. Combs
Department of Corrections
Frankfort, Kentucky