

RENDERED: August 29, 1997; 10:00 a.m.

NOT TO BE PUBLISHED

NO. 96-CA-2368-MR

LEONARD JONES

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAN CORNETTE, JUDGE  
ACTION NO. 96-CI-0305

TOM CAMPBELL, WARDEN

APPELLEE

**OPINION**  
**AFFIRMING**

\* \* \* \* \*

BEFORE: ABRAMSON, COMBS, and SCHRODER, JUDGES.

COMBS, JUDGE: Leonard Jones appeals pro se from a summary judgment dismissing his petition for declaratory relief. Finding no error, we affirm.

Leonard Jones (Jones) is an inmate at the Green River Correctional Complex, at Central City, Kentucky. On May 12, 1996, Jones had a conversation with Correctional Officer Arthur Hayes about another inmate. Jones remarked upon the other inmate's release from protective custody and whether or not the inmate owed anyone cigarettes. Since Jones was placing an outside telephone call at the time, the inmate telephone system recorded Jones's conversation with Officer Hayes. Based upon this exchange, Officer Hayes "wrote up" Jones for loan sharking,

collecting or incurring debts, a category V-4 violation. Officer Ed Wilson investigated, and the matter went to a hearing.

After hearing Jones's testimony and reviewing Officer Hayes's report, the adjustment hearing officer found Jones guilty. He assigned Jones to disciplinary segregation for 45 days, suspended for 180 days, and restricted him to his assigned cell from 6:00 p.m. to 6:00 a.m. for fifteen days. Jones appealed to the warden. Warden Tom D. Campbell found that there was sufficient evidence of Jones's guilt and that due process had been met, but he reduced the penalty. Campbell removed the cell restriction and reduced Jones's disciplinary segregation to fifteen days, suspended for 30 days.

Jones filed a "Complaint for Declaratory Judgement and Permanent Injunction" on June 24, 1996, in Muhlenberg Circuit Court, invoking Kentucky Revised Statutes (KRS) 418.040 and 418.045. He alleged that while he had been found guilty of loan sharking based upon his conversation with Officer Hayes, the adjustment committee determined the same evidence insufficient to find guilty the inmate whom he had implicated. He attached reports from the other inmate's disciplinary proceeding. Jones asked the court to declare his disciplinary proceeding unconstitutional under both the United States and Kentucky Constitutions, to enjoin Campbell from relying on the decision in any future classification or parole hearing, and to expunge it from his prison file.

Campbell moved for summary judgment on July 18, 1996, arguing that Jones had been given his due process rights, that the evidence supported the adjustment hearing officer's conclusion, and that Jones had failed to state a justiciable controversy. Jones filed a "Cross Motion For Summary Judgment," contending that there was a controversy because the disciplinary action would affect future parole decisions and security classification. In an order entered August 14, 1996, Judge Dan Cornette granted Campbell's motion for summary judgment, holding that Jones had failed to state a controversy, "[a]nd anyway, de minimis non curat lex" (the law does not concern itself with trifles). This appeal followed.

Summary judgment is proper when there are no genuine issues of material fact and when the movant is entitled to judgment as a matter of law. Ambiguities in the record must be construed in favor of the non-moving party. CR 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). This rule is to be applied with care and sensitivity to particular circumstances.

Summary judgment for the Corrections Department is proper if and only if an inmate's petition and any supporting materials, construed in light of the entire record (including, if submitted, institutional affidavits describing the context of acts or decisions), do not raise specific, genuine issues of material fact and the Department is entitled to judgment as a matter of law. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997).

Where -- as here -- the circuit court's determinations are strictly matters of law, we review its decision anew. City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964).

In Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed.2d 935 (1974), the Supreme Court of the United States held that prison inmates may not be deprived of statutory good time without first having been provided a meaningful opportunity to contest the deprivation. Prisoners are entitled to notice of the disciplinary charges, a reasonable opportunity to testify, a reasonable opportunity to call and to cross-examine witnesses, and written findings by an unbiased fact finder. Such findings must be supported by at least some reliable evidence in the record and must be sufficient for judicial review.

Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985).

Prison disciplinary penalties do not involve the full panoply of due process rights. In Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed. 2d 418 (1995), a Hawaiian inmate brought a civil rights action challenging his thirty-day disciplinary segregation for misconduct. The United States Supreme Court revisited the issue of the constitutional right to procedural due process in this context. The Court began with the substantive liberty or property interest at stake, and asked whether that interest had been protected under state law or was sufficiently significant to merit protection under the Constitution. Finding that neither the Constitution nor Hawaii's

prison regulations afforded such protection to the inmate's asserted interest in avoiding a relatively short period of disciplinary segregation, the Court ruled that the inmate had failed to invoke the Constitution's procedural due process provisions.

Jones was sentenced to fifteen days in segregation, and that sentence was suspended. He does not allege having actually served any time in segregation -- nor did he lose any good time credit. Pursuant to Sandin, his interest in avoiding this sanction is not sufficient to invoke the federal Constitution's procedural protections. We find that Jones has failed to allege a federal due process violation.

Jones also complains that the disciplinary action taken against him will negatively affect his future security classification and possibility of parole. Inmates do not have a right to be housed at any particular institution within a state's correctional system nor to be assigned to any particular custody level. Meachum v. Fano, 427 U.S. 215, 96 S. Ct. 2532, 49 L. Ed. 2d 451; reh'g denied, 429 U.S. 873, 97 S. Ct. 191, 50 L. Ed. 2d 155 (1976). An inmate's institutional record is but one of many factors the parole board can consider in determining whether or not to grant parole, and Jones will have the opportunity to personally appear before the board. KRS 439.340, 501 KAR 1:030(5). The speculation that his penalty could hurt his chances of parole does not rise to the level of a due process right. Sandin, 115 S.Ct. at 2302.

Jones invokes Section Two of the Kentucky State Constitution prohibiting the exercise of arbitrary action. However, we find that the action of the Department was not arbitrary. This Court recently held that the "some evidence" standard of Hill, supra, is appropriate for Section Two arbitrariness claims in prisoner disciplinary cases. Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 358. (1997). Jones complains that the decision to penalize him was arbitrary because the same evidence used to find him guilty was found insufficient to prove the guilt of the inmate whom he had implicated. Officer Hayes's report indicated that Jones said that the other inmate owed Jones six packs of cigarettes but that Jones was not "sweating" him to collect the debt. Jones claims that what he really said was that he had never known the other inmate to owe anyone more than six packs. In affidavits attached to the Department's motion for summary judgment, Hayes and two other officers swore that they listened to the recorded conversation; the other officers corroborated Hayes's account.

Accordingly, we find that there was "some evidence" to support the hearing officer's conclusion. Hill, O'Dea, supra. The fact that this evidence was viewed differently in the other inmate's case does not diminish the evidence against Jones. In view of the affidavits submitted to the circuit court, Jones's petition does not raise specific, genuine issues of material fact, and the Department is entitled to judgment as a matter of law.

For the foregoing reasons, the decision below is affirmed.

ALL CONCUR.

BRIEF FOR  
APPELLANT *PRO SE*:

Leonard Jones  
Central City, Kentucky

BRIEF FOR APPELLEE:

Boyce A. Crocker  
Justice Cabinet  
Department of Corrections  
Frankfort, Kentucky