

RENDERED: September 19, 1997; 2:00 p.m.

NOT TO BE PUBLISHED

NO. 96-CA-3444-MR

DERRICK BARNETT

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE DENNIS A. FRITZ, JUDGE  
ACTION NO. 96-CI-0507

STEVE BERRY, Warden,  
Luther Luckett Correctional Complex

APPELLEE

OPINION  
AFFIRMING

---

\* \* \*

BEFORE: GUIDUGLI, JOHNSON AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Derrick Barnett (Barnett), an inmate at the Luther Luckett Correctional Complex, appeals pro se from a December 9, 1996, order of the Oldham Circuit Court denying his petition for declaratory judgment pursuant to KRS 418.040. Barnett claims the warden, Steve Berry, violated his due process rights in the course of a disciplinary proceeding.

On June 26, 1996, prison officials obtained a urine sample from Barnett. It tested positive for the presence of marijuana, and the next day, Barnett was charged with

unauthorized use of drugs or intoxicants. The record reflects that Barnett plead guilty at the adjustment committee hearing, and he has not disputed that fact on appeal. The committee imposed a penalty which resulted in the loss of statutory good-time. Barnett appealed to Warden Steve Berry, who concurred with the committee. Barnett appealed a second time to the warden, who again denied him relief.

Barnett filed a petition for declaratory judgment on October 15, 1996, alleging irregularities in the chain of custody of the urine sample. The appellee filed a written response, with affidavits, asking that the petition be denied and the action dismissed because of Barnett's guilty plea and because the chain of custody was in order. After reviewing the petition, response, and the affidavits, the circuit court denied the petition. The court entered its findings and order which found that Barnett's challenge to the chain of custody was unfounded, and that his guilty plea to the adjustment committee constituted a waiver of his right to challenge the committee's decision, citing O'Dea v. Clark, Ky. App., 883 S.W.2d 888 (1994). The court entered "summary judgment" on the clerk's docket sheet.

In this appeal, Barnett argues that the correction officers did not follow the proper chain of custody procedure. The circuit court found Barnett had the opportunity, before his hearing, to inspect the evidence against him and to seek legal aide. More importantly, uncontroverted affidavits in the record

indicate Barnett plead guilty at the hearing. Only later, on appeal to the warden, did Barnett raise problems with the chain of custody. As the circuit court held, Barnett's guilty plea acted as a waiver. O'Dea v. Clark, Ky. App., 883 S.W.2d 888 (1994).

In O'Dea v. Clark, Clark plead guilty at his administrative hearing. Even though the chain of custody resulting in his discipline was lacking, this Court held he had waived his right to challenge the administrative punishment. Id. at 891. Given Barnett's guilty plea, he cannot now challenge the adjustment committee's action. There being no genuine issues of material fact, nor issues of law, Warden Steve Berry is entitled to judgment as a matter of law. CR 56 and Steelvest, Inc., supra.

For the foregoing reasons, the judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Derrick Barnett, Pro Se  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Boyce A. Crocker  
Frankfort, Kentucky