

RENDERED: October 17, 1997; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 97-CA-0850-MR

RONALD MYERS

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE DENNIS A. FRITZ, JUDGE  
ACTION NO. 96-CI-0063

JIM GRIDER, WARDEN,  
ROEDERER CORRECTIONAL COMPLEX

APPELLEE

**OPINION**

**AFFIRMING**

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BEFORE: EMBERTON, HUDDLESTON, and MILLER, Judges.

MILLER, JUDGE: This is an appeal from Oldham Circuit Court denying declaratory judgment. Appellant, Ronald Myers, alleges that he was denied due process because (1) a disciplinary hearing was not conducted within seven days of completion of the initial investigation into his 1983 escape; (2) he was denied the opportunity to call witnesses at his disciplinary hearing on the escape; (3) his rights under the Interstate Agreement on Detainers were violated; and (4) his statutory good-time credits were improperly forfeited.

Having reviewed the record and arguments of the parties, we affirm the decision of the circuit court.

On August 13, 1983, appellant escaped from Blackburn Correctional Complex in Fayette County, Kentucky, where he was serving a five-year term for theft by deception. On April 1, 1987, he was arrested by the United States Secret Service in Denver, Colorado, on charges of counterfeiting. He was convicted of these charges and sentenced to serve four years in federal prison. On November 2, 1987, appellant was transferred from Lompoc, California, federal prison to Lexington, Kentucky, to face charges on the 1983 escape. He was subsequently sentenced to five years' imprisonment on the escape charge and was returned to California on March 9, 1988, to complete service of his federal sentence.

While appellant was in Kentucky facing escape charges, the Department of Corrections (DOC) conducted and completed a disciplinary report concerning the 1983 escape, but no disciplinary hearing was held at that time. After serving out his federal sentence, on September 7, 1996, appellant was returned to Kentucky to complete his theft and escape sentences.

On September 26, 1996, the DOC again investigated the '83 escape. An Adjustment Committee (committee) hearing was held on October 1, 1996. The committee sentenced appellant to forfeiture of 180 days of statutory good-time credit and to 90 days of segregation time, suspended for 180 days. Appellant appealed to the warden, who upheld the committee's findings. Appellant then filed a motion for declaratory judgment in the Oldham Circuit

Court. On March 25, 1997, the circuit court issued an order denying appellant's motion. This appeal followed.

Appellant first argues that his due process protections were violated by the nearly nine-year delay between the initial disciplinary investigation into his escape and the holding of a disciplinary hearing. DOC policies and procedures provide that a "hearing shall be held within seven working days after the completion of [the] investigation. Any delays beyond this time shall be justified and documented in writing."

The delay between the disciplinary investigation conducted in December 1987 and the October 1996 hearing has been justified and documented pursuant to DOC policy and procedure cited by appellant. During his brief return to Kentucky in 1987, appellant was not in the custody of the DOC, but rather was in the custody of the authorities prosecuting him on the escape charges. While the DOC did investigate the escape during this time, it was justified in not having a hearing within seven days because it did not have custody of appellant. When it obtained custody of appellant in September 1996, the DOC again investigated the escape and, within seven days of completing the second investigation, conducted a hearing. This complied with the due process requirements of Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

Further, appellant failed to assert his right to a hearing in 1987 at the completion of the original investigation. Absent some manifest injustice, the right to complain about the denial of such a right is contingent upon having demanded its

exercise in the first place. A defendant, content to sit back and wait without complaint, loses the right to complain after the fact absent circumstances showing that he was prejudiced by the delay. Cf. Commonwealth v. Tiryung, Ky., 709 S.W.2d 454 (1986). In the case sub judice, appellant has failed to show prejudice. He admits to the escape, and there is no contention that the forfeiture of good-time credit is an excessive disciplinary punishment for an escape violation. Appellant was not prejudiced by having his hearing in 1996 rather than 1987. Regardless of when the hearing was held, appellant would have lost the good-time credit. On appeal, the party alleging error bears the burden of showing prejudice therefrom. Kentucky Lake Vacation Land, Inc. v. State Property and Buildings Commission, Ky., 333 S.W.2d 779 (1960). "Unless the ruling is considered prejudicial, the error is not reversible." Id. at 781. We therefore affirm on this issue.

Appellant next alleges that he was denied procedural due process when he was denied the opportunity to call witnesses at his hearing before the committee. An inmate's right to call witnesses is guaranteed under Wolff, supra; however, DOC policies and procedures provide that an inmate must inform the committee within 24 hours of commencement of the hearing of the witnesses the inmate seeks to call. Appellant submitted no evidence that he complied with the 24-hour requirement. He alleges that he told Lt. Patterson, who conducted the second investigation, that he would need the first investigator, Lt. Rankin, as a witness. Appellant states that he "assumed Lt. Patterson had written Lt. Rankin's name down [as a witness]; however, appellant could not read what was

written on his copy." This is not convincing evidence that the committee was notified pursuant to the 24-hour rule. The committee's disciplinary report states that appellant, though advised of this requirement, did not submit to the committee a request to call witnesses more than 24 hours before the hearing. Having failed to provide the necessary notice regarding witnesses, appellant's claim is without merit.

Appellant next argues that under the Interstate Agreement on Detainers (IAD), Kentucky lost jurisdiction to further charge him with acts arising out of the escape once he was returned to federal custody. In support of his argument, appellant cites the following IAD provision: "Any request for final disposition made by a prisoner . . . shall operate as a request for final disposition of all untried indictments . . . ." Ky. Rev. Stat. 440.450 Art. III(4). There is no evidence that appellant made a proper IAD request for disposition. Appellant does not even allege that he made the required request for final disposition. Consequently, this allegation of error is without merit. See Ellis v. Commonwealth, Ky., 828 S.W.2d 360 (1992).

Appellant last argues that his procedural due process rights were violated when his statutory good-time credits were taken in violation of procedural due process safeguards. Wolff, supra, established that prison inmates may not be deprived of statutory good-time credit without first having been provided a meaningful opportunity to contest the deprivation. The procedures deemed necessary to guard against arbitrary deprivations are 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. Id. Findings must be supported by at least some reliable evidence in the record and must be sufficient for judicial review. See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). In the case sub judice, the procedural due process requirements of Wolff were fully met, as was the Hill standard of "some reliable evidence." We therefore conclude that appellant's procedural due process rights were not violated.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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West Liberty, KY

BRIEF FOR APPELLEE:

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