

RENDERED: November 26, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

97-CA-1350-MR

DELANEY GIBSON

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 96-CI-277

MICHAEL J. O'DEA III

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: WILHOIT¹, Chief Judge; COMBS and JOHNSON, Judges.

WILHOIT, CHIEF JUDGE. The appellant, Delaney Gibson, filed a declaratory judgment action in the Morgan Circuit Court challenging a prison disciplinary proceeding. The trial court summarily dismissed the declaratory judgment action without a hearing. We affirm.

During a routine cell "shakedown," a small pink tablet, later identified as a Xanax prescription tablet, was found under the appellant's laundry bag. The appellant was found guilty during a prison disciplinary hearing of "possession or promoting of dangerous contraband" and sanctioned 180 days' good time credit and 90 days' disciplinary segregation.

¹ This opinion was prepared and concurred in prior to Chief Judge Wilhoit's retirement on November 15, 1997. Release of the opinion was delayed by normal administrative handling.

Inmates have a liberty interest in not having their "good time credits" revoked and are entitled to minimal due process rights in protecting that interest. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). "Wolff requires (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 his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985), summarizing Wolff, 418 U.S. at 563-67. A disciplinary decision may not be disturbed on appeal if "some evidence supports the decision by the prison disciplinary board to revoke good time credits." Superintendent v. Hill, 472 U.S. at 455.

First, the appellant complains that the identification of the pink pill as Xanax by a nurse was insufficient. On the contrary, the identification by the nurse provides "some evidence" for the adjustment committee to find that the pill constituted contraband. See Superintendent v. Hill, supra.

Second, the appellant complains that he was improperly treated differently from his roommate.² Both roommates were found guilty of the same charge; however, the appellant's

²The appellant's defense was that a third person left the pill in his cell. Indeed, that individual testified at the hearing claiming ownership of the pill.

roommate was granted relief on appeal to the warden. The appellant claims that because of this the decision as to him was arbitrary. We disagree. The pill was found under the appellant's laundry bag; therefore, the warden had sufficient reason to view the cell mate's situation differently.

Next, the appellant argues that one of the members of the adjustment committee was biased because he assisted the appellant's roommate on appeal. The appellant has failed to show that the panel member was biased during the hearing, especially since both the appellant and his cell mate were found guilty of the same charge.

The appellant also argues that he was given three forms of punishment, where only two are allowed under the Corrections Policies and Procedures (CPP). The argument arises because the adjustment committee fired the appellant from his job. The appellant admits that he has no constitutional liberty interest in a prison job; however, he states that the adjustment committee impermissibly failed to follow the CPP.

In fact, the adjustment committee only applied two penalties to Gibson. Under CPP 15.2, the forfeiture of 180 days of good time credit and assignment to 90 days' disciplinary segregation is considered one penalty.³ Therefore, the loss of a job could not constitute a third penalty.

Finally, the appellant argues that the trial court improperly dismissed his declaratory judgment action. The

³Penalty #10 listed in CPP 15.2.

appellant has failed to raise sufficient specific facts to overcome the presumption of agency propriety. The trial court's summary dismissal was proper. See Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997).

The order of the Morgan Circuit Court dismissing appellant's declaratory judgment action is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Delaney Gibson, Pro Se
West Liberty, KY

BRIEF FOR APPELLEE:

John T. Damron
Office of General Counsel
Frankfort, KY