

RENDERED: December 24, 1997; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 97-CA-0254-MR

GRANVILLE V. TURNER, III

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE STEPHEN M. SHEWMAKER, JUDGE  
ACTION NO. 96-CI-522

BILL CASE

APPELLEE

OPINION  
AFFIRMING

\* \* \*

BEFORE: DYCHE, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order dismissing appellant's petition for declaratory judgment challenging a prison disciplinary proceeding against him. Upon reviewing appellant's arguments in light of the record herein and the applicable law, we affirm.

Appellant, Granville V. Turner, III, an inmate currently incarcerated at the Bell County Forestry Camp (BCFC), was an inmate incarcerated at the Northpoint Training Center (NTC) on January 8, 1996. On that date, Turner was issued a

disciplinary report and was later charged with the offense of "Refusing to Obey a Direct Order" for refusing to remove a hanger from his wall locker. On January 17, 1996, a hearing was held before the appellee, adjustment officer, Correctional Lieutenant Bill Case, in which appellant was found guilty of the charged offense and assessed a penalty of 40 hours' extra duty.

According to NTC's corrections policy and procedure, appellant had 15 days from the date of the adjustment officer's decision to appeal that decision to the warden of NTC. Although appellant had notice of the 15 day limit, appellant did not appeal the decision until April 18, 1996. In that appeal, appellant claimed that he had to wait until he was moved to another facility (BCFC) before he could appeal because of a threat to his classification level by the unit administrator II at NTC, Captain Lola Sims, if he appealed the decision to the warden. According to appellant, Sims told him if he appealed the decision, he would lose his eligibility to be transferred to a lower security institution. Turner's appeal was dismissed by the warden as untimely.

On December 3, 1996, Turner filed a petition for declaratory judgment in the Boyle Circuit Court challenging the disciplinary action against him at NTC. From the order dismissing that petition, Turner now appeals.

We shall first address the appellee's argument that appellant's petition for declaratory judgment was properly dismissed because appellant failed to exhaust his administrative remedies by appealing the decision to the warden in a timely

manner. A petition for declaratory judgment pursuant to KRS 418.040 is a proper vehicle for an inmate to seek review of disputes with the Corrections Department when a Habeas Corpus proceeding is inappropriate. Polsgrove v. Kentucky Bureau of Corrections, Ky., 559 S.W.2d 736 (1977); Graham v. O'Dea, Ky. App., 876 S.W.2d 621 (1994). It has been held, however, that before a party brings a declaratory judgment action, he must first exhaust his administrative remedies unless he is attacking the validity of a statute or regulation or shows that he could not successfully defend against the pending administrative proceedings. White v. Shepherd, Ky. App., 940 S.W.2d 909 (1997). Turner does not attack the validity of a statute or regulation in his declaratory judgment action, but rather challenges the adjustment officer's finding of guilt. Further, there was no reason that Turner could not have proceeded with the appeal to the warden, other than his claim of the threat of retaliation by his unit administrator, which was refuted by an affidavit of the unit administrator in the record denying the threat. Accordingly, the trial court properly dismissed the declaratory judgment action for failure to first exhaust administrative remedies.

Even if we did review appellant's argument that there was insufficient evidence to support the adjustment officer's finding of guilt, we, nevertheless, believe the action was properly dismissed by the trial court. In a declaratory judgment action regarding a prison disciplinary proceeding, summary

judgment in favor of the Correction Department is proper if the inmate's petition and any supporting materials construed in light of the entire agency record do not raise specific genuine issues of material fact. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). In reviewing the findings of a prison disciplinary body, Kentucky has adopted the federal standard of review wherein it is only required that there be "some evidence" in the record to support the finding. Id.

The record in the instant case contains the write up and investigation disciplinary report form, the disciplinary report form completed pursuant to the hearing and the affidavit of the Correctional Unit Administrator II, Lola Sims. This evidence revealed that on November 27, 1995, a notice titled "Direct Order" was posted advising all dorm inmates not to have hangers on wall lockers. On January 8, 1996, Sergeant Russell Lane observed a hanger containing a towel on appellant's locker. In her affidavit, Sims also categorically denied telling appellant that filing an appeal would affect his classification to a lower security institution. We believe the above evidence constituted sufficient ("some") evidence to support the adjustment officer's finding. We further do not see that the evidence revealed any genuine issues of material fact.

For the reasons stated above, the order of the Boyle Circuit Court dismissing appellant's action is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Granville V. Turner, III,  
Pro se  
Pineville, Kentucky

BRIEF FOR APPELLEE:

Boyce A. Crocker  
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