

RENDERED: June 19, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-2067-MR

ALLEN WESLEY SMITH

APPELLANT

V. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 97-CI-00025

PHILLIP PARKER

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, KNOPF, and SCHRODER, JUDGES.

KNOPF, JUDGE. Allen Smith brings this pro se appeal from an order of the Lyon Circuit Court dismissing his petition for declaratory judgment brought pursuant to KRS 418.040 for failure to bring the action within the time period required by the statute of limitations. Finding no error, we affirm.

Smith currently is an inmate at the Kentucky State Reformatory at LaGrange, Kentucky. In September 1993, Smith was charged with violating Corrections Policies and Procedures (CPP) Category VII-1-1(a), attempted assault of a prison employee.

Following a hearing on October 4, 1993, the prison Adjustment Committee found Smith guilty of the offense and assessed a penalty of one hundred eighty (180) days disciplinary segregation and forfeiture of two (2) years non-restorable good-time credit. Upon administrative appeal, Phillip Parker, the prison warden, concurred with the decision of the Adjustment Committee on October 18, 1993.

On February 12, 1997, Smith filed a petition for declaratory judgment seeking restoration of the forfeited two (2) years good time and \$1,500.00 in monetary damages for distress. On June 9, 1997, Parker filed a motion to dismiss based on Smith's failure to bring the action within the time allowed by KRS 413.140(1)(a), the one-year statute of limitations for injury to a person. On July 18, 1997, the circuit court granted the motion to dismiss stating the action was barred by KRS 413.140(1)(a). This appeal followed.

As an initial matter, the trial court's dismissal should be affirmed because the issue of Smith's compliance with the statute of limitations has not been raised before this Court. Smith's appellate brief consists solely of his complaint that the Adjustment Committee violated procedural due process. Smith merely reiterates on appeal the same arguments presented to the trial court in his original declaratory judgment petition. Smith completely ignores the issue of whether the trial court erroneously applied the statute of limitations to his complaints. Smith was disciplined in October 1993 and filed suit in February

1997. Smith has not challenged the use of KRS 413.140(1)(a), the one-year statute of limitations, or the application of this statute to his case. A reviewing court generally will confine itself to errors pointed out in the briefs and will not search the record for errors. Ballard v. King, Ky., 373 S.W.2d 591, 593 (1963); Milby v. Mears, Ky. App., 580 S.W.2d 724, 727 (1979). An appellant's failure to discuss particular errors in his brief is the same as if no brief at all had been filed on those issues. R.E. Gaddie, Inc. v. Price, Ky., 528 S.W.2d 708, 710 (1975). Failure to raise an issue on appeal constitutes a waiver of error on that issue. See Personnel Bd. v. Heck, Ky. App., 725 S.W.2d 13, 18 (1987). The trial court's determination on those issues which are not briefed on appeal ordinarily is affirmed. Stansbury v. Smith, Ky., 424 S.W.2d 571, 572 (1968); Hall v. Kolb, Ky., 374 S.W.2d 854, 856 (1964); Herrick v. Wells, Ky., 333 S.W.2d 275, 276 (1960). As a result, the circuit court's dismissal based on the statute of limitations should be affirmed because this issue is not properly before this Court.

Furthermore, Smith's substantive complaint is without merit. Smith alleges that the prison officials violated his federal constitutional right to due process under the Fourteenth Amendment. More specifically, Smith maintains that the disciplinary proceedings did not comply with the procedural due process requirements established in Wolff v. McDonald, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), because the Adjustment Committee's disciplinary report form failed to provide

a sufficient "'written statement by the factfinders as to the evidence relied on and reasons' for the disciplinary action." Id. at 564, 94 S. Ct. at 2979 (quoting Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604, 33 L. Ed. 2d 484 (1972)). Smith also asserts that the disciplinary report failed to fully identify each item of evidence relied upon by the Adjustment Committee because it referred to the facts stated in the initial investigative report. See King v. Wells, 760 F.2d 89 (6th Cir. 1985).

A prison disciplinary committee is required to give a written statement of the evidentiary basis for its decision to administer discipline so that a reviewing court can determine whether the evidence before the committee was adequate to support its findings concerning the nature and gravity of the prisoner's misconduct. Wolff, 418 U.S. at 564-65, 94 S. Ct. at 2978-79; Hudson v. Edmonson, 848 F.2d 682, 685-86 (6th Cir. 1988). The disciplinary committee's findings of fact must be supported by "some evidence in the record" in order to comply with the minimal requirements of due process. Superintendent, Massachusetts Corrections Institution, Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985); Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). The function of written findings is to protect inmates against collateral consequences based on a misunderstanding of the nature of the original proceeding and to insure that administrators act fairly. Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 810 (1987). However, the written statement

may be brief, and the courts must give prison officials wide discretion in enforcing prison discipline. Id.; Smith v. O'Dea, 939 S.W.2d at 357.

In the case at bar, Sergeant Richardville prepared a disciplinary form describing the incident involving Smith. The disciplinary committee hearing report states that the Adjustment Committee found Smith guilty based on the facts stated and witnessed by Sgt. Richardville. Although abbreviated, this statement is sufficient to determine the factual basis and the propriety of the disciplinary action. This is a simple factual situation. Despite its brevity, there is no mystery about the Adjustment Committee's reasoning. The committee members obviously relied on the eyewitness account of Sgt. Richardville. In fact, Smith does not deny the facts as described by Sgt. Richardville. A statement of reasons is instrumental in making sure that prisoners are not subjected to an undue risk of being disciplined for things they have not actually done. Saenz v. Young, 811 F.2d 1172, 1174 (7th Cir. 1987). The statement of reasons in the disciplinary hearing report was not so deficient as to create error of constitutional magnitude. Consequently, had the trial court not dismissed Smith's petition because of the statute of limitations, he nevertheless would not have been entitled to relief.

For the above-stated reasons, we affirm the order of the Lyon Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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