

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000098-MR

BOBBY CHESTNUT

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 98-CI-00298

LARRY CHANDLER

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; BUCKINGHAM, and JOHNSON, Judges.

BUCKINGHAM, JUDGE. Bobby Chestnut appeals from an order of the Muhlenberg Circuit Court which granted Larry Chandler's motion to dismiss Chestnut's declaratory judgment action. Chestnut, a prison inmate at the Green River Correction Complex ("GRCC"), had filed a declaratory judgment action in the Muhlenberg Circuit Court against Chandler, the warden at GRCC, alleging that an improper disciplinary action was taken against him. Having reviewed the record and the arguments of the parties, we conclude that the trial court properly dismissed Chestnut's action.

After having been lodged in the Simpson County Jail as a state prisoner for over one year, Chestnut was transferred to the GRCC on December 12, 1997. He was required to give a urine sample to the prison authorities on the same day to detect the presence of any drugs. When the drug test showed positive for marijuana, a disciplinary report was issued.

On February 18, 1998, Chestnut appeared before Lt. Randy Adkins, the adjustment hearing officer of GRCC, facing a charge of violating Corrections Cabinet regulations which prohibit the use of unauthorized drugs. Prior to the hearing, Chestnut requested the opportunity to call Jerry Butcher, an employee of the Simpson County Jail, as a witness to testify on his behalf. Chestnut proposed to elicit testimony from Butcher which would establish that a few days prior to Chestnut's being transferred to GRCC, he breathed in marijuana smoke from other inmates in his jail cell who were smoking marijuana. Chestnut claimed that Butcher would testify that Chestnut slept while other inmates smoked.

Adkins denied Chestnut's request to call Butcher as a witness because Butcher was not present at the time of the offense and because Butcher's testimony would not be relevant since the drug test which Chestnut failed was administered at GRCC. Chestnut also claims that he requested to be advised of the nanogram level of the drug test so that he could demonstrate passive inhalation.

Following the hearing, Chestnut was found to have violated prison regulations by using an unauthorized drug. He

was penalized with disciplinary segregation, loss of statutory good time credits, and a limitation of his institutional privileges. His declaratory judgment action in the trial court sought a declaration that the prison authorities had violated his rights, an order restoring his loss of good time credits, and an order directing the authorities to expunge his record with regard to the incident in question. Chandler's subsequent motion to dismiss Chestnut's action was granted, and Chestnut's appeal followed.

The minimum requirements of procedural due process in proceedings resulting in loss of good time credits are (1) advanced 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 defense; and (3) a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary action. Wolff v. McDonnell, 418 U.S. 539, 563, 566, 94 S.Ct. 2963, 2978, 2979, 41 L.Ed.2d 935 (1974). Kentucky courts have recognized and followed these requirements. Stanford v. Parker, Ky., 949 S.W.2d 616, 617 (1996); Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 357 (1997). Chestnut's arguments relate to the second requirement, that of calling witnesses and producing documentary evidence.

Prisoners do not have unfettered freedom to call witnesses. Wolff, 418 U.S. at 566, 94 S.Ct. at 2979-80. The written policy and procedures of the Corrections Cabinet for disciplinary proceedings restrict a prisoner's right to call

witnesses whose testimony is irrelevant to the issues. The hearing officer in this case determined that Butcher's testimony was irrelevant, and we find no abuse of discretion or error in that regard. We likewise determine that there was no abuse of discretion or error due to Chestnut's not being provided the nanogram level of his drug test.

A decision to revoke good time credits must only be supported by "some evidence." Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985). This standard has also been recognized by Kentucky courts. Stanford, 949 S.W.2d at 617; O'Dea, 939 S.W.2d at 356. Evidence that Chestnut's urine test was positive for marijuana is sufficient to satisfy the "some evidence" standard.

The judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

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