

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001386-MR

MUHAMMAD THABIT RASHAD

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00065

DON BATTLES; PAUL FUGATI;
EARL RUCKER; AND BARBARA CONLEY

APPELLEES

AND

NO. 1999-CA-001387-MR

MUHAMMAD THABIT RASHAD

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00053

RHONDA B. EASTON; LT. RICHARD FULKS;
W. CHRIS LACY; BARBARA CONLEY; AND
GEORGE R. MILLION

APPELLEES

AND

NO. 1999-CA-001389-MR

MUHAMMAD THABIT RASHAD

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00049

GEORGE R. MILLION; RICHARD FULK;
BARBARA CONLEY; AND DONALD FANNIN

APPELLEES

AND

NO. 1999-CA-001391-MR

MUHAMMAD THABIT RASHAD

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00047

GEORGE R. MILLION; RICHARD FULK;
BARBARA CONLEY; AND DONALD FANNIN

APPELLEES

AND

NO. 1999-CA-001392-MR

MUHAMMAD THABIT RASHAD

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00044

GEORGE R. MILLION; RICHARD FULK;
BARBARA CONLEY; AND DONALD FANNIN

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, SCHRODER, AND TACKETT, JUDGES.
SCHRODER, JUDGE: These are five consolidated appeals from orders dismissing Muhammad Rashad's petitions for declaration of rights regarding prison disciplinary proceedings taken against him. Although the court should have allowed Rashad to respond to the motion to dismiss before entering the orders, there was no reversible error where no grounds for relief were presented in Rashad's responses to the motions to dismiss or in the petitions for declaration of rights. Hence, we affirm.

Appellant, Muhammad Rashad, a prison inmate acting pro se, was the subject of five prison disciplinary proceedings at Eastern Correctional Complex (ECC). In the course of these proceedings, Rashad was found guilty by the prison adjustment committee of: obtaining privileges under false pretenses; using the mail to obtain money, goods, or services by fraud; making threatening statements; refusing to obey an order; and eluding or resisting apprehension. As punishment for these institutional offenses, Rashad was given five terms of disciplinary segregation totaling 225 days, to run consecutively with each other and with other terms of disciplinary segregation he had previously received, which are not the subject of this appeal. Rashad was also given a total of 270 days of phone restriction, to run consecutive with other terms of phone restriction, and 180 days of canteen restriction.

Subsequent to these institutional rulings, Rashad filed five petitions for declaration of rights in the Morgan Circuit Court. In these petitions, he alleged that his due process rights were violated by the prison disciplinary proceedings and by the excessive punishments given. The Commonwealth filed motions to dismiss, claiming that Rashad was not entitled to relief under the facts. The court thereafter dismissed all five petitions before Rashad filed his response to the motions to dismiss. From these orders of dismissal, Rashad now appeals.

In all five of Rashad's appeals, he argues that the court erred in dismissing his petitions without first giving him the opportunity to file his responses to the motions to dismiss.

It has been held that a court cannot dismiss a complaint *sua sponte* without notice and an opportunity to be heard. Gall v. Scroggy, Ky. App., 725 S.W.2d 867 (1987). However, the orders in the instant case were not issued *sua sponte*, but on motion of the Commonwealth. We are unaware of any case law requiring a court to wait until the party opposing the motion has had time to file his response before entering its order of dismissal, but we believe this practice avoids potential due process arguments. In the case at bar, even if it was error for the court to dismiss the petition before Rashad had time to file his response to the motion to dismiss, it was harmless error since he was not entitled to relief under the response to the motion or the petition, as we shall discuss below. Rashad argues in three of his appeals that his due process rights were violated by the prison disciplinary proceedings because the evidence against him was unfounded and based on the lies of the reporting prison official. It has been held that in order to afford an inmate minimal due process regarding a prison disciplinary proceeding, the following is required: advance written notice of the grounds for the charges; an evidentiary hearing; a neutral decision maker; an opportunity to be heard, and opportunities to present and confront witnesses; and written findings and conclusions by the fact finder. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). It has further been held that if some evidence supports the decision by the prison disciplinary body, it may not be disturbed on appeal. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). In all of Rashad's disciplinary

proceedings, the due process requirements of Wolff were met. Further, upon reviewing the record, we see that there was some evidence to support the findings in all of Rashad's disciplinary proceedings. As to Rashad's claims that the charges were grounded in lies on the part of reporting prison officials, Rashad fails to allege any specific facts supporting these statements.

The final issue we shall address is Rashad's claim in three of the appeals that his punishment was excessive. In particular, Rashad maintains that his terms of disciplinary segregation imposed a significant hardship on him, especially since they were ordered to run consecutive with previous terms of disciplinary segregation which totaled over 400 days. Unlike the loss of good time, disciplinary segregation does not deprive an inmate of any liberty interest. Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). In order for confinement to implicate constitutionally protected liberty interests and due process protections, the confinement must present an atypical, significant deprivation that is substantially and fundamentally different than typical conditions of incarceration. Id. In Jones v. Baker, 155 F.3d 810 (6th Cir. 1998), the Court upheld a segregation period of approximately two and one-half years as constitutional under Sandin. Accordingly, we cannot say that the period of segregation fixed in Rashad's disciplinary proceedings (a total of approximately 500 days) constitutes an atypical, significant deprivation which triggers due process protections.

For the reasons stated above, the orders of the Morgan
Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

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