

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002843-MR

EDMUND T. CRATER

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 00-CI-00136

J. WILSON

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE: Edmund Crater appeals the Oldham Circuit Court's denial of his petition for declaration of rights concerning his loss of good time credits as a result of a prison disciplinary action. Having found no error by the trial court, we affirm.

A urine specimen received from Crater on May 25, 1999, tested positive for marijuana, and Crater was penalized with a forfeiture of sixty days' good time credit on June 15, 1999. The petition underlying this appeal was filed on March 14, 2000; the Oldham Circuit Court dismissed the petition on November 9, 2000, and this appeal followed.

Crater claims that there was a deficiency in the chain of custody of the specimen that rendered the results unreliable; that the laboratory equipment on which his sample was tested was faulty; and that the prescribed medication he was taking would cause the test to falsely report positive for marijuana. He denies having smoked marijuana prior to the sample being taken.

"Under Kentucky law, the courts generally do not interfere with the imposition of discipline on prison inmates." Blair v. Hendricks, Ky. App., 30 S.W.3d 802, 806 (2000). If there is some evidence in the record supporting the disciplinary action, the inmate's constitutional guarantee to due process has been satisfied. Id.; Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997).

Two documents in the record indicate that Crater was not taking any prescribed medication at the time the sample was taken that could have resulted in a positive reading for marijuana. The first is the investigative report of the adjustment committee, in which the investigating officer reports having contacted the prison's medical staff concerning Crater's allegation, and being told that Crater's medication would not result in a positive test reading for marijuana. The second is a memorandum from the prison's pharmacist to the same effect. The evidence in the record is sufficient to support the committee's action. Further, Crater's allegation that the laboratory equipment is faulty is just that – an allegation unsupported by any documentation in the record.

Finally, we address Crater's primary complaint – that the chain of custody was broken, rendering the results of the test suspect. The chain of custody form indicates that at 3:19 p.m. on May 25, 1999, Officer David Leavell removed the sample from a locked security box; however, he failed to check whether the bottle seal was intact. Immediately following that entry, however, Officer Leavell signed that he was releasing the sample to Sergeant Scott Beaumont – also at 3:19 p.m. on May 25, 1999 – and that entry indicated that the seal was intact. Crater argues that according to Byerly v. Ashley, Ky. App., 825 S.W.2d 286 (1991), the failure to check the box indicating that the seal was intact is a violation of his due process rights.

In Byerly, this Court addressed a situation in which the chain of custody was established by prison authorities until the sample reached the laboratory, but “[n]o one at the laboratory made an entry on the form indicating who or how many handled the specimen there.” Id. at 287. As the Court noted in Byerly,

Proving a proper chain of custody is not an end in itself. In a case like this it is for the purpose of establishing that the sample tested is the same as that taken from a particular individual and that, at the time it is tested, the sample is in the same condition as when taken, free of tampering.

Id.

The underlying principle of Byerly is that “fundamental fairness dictates that the evidence relied upon to punish [the inmate] at least be reliable.” Id. at 288. In this case, every individual who handled the sample signed the chain of custody

form, and it was signed at each time of day when custody was transferred. The error of the officer in failing to check the box indicating that the seal was intact at 3:19 p.m. was cured by the entry immediately thereafter that the seal was intact at that same time. The process which led to Crater's administrative punishment was fundamentally fair.

Due process in a prison disciplinary proceeding requires "no more than notice of the charges, a reasonable opportunity to be heard, and a brief written finding suitable for judicial review." Smith, 939 S.W.2d at 357 (citing Wolff v. McDonald, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 [1974]). Crater does not allege a lack of notice, of an opportunity to be heard, or of a written finding suitable for review, and we find no deficiency in any of these areas. Because there is "some evidence" in the record supporting the action, Crater's due process rights have not been violated.

The judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*

NO BRIEF FOR APPELLEE

Edmund T. Crater
Burgin, Kentucky