

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000208-MR

RANDALL OSBORNE

APPELLANT

v.

APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 00-CI-00365

LEGGETT MORRIS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, HUDDLESTON, and MILLER, Judges.

COMBS, JUDGE: Randall Osborne, an inmate at the Green River Correctional Complex (GRCC), appeals, *pro se*, from a January 24, 2001, order of the Muhlenberg Circuit Court which dismissed his petition for a declaration of rights. We affirm.

The relevant facts are not in dispute. Osborne provided a single urine sample for drug screening on June 9, 2000. Osborne's sample came back positive for morphine, alprazolam, and cocaine. As a result of these test results, Osborne received three separate disciplinary reports charging him with unauthorized use of drugs or intoxicants in violation of Corrections Policies and Procedures (CPP) Category IV, Item 2. On June 22, 2000, Osborne was convicted on all three counts and received 45 days disciplinary segregation for each offense, to run concurrently, and non-contact visitation for one year.

Osborne then sought judicial review through a declaration of rights petition with the Muhlenberg Circuit Court. The circuit court granted a motion to dismiss filed by the respondent/appellee. This appeal follows.

Osborne raises two arguments on appeal. The first is that the GRCC Adjustment Officer, Leggett Morris, violated Osborne's rights under the constitutions of the United States and of Kentucky in finding him guilty of three offenses from one urine test and in failing to follow proper Department of Corrections procedures. Specifically, Osborne argues that Morris failed to follow CPP 15.2, V,¹ which requires rule violations to be processed fairly and to insure protection of inmates' due process rights. Osborne has presented no evidence to indicate he was not treated fairly. Additionally, as Osborne did not lose any good time credit, he has not shown that a liberty interest was at issue so as to trigger a requirement of a due-process analysis. See Sandin v. Conner, 115 S.Ct. 2239, 132 L.Ed.2d 418 (1995).

We cannot agree that there is an inherent inequity in charging Osborne with three violations from one urine sample. Each drug found in Osborne's urine sample represented and revealed a separate violation of CPP Category IV, Item 2. Thus, Osborne committed three violations and was correctly charged. If the policy were enforced as Osborne advocates, an inmate might

¹CPP 15.2, V: "All alleged violations of rules and regulations shall be fairly processed. All inmate due process rights shall be fully protected within the parameters of clearly established law."

take one illegal substance and then as many other illegal substances as possible prior to a urine test with no additional consequences. Such a plan of enforcement would wholly undermine the purpose of the rule against the use of controlled substances.

Next, Osborne argues that the circuit court abused its discretion in summarily dismissing his petition. Having carefully reviewed the record, we disagree. The circuit court reviewed the petition pursuant to Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). It found no material issues of fact in controversy. The only issue was a question of law regarding whether Osborne could be charged with three violations from one urine sample. We believe that the trial court properly exercised its discretion and did not err in dismissing Osborne's petition.

The order of the Muhlenberg Circuit Court dismissing Osborne's petition for declaration of rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

NO BRIEF FOR APPELLEE

Randall Osborne
Central City, Kentucky