

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002034-MR

QUANTEZ GIBSON

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
CIVIL ACTION NO. 01-CI-00033

PHILLIP PARKER

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, Chief Judge; DYCHE and HUDDLESTON, Judges.

HUDDLESTON, Judge: Quantez Gibson appeals from a Lyon Circuit Court order dismissing his petition for declaratory judgment. Gibson, an inmate at the Kentucky State Penitentiary, filed the petition in Lyon Circuit Court against Philip Parker, Warden at Kentucky State Penitentiary, and three members of the Kentucky State Penitentiary Adjustment Committee,¹ alleging that his due

¹ Gibson did not name the members of the Adjustment Committee in his notice of appeal.

process rights were violated in a disciplinary action taken against him.

On October 24, 2000, Gibson was involved in a fight with another inmate, Laron Spaulding. Correctional Officer R. Dixon was on the scene and ordered the two inmates to stop fighting. The inmates did not comply with the order, so Dixon attempted to pull Spaulding from the fight. While Dixon was holding Spaulding, Gibson jumped on Spaulding, knocking both Spaulding and Dixon to the ground. Another correctional officer on the scene, T. Henderson, attempted to pull Gibson off of Spaulding and Dixon, but Gibson resisted. Eventually, Henderson wrapped his arm around Gibson's neck and pulled him away.

Gibson was subsequently charged with violating Corrections Policies and Procedures (CPP) 15.2 Category VII, Item 1, the offense of "physical action against an employee or non-inmate."² On October 31, 2000, the penitentiary's Adjustment Committee heard Gibson's case and found him guilty of the charge. Gibson was punished with 180 days of disciplinary segregation and the loss of two years non-restorable good time credits. Gibson's appeal to the Warden was unsuccessful.

On February 8, 2001, pursuant to Kentucky Revised Statutes (KRS) 418.040, Gibson filed a petition for declaration of rights in Lyon Circuit Court alleging that there was insufficient evidence to support his conviction of physical action against an

² For resisting Officer Henderson's efforts to pull him off of Spaulding and Dixon, Gibson was also charged with and convicted of the offense of resisting. However, the disposition of that charge is not at issue in this appeal.

employee; that he was denied the opportunity to call witnesses and to present a security camera recording of the incident; and that the adjustment committee failed to make adequate findings. The Department of Corrections responded on behalf of the defendants and filed a motion to dismiss. On August 7, 2001, the circuit court dismissed Gibson's petition for declaratory judgment. This appeal followed.

It is well-established that "a prison inmate facing administrative disciplinary proceedings does not have the same procedural safeguards as does a person facing criminal prosecution or even parole revocation" ³ Nevertheless, "fundamental fairness dictates that the evidence relied upon to punish him at least be reliable." ⁴ In cases, as here, involving the administrative revocation of good time, the minimum requirements of procedural due process 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. ⁵ Furthermore a disciplinary decision may not be disturbed on appeal if "some evidence supports the decision by the prison disciplinary board to revoke good time

³ Byerly v. Ashley, Ky. App., 825 S.W.2d 286, 288 (1991). See also Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 809 (1987).

⁴ Byerly, 825 S.W.2d at 288.

⁵ Wolff v. McDonnell, 418 U.S. 539, 563-567, 94 S. Ct. 2963, 2978-2982, 41 L. Ed. 2d 935 (1974).

credits.”⁶ This court has recognized and followed these requirements.⁷

First, Gibson contends that there was insufficient evidence to support a finding that he was guilty of physical action against an employee and that the circuit court erred in deciding that the disciplinary committee need not determine his criminal intent in its determination of his guilt.

As a result of the October 24, 2000, incident, Gibson was charged with engaging in a physical action against an employee of the prison. According to Officer Dixon’s incident report, Sgt. Lois Lyle’s investigation report, and Officer Dixon’s hearing testimony, Gibson jumped on Spaulding while Dixon was restraining Spaulding and, as a result, both Spaulding and Dixon were knocked to the ground. Gibson does not dispute Dixon’s version of the events but, rather, the interpretation of the facts, and cites Dixon’s testimony in support of his claim that his conduct on October 24, 2000, does not meet the elements for a finding of guilt for “physical action against an employee or non-inmate.” It appears to be Gibson’s contention that his physical action was directed against Spaulding only, and not against Dixon, and, therefore, the charge of physical action against an employee was unjustified.

⁶ Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985).

⁷ Smith v. O’Dea, Ky. App., 939 S.W.2d 353, 357 (1997); Stanford v. Parker, Ky. App., 949 S.W.2d 616, 617 (1996).

The CPP in effect at the time of Gibson's violation did not define "physical action."⁸ However, Gibson's act of jumping on the restrained Spaulding was clearly a physical action. Further, inasmuch as Dixon was holding Spaulding at the time Gibson took physical action against Spaulding, and since as a natural consequence of Gibson's physical action against Spaulding Officer Dixon was knocked to the floor, we conclude that there was some evidence that Gibson engaged in physical action against Dixon.

Gibson also alleges that there was insufficient evidence regarding his intent to engage in a physical action against Dixon. While the CPP does not specify an intent requirement as an element for conviction for physical action against an employee, we are persuaded that any intent requirement is established by the evidence. KRS 501.020(1) provides that a person acts "intentionally" when the person's conscious objective is to engage in the conduct. Further, KRS 501.060(2)(a) provides that the intent element is satisfied when the actual result is different from that intended only in the respect that a different person is affected. Here, Gibson essentially concedes that he intentionally jumped on inmate Spaulding. As a result of this intentional act, and as a natural consequence of the act, Dixon was knocked to the ground. Under these circumstances, Gibson's intent to take

⁸ The version of the CPP effective December 19, 2001, defines "physical action" as "any act of fighting, hitting, kicking, shoving, pushing, biting, using force or other similar types of physical contact, throwing, squirting or spitting any item, substance or fluid." See CPP 15.2 § IV., issued December 17, 2001.

physical action against Spaulding transfers into an intent to take physical action against Dixon.

Gibson also argues that a conviction for taking physical action against an employee requires that the elements of KRS 508.025, which criminalizes third-degree assault, and KRS 503.010(4), which defines "physical force," must be met. However, we find no basis to conclude that the CPP intended the offense of physical action against an employee to be interpreted with reference to these statutes. Gibson's argument in this regard is without merit.

Next, Gibson contends that he was denied the opportunity to present evidence at the hearing. Gibson alleges that the prison authorities failed to comply with his request that a security camera video recording of the fight be turned over and, further, refused to allow him to call witnesses to rebut the physical action against an employee charge.

The Investigation section of the Disciplinary Report Form, which was completed by Sgt. Lois Lyle, explicitly states "Their [sic] is no tape of the fight." As the only evidence in the record is that no tape of the fight exists, it follows that Gibson was not denied any right regarding the nonexistent tape.

Gibson also contends that he was denied due process on the basis that the Adjustment Committee refused to permit him to call as witnesses inmates F. Malone, M. Gudgen, Lee Willis and Tyrone White. This issue is not preserved with respect to Malone, Gudgen and Willis because the issue with respect to these witnesses was not raised before the trial court. Gibson raised witness

issues in Section II of his petition for declaratory judgment. Therein, Gibson objected only to the exclusion of White's testimony at the hearing; Malone, Gudgen and Willis are not mentioned in the petition at all. Issues not presented to the trial court are not preserved for appellate review.⁹

With regard to White, Gibson was not deprived of any right by the exclusion of his testimony at the disciplinary hearing. The Disciplinary Report Form for the physical action against an employee charge, which was signed by Gibson, lists under "witnesses requested" F. Malone and M. Gudgen only. White is not listed as a requested witness.¹⁰ As Gibson did not request White as a witness at the disciplinary hearing in the physical action case, it follows that the Adjustment Committee properly excluded White's oral testimony.¹¹

Finally, Gibson contends that he was deprived of due process on the basis that the Adjustment Committee failed to make adequate written findings of fact in support of its decision.

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

⁹ Hoy v. Kentucky Industrial Revitalization Authority, Ky., 907 S.W.2d 766, 769 (1995). See also CR 76.12(4)(c)(iv) (providing that the appellant shall include "at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner").

¹⁰ It appears that White may have been listed as a witness in the resisting offense proceeding.

¹¹ While excluding White's oral testimony, it appears that the committee stated that it would accept Gibson's legal aide's account of what White would testify to.

whether the evidence before the committee was adequate to support its findings concerning the nature and gravity of the prisoner's misconduct.¹² 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 ensure that administrators act fairly.¹³ 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.¹⁴ The written statement of findings may be brief and this Court generally will not interfere with the prison officials' wide discretion in their enforcement of prison discipline.¹⁵

Despite the brevity of the Adjustment Committee's findings, there is no misunderstanding regarding the committee's reasoning. Under the findings section of the disciplinary report, the Adjustment Committee indicated that it relied upon the report of the investigating officer and Dixon's testimony. Based upon the evidence from these sources, the Adjustment Committee made a finding that Gibson had jumped on Spalding while Dixon was holding Spaulding and, as a result, Dixon was knocked to the ground. Gibson does not appear to deny the facts as described by Dixon, only the interpretation of those facts. The written report of the

¹² Wolff, 418 U.S. at 564-565, 94 S. Ct. at 2978-2979; Hudson v. Edmonson, 848 F.2d 682, 685-686 (6th Cir. 1988).

¹³ Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 810 (1987); Wolff, 418 U.S. at 565, 94 S. Ct. at 2979.

¹⁴ Saenz v. Young, 811 F.2d 1172, 1174 (7th Cir. 1987).

¹⁵ See Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808, 810 (1987) (citing Ivey v. Wilson, 577 F. Supp. 169, 172-73 (W.D. Ky. 1983)); Smith v. O'Dea, supra, n.7, at 357.

investigator and the testimony of Dixon were sufficient to support the Adjustment Committee's decision. Furthermore, the Adjustment Committee's written factual findings in the disciplinary report were sufficient to satisfy the minimal due process requirements associated with prison disciplinary proceedings.

Since Gibson has not identified any facts justifying a finding that the evidence relied upon to punish him was unreliable, or that his due process rights were otherwise violated, the order from which this appeal is prosecuted is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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