

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001219-MR

KURT JACKSON

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
CIVIL ACTION NO. 01-CI-00747

LT. LARRY VOIROL

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM and HUDDLESTON, Judges.

HUDDLESTON, Judge: Kurt Jackson appeals the dismissal for failure to state a claim for which relief may be granted¹ of his action filed under the Declaratory Judgment Act.² Specifically, he alleged that the disciplinary action taken against him by the corrections staff of Luther Lockett Correctional Complex (LLCC) violated his due process rights.³

¹ See Ky. R. Civ. P. (CR) 12.02(f).

² Ky. Rev. Stat. (KRS) 418.040.

³ The circuit court should have treated Voirol's motion to dismiss as a motion for summary judgment under CR 56, in that its
(continued...)

Jackson was charged with an assault or physical action against an employee or non-inmate, as well as pursuing a relationship unrelated to correctional activities with a non-inmate. The charges stemmed from an incident with a canteen worker, wherein Jackson was alleged to have reached through the canteen window and grabbed and rubbed the canteen worker's hands.

Following a hearing, Jackson was found guilty of the assault charge, while the lesser charge of pursuing a relationship with a non-inmate was dismissed. Based on this finding, Jackson was sentenced to 180 days' disciplinary segregation and lost 730 days of accumulated good-time credit.⁴

Jackson appealed the adjustment committee's finding to the LLCC warden, who affirmed the committee's decision. Jackson then filed a declaratory judgment action in Oldham Circuit Court, alleging that his treatment by corrections officials violated his due process rights under the federal and Kentucky constitutions. The circuit court's decision against Jackson prompted this appeal.

Jackson's argument is that it was improper for the adjustment committee to rely on the testimony of the canteen worker involved, citing several inconsistencies between her testimony at

³ (...continued)
decision was really a determination that no genuine issue of material fact existed such that Voirol was entitled to judgment as a matter of law. See Steelvest v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). Jackson's petition did state a claim for which relief could be granted in a proper case; however, the circuit court determined that this was not such a case. Therefore, we will treat the decision as it should have been rendered, that is, as a summary judgment.

⁴ We do not know if this is the standard punishment for this type of incident or if Jackson was treated especially harshly for some reason.

the hearing and statements she gave prior to the hearing. His argument is that because her testimony was inconsistent, it must be disregarded, and that once her testimony is disregarded, there is no evidence to support the committee's decision.

The findings of fact of a prison disciplinary committee must be supported by "some evidence."⁵ The evidence relied upon to punish a prison inmate must at least be reliable.⁶ In this case, both Jackson's testimony and that of the canteen worker changed between the giving of their initial statements and their testimony at the adjustment hearing. The committee was thus called upon to decide whose testimony was more credible, despite each having changed position. It is not our function as a reviewing court to decide which testimony is to be believed and which disregarded; that is uniquely the function of the prison adjustment committee. In reaching its decision, the committee chose to believe the canteen worker's testimony and disregard Jackson's, which it may properly do. It based its decision on her testimony, which provided "some evidence" to support its ultimate conclusion.

Accordingly, the judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Kurt Jackson, pro se
LaGrange, Kentucky

⁵ Superintendent, Massachusetts Correctional Institution at Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985).

⁶ Byerly v. Ashley, Ky. App., 825 S.W.2d 286, 288 (1991).

