

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000740-MR

DONALD RUCKER

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 2001-CI-00556

KENTUCKY DEPARTMENT OF CORRECTIONS,  
WILLIAM C. SEABOLD, WARDEN,  
LT. SEARCY, SGTR. THOMAS  
CTO MULLER, COMMITTEE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM, AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Donald Rucker appeals from an order of the Oldham Circuit Court dismissing his petition for declaration of rights. We affirm.

Rucker was an inmate at the Kentucky State Reformatory in LaGrange. Prison officials found Rucker to be in violation of Corrections' regulations by being in possession of stolen property on July 30, 2001. According to the testimony of Corrections' Officer John Fulcher, a shakedown was conducted in the inmate copy office, and two cans of spray paint, twenty-one cassette tapes, and laminating material for identification cards

were found. Rucker had been assigned to the copy office and was the only person allowed to work therein. He was the only person, other than staff, to have access to the office. Rucker was found guilty of being in possession of stolen property and was punished by being made to spend eighteen days in segregation.<sup>1</sup>

On September 14, 2001, Rucker filed a petition for declaration of rights in the Oldham Circuit Court. Therein, he alleged errors in the prison disciplinary proceeding against him. He requested the circuit court to enter an order expunging the disciplinary report and the findings of the Adjustment Committee from his institutional record.

In an order entered on March 11, 2002, the circuit court dismissed Rucker's petition. The court reasoned as follows: "The Court is persuaded by the legal arguments contained in Respondents' memorandum in support of their motion to dismiss and incorporates herein by reference." From that order, Rucker appeals.

Rucker understands that if he is to obtain any relief, he must show due process violations and that he has been deprived of a protected liberty or property interest through government action. He does not argue that the eighteen days he spent in segregation deprived him of a protected liberty interest. Rather, he asserts that he was deprived of a protected liberty interest as a result of having been convicted since he is now

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<sup>1</sup> Rucker initially received greater punishment in the form of additional days in segregation and loss of statutory good time credit, but his punishment was reduced to only eighteen days in segregation by the warden on appeal.

denied five days of meritorious good time credit toward his sentence.

KRS<sup>2</sup> 197.045(3) states that an inmate may be allowed a deduction from his sentence of five days per month "for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs." Such credit may be awarded in the discretion of the Corrections' commissioner. Rucker argues that, since he has been convicted of violating a rule under a major category of offenses, he will not receive five days meritorious good time for the month the conviction occurred. Thus, he maintains that he will be required to spend more time in prison and that a protected liberty interest was involved. We agree with Corrections that there is no protected liberty interest in the receipt of awards of meritorious good time since such awards are entirely discretionary. See Anderson v. Parker, Ky. App., 964 S.W.2d 809, 810 (1997).

Rucker's second argument is that he did not receive due process because he was convicted of possession of stolen property even though no evidence was presented to prove the items were stolen. The question is whether "some evidence" appears in the record to support the findings of the Adjustment Committee. Smith v. O'Dea, Ky. App., S.W.2d 353, 358 (1997). As in the O'Dea case, the fact finder may make reasonable inferences from the evidence given. Id. at 357. Under the circumstances in the case *sub judice*, the Adjustment Committee could reasonably have

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<sup>2</sup> Kentucky Revised Statutes.

inferred that Rucker was in possession of stolen property. Although Rucker maintains that there was no evidence that the items were stolen, the items were found in a restricted area in which they did not belong. Rucker was the only inmate with access to the inmate copy office, and staff personnel were unaware of how the items came to be in the office. We conclude that there was "some evidence" that the items were stolen and that Rucker had possession of them.

Rucker's third argument was that he was denied due process because he was not allowed to cross examine Corrections Officer Janice Markum. Officer Markum was Rucker's accuser, and Rucker states that Corrections' policy and procedure required the Adjustment Committee to grant his request to cross examine her. He states that, had he been granted his request to cross examine Officer Markum, "pertinent facts crucial to his defense would have surfaced lending to appellant's assertion he was not responsible for the items discovered in the copy room." Furthermore, he asserts that Corrections' policy and procedure state that if the Adjustment Committee denies an inmate the opportunity to confront and cross examine his accuser, justification for the denial must be made in writing. He notes that no justification for denying his right to cross examine Officer Markum was made in writing.

Corrections acknowledges that the Adjustment Committee did not state in writing its justification for denying Rucker the right to cross examine Officer Markum. However, Corrections' policy and procedure authorize the denial of witnesses when their

testimony would be irrelevant, cumulative, unnecessary, or would constitute a threat to security. Corrections argues that the violation of policy was "a technical violation" in light of the fact that Officer Fulcher, who was involved in the incident, appeared and testified. Further, Corrections argues the relief requested by Rucker is not warranted since he was not deprived of a constitutionally protected interest.

Although Rucker argues that Officer Markum would have presented additional testimony favorable to him, we are unpersuaded that would be the case. We agree with Corrections that any violation in the policy would not have been prejudicial to Rucker since Officer Fulcher testified and since Officer Markum's report was consistent with this testimony and adverse to Rucker's position. Regardless, since Rucker was not deprived of a protected liberty or property interest by being denied five days of meritorious good time credit, the trial court properly refused to rule in Rucker's favor on his petition.

The order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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LaGrange, Kentucky

BRIEF FOR APPELLEE:

Rebecca Baylous  
Department of Corrections  
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