

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002142-MR

DAVID RHODES

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 02-CI-00248

LT. JULIE PHILLIPS

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BAKER, GUIDUGLI AND PAISLEY, JUDGES.

GUIDUGLI, JUDGE. David Rhodes (hereinafter "Rhodes") appeals pro se from the order denying his petition for declaration of rights. We affirm.

On March 11, 2002, Rhodes filed his petition for declaration of rights in the Franklin Circuit Court. In that he was an inmate at the Northpoint Training Center located in Burgin, Kentucky, the case was transferred to the Boyle Circuit Court on June 11, 2002. Thereafter, in September, 2002, the

Boyle Circuit Court entered an order denying the petition. This appeal followed.

In that Rhodes raises the same issues on appeal as he did before the Boyle Circuit Court, and Judge Darren W. Pecker's order thoroughly addresses these issues, we adopt his order as follows:

This matter is before the Court on Petition for Declaratory Judgment. This Court, having reviewed the Petition, attachments, and all relevant precedent, hereby DENIES Petitioner's request for declaratory judgment.

Petitioner makes several claims that he argues created deprivations of due process rights. These claims are: 1) no signature on the chain of custody form when specimen received from courier; 2) no signature next to checks for "intact upon receipt; 3) faxed test results were not attached to disciplinary report; 4) signature of laboratory tester was illegible; 5) test results do not show which laboratory actually did the testing; 6) the test results were not signed by the certifying scientist; 7) there was an unreasonable delay between the test results and the disciplinary report; 8) the test results don't show what substance was tested for; 9) the adjudicative officer did not consider Diersen Center's drug policy. As relief; Petitioner requests that the Court enter a declaratory judgment that his due process rights were violated by the above claims, order restoration of good-time credits, award punitive damages of \$5000 per respondent, compensatory damages of \$5000 per respondent, and court costs.

When a prisoner files a request for declaratory judgment to the Circuit Court,

this request invokes the Court's ability to act as a court of review. Smith v. O'Dea, Ky.App., 939 S.W.2d 353 (1997). The Court will limit its review of the decision to discipline a prisoner to whether some evidence in the record supports the finding, and whether the prisoner received notice of the charges, a reasonable opportunity to be heard, and a brief written explanation of the adjudicative officer's decision. Id. at 357.

The Northpoint Training Center (hereinafter NTC) Adjudicative Officers cannot find a prisoner guilty of unauthorized drug use solely on the basis of a urinalysis test with a flawed chain of custody. This is a violation of the "some evidence" standard of review this Court uses to review the decision of NTC Adjudicative Officers.

However, the chain of custody in this case was not flawed, so Petitioner's loss of good-time credits was not a violation of due process. The Kentucky Court of Appeals held in Byerly v. Ashley, Ky.App., 825 S.W.2d 286 (1991) that "chain of custody" is not complete unless it at least indicates "who received the sample, that the specimen seal was then intact, and who had handled the specimen through the time it was tested.

The record documents a clean chain of custody from the time that Petitioner signed the form on November 6, 2001 until the test was certified and released by Trudi Osborne on November 8, 2001. The "custody and control form" used by Diersen Center and Advanced Toxicology Network (hereinafter ATN) leave no doubt that the sample was received intact at the ATN on November 7, 2001. The "Internal Custody/Control form" includes the signatures of each person at the lab who handled the sample and clearly shows that the test was performed at ANT's facility in Memphis, TN.

Petitioner's other allegations do not rise to the level of due process violations. Clearly the adjudicative officer in this case did not make an arbitrary decision to punish Petitioner. The decision was based on a urine test with a chain of custody clean enough to meet the standard of Byerly v. Ashley, Ky.App., 825 S.W.2d 286 (1991).

For the above-stated reasons, IT IS HEREBY ORDERED AND ADJUDGED that Petitioner's petition for declaratory judgment is DENIED. This order is FINAL and APPEALABLE.

Done this 4th day of September, 2002.

Judicial review of an administrative action is concerned with the question of arbitrariness. The court is to insure that the administrative hearing complied with the following three grounds: (1) whether the agency acted in exercise of its statutory powers; (2) whether procedural due process was complied with; and (3) whether substantial evidence was taken to support the decision reached. See American Beauty Homes Corp. v. Louisville, etc., Ky., 379 S.W.2d 450 (1964). Having reviewed the record, the trial court order and Rhodes's argument on appeal (appellee, Lt. Julie Phillips, did not file an appellate brief), we find no error in Judge Peckler's review of the prison disciplinary action and believe Rhodes received all due process to which he was entitled.

For the foregoing reasons, the order entered by the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT, PRO SE: NO BRIEF FILED FOR APPELLEE

David Rhodes
Burgin, KY