

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000236-MR

DARRELL WILSON

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 02-CI-00253

JAMES L. MORGAN

APPELLEES

OPINION

AFFIRMING

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BEFORE: BARBER, DYCHE AND McANULTY, JUDGES.

BARBER, JUDGE: Darrell Wilson appeals from an order of the Boyle Circuit Court which granted James L. Morgan's motion to dismiss Wilson's declaratory judgment action. Wilson, a prison inmate at the Northpoint Training Center, had filed a declaratory judgment action against Morgan, the warden at Northpoint, alleging improper disciplinary action was taken

against him. Having reviewed the record, the arguments of the parties and the applicable law, we affirm.

On January 22, 2002, Northpoint Correctional Officer Michael Hovious collected a urine specimen from Wilson for the purpose of a drug screen. Officer Hovious, witnessed by Correctional Officer Jason Spurr, took the sample from Wilson, sealed it and arranged for the sample to be shipped to a private laboratory for analysis. Wilson's urine sample was tested on January 31, 2002. These test results, received by Northpoint on February 6, 2002, indicated the presence of cocaine. Thereafter, Corrections Officer John Fowler, in a disciplinary report, charged Wilson with unauthorized use of drugs in violation of regulations promulgated by the Department of Corrections. The laboratory results were attached to Officer Fowler's report.

On April 14, 2002, Wilson appeared before the Northpoint Training Center's Adjustment Committee for a hearing. After reviewing the chain of custody reports provided to Wilson, the results of the drug test, as well as testimony from Officer Hovious, the Committee found Wilson guilty of the charged offense. The Committee penalized Wilson with disciplinary segregation for 45 days, ordered the forfeiture of 60 days good time credit and restricted Wilson's institutional privileges for

180 days. Wilson timely appealed this decision to Warden Morgan, who denied the appeal on April 29, 2002.

Following Warden Morgan's denial of Wilson's institutional appeal, Wilson filed a declaratory judgment action with the Boyle Circuit Court. In this declaratory judgment action, Wilson sought a declaration that authorities at Northpoint Training Center violated his constitutional rights. Wilson also requested the trial court to restore his good time credits and expunge his record with regard to the drug charge. Wilson further requested compensatory and punitive damages from Warden Morgan. The trial court dismissed Wilson's declaratory judgment action upon Warden Morgan's motion. This appeal followed.

On appeal, Wilson presents two arguments for our review. First, Wilson asserts that he was denied his right to an appeal because the trial court's refused to allow him to proceed in forma pauperis unless Wilson paid a filing fee of \$126.00 for the appeal. On January 3, 2003, we vacated the trial court's order that denied Wilson's motion to proceed in forma pauperis and remanded this matter to the trial court for entry of an order granting Wilson's motion. Accordingly, we need not address this argument herein as this issue is moot.

We now turn to Wilson's argument that the trial court erred in dismissing his declaratory judgment action because

Warden Morgan and corrections officials at Northpoint violated his due process and equal protection rights. We find this assertion to be totally lacking in merit.

When a prisoner files a request for declaratory judgment to the circuit court, the request invokes the trial court's ability to act as a court of review. Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 355 (1997). An inmate who alleges due process violations has the burden of demonstrating that some type of arbitrary governmental action resulted in the deprivation of a protected liberty or property interest. Williams v. Bass, 63 F.3d 483, 485 (6<sup>th</sup> Cir. 1995). Where a prison disciplinary hearing may result in the loss of good time credits, the inmate is required to receive advanced written notice of the disciplinary charges, an opportunity to call witnesses and present documentary evidence in defense and a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary action. Wolff v. McDonnell, 418 U.S. 539, 563-567, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Kentucky courts have recognized and followed these requirements. Stanford v. Parker, Ky., 949 S.W.2d 616, 617 (1996); Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 357 (1997). A decision to revoke good time credits must be supported by "some evidence." Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 455, 105 S.Ct. 2768,

2774, 86 L.Ed.2d 356 (1985). Kentucky courts have also recognized this standard. Stanford, 949 S.W.2d at 617; O'Dea, 939 S.W.2d at 357. With these legal principles in mind, we now turn our attention to Wilson's two specific assertions of error.

First, Wilson argues that the chain of custody of his urine specimen was incomplete, making the results unreliable. Wilson relies upon Byerly v. Ashley, Ky. App., 825 S.W.2d 286 (1991) in support of his arguments. In Byerly, this Court was confronted with a situation where the chain of custody for the prisoner's urine sample was established by prison authorities until such time as the sample arrived at the laboratory, but was deficient from that point forward since there was no entry on the form indicating who or how many handled the specimen at the lab. Id., at 287. In determining that such deficiencies rendered the chain of custody unreliable, this Court noted that information reflecting the date and time others within the laboratory received the sample had been omitted from the form even though spaces were designated for that purpose. Id. Hence, Byerly stands for the proposition that chain of custody is incomplete 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. Id., at 288.

In order to fully comply with our decision in Byerly, the Department of Corrections revised its regulations concerning unauthorized substance abuse testing. At the time Wilson's urine sample was given, Corrections Cabinet Policy and Procedure (CPP) 15.8(VI)(3) governed chain of custody as follows:

(A) A Chain of Custody form shall be properly maintained on the urine sample.

(B) An institution that utilizes any outside delivery agent to deliver a urine sample to the laboratory shall ensure that the sample is released to the delivery agent by signature of staff packaging the sample.

(C) The laboratory personnel conducting the testing shall sign and date the Chain of Custody certifying:

1. That the sample was received intact;  
and
2. That the sample is properly identified as the inmate's.

(D) The laboratory shall report which substance the urine sample tested positive for, if any.

(E) If the test indicates the use of an Unauthorized Substance:

1. The Chain of Custody form shall be returned to the sending institution; and
2. The institution shall initiate a disciplinary report against the inmate.

(F) If a positive test for an Unauthorized Substance occurs, the institution shall determine and document through consultation with medical or pharmacy staff whether the inmate is taking medication which may have resulted in the positive results.

(G) The inmate shall receive a copy of the Chain of Custody form if a disciplinary

report is filed against him and if a Chain of Custody form is used.

Here, the record documents a complete chain of custody from the time that Wilson signed the chain of custody form on January 22, 2002 until Certifying Scientist Trudi Osborne confirmed and released the results of the drug test on February 1, 2002. First, Wilson signed the custody and control form acknowledging "each specimen bottle used was sealed with a tamper-evident seal in my presence." Next, the custody and control forms used by Advanced Toxicology Network ("ATN")<sup>1</sup> leave no doubt that the sample was received intact by ATN on January 31, 2002. These forms include the signatures of each person at ATN's lab who handled the sample and clearly shows that the test was performed at ATN's facility in Memphis, Tennessee. The test results were then reported to ChemReview in Kansas City, Missouri who then reported the results of this drug test to Northpoint. Finally, the identification numbers originally assigned to the urine sample correspond with the numbers printed on all of the chain of custody forms. From the record, we find no evidence that CPP 15.8 was violated or that any flaws in the chain of custody over Wilson's urine sample existed. Hence, we conclude that the chain of custody herein was valid, proper and

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<sup>1</sup> ATN is the laboratory that performs and analyzes the drug tests on Kentucky inmates on behalf of the Department of Corrections.

clearly establishes the reliability of the results of Wilson's positive drug test.

Wilson also argues that his due process rights were violated because he was denied documents relating to the testing of his urine specimen. Wilson argues that, to present a proper defense, he required access to a carbon-copied page from the initial custody and control form, as well as a page from a urine specimen logbook maintained by the correctional institution. CPP 15.6(VI)(C)(4)(b)(3)(c) requires that inmates be provided all documents to be used by the Adjustment Committee or the Adjustment Officer at the hearing. The written findings of the Adjustment Committee demonstrate that Wilson was found guilty of using cocaine solely from Officer Haviou's testimony and from information contained within Officer Fowler's disciplinary report. Since the documentation Wilson requested was not used by the Adjustment Committee during the April 15, 2002 hearing, neither CPP 15.6 nor CPP 15.8 permitted Wilson to obtain those documents for his defense. Moreover, even had Wilson possessed the documentation he requested, Wilson fails to show how the requested documents would counteract the overwhelming evidence contained within the record. Wilson's positive drug test, coupled with the evidence of the validity of the chain of custody of his urine sample, sufficiently satisfies the "some evidence" standard. Thus, we cannot find that failing to



provide Wilson with requested documents deprived him of due process herein.

For the foregoing reasons, the judgment of the Boyle Circuit Court is affirmed.

ALL CONCUR.

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