

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002505-MR

WOODIE WILCOX

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 02-CI-00193

VERTNER L. TAYLOR, GEORGE R.
MILLION, BARBARA GREENE AND
JOHN UNDERWOOD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, COMBS, AND TACKETT, JUDGES.

TACKETT, JUDGE: Woodie Wilcox appeals from an order of the Morgan Circuit Court dismissing his petition for a declaration of rights. Because we agree with the circuit court's determination that Wilson received all of the due process to which he was entitled in his two prison disciplinary actions, we affirm.

Wilcox was serving his sentence at the Marion Adjustment Center (MAC) when prison employees confiscated three apparent marijuana joints from underneath his mattress on

January 22, 2002. The incident was written up along with Wilcox's statement that he had no idea where the joints came from and that he believed he was being set up. Prior to the prison adjustment committee's disciplinary hearing, Wilcox was transferred to Eastern Kentucky Correctional Complex (EKCC). On February 22, 2002, Wilcox's cell was searched by two EKCC employees who found matches and rolling papers concealed in the fingertips of a pair of latex gloves. Wilcox was charged with attempting to possess or smuggle contraband because he was scheduled to be moved to segregation later that day and those items were prohibited in segregation. A hearing was held on the second charge that same day, and the adjustment committee report stated that Wilcox was found guilty based on the incident report and on his own guilty plea. The committee assigned him to disciplinary segregation for forty-five days and assessed a forfeiture of sixty days good time. The warden concurred with the prison adjustment committee.

On March 12, 2002, the adjustment committee heard evidence relating to the marijuana joints found under Wilcox's mattress at the MAC. Wilcox again stated that he felt he had been set up. Initially, there were issues regarding the chain of custody after the items were found; however, the reporting employee at the MAC testified by speaker phone in support of the completed chain of custody form. Another prison employee tested

the items found under Wilcox's mattress and confirmed that they were in fact marijuana joints. The committee's report states that Wilcox was found guilty based on the officer's report that marijuana was found under his mattress and that the substance found tested positive for marijuana. In addition, Wilcox's denial was noted on the hearing report. He was sentenced to an additional ninety days segregation and forfeited one hundred eighty days good time. Both the February 22 and March 12 hearing reports noted that the penalties were assessed to control Wilcox's behavior and enforce institutional rules. The warden again concurred with the prison adjustment committee. Wilcox petitioned the Marion Circuit Court for a declaration of rights. The circuit court dismissed his petition, and this appeal followed.

Wilcox's arguments on appeal can essentially be summarized as follows: Wilcox contends that he was entitled to an evidentiary hearing in front of the circuit court to present evidence not included in his petition. Further, Wilcox argues that he did not receive all of the due process to which he was entitled. The United States Supreme Court has determined that an inmate in a prison disciplinary action is entitled to written notice of the charges against him, a hearing at which he may present evidence in his own defense, and a written report from the disciplinary body setting forth the evidence relied on to

convict him and the reason for any penalty imposed. Wolff v. McDonnell, 418 U.S. 539, 29 S.Ct. 2963, 49 L.Ed.2d 935 (1994). In both instances, Wilcox received written notice of the alleged violations and gave statements during the investigation that he was innocent and felt he was being set up. The prison disciplinary committee held a hearing on each charge and issued a written report of the evidence presented, including Wilcox's guilty plea to attempted smuggling of contraband and his contention that he was innocent of possessing the marijuana found under his mattress. In addition, the hearing reports stated as a reason for the penalties assessed "to control inmate's behavior, actions and enforce institutional rules." Thus, Wilcox received all of the due process to which he was entitled under Wolff.

The standard under which the circuit court was required to review Wilcox's petition for a declaration of rights merely required that the prison disciplinary committee's findings be supported by some evidence. Superintendent Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); Stanford v. Parker, Ky. App., 949 S.W.2d 616 (1996); Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). In each case, the committee had reports from prison employees who found contraband in Wilcox's cell. With regard to the attempted smuggling charge, the report even noted Wilcox's

guilty plea. Wilcox has failed to show any obligation on the part of the circuit court to permit him an evidentiary hearing to present matters not contained in his petition for declaration of rights. Consequently, the judgment of the Marion Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

Woodie Wilcox, *Pro Se*
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