

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002071-MR

DONALD RUCKER

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 02-CI-00294

KENTUCKY DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Donald Rucker has appealed, pro se, from an order of the Oldham Circuit Court entered on July 24, 2002, which granted the Kentucky Department of Corrections' motion to dismiss Rucker's petition for declaration of rights. Having concluded that the trial court did not err in granting the Department's motion to dismiss, we affirm.

Rucker is an inmate at the Kentucky State Reformatory in LaGrange, Kentucky. On October 17, 2001, Rucker was required

to submit a urine sample which was tested the following day for the presence of illegal drugs. Rucker's urine sample tested positive for the presence of marijuana and on October 29, 2001, a disciplinary report was filed against Rucker by the Department. A disciplinary hearing was held on November 5, 2001, after which the Adjustment Committee found Rucker guilty of unauthorized drug use. Rucker was given 45 days of disciplinary segregation and forced to forfeit 60 days of good-time credit. Rucker's appeal of the committee's decision was denied by the prison warden on November 19, 2001.

On May 17, 2002, Rucker filed a pro se petition for declaration of rights in the Oldham Circuit Court. Rucker claimed that he had been denied due process of law on the following grounds: (1) there were defects in his urine sample's chain of custody; (2) he was improperly denied the opportunity to call two doctors as expert witnesses; (3) the Adjustment Committee improperly relied upon the testimony of Cindy Gray, the prison's pharmacist; and (4) he was denied a fair hearing when the committee chairperson improperly spoke with a witness outside the hearing room prior to the witness's testimony.

On July 15, 2002, the Department filed a motion to dismiss Rucker's petition for declaration of rights. On July 24, 2002, after finding that "[t]he chain of custody documentation for [Rucker's] urine sample [was] complete," and

that Rucker had "failed to demonstrate that he was prejudiced by the denial of witnesses in such a way as to support a finding of a due process violation," the circuit court granted the Department's motion to dismiss. On August 21, 2002, the circuit court denied Rucker's motion to alter, amend, or vacate its order dismissing his petition for declaration of rights. This appeal followed.

Rucker first claims that he was denied due process of law when the Adjustment Committee found him guilty of unauthorized drug use by relying upon the testimony and report of Cindy Gray, the prison's pharmacist. Specifically, Rucker argues that Gray was not qualified to testify to which medications could produce a false positive drug test, and that Gray's testimony was not based on all of the facts since she was not aware that Rucker had taken certain vaccines which, according to Rucker, could lead to a false positive drug test. We find this alleged due process violation to be without merit.

In Superintendent, Massachusetts Correctional Institution, Walpole v. Hill,¹ the United States Supreme Court discussed the evidentiary requirement that must be met to support a finding of guilt in the prison disciplinary context:

We hold that the requirements of due process are satisfied if some evidence supports the decision by the prison

¹ 472 U.S. 445, 455-56, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985).

disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . ." Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board [citation omitted].

In the case sub judice, our review of the record shows that the Adjustment Committee's finding of guilt was supported by sufficient evidence.

First, although Gray testified that she did not know Rucker had taken any vaccines, she also testified that she was unaware of any flu vaccines which would cause a false positive drug test for marijuana. Moreover, Dr. Morkas,² a prison physician, testified that Rucker's alleged liver disease, kidney infection, flu or hepatitis vaccines, and hydrocortisone injections would not cause a false positive drug test for marijuana. Accordingly, since there was "some evidence" supporting the committee's finding of guilt, Rucker was not denied due process of law.

Rucker next argues that he was denied due process of law on the grounds that a proper chain of custody was not established with respect to his urine sample. In support of

² Dr. Morkas's first name is not mentioned in the record.

this claim, Rucker alleges that his urine sample was not placed "in a secured lock box" prior to being delivered to the lab courier for shipment. According to Rucker, this constituted a "break" in the chain of custody sufficient to render the sample unreliable. We disagree.

In Mollette v. Kentucky Personnel Board,³ this Court discussed the requirements for establishing a proper chain of custody:

While the integrity of weapons or similar items of physical evidence, which are clearly identifiable and distinguishable, does not require proof of a chain of custody, a chain of custody is required for blood samples or other specimens taken from a human body for the purpose of analysis to show that the sample tested in the laboratory was the same sample drawn from the victim [citations omitted].

Even with respect to substances which are not clearly identifiable or distinguishable, it is unnecessary to establish a perfect chain of custody or to eliminate all possibility of tampering or misidentification, so long as there is persuasive evidence that "the reasonable probability is that the evidence has not been altered in any material respect" [citations omitted].

In the case at bar, our review of the record shows that a proper chain of custody was established.

Correctional Lieutenant Carl Corley testified that after Rucker submitted his urine sample, the sample was sealed

³ Ky.App., 997 S.W.2d 492, 495 (1999).

in the proper container and given to the courier for shipment. Contrary to Rucker's assertion, since the courier was already at the prison, there was no need to place the sample "in a secured lock box" prior to shipment. Documents in the record support Lt. Corley's testimony. A form bearing Rucker's signature and the identification number "304677260" appears in the record, which indicates that after Rucker submitted his urine sample, it was sealed in his presence and the labeling on the container was correct. This form also contains language indicating that Rucker's urine sample was released to Airborne Express for shipment after the sample was submitted. Further, the document contains the signature of a laboratory employee, who indicated on the form that the sample was sealed in its container after being delivered to the lab the following day.

A lab report listing Rucker's name and the identification number "304677260" also appears in the record, and states that Rucker's sample tested positively for marijuana. Finally, internal lab documents with the identification number "304677260," contain numerous signatures of individuals who handled the sample at the lab. These signatures account for the sample's movement from place-to-place within the lab. Therefore, we conclude that there was sufficient evidence establishing to "a reasonable probability that the evidence ha[d] not been altered in any material respect." Accordingly,

Rucker's claim that he was denied due process of law on chain of custody grounds is without merit.

Rucker next argues that he was denied due process of law when the committee chairperson, Lt. Bill Searcy, left the hearing room to "discuss [] [Rucker's] case with Dr. Morkas [] minutes before Dr. Morkas testified at the hearing." While it is apparently true that Lt. Searcy apprised Dr. Morkas of the issues to be discussed at the hearing prior to his testimony,⁴ we conclude that no due process violation occurred.

"The requirements of due process are flexible and depend on a balancing of the interests affected by the relevant government action."⁵ In the prison disciplinary hearing context, due process is satisfied if there has been "notice of the charges, a reasonable opportunity to be heard, and a brief written finding suitable for judicial review."⁶ Further, "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."⁷ In the instant case, since Rucker has not alleged that any inappropriate communication took

⁴ In its brief to this Court, the Department admits that Lt. Searcy left the hearing room to call Dr. Morkas as a witness and that he "apprised" Dr. Morkas of the issues to be discussed at the hearing.

⁵ Hill, 472 U.S. at 454.

⁶ Smith v. O'Dea, Ky.App., 939 S.W.2d 353, 357 (1997)(citing Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)).

⁷ Wolff, 418 U.S. at 556.

place when Lt. Searcy left the hearing room to summons Dr. Morkas, we conclude that Rucker's due process rights were not violated when Lt. Searcy briefly apprised Dr. Morkas before he testified of the relevant issues to be discussed at the hearing. Therefore, this claim of error is also without merit.

Next, Rucker claims that after the hearing, he informed Dr. Morkas that he had received injections which were "laced with Lidocaine" prior to submitting his urine sample. Rucker contends that Dr. Morkas was not aware of this fact at the time of the hearing. Presumably, Rucker is arguing that the Lidocaine could have affected the results of his drug test and that further expert testimony was necessary to resolve this issue. We disagree.

First, we note that Rucker has produced no evidence whatsoever indicating that Lidocaine would have had any effect on the results of his drug test, or that Dr. Morkas would have testified differently if he had known about Rucker's alleged contact with Lidocaine. Moreover, Dr. Morkas testified that Rucker would not be in danger of a false positive drug test for marijuana unless he had taken narcotics within two weeks of the drug test. Rucker himself stated at the hearing that the medicines he had taken were administered more than two weeks prior to his drug test. Accordingly, we reject this claim of error as well.

Finally, Rucker argues that he was denied due process of law by the Adjustment Committee's refusal to allow him to call two doctors to testify on his behalf. According to Rucker, these two doctors could have testified that his prior medications led to a false positive drug test for marijuana. We disagree and find no violation of Rucker's due process rights.

We once again turn to Wolff, where the United States Supreme Court stated:

Ordinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution. We should not be too ready to exercise oversight and put aside the judgment of prison administrators. It may be that an individual threatened with serious sanctions would normally be entitled to present witnesses and relevant documentary evidence; but here we must balance the inmate's interest in avoiding loss of good time against the needs of the prison, and some amount of flexibility and accommodation is required. Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the Committee to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases. Any

less flexible rule appears untenable as a constitutional matter, at least on the record made in this case. The operation of a correctional institution is at best an extraordinarily difficult undertaking. Many prison officials, on the spot and with the responsibility for the safety of inmates and staff, are reluctant to extend the unqualified right to call witnesses; and in our view, they must have the necessary discretion without being subject to unduly crippling constitutional impediments. There is this much play in the joints of the Due Process Clause, and we stop short of imposing a more demanding rule with respect to witnesses and documents.⁸

In the case at bar, Rucker failed to provide any evidence whatsoever that either of the two doctors he wanted to call as witnesses would have provided favorable testimony. This fact, coupled with the reality that Dr. Morkas provided testimony regarding the possible effects of the medications Rucker had taken, supports the Department's determination not to allow Rucker to call two doctors from outside the prison to testify at the hearing. Accordingly, Rucker's final due process argument is also unpersuasive.

Based on the foregoing, the order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

⁸ Id. at 566-67.

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