

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001672-MR

DEWAYNE SELLERS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 03-CI-00082

DALE WATSON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, McANULTY AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Dewayne Sellers brings this *pro se* appeal from a July 11, 2003 Order of the Lyon Circuit Court. We affirm.

Appellant is an inmate in the Kentucky Department of Corrections at the Blackburn Correctional Complex in Lexington, Kentucky. Appellant was charged with "abusive, disrespectful, threatening language, gestures or actions directed toward a non-inmate", a Category III-20 violation of 501 Ky. Admin. Regs. 6:020, Kentucky Corrections Policies and Procedures (KCPP) 15.2.

Appellant received the disciplinary write up from correctional Officer Randy Rushing.

A prison disciplinary hearing was held on March 17, 2003. The adjustment committee found appellant guilty of the offense and imposed a penalty of sixty days good time forfeiture, which was suspended for a period of ninety days, subject to appellant's good behavior.¹ In the disciplinary report, the adjustment committee specifically found:

On 3/10/03 Ms. Lou Carr (forestry foreman on outside detail tree farm) reported to Officers that. . . Sellers was staring at her hard stares on a frequent basis. She stated he had got mad at her when he asked for rubber gloves and she denied them as the job he was doing did not require them. At this time the officers began to watch and Ofc [sic] Rushing testified he was standing very close to Ms [sic] Carr and he saw. . . Sellars [sic] staring at Ms [sic] Carr 8 times in a glaring or threatening manner for 30 to 40 seconds. . . . [Sellers'] witness's [sic] state they never saw. . . Sellars [sic] looking at anyone while they were working. Ofc. [sic] Odom stated he had to tell. . . Sellars [sic] to pay attention to his work. We impose a penalty of 60 days GTL suspend [sic] for 90 days.

An appeal was taken to the warden, and the warden affirmed the adjustment committee's decision. Thereafter, appellant filed a petition for declaratory judgment in the Lyon Circuit Court. By Order entered July 11, 2003, the Lyon Circuit Court dismissed appellant's petition. This appeal follows.

¹ 501 Ky. Admin. Regs. 6:020, Kentucky Corrections Policies and Procedures (KCPP) 15.6 (Par VI, (B)(1)(d)).

Appellant contends that the circuit court committed error by dismissing his petition for declaratory judgment. Specifically, appellant contends that he was denied a twenty-four hour notice of the adjustment committee's hearing as required by KCPP 15.6, he was denied the right to call a witness, Lou Carr, and he was entitled to a jury trial. We shall address each issue seriatim.

Appellant initially asserts that he was not given notice twenty-four hours prior to the hearing as required by KCPP 15.6. Upon review of KCPP 15.6, we were unable to locate a rule that specifically requires an inmate to be given twenty-four hours notice of a hearing. There is a requirement that the inmate receive a copy of the disciplinary report no less than twenty-four hours prior to the hearing. There is, however, no requirement that an inmate receive notice of the hearing twenty-four hours prior thereto. As such, we view this contention to be without merit.

Appellant next claims that he was denied due process of law. Appellant sought to call Lou Carr as a witness, but the adjustment committee denied his request. At the disciplinary hearing, the reporting employee, Officer Rushing, and Officer Ricky Odom testified, and both officers had directly observed appellant's behavior toward Carr. The committee also accepted several inmates' statements by affidavits. We think the

testimony of Officer Rushing and Officer Odom constituted "some evidence" upon which to support the adjustment committee's finding of guilt. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); Superintendent, Mass. Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). Accordingly, we are of the opinion that appellant was not denied due process of law.

Appellant lastly argues that he was entitled to a hearing before the circuit court. Based upon our disposition of the above issues, we are of the opinion that appellant's petition was without merit and the circuit court properly dismissed the petition without the necessity for a hearing on the merits.

Upon the whole, we are of the opinion that the circuit court properly dismissed appellant's petition for declaratory judgment.

For the foregoing reasons, the Order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dewayne Sellers, *Pro Se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

Emily Dennis
Frankfort, Kentucky