

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001117-MR

LARRY DENNISON

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 01-CI-00229

JAMES MORGAN

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is a pro se appeal from an order dismissing appellant's supplemental complaint challenging a prison disciplinary proceeding against him that resulted in his loss of good time. Because there was "some evidence" to support the institutional conviction, appellant was not disciplined in error. Hence, we affirm.

On June 14, 2001, Larry Dennison, an inmate at the Northpoint Training Center, brought a declaratory judgment

action in the Boyle Circuit Court challenging his institutional convictions for smoking tobacco in an unauthorized area, possession of marijuana, and unauthorized use of drugs. The action also challenged certain living conditions in the prison. Various orders were thereafter entered pursuant to the above action. Subsequently, on March 21, 2002, Dennison filed a motion to supplement the complaint pursuant to CR 15.04. This complaint was based on a more recent prison disciplinary action taken against him for failure to obey an order. On May 2, 2002, the court entered an order granting the motion to supplement the complaint. Thereafter, the Department of Corrections filed a response to the supplemental complaint and a motion to dismiss for failure to state a claim upon which relief could be granted. On June 28, 2002, the court granted the motion to dismiss the supplemental complaint. On July 11, 2002, Dennison filed a CR 59.05 motion to alter, amend or vacate the June 28, 2002, order dismissing his supplemental complaint. On January 10, 2003, the court denied the CR 59.05 motion.

Dennison filed a notice of appeal with this Court on May 30, 2003, which failed to identify what order he was appealing from as required by CR 73.03(1). The notice of appeal stated only "his notice of intent to appeal the adverse decision rendered by the Boyle Circuit Court in the above styled and captioned cause." Attached to his notice of appeal, however,

was the January 10, 2003, order denying his motion to alter, amend or vacate the June 28, 2002, order dismissing his supplemental complaint. Dennison's appellate brief raises issues relative to the original complaint and the multitude of orders entered pursuant thereto, as well as issues relating to the supplemental complaint and the dismissal thereof. Although Dennison failed to comply with CR 73.03(1), given his substantial compliance and the fact that he was acting pro se, we shall consider the merits of his appeal relative only to the order dismissing the supplemental complaint, since the order attached pertained only to the supplemental complaint. CR 73.02(2); see Ready v. Jamison, Ky., 705 S.W.2d 479 (1986).

The first argument we shall address is Dennison's contention that the lower court erred in dismissing his claim challenging his institutional conviction of August 7, 2001, for failure to obey an order. In Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997), this Court adopted the standard of review of prison disciplinary decisions set out in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) - if the findings of fact of the prison disciplinary body are supported by some evidence, the decision will not be overturned. In the present case, the adjustment officer's determination of guilt was based on Corrections Officer Spurr's testimony and written

report stating that he observed Dennison smoking outside his dorm wearing his recreational clothing, which is in violation of the prison dress code and which conduct Dennison had been warned about the previous day. We believe that the testimony and report constituted "some evidence" under the standard enunciated above. Accordingly, the adjustment officer's determination of guilt was supported by sufficient evidence.

The remaining argument we shall address is Dennison's assertion that the "some evidence" standard discussed above is deficient under Sections 1, 2, and 14 of the Kentucky Constitution and that the "substantial evidence" standard utilized in reviewing administrative decisions should apply. This same argument was addressed and rejected by this Court in Smith v. O'Dea, 939 S.W.2d at 358:

We note on one hand the prison administration's compelling interest in order and in authority as a means to order. In a prison, where a state of emergency and high alert is unrelieved, any defect in the administration's authority poses a risk of disruption. On the other hand, inmate declaratory judgment petitions, like the one before us, typically present uncomplicated factual situations and concern relatively minor interests (in slightly reduced sentences, for example, or marginally mitigated conditions of confinement). In light of these disparate interests and the circumstances in which they typically arise, we are persuaded that the "some evidence" standard of review provides courts with a sufficient check upon adjustment committee fact-finding. Section 2 of our Constitution

is not compromised by judicial deference to the judgments of prison disciplinary committees and administrators in accord with that recognized as appropriate under federal law. . . .

For the reasons stated above, the order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Larry Dennison, pro se
Eddyville, Kentucky