

RENDERED: July 30, 2004, 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002038-MR

DUAN CALLOWAY, SR.

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 03-CI-00284

PATTI WEBB

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order dismissing an inmate's declaratory judgment action alleging multiple due process violations in a prison disciplinary proceeding. Upon review of the record, we agree with the lower court that appellant was not denied due process in the course of the disciplinary proceeding. Hence, we affirm.

On June 21, 2001, appellant, Duan Calloway, an inmate at the Eastern Kentucky Correctional Complex, and a fellow

inmate, Malcom Graham, were charged by the prison with assaulting inmate David Jarboe. The write-up and investigation form, which was completed by Lt. Fred Wilson and provided to Calloway, stated that on June 21, 2001, at approximately 8:35 p.m., Calloway and Graham assaulted Jarboe in Dorm 2, C Upper Wing and Jarboe sustained serious physical injury as a result of the assault. The report stated that a towel with blood spots on it was found in CU 2, where Calloway and Graham lived. The report also made reference to the fact that a confidential report was made to the adjustment officer. On July 9, 2001, a memorandum was issued by Lt. John Underwood stating that he had received information from one to ten different sources that were deemed reliable that on June 21, 2001, inmate Calloway and Graham assaulted Jarboe. On July 12, 2001, a hearing was held in which the adjustment officer found Calloway guilty and sentenced him to 180 days of segregation and 720 days of forfeited nonrestorable good time. The adjustment officer based his findings on the disciplinary report, the towel with the blood stains, and information from confidential informants whom were deemed reliable. On August 2, 2001, the warden affirmed the adjustment officer's findings and sentence.

Thereafter, on November 27, 2001, upon Calloway's motion to reconsider, the warden granted a rehearing based on the fact that the towel used as evidence against Calloway was

not ever made available for Calloway's inspection. Consequently, a new disciplinary report and investigation form was completed on December 15, 2001, wherein there was no mention of the towel as evidence against Calloway. Pursuant to the rehearing on December 18, 2001, the adjustment officer found Calloway guilty based on the disciplinary report of Lt. Wilson and the information from the confidential informants whom he deemed reliable. Upon appeal to the warden, the warden granted Calloway another retrial due to procedural errors that were unclear from the record.

On January 22, 2002, another disciplinary report/investigation form was completed by Lt. Wilson. This disciplinary report again made no mention of the bloody towel. The report stated that he received information from confidential informants whom he deemed reliable that Graham and Calloway were observed kicking Jarboe while he was lying in Dorm 2 C Upper Wing. Pursuant to another hearing held on February 12, 2002, the adjustment officer again found Calloway guilty based on the disciplinary report of Lt. Wilson and information from confidential informants whom he deemed reliable. These findings were initially affirmed by the warden, but later another rehearing was granted to determine whether the victim sustained serious physical injury.

On March 4, 2003, a fourth disciplinary report/investigation form was submitted by Lt. Wilson, which contained the same description of the incident as the January 22, 2002, report except the later report referenced a medical bill documenting the victim's treatment for his injuries. This report charged Calloway with physical action resulting in injury to another inmate. The adjustment officer found Calloway guilty based on the disciplinary report and the information from the reliable confidential informants. Calloway was again sentenced to 180 days segregation and 720 days of forfeited nonrestorable good time. On March 28, 2003, the warden issued a memorandum affirming the decision of the adjustment officer.

Subsequently, on June 27, 2003, Calloway filed a petition for declaratory judgment in the Muhlenberg Circuit Court alleging the following due process violations relative to the prison disciplinary proceeding: lack of evidence that the victim sustained a serious physical injury; failing to produce the blood-stained towel at the hearing; failure to provide Calloway, prior to the hearing, a summary of the confidential informants' statements; failure to provide Calloway with a written statement regarding the evidence relied on to support the finding that the victim sustained a serious physical injury; failure to provide Calloway with particular facts on which the

charge was based prior to the hearing; and failure to cure due process violations upon rehearing. On August 28, 2003, the court entered an order dismissing the petition, finding that no due process violations occurred in the course of the prison disciplinary proceeding. This appeal by Calloway followed.

Calloway's first argument is that the circuit court erred in failing to address the constitutional validity of each issue raised in the declaratory judgment action. It has been held that a court reviewing a prison disciplinary proceeding in a declaratory judgment action is not required to make independent findings of fact. Smith v. O'Dea, Ky. App., 939 S.W.2d 353 (1997). In any event, the circuit court's judgment clearly stated that it adjudged no due process violations. Hence, this argument is devoid of merit.

Calloway next argues that no evidence was presented that the victim suffered a serious physical injury. In Smith v. O'Dea, this Court adopted the federal standard for review of a prison disciplinary proceeding which requires that there be only some evidence to support the findings of the prison disciplinary body. Id. at 357-358. At the third and final rehearing on the matter, a medical bill from the hospital where Jarboe was treated on June 21, 2001, for his injuries was offered, as well as an accident/extraordinary occurrence report which stated that Jarboe had a large lump and bruise to the right side of his

head, a laceration on the left side of his head, a laceration on his right arm, bruising on his right side, and a scratch on his neck. We believe this constituted "some" evidence to support the finding.

Calloway also complains that the towel with blood stains was not produced at the hearing. Since the towel in question was not considered as evidence in the final ruling by the adjustment officer and warden, there was no error in failing to offer the towel as evidence at the hearing.

Another of Calloway's assignments of error is that he was not provided with a written statement of the evidence relied on by the adjustment officer in finding that the victim suffered a serious physical injury. In Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), the Court held that the fact finder in a prison disciplinary proceeding must make written findings of fact sufficient for a meaningful judicial review. The Court acknowledged that these findings may be brief. See Smith v. O'Dea, 939 S.W.2d at 357. In his findings on the final rehearing in the present case, the adjustment officer stated that his decision was based on the disciplinary report of Lt. Wilson. This report, dated March 4, 2003, clearly stated the victim received "serious physical injury as evidenced by the attached medical bill outlining inmate Jarboe's treatment

at ARH Hospital." We believe the adjustment officer's findings were sufficient on this issue.

Calloway also maintains that he was unconstitutionally deprived of a summary of the particular facts comprising the charge against him prior to the hearing. In Wolff, 418 U.S. at 564, 94 S. Ct. at 2978-2979, it was likewise held that due process requires that the inmate in a prison disciplinary proceeding be given advance written notice of the disciplinary charges, which notice must be sufficient to enable the inmate to prepare a defense. Upon review of the final disciplinary report/investigation form that was provided to Calloway prior to the final hearing, we believe the summary of the charge was sufficient to allow him to prepare a defense to the charge. The summary gave the specific date, time, and place of the incident. The summary further stated that he and Graham were observed kicking the victim while Jarboe was lying down and that Jarboe sustained a serious physical injury as a result of the assault.

Calloway also claims that he was denied due process when he was not given a summary of the statements from all ten confidential informants in the case. In a prison disciplinary proceeding where information from confidential informants is relied upon, it is not required that the charged inmate receive such detailed information as would enable him to identify the informants. Gilhaus v. Wilson, Ky. App., 734 S.W.2d 808 (1987).

As stated above, Calloway was provided with sufficient details of the charged offense to allow him to prepare a defense. Nothing more is required.

Calloway's remaining argument is that the warden improperly failed to take action to cure the alleged due process violations upon rehearing. As noted earlier, Calloway was given three rehearings in this case for various reasons. In our view, the warden made every effort to see that due process was afforded Calloway in the matter. Since we have adjudged there were no due process violations relative to the final hearing and decision, there were no due process errors for the warden to cure. Hence, this argument has no merit.

For the reasons stated above, the judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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