

RENDERED: August 6, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001583-MR

JEREMY BOYD

APPELLANT

v. APPEAL FROM MUHLENBURG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 03-CI-00216

PATTI WEBB, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; AND EMBERTON, SENIOR JUDGE.¹

JOHNSON, JUDGE: Jeremy Boyd has appealed from an order entered by the Muhlenburg Circuit Court on July 10, 2003, dismissing his petition for declaration of rights. The dismissal had the effect of allowing the findings of the warden of the Green River Correctional Complex in a disciplinary action to stand. Having

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

concluded that Boyd received all of the due process to which he was entitled, we affirm.

During an investigation of drug activity at the Western Kentucky Correctional Complex, Jason Ortt, a maintenance supervisor, admitted that he had brought marijuana into the institution. Ortt claimed that on February 17, 2003, he brought the marijuana into the correctional complex in two green balloons and that Boyd was going to pay him approximately \$400.00 for it. On February 18, 2003, a green balloon containing a green, leafy substance was found in the prison yard. Subsequent testing revealed the substance to be marijuana.

Based on Ortt's statements concerning the marijuana, Lieutenant Roland Woodrum took disciplinary action against Boyd. On February 20, 2003, Boyd was charged in a prison disciplinary action with promoting dangerous contraband, inchoate, a Category 6, Item 4 violation. At a disciplinary hearing held on March 20, 2003, Boyd was found guilty and assessed a penalty of 90 days in segregation, forfeiture of 180 days of good-time credits, and forfeiture of 180 days of non-contact visitation.

Boyd filed a petition for declaration of rights in the Muhlenburg Circuit Court on May 12, 2003, challenging the disciplinary action. The warden filed a motion to dismiss,

which was granted in an order entered on July 10, 2003. This appeal followed.

Boyd contends that his due process rights were violated as follows: 1) that he was denied the opportunity to call witnesses to testify in his favor; 2) that he was not afforded the right of confrontation and cross-examination; 3) that the adjustment committee chairman failed to make adequate findings of fact; 4) that the evidence relied upon was insufficient to find him guilty; 5) that he did not receive a hearing from a fair and impartial tribunal since the adjustment committee was composed of only one person; and 6) that the laboratory report claiming the substance to be marijuana was not accompanied by an adequate chain of custody form.

In Wolff v. McDonnell,² the Supreme Court of the United States set forth the basic due process procedures required for a prison disciplinary hearing. The prison facility must give the inmate written notice of the charges to be brought against him to enable him to marshal a defense, there must be a written statement by the fact-finder as to the evidence relied upon for the disciplinary action, and the inmate should be allowed to call witnesses and to present evidence in his defense unless

² 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

doing so would be unduly hazardous to institutional safety and correctional goals.³

It is well-established by the courts that "wide latitude" will be given to authorities charged with handling prison disciplinary hearings.⁴ While the Supreme Court has noted that it would be useful for a hearing committee to state its reasons for refusing to call a witness, "whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases," it is not mandated by the courts.⁵

In the case sub judice, the hearing officer attempted to contact Ortt by telephone during the hearing, to no avail. However, it is important to note that Ortt had already expressed his unwillingness to make any further statements concerning the allegations.

While the right to confront one's accuser is essential in criminal trials, the rights to confrontation and cross-examination are "not rights universally applicable to all hearings."⁶ Boyd cites several cases discussing the fundamental rights to confrontation and cross-examination, nearly all of which are criminal cases and therefore irrelevant to prison

³ Id. 418 U.S. at 563-64, 566.

⁴ Goble v. Wilson, 577 F.Supp. 219, 221 (1983).

⁵ Wolff, 418 U.S. at 566.

⁶ Id. 418 U.S. at 567.

disciplinary hearings. As an administrative civil hearing, the prison disciplinary hearing was not bound by the same procedures as a criminal trial. Thus, even though a prisoner retains certain rights under the Due Process Clause, that fact "in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed."⁷ Boyd simply does not have an absolute right to confront or to cross-examine witnesses in a prison disciplinary hearing.⁸ However, while this right is limited by considerations of institutional safety, the institution in the case sub judice has not suggested any basis for such a concern other than Ortt's past act of bringing marijuana into the institution.⁹ Thus, Ortt should have been made available to testify. However, there remains the question of his unwillingness to testify. The only evidence of record indicates that Ortt refused to provide any information concerning the marijuana other than the statement that he gave to correctional authorities implicating Boyd. Hence, based upon Ortt's previous statement incriminating Boyd, and the fact that there is no evidence that he was inclined to change his previous statement,

⁷ Id. 418 U.S. at 556.

⁸ Goble, 577 F.Supp. at 220.

⁹ We are confident that prison security is such that the likelihood of Ortt repeating such conduct on a trip to the prison to testify would be infinitesimal.

we conclude that Boyd was not denied due process as a result of his inability to confront Ortt.

We further conclude that the prison disciplinary hearing satisfied Boyd's due process rights with respect to the sufficiency of the evidence. Pursuant to Superintendent, Massachusetts Correctional Institution, Walpole v. Hill,¹⁰ due process is met if there is "some evidence from which the conclusion of the administrative tribunal could be deduced. . . ." ¹¹ In fact, the real question is whether there is "any evidence in the record that could support the conclusion reached by the disciplinary board"¹² [emphasis added]. Evidence does not have to be so overwhelming that the decision reached by the disciplinary board is the only one that could be reached. Rather, evidence is sufficient, although it might be "characterized as meager," if the "record is not so devoid of evidence that the findings of the disciplinary board were without support or otherwise arbitrary."¹³

In Hill, three men were seen running away from an assault victim in the state prison in Walpole, Massachusetts. While there was no witness to the actual assault, the mere fact

¹⁰ 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

¹¹ Id. 472 U.S. at 455 (quoting United States ex rel. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106, 47 S.Ct. 302, 304, 71 L.Ed.2d 560 (1927)).

¹² Id. 472 U.S. at 455-56.

¹³ Id. 472 U.S. at 457.

they were running from the scene was enough evidence to support a conviction by the disciplinary hearing board. In the present case, there is even stronger evidence, and clearly enough evidence to meet the "some evidence" standard.

Ortt and a prison informant both told the prison officials about Boyd's plan to have Ortt smuggle marijuana into the prison. In addition, a green balloon containing marijuana was found in a van that was accessible to Boyd. While this does not preclude any other explanations or theories concerning the ownership of the marijuana, the evidence is clearly enough under the Hill standard for the disciplinary action taken against Boyd.

Boyd also contends that he did not receive a fair hearing because the tribunal consisted of only one person, who Boyd claims held a grudge against him. According to prison regulations, the prison warden may determine whether to use an Adjustment Committee or a single Adjustment Officer, who performs under the same requirements as a committee.¹⁴ In addition, there is no evidence in the record to indicate that the hearing officer had a bias against Boyd, or that he was seeking "revenge" against him as Boyd claims. While Boyd was an inmate at the Western Kentucky Correctional Complex and the investigation took place at that correctional complex, the

¹⁴ Kentucky Correction Policies and Procedures (CPP) 15.6.

hearing itself was held at the Green River Correctional Complex by an Adjustment Officer at that complex. Boyd also claims that the hearing officer berated him during the hearing, but there is no proof of this allegation. From the audio tape provided with the record, this Court can only conclude that the hearing was fair and impartial.

Finally, Boyd argues that a proper chain of custody of evidence was not established. Boyd relies on Byerly v. Ashley,¹⁵ but that case is not directly in point with the case before this Court. In Byerly, the appropriate chain of custody was established for sending the urine specimen outside of the prison for testing. The prison was testing an inmate for the purposes of determining whether he had used alcohol or unauthorized drugs.¹⁶ Since the laboratory staff did not complete the proper paperwork and since the urine sample was the only evidence in the case, it was found to be unreliable and insufficient to support a finding of guilt. The Court went on to say that "fundamental fairness dictates that the evidence relied upon to punish him at least be reliable."¹⁷

In the present case, the evidence never left the prison facility. Thus, the same dangers of tampering,

¹⁵ Ky.App., 825 S.W.2d 286 (1991).

¹⁶ Id. at 287.

¹⁷ Id. at 288.

misplacing or switching samples that might be of concern when the evidence is sent out of the prison, were not as great of a concern in this situation. Additionally, in Byerly, the urine sample was the only evidence relied upon by the Adjustment Committee. If the sample had been tainted, there was no other evidence to support the charge. In the case sub judice, the marijuana was not tested to prove a specific link between the drug and the inmate as in Byerly, but only to show that the substance was indeed marijuana. The linking of the contraband to Boyd was done through Ortt's statement. The marijuana-filled balloon was not the only evidence relied upon to convict Boyd, since there were also statements from Ortt and the informant. Thus, even without the lab test of the alleged marijuana, the statements were sufficient to provide "some evidence" to support a finding of guilt in the disciplinary action.

Although inmates have due process rights in prison disciplinary hearings, the courts must "afford appropriate deference and flexibility to state officials trying to manage a volatile environment."¹⁸ While prisoners still have constitutional rights, "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and

¹⁸ Sandin v. Conner, 515 U.S. 472, 482, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).

rights, a retraction justified by the considerations underlying our penal system.'"¹⁹

For the foregoing reasons, the judgment of the Muhlenburg Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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¹⁹ Id. 515 U.S. at 485 (quoting Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 125, 97 S.Ct. 2532, 2537, 53 L.Ed.2d 629 (1977)(quoting Price v. Johnston, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948))).