

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001156-MR
AND
NO. 2003-CA-001873-MR

JAMES ROCKY WRIGHT

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
ACTION NO. 02-CI-00144

VERTNER TAYLOR; DAVID GILPIN;
JAMES COMBS; AND ARCHIE MOORE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND VANMETER, JUDGES.

VANMETER, JUDGE: These are pro se appeals from orders of the Lee Circuit Court dismissing the due process and open records request claims of appellant James Rocky Wright. In response to two separate motions below, the court entered orders dismissing Wright's claims on both April 9, 2003, and May 12, 2003. As Wright's two appeals from those orders raise identical issues, the two are herein treated as one. The circuit court found that the imposition of a warning and reprimand to inmate Wright by

the Kentucky Department of Corrections (Corrections) merited no relief, and that Wright's claim was frivolous and was made only to harass appellees. We affirm.

Wright served as a legal aide while he was an inmate at the Lee Adjustment Center. On December 2, 2001, Wright was asked by Officer Billy Little to go to the segregation unit (unit) to meet with inmates who had upcoming court appearances. Wright informed Little that he preferred not to go as he was about to phone his son. While Wright was on the phone, Little again approached and informed him that if he did not report to the unit, he would be written up. Wright, who indicated to Little that he would take the write-up, initially was written up for "refusing to carry out work assignment." According to Wright the Adjustment Committee amended his charge to that of "failure to abide by any published institutional schedule or documented rule," and he was given only a reprimand and a warning. After the warden dismissed Wright's appeal of his write-up Wright sought a declaratory judgment in the Lee Circuit Court, alleging that appellees had violated his civil rights. Wright requested that the court expunge the disciplinary hearing from his record, to order Corrections to define the elements of offenses and to require all disciplinary hearing statements and reports to be sworn statements, to award compensatory and punitive damages, and to enter orders pertaining to scheduling

discovery. The court granted appellee's motions to dismiss, finding that the action was frivolous and was made only to harass appellees. These appeals followed.

Wright alleges that the circuit court erred in dismissing his complaint as frivolous and harassing. Under KRS 454.405 an inmate's action may be dismissed if the court is "satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous." Here, the trial court found that "an imposition of a reprimand and warning has no merit before this Court as far as Petitioner's due process rights exists," that Wright had "not presented an open records claim" and that Wright's action was frivolous and harassing to appellees.

First, we note that Wright's open records claim was not substantiated by any evidence. Indeed, he did not even provide the court with a copy of his open records request. Thus, the court did not err by denying Wright's open records claim.

Further, there is no merit to Wright's claim that the disciplinary hearing violated his due process rights. This court recently addressed inmates' rights to make due process claims as follows:

In order to prevail on a Fourteenth Amendment procedural due process claim, a party must establish (1) that he enjoyed a

protected "liberty" or "property" interest within the meaning of the Due Process Clause, and (2) that he was denied the process due him under the circumstances. A protected liberty interest may arise from two sources --the Due Process Clause itself and state law or regulations. Challenges to prison conditions including segregation or removal from the general prison population are based on a potential "liberty" interest, but not all deprivations of an interest trigger the procedural safeguards of the Due Process Clause. For example, disciplinary segregation typically does not implicate a liberty interest protected by the Due Process Clause itself because it is the sort of confinement an inmate can reasonably anticipate receiving.¹

Here, Wright was deprived of nothing since his charge was amended and his penalty consisted of a reprimand and a warning. Wright does not dispute that he refused Officer Little's instruction to go to another unit. An Adjustment Committee is vested with great latitude in taking action to maintain order in prison, and a reviewing court need not set aside a decision that has some basis in fact.² As the facts underlying the Adjustment Committee's decision are not disputed, we cannot say that the decision lacked a basis in fact or that the trial court erred by failing to set that decision aside. As

¹ *Marksberry v. Chandler*, 126 S.W.3d 747, 749-50 (Ky. App. 2004). (footnotes omitted).

² *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

far as Wright's due process claim, the court in *Higgs v. Bland*³ determined that where substantial evidence for the Adjustment Committee's findings exist, due process rights have been protected.

Wright argues that Corrections employees cannot arbitrarily interfere with inmates while communicating with family members. The evidence in the record indicates that prior to Wright's phone call Officer Little requested that he go to the segregation unit. Little approached Wright while he was on the phone to give him a second chance to follow the instruction he had previously been given. This court does not see the actions of Little as those of a Corrections employee interfering with the inmates' communication, but rather as those of a Corrections officer instructing an inmate as to the outcome of his behavior.

As for Wright's following claims, that Corrections employees should be mandated to swear to statements, and that policies and procedures of the Corrections lack specificity, we find that they are conclusory and not appropriate for a declaratory judgment. "In order for a declaratory judgment action to proceed, the movant must show that an actual and

³ 888 F.2d 443, 449(6th Cir. 1989).

justiciable controversy exists involving the specific rights of the party."⁴ Wright fails to make such a showing in this matter.

For the foregoing reasons, the order of the dismissal entered by the Lee Circuit Court is affirmed.

ALL CONCUR.

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⁴ *Blair v. Hendricks*, 30 S.W.3d 802, 805 (Ky. App. 2000) (citing *HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc.*, 697 S.W.2d 946 (Ky. 1985)).