

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002455-MR

CHRISTOPHER BARLEY

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 05-CI-00233

KENTUCKY DEPARTMENT OF CORRECTIONS
AND
PATTI WEBB, WARDEN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

BUCKINGHAM, SENIOR JUDGE: Christopher Barley appeals pro se from an order of the Muhlenberg Circuit Court dismissing his petition for declaration of rights. The case involves a disciplinary action taken by prison officials against Barley, an inmate in the Kentucky prison system. We affirm.

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

Barley, an inmate at the Green River Correctional Complex in Muhlenberg County, Kentucky², was subjected to two separate disciplinary actions by prison officials at Green River in late 2004 after allegedly testing positive for marijuana following the collection and testing of urine samples. Following each disciplinary action, he was given time in segregation and lost good time credit toward the satisfaction of his sentence.

In April 2005, Barley filed a petition for declaration of rights in the Muhlenberg Circuit Court. He named the Kentucky Department of Corrections and the prison warden as respondents. In his petition, Barley alleged that the evidence against him was insufficient due to a break in the chain of custody of the urine sample and that the prison officials violated the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For relief, he asked the circuit court to have the disciplinary reports and actions dismissed and expunged from his institutional record and to order restoration of his good time credit.

In an order entered on October 24, 2005, the circuit court dismissed the petition. The court determined that the urine sample chain of custody was "complete and complies with all mandates of *Byerly v. Ashley*, Ky.App., 825 S.W.2d 286

² Barley is apparently an inmate at the Kentucky State Penitentiary in Eddyville, Kentucky, at this time.

(1991), and constitutional due process." Further, citing several cases from the federal courts, the court concluded that HIPAA did not create a private right of action. Thus, the court rejected Barley's HIPAA argument. On appeal, Barley raises the same two arguments.

Regarding the chain of custody argument, Barley does not make it clear whether he is referring to the first urine sample taken in July 2004 or the second urine sample taken in October 2004. In reviewing his petition and the attached exhibits, it appears that he is referring to the second urine sample.

Barley alleges that during the adjustment hearing at the prison, the officer who collected the sample stated, "the chain of custody was broken." The record before us does not include a tape of the hearing or a transcript. Rather, we can only review the documentation presented by Barley with his petition. Nothing there leads us to conclude that there was a break in the chain of custody. Furthermore, as stated by the commonwealth, it appears that an identical fact pattern to that employed by the prison officials here was held not to have demonstrated a break in the chain of custody in the case of *Lucas v. Voirol*, 136 S.W.3d 477 (Ky.App. 2004). In short, we are not persuaded that the circuit court erred in rejecting this argument by Barley.

Barley's second argument is that his rights under HIPAA were violated by the dissemination of his private medical information in connection with the proceedings concerning his urine samples. First, we agree with the trial court that there is no private right of action under HIPAA. See *Johnson v. Quander*, 370 F.Supp.2d 79, 99-100 (D.D.C. 2005).³ Second, we conclude at any rate that the prison officials and/or the disciplinary proceedings did not violate HIPAA.

The order of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Barley, *Pro Se*
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BRIEF FOR APPELLEES:

Rebecca Baylous
Frankfort, Kentucky

³ Other cases supporting this determination were cited by the circuit court in its order.