

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001960-MR

JESSIE JONES

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT  
HONORABLE JOHN DAVID CAUDILL, JUDGE  
ACTION NO. 06-CI-00158

BARBARA GREEN; JOHN MOTLEY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: WINE, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.<sup>1</sup>

WINE, JUDGE: Jessie Jones, an inmate at the Eastern Kentucky Correctional Complex (EKCC), appeals, *pro se*, from a Morgan Circuit Court order that dismissed his petition for a declaration of rights seeking relief from an adjustment committee's adverse decision. Finding no error, we affirm.

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<sup>1</sup> Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

At all times relevant to this action, Jones was an inmate at EKCC. On February 20, 2006, Jones was taken to Paintsville, Kentucky, for a court proceeding having to do with an insurance claim which involved the death of his son. Jones spent one night in the Johnson County Jail. Jones states that the cell did not have running water due to faulty water fixtures. He further claims that he was only given six ounces of orange juice, one cup of milk and no water before being transported back to EKCC. Upon returning to EKCC, the prison regulations required Jones to submit a urine sample for drug testing. Jones was accompanied by two corrections officers who asked him to produce a urine sample within a three-hour period. At first Jones was physically unable to produce but finally was able to give a sample, stating, "This is all I can do." Officer G. Helton reportedly stated that the urine amount was sufficient. However, Officer O. Wright asked Jones to try to produce a little more. Jones proceeded to try but could not. Once the three hours had lapsed and Jones was unable to produce any more urine, the officers wrote him up to the adjustment committee, charging him "with refusing or failing to submit to a drug urinalysis test within three hours."

On February 24, 2006, the adjustment committee held a disciplinary hearing to consider the charges against Jones. The adjustment committee found Jones guilty and punished him by placing him in disciplinary segregation for 90 days and directing that he forfeit 180 days good-time credit. Jones appealed to EKCC's warden, John Motley, who upheld the committee's ruling. On the appeal form, the warden wrote that one of his staff

spoke with Officer Wright who explained that Jones had received a cup of water per hour within the three-hour time period he was to produce a sample.

On July 28, 2006, Jones filed a petition for declaration of rights in Morgan Circuit Court seeking reversal of the adjustment committee's ruling. In his petition, Jones argued that the adjustment committee violated his substantive due process rights since its decision was not supported by sufficient evidence. Furthermore, Jones claimed the adjustment committee violated his procedural due process rights when it denied his request to call Officer Helton and Officer Wright as witnesses. On August 16, 2006, the trial court entered an order dismissing Jones's petition.

When reviewing prison administrative disciplinary proceedings, we must affirm if "some evidence" supports the committee's finding of guilt. *Stanford v. Parker*, 949 S.W.2d 616, 617 (Ky.App. 1996). However, while the requirement is only that there be "some evidence," fairness demands that the evidence is reliable. *Byerly v. Ashley*, 825 S.W.2d 286, 288 (Ky.App. 1991). In this case, the committee relied on the officers' written report which stated that Jones failed to produce a sufficient urine sample within the three hours provided. Jones does not dispute these facts, but contends that there were extenuating circumstances and that his failure to provide the sample was not willful. Consequently, he argues he was entitled to call the officers as witnesses to explain those circumstances. However, according to the record, Jones requested no witnesses and then signed his name verifying that he was waiving his right to call any witnesses. (Trial Record, pg. 15). We find that the officers' report meets the threshold standard of "some

evidence” to support the committee’s determination that Jones failed to produce a urine sample as required. Consequently, Jones has the burden of showing that his failure was due to circumstances beyond his control but has failed to do so.

The Supreme Court of the United States has established that prison disciplinary proceedings are not criminal prosecutions. Thus, it follows that an inmate is not entitled to the complete due process of rights afforded a criminal defendant. *Ponte v. Real*, 471 U.S. 491, 495, 105 S. Ct. 2192, 85 L. Ed. 2d 553 (1985). It has been recognized that an inmate has a right to confront his accuser or to call witnesses on his behalf in a prison disciplinary proceeding. But this right is not unqualified, and a disciplinary committee may deny an inmate’s request if calling the witness would cause undue hazard to the institution’s safety or interfere with its correctional goals. *Id.* Moreover, the denial of an inmate’s request to call a witness is within the sound discretion of the disciplinary committee. *Baxter v. Palmigiano*, 425 U.S. 308, 322, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976). In the case *sub judice*, the record reflects that the committee did not deny Jones’s right to call witnesses on his behalf but that Jones waived his right to call witnesses.

Interestingly, Jones makes no mention in his appeal to the warden that he was denied an opportunity to call witnesses at his hearing before the adjustment committee. It is clear the warden went outside the record by talking to a staff member about the incident when considering Jones’s appeal. However, even without considering that the warden looked at evidence outside the administrative record in making his

decision to deny Jones's appeal, the committee still had enough evidence to make its findings.

Jones further argues that the trial court erred because it denied his appeal without reviewing the recorded record of the adjustment committee hearing. Apparently, the recording was misplaced. However, this argument fails because, again, the committee relied on sufficient evidence to make a finding of guilt. Thus, the circuit court did not err when it dismissed Jones's petition for declaration of rights.

Therefore, the order of the Morgan Circuit Court denying the petition for declaratory relief is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEFS FILED FOR APPELLEES

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