

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001150-MR

FREDERICK D. JONES

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 06-CI-00084

JOHN MOTLEY, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ABRAMSON¹ AND TAYLOR, JUDGES; KNOPF,² SENIOR JUDGE.

TAYLOR, JUDGE: Frederick D. Jones brings this *pro se* appeal from a May 26, 2006, order of the Morgan Circuit Court dismissing his petition for declaration of rights. We affirm.

¹ Judge Lisabeth H. Abramson concurred in this opinion prior to her appointment to the Kentucky Supreme Court. Release of this opinion was delayed by administrative handling.

² Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Appellant is currently an inmate at the Eastern Kentucky Correctional Complex (EKCC). On March 3, 2006, while incarcerated at the Western Kentucky Correctional Complex (WKCC), a correctional officer entered the laundry room at WKCC where appellant was doing laundry. The officer, upon hearing a loud banging noise emanating from a dryer, asked appellant what was in the dryer. Appellant responded that it was his shoes. The officer instructed appellant to remove the shoes from the dryer, but appellant refused to do so. The officer then opened the dryer and told appellant to get the shoes out of the dryer. Appellant responded “[s]o we are going to be an asshole today.” As a result of this incident, appellant was charged with disrespectful language directed toward an employee, a Category III violation of the Corrections Policies and Procedures 15.2 (501 KAR [Ky. Admin. Regs.] 6:020).

Appellant was then transferred to the EKCC where a disciplinary hearing was held on March 23, 2006.³ At the hearing, appellant was found guilty of the charged violation and was assigned fifteen days disciplinary segregation with credit for time served. Appellant sought review with the warden. On April 20, 2006, Warden John Motley concurred with the hearing officer's findings and specifically noted that appellant admitted to making the disrespectful statement.

On April 11, 2006, appellant filed a petition for declaration of rights in the Morgan Circuit Court.⁴ In his petition, appellant claimed that he was denied due process

³ The record does not reflect why appellant was transferred to Eastern Kentucky Correctional Complex.

⁴ Appellant filed the petition for declaration of rights before Warden John Motley rendered his opinion.

of law at the disciplinary hearing and that he was held in segregation for a total of twenty days, which was five days longer than the fifteen-day punishment he received from the adjustment committee. By order entered May 26, 2006, the circuit court dismissed appellant's petition for declaration of rights. This appeal follows.

Appellant contends the circuit court committed error by dismissing his petition for declaration of rights. Specifically, appellant alleges that he was denied due process of law at the prison disciplinary hearing by the adjustment committee and by being held longer than fifteen days in disciplinary segregation. However, we do not believe that appellant's disciplinary segregation implicated any liberty interest under the due process clause. *Sandin v. R.D. Conner*, 515 U.S. 472 , 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Even if due process protections were applicable, appellant was clearly not denied his due process rights at the disciplinary hearing. Indeed, appellant admitted to the disrespectful comments. Thus, the adjustment committee's finding of guilt was supported by some evidence. *See Smith v. O'Dea*, 939 S.W.2d 353 (Ky.App. 1997) . In short, appellant was not denied due process of law in regard to his prison disciplinary hearing or his disciplinary segregation.

Appellant also argues the circuit court committed error by failing to address his claim of racial discrimination. Appellant filed a document titled “Additional Claim” on May 22, 2006, with the Morgan Circuit Court. The document was not accompanied by a motion seeking to amend the original complaint.⁵ In this document, appellant

⁵ The record does reflect that appellant filed a “Motion for Leave to Amend Complaint” on May 9, 2006, which made no reference to the “additional claim” set forth in the document filed on May 22, 2006.

attempted to assert an additional claim of racial discrimination against EKCC.

Specifically, appellant contended:

3. Policy here at EKCC is discriminatory[sic], they place inmates in cells by their race. If you come out of segregation, you must stay in enhanced supervision unit until a cell comes open with a prisoner of your race. Also you must stay in AC until the same.

On May 26, 2006, the circuit court entered an order of dismissal. Thus, the court impliedly denied appellant's attempt to amend his petition for declaration of rights to assert the additional allegation. Appellant claims that the circuit court erred in dismissing his petition of declaration of rights without addressing the additional claim of racial segregation. Ky. R. Civ. P. 15.01 provides that a party may only amend his pleading by leave of court or by written consent of the adverse party after a responsive pleading has been filed. In this case, the Commonwealth filed a responsive pleading and motion to dismiss on May 18, 2006.⁶ Upon consideration of the record, we do not believe the circuit court abused its discretion by refusing to consider appellant's racial discrimination claim, which effectively constituted a denial of the claim. *See Scott Farms, Inc. v. Southard*, 424 S.W.2d 574 (Ky. 1968). In sum, we hold the circuit court properly dismissed appellant's petition for declaration of rights.

For the foregoing reasons, the order of the Morgan Circuit Court is affirmed.

⁶ The Court notes that appellant did file a separate response to the Commonwealth's motion to dismiss. However, the Commonwealth did not consent to appellant asserting a racial discrimination claim by amendment or otherwise, and appellant did not properly seek to assert such a claim.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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