

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000190-MR

ELBERT PHILLIP LONG

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 04-CI-00595

LARRY CHANDLER, WARDEN;
LIEUTENANT BILL SEARCY; AND
MARY DURRETT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

DIXON, JUDGE: Elbert Long, *pro se*, appeals the Oldham Circuit Court's dismissal of his declaratory judgment action in which he challenged a prison disciplinary proceeding.

We affirm.

On July 16, 2004, Long was an inmate at the Kentucky State Reformatory.

During a security search of Long's cell, Corrections Officer Lieutenant James Moore

¹ 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 KRS 21.580.

found an unauthorized television in Long's possession. Long admitted that an inmate who had "served out" gave the television to him. Additionally, Lieutenant Moore suspected the appliance card for the television was forged, and the property room supervisor confirmed his suspicion. Long received a disciplinary write-up charging him with forgery and unauthorized transfer of property.

Long was assisted by an inmate legal aide at the adjustment committee hearing. He waived his right to call witnesses, and the committee found him guilty of the charged offenses. The committee penalized Long with a reprimand and warning as well as thirty days in segregation, suspended for ninety days.² Long appealed the decision to the warden, who concurred with the committee.

On September 1, 2004, Long filed a petition for declaration of rights in Oldham Circuit Court. Long contended the disciplinary hearing did not comport with procedural and substantive due process. Appellees responded to Long's petition and moved to dismiss. The court concluded Long failed to demonstrate a constitutional deprivation warranting relief and granted Appellees' motion to dismiss. This appeal followed.

Long raises eleven issues on appeal to this Court. According to Long's theory of the case, prison officials intentionally searched his cell to obtain his television. Long alleges that prison officials needed to "pay" an inmate-informant, and Long's television was the desired currency. Accordingly, Long contends prison officials illegally confiscated his television, gave it to an informant, and destroyed any evidence of their wrongdoing.

² Long did not serve any time in segregation, as the ninety-day suspension period elapsed without any additional infractions.

After reviewing the record, regulations, and applicable law, we conclude the trial court properly dismissed Long's petition. As many of Long's allegations are related, we will combine them in our analysis.

I. Trial Court Errors

Long first contends the trial court erred by failing to hold an evidentiary hearing, failing to order discovery, and summarily dismissing his action without addressing the merits. We disagree.

The circuit court was acting in its appellate capacity by reviewing the adjustment committee's action. *Smith v. O'Dea*, 939 S.W.2d 353, 355 (Ky. App. 1997). Consequently, the court was bound by the administrative record created during the disciplinary proceedings. *Id.* at 365. Where, as here, the administrative record provided meaningful review, the circuit court was not required to order discovery or hold an evidentiary hearing. *Id.* Likewise, the court was not obligated to specifically address the merits of the petition, as "legal conclusions need not accompany summary affirmations of administrative adjudications." *Id.* Despite Long's arguments to the contrary, we find no error.

II. Administrative Proceedings

Long next contends he was denied due process during the administrative proceedings. He argues that the disciplinary report was falsified and inaccurate, in violation of Corrections Policy and Procedures 15.6. He also complains that the adjustment committee ignored or failed to consider all of the evidence.

"[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board." *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356 (1985). On appellate review, "the relevant question is whether there is

any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.* at 455-56, 105 S. Ct. at 2774.

Here, the record reflects that “some evidence” supports the adjustment committee’s decision. The disciplinary report clearly describes the facts and provides notice of the charges against Long. Further, it appears, and Long does not contend otherwise, that he received a fair hearing and assistance from an inmate legal aide. Although Long may believe that the adjustment committee ignored evidence favorable to him, it is clear that evidence exists to support the committee’s finding of guilt. It was within the discretion of the committee to weigh the evidence before it.

We conclude the disciplinary hearing comported with the constitutional protections afforded prison inmates. We conclude that the trial court properly dismissed Long’s petition.

III. Conclusion

Finally, Long asserts he suffered injustice due to the “prison informant system.” He also opines that confidential information was used against him, and he claims his television was given to an informant. After considering Long’s arguments, we reject them as wholly speculative. Accordingly, we decline to further address his remaining complaints.

For the reasons stated herein, the Oldham Circuit Court’s order of dismissal is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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