

RENDERED: JULY 3, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001085-MR

LARRY CRUMP

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 06-CI-00003

JOHN MOTLEY, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

THOMPSON, JUDGE: Larry Crump, an inmate at the Eastern Kentucky Correctional Complex (EKCC), appeals the Morgan Circuit Court's dismissal of his declaratory judgment action in which he requested a review of his disciplinary proceeding. For the reasons set forth herein, we affirm.

On or about September 13, 2005, prison authorities intercepted a letter written by Crump to Lisa Parks. In the letter, attached to Part I of the disciplinary report dated September 14, 2005, Crump wrote, in pertinent part, the following:

Baby we got to get me out of here. It's getting to where I can't deal with it anymore. Weve got to get a plan together and get me out, than we'll be together and noone will keep us apart, or no rules.

Baby its too simple to get me out. you seen how the guard at court took me. Im in a little car and they park around back where its nice and secluded. All it takes is to build up some nerve, and pull the gun when they get me out of the car.

There needs to be two people, I'm gona write Nick in this letter and you can get it to him. He knows he's wrong, and he snitched so he'll be anxious to do anything to help me out of here. He of all people know me and what Ill do to him for doing me the way he has. So when and if he helps, once I'm out, I wont have no use for him anymore. He can also get guns. All he'll need is some Krystal Meth in his system to give him the balls to do it with you, and I'll be free.

Following the inspection of this letter, Crump was immediately placed in administrative segregation pending further investigation.

Subsequently, prison authorities charged Crump with conspiring to commit physical action resulting in the death or injury of an employee or non-inmate, a category VII, item 4, inchoate violation of Corrections Policies and Procedures (CPP) 15.2. On September 22, 2005, an EKCC adjustment committee held a disciplinary hearing to consider the charge against Crump.

Following the hearing, the adjustment committee found Crump guilty of the charged offense and punished him by placing him in disciplinary segregation

for one year and stripping him of 1,290 days of non-restorable good-time credit. After his declaration of rights action was dismissed by the trial court, this appeal followed.

Crump first contends that his constitutional due process rights were violated when he was charged with conspiring to commit physical action resulting in the death or injury to another. He contends that the charge is patently unsupported by the facts and constitutes vindictive prosecution.

As a foundation for our analysis, we observe that prison inmates facing disciplinary proceedings are not entitled to the full panoply of rights as other non-institutionalized individuals who are summoned to answer for impermissible conduct. *Wolff v. McDonnell*, 418 U.S. 539, 561-562, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Rather, prison inmates simply need to be provided with a minimum standard of due process. *Smith v. O'Dea*, 939 S.W.2d 353, 357 (Ky.App. 1997).

The United States Supreme Court has enumerated three basic procedural requirements that must be provided to prison inmates who are subjected to disciplinary proceedings. Prisons must provide the accused with advance written notice of the charges against him; the accused must have an opportunity to call witnesses and present evidence when consistent with institutional safety and correctional goals; and the accused must be provided with a written statement from the fact finder regarding the evidence relied on and the reasons for the disciplinary action. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

Further, the appellate standard of review of a prison disciplinary committee's findings of fact is the "some evidence" standard. *Smith*, 939 S.W.2d at 358. The "some evidence" standard of review does not require that an adjustment committee's factual findings be supported beyond all reasonable doubt or even compelling evidence but rather evidence that will support a reasonable inference of guilt. *Id.* at 357.

Although Crump contends that he was impermissibly charged with one of the most serious crimes in terms of severity of punishment, his actions squarely placed his conduct within the scope of the charged offense. Fundamentally, by arguing that the prison's conclusion regarding the outcome of his escape plan was "purely speculative," Crump misunderstands the essence of an inchoate offense which sanctions a defendant's conduct prior to the achieving of his ultimate objective.

CPP 15.2 (II)(E)(1), regarding inchoate violations, provides the following:

A person may be found to have committed the violation listed in this policy if he: a. Attempts to commit the violation; b. Solicits another or others to commit the violation; c. Conspires with another or others to commit the violation; d. Aids the action of another or others in committing the violation.

As previously noted, "Physical action resulting in the death or injury on an employee or non-inmate" is a category 7 offense constituting a major violation as listed in the CPP. The definition section of CPP 15.2 defines physical

action as “any act of fighting, hitting, kicking, shoving, pushing, biting, using force or other similar types of physical contact, throwing, squirting or spitting any item, substance or fluid.”

Consequently, when Crump directed that guns be drawn against the officers transporting him to a court hearing, he committed an inchoate offense; thus, he was properly found guilty of the principal offense by virtue of CPP 15.2 (II)(E)(1). While Crump correctly contends that no prison official was injured or killed, he misses the point that the planning of such an inherently dangerous act, for purposes of prison regulations, constituted the principal offense. There is “some evidence” evidence supporting the adjustment committee’s finding that Crump’s plan would have resulted in injury or even death to prison guards.

Furthermore, notwithstanding his contention that he could not be found guilty of a conspiracy because his letter never reached a “co-conspirator,” we note that prison disciplinary proceedings are not criminal proceedings. *Stanford v. Parker*, 949 S.W.2d 616, 617 (Ky. 1996). Crump’s due process rights, as required in *Hill*, were observed by prison officials.

Additionally, there was “some evidence” to permit a reasonable inference that Crump’s action would cause injury or death to another. Drawing guns on prison guards, in a secluded location, by an individual under the influence of methamphetamine to effectuate a daring prisoner escape constitutes “some evidence” supporting the adjustment committee’s findings.

Crump next contends that his due process rights were violated because he was denied a fair and impartial disciplinary hearing. Specifically, he contends that the investigator's report regarding his improper conduct and the hearing officer's findings were identical and serve as "some evidence" of collusion between the two. He contends that the hearing officer was impermissibly influenced by the investigator and entered the hearing with a preconceived notion of his guilt. We disagree.

The "Disciplinary Report Form Part I-Write Up and Investigation," written by the investigating officer, and the "Disciplinary Report Form Part II-Hearing/Appeal," written by the hearing officer contain identical summaries when describing Crump's improper conduct. While Crump contends this is "some evidence" of collusion between the two, we find his contention unpersuasive. The investigative report was part of the record for the hearing officer to consider, and copying the investigator's description of Crump's improper conduct was not indicative of collusion or partiality. Finally, there is no presumed bias when a prison's security office provides both the investigator and hearing officer.

For the foregoing reasons, the order of the Morgan Circuit Court dismissing Crump's petition for a declaration of rights is affirmed.

KELLER, JUDGE, CONCURS.

WINE, JUDGE, CONCURS IN RESULT ONLY.

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