

RENDERED: OCTOBER 3, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002580-MR

ROBERT WHITEHEAD

APPELLANT

APPEAL FROM LYON CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 07-CI-00206

BECKY PANCAKE, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

COMBS, CHIEF JUDGE: Robert Whitehead, proceeding *pro se*, appeals from the dismissal of his petition for declaration of rights by the Lyon Circuit Court. He challenges the imposition of disciplinary penalties resulting from a prison disciplinary proceeding. After our review, we affirm.

This case arose from an incident that took place on June 12, 2007, at the Western Kentucky Correctional Complex in Fredonia, Kentucky, where

Whitehead is an inmate. According to the disciplinary report, Whitehead had been ordered to be strip-searched. While on the way to the search, he began asking to use the restroom. Sgt. David Meeks told Whitehead that he could not use the restroom until the search was completed. As Whitehead and Sgt. Meeks approached the office where the strip search was to be conducted, Whitehead ran into a nearby restroom, ignoring several orders to stop. Sgt. Meeks and another officer followed him into the restroom. Sgt. Meeks reported that he saw Whitehead “pull an unknown substance from his pocket wrapped in what appeared to be tissue paper.” Whitehead then “intentionally passed several unoccupied urinals and flushed the substance in a toilet.” Sgt. Meeks reported that Whitehead never actually attempted to use the restroom.

Whitehead was subsequently charged with Possession of Dangerous Contraband, a Category VI, Item 4 prison disciplinary offense. On June 27, 2007, Whitehead appeared before a Department of Corrections adjustment committee for a hearing. The committee found Whitehead guilty of the charged offense, observing that Whitehead’s “extreme non compliance” with the officers’ orders made it “obvious” that he was “attempting to conceal and destroy dangerous contraband.” The committee also noted that this was Whitehead’s “3rd major report in 6 months.” Whitehead received a penalty of ninety-days’ disciplinary segregation and forfeiture of one hundred eighty days of statutory good-time credit.

Whitehead filed an appeal to WKCC Warden Becky Pancake. He argued that he was denied due process because there was no evidence to establish that he had possessed dangerous contraband. He alleged that no positive urinalysis sample had been taken from him from which to demonstrate that he had possessed such contraband. Warden Pancake denied this appeal on July 9, 2007, finding that there was “sufficient information to support the decision of guilt” and that “[p]rocedural due process has been provided.”

Whitehead subsequently filed a petition for declaration of rights in the Lyon Circuit Court. He again alleged that he had been denied due process at the prison disciplinary hearing because there was insufficient evidence that he had been in possession of dangerous contraband. Whitehead asked for restoration of his good-time credit and for his release from segregation.

On November 1, 2007, the circuit court entered an order dismissing Whitehead’s petition for failure to state a claim upon which relief could be granted. The court found that Whitehead had failed to allege any facts demonstrating a violation of his right to due process and concluded that there was sufficient evidence to support the adjustment committee’s decision. Whitehead’s motion for reconsideration was denied. This appeal followed.

Whitehead again argues that he was deprived of his right to due process because there was insufficient evidence produced to establish that he had been in possession of dangerous contraband. The United States Supreme Court has recognized that “[p]rison disciplinary proceedings are not part of a criminal

prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974); *see also Webb v. Sharp*, 223 S.W.3d 113, 117 (Ky. 2007).

Nonetheless, in cases where a loss of good-time credit is at stake, an inmate must receive:

- (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

Superintendent, Mass. Correctional Inst., Walpole v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 2773, 86 L.Ed.2d 356 (1985); *see also Webb*, 223 S.W.3d at 117-18.

From our review of the record, it appears that all of these requirements have been satisfied. Whitehead does not raise an argument to the contrary.

The U.S. Supreme Court has further held that the requirements of due process are satisfied if “some evidence” exists to support the prison disciplinary board’s decision. *Hill*, 472 U.S. at 455, 105 S.Ct. at 2774; *see also Webb*, 223 S.W.3d at 118. The only relevant question for our consideration in this respect “is whether there is **any** evidence in the record that could support the conclusion reached by the disciplinary board.” *Hill*, 472 U.S. at 455-56, 105 S.Ct. at 2774 (Emphasis added); *see also Webb*, 223 S.W.3d at 118. Even “meager” evidence has been found to meet this burden. *Hill*, 472 U.S. at 457, 105 S.Ct. at 2775.

When this standard is met, we are obligated to affirm the decision of an adjustment

committee. *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky.App. 2003). In conducting our review, we must bear in mind that prison officials are afforded broad discretion in prison disciplinary matters. *Id.*; *Gilhaus v. Wilson*, 734 S.W.2d 808, 810 (Ky.App. 1987).

Whitehead has failed to allege any facts that would demonstrate that a due process violation has occurred here. Although the evidence presented at the adjustment hearing in support of the contraband charge was not necessarily overwhelming, it was indeed sufficient to satisfy the “some evidence” standard. Although contraband was not directly seized or recovered, Whitehead’s conduct was overtly suspicious in nature – particularly in light of the fact that he was about to be strip-searched. The adjustment committee concluded that his actions indicated an intent to “conceal and destroy dangerous contraband.” Its reasoning was neither arbitrary nor unreasonable.

We affirm the judgment of the Lyon Circuit Court.

ALL CONCUR.

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