

RENDERED: FEBRUARY 20, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000878-MR

VINCENTE HELM

APPELLANT

v.

APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 07-CI-00090

JOHN MOTLEY, WARDEN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, MOORE, AND STUMBO, JUDGES.

STUMBO, JUDGE: Vincente Helm appeals from an order of the Morgan Circuit Court denying his petition for declaration of rights. Helm contended that a prison disciplinary action rendered by the Adjustment Committee of the Eastern Kentucky Correctional Complex (“EKCC”) improperly found him guilty of making a nonviolent demonstration, making threatening or intimidating statements,

and using abusive language or making threatening gestures toward a prison employee, visitor or non-inmate. He argues that the circuit court erred in concluding that he failed to demonstrate a violation of due process during the disciplinary process. For the reasons stated below, we affirm the order on appeal.

On May 14, 2006, Helm was an inmate at EKCC, where he was housed in the infirmary. On that date, three separate Disciplinary Report Forms were filed by EKCC corrections officers for events occurring between 8:55 p.m. and 10:51 p.m. The first report stated that Helm sought to talk to Corrections Officer B. Patrick, who replied that he would not talk to Helm because Helm was being argumentative, loud and disrespectful. According to Patrick, Helm then said, “F*** you. You disrespected yourself when you went along with this bull****.” The following day, the matter was investigated and Helm was charged with the disciplinary offense of nonviolent demonstration or inciting a nonviolent demonstration that could lead to disruption of institutional operations (category 4-18).

The second report issued on May 14, 2006, indicated that Helm said, “F*** this bull****. I’ll kill myself so now you can strip me out.” Again, the matter was investigated the following day, and Helm was charged with making threatening or intimidating statements (category 4-19). The third and final disciplinary report stated that Helm yelled to a corrections officer, “come here niger [sic] come here.” This infraction resulted in the category 3-20 charge of

abusive, disrespectful, vulgar, obscene, or threatening language, gestures or actions directed toward or about an employee, visitor or non-inmate.

The disciplinary reports went before an Adjustment Committee, which considered the written statements, as well as the testimony of Helm and the correctional officers.¹ Upon considering the proof, Helm was found guilty on each charge. On the first charge, he was assigned disciplinary segregation for 45 days and loss of 60 days of good time credit. The second charge resulted in the same action, and the third charge resulted in the assignment of 15 days of disciplinary segregation. All segregation time was to run consecutively.

Helm appealed the findings to the Warden, who concurred with the Adjustment Committee's findings and recommendations as to the first and third disciplinary reports, but reduced the punishment set out in the second report. The Warden amended the second charge to the category 3-20 offense of abusive and disrespectful language directed toward an employee. The penalty for that charge was amended to 15 days of disciplinary segregation.

On April 27, 2007, Helm filed a Petition for Declaration of Rights pursuant to Kentucky Revised Statutes (KRS) 418.040 in Morgan Circuit Court. He alleged therein that his 14th Amendment right to due process and a fair hearing was denied when the hearing officer did not allow him to call certain witnesses. A supportive memorandum was filed, after which the Justice and Public Safety Cabinet moved to dismiss the petition. On January 14, 2008, the Morgan Circuit

¹ Helm references a "hearing officer," whereas EKCC documents contained in the record refer to the "adjustment committee."

Court rendered an order granting the motion to dismiss and denying Helm's petition for relief. As a basis for the order, the court determined that Helm was provided advance notice of the charges against him; that he was provided with the opportunity to present a defense; and was provided a written statement by the fact-finder detailing the evidence relied upon, the conclusions drawn, and the reasons for the disciplinary action. It went on to note that an inmate does not have an unlimited right to present evidence in prison disciplinary proceedings, and that prison officials have the discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority. This appeal followed.

Helm now argues that the circuit court erred in dismissing his petition for a declaration of rights. He maintains that he did not receive the due process to which he was entitled when he was not allowed to call correction officers Kash and Hensley as witnesses at the adjustment committee hearing. Citing *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), Helm contends that prison officials improperly manipulated the disciplinary procedure to exclude the witnesses, and that he clearly has the right to call the witnesses who would be helpful in refuting the charges against him. He seeks an order vacating the order of the Morgan Circuit Court and remanding the matter for further proceedings.

We have examined the record and find no error. Inmates retain rights under the Due Process Clause of the United States Constitution, subject to restrictions imposed by the nature of their lawful imprisonment. *Wolff, supra*.

However, the full panoply of rights due a defendant in a criminal prosecution is not applicable in a prison disciplinary proceeding. *Id.* The inmate's interest in the procedural protections required by due process must be balanced against the legitimate institutional needs of assuring safety and control of inmates, avoiding burdensome administrative requirements and preserving the disciplinary process as a means of rehabilitation. *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985); *Wolff, supra.*

In *Wolff*, the United States Supreme Court set forth the basic procedural due process requirements for a prison disciplinary hearing. First, the inmate must be provided with written notice of the charges against him at least 24 hours before the hearing. *Id.* Second, there must be a written statement by the fact-finder regarding the evidence relied upon and the reason for the disciplinary action. *Id.* Third, the inmate facing disciplinary proceedings should be allowed to call witnesses and present other evidence in his defense when allowing him to do so will not be unduly hazardous to prison safety or correctional goals. *Id.*

In the matter at bar, the record indicates that Helm was given written notice of the charges against him at least 24 hours before the hearing, and that the adjustment committee issued a written statement addressing the evidence relied upon and the reason for the disciplinary action. Further, Helm does not demonstrate if or how the testimony of Kash and Hensley would have assisted in his defense. At issue is the probative value of the evidence presented, and whether

Helm was improperly denied the opportunity to call Kash and Hensley as a witnesses.

On the first question, i.e., whether the evidence was sufficient to support the charge, the standard of judicial review of a prison disciplinary committee's findings of fact is whether "some evidence" exists in support of the result. *Smith v. O'Dea*, 939 S.W.2d 353 (Ky. App. 1997). The "some evidence" standard does not require that an adjustment committee's fact-finding be supported by compelling evidence; rather, it merely requires evidence that will support a reasonable inference of guilt. *Id.* at 357. Determining whether the "some evidence" standard has been satisfied does not necessitate an examination of the entire record or weighing the credibility of the evidence. *Walpole* at 455-456. The circuit court need only review the record for "some evidence" sufficient to uphold a decision of the adjustment committee. *Yates v. Fletcher*, 120 S.W.3d 728 (Ky. App. 2003). Our review of the record reveals that "some evidence" was presented at the committee's hearing in support of the charge and upon which the committee reasonably relied in reaching its conclusion.

The next issue is whether the circuit court erred in failing to find that the committee's decision not to allow Helm to call Kash and Hensley as witnesses constituted a denial of Helm's due process rights. The United States Supreme Court addressed this issue in *Ponte v. Real*, 471 U.S. 491, 105 S.Ct. 2192, 85 L.Ed.2d 553 (1985), in which it stated that:

We noted in *Wolff* and repeated in *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), that ordinarily the right to present evidence is basic to a fair hearing, but the inmate's right to present witnesses is necessarily circumscribed by the penological need to provide swift discipline in individual cases. This right is additionally circumscribed by the very real dangers in prison life which may result from violence or intimidation directed at either other inmates or staff. We described the right to call witnesses as subject to the "mutual accommodation between institutional needs and objectives and the provisions of the Constitution. . . ." *Baxter, supra*, at 321, 96 S.Ct., at 1559, citing *Wolff, supra*, 418 U.S., at 556, 94 S.Ct., at 2974.

Thus the inmate's right to call witnesses and present evidence in disciplinary hearings could be denied if granting the request would be "unduly hazardous to institutional safety or correctional goals." *Wolff, supra*, at 566, 94 S.Ct. at 2974; *Baxter, supra*, 425 U.S. at 321, 96 S.Ct. at 1559. See also *Hughes v. Rowe*, 449 U.S. 5, 9, and n. 6, 101 S.Ct. 173, 175, and n. 6, 66 L.Ed.2d 163 (1980). As stated in *Wolff*, 418 U.S. at 566, and 94 S.Ct. at 2980:

"Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the [disciplinary board] to state its reasons for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases."

Notwithstanding the suggestion that adjustment committees give reasons for denying an inmate's witness request, nowhere in *Wolff* or *Baxter* did the United States Supreme Court require the disciplinary board to explain why it

denied the prisoner's request, nor did it require that those reasons otherwise appear in the administrative record. *See Ponte*, 471 U.S. at 496.

Though we do not know the reason or reasons why the Adjustment Committee refused to allow Helm to call Kash and Hensley as witnesses, the committee was not required to memorialize the reasons in the administrative record. *Ponte, supra*. It is sufficient to recognize that this decision falls within the EKCC's authority to maintain institutional safety and achieve correctional goals. *Baxter, supra*. Accordingly, we find no error on this issue.

For the foregoing reasons, we affirm the order of the Morgan Circuit Court.

ALL CONCUR.

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