

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002154-MR

MICHAEL JORDAN

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 07-CI-00121

JOHN D. REES

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Michael Jordan appeals *pro se* from an order, entered by the Lyon Circuit Court, dismissing his petition seeking a declaration of rights after he lost thirteen months of “meritorious good time” credits as a result of a prison disciplinary proceeding. We affirm.

In July 2006, while incarcerated at the Little Sandy Correctional Complex, Jordan was involved in two incidents which resulted in his being found guilty of two counts of Physical Action Against Employee. As to each violation, he was assessed a penalty of 180 days disciplinary segregation, plus the forfeiture of 720 days (two years nonrestorable) “good time” credit. The prison’s warden concurred on appeal.

Jordan subsequently learned that because he had no good time credit available for forfeiture, a substitution of penalties resulted in his forfeiture of thirteen months of meritorious good time credit pursuant to CPP¹ 15.3(V). The latter rule permits the forfeiture of meritorious good time if a major rule violation occurs or if statutory good time is exhausted. After unsuccessfully seeking relief from the substitution through Department of Corrections channels, Jordan sought a declaration of rights. The circuit court dismissed the *pro se* petition, concluding that due process requirements were met during the disciplinary process, and that no grounds existed for relief. This appeal followed.

As noted by the trial court, the circuit court’s role in a prison disciplinary proceeding is to serve only as a court of review to determine whether “some evidence” supported the Adjustment Committee’s decision and the penalty assessed. *Smith v. O’Dea*, 939 S.W.2d 353 (Ky.App. 1997). Prison officials are vested with broad discretion in making such decisions. *Yates v. Fletcher*, 120 S.W.3d 728, 731 (Ky.App. 2003). However, Jordan does not challenge the

¹ Kentucky Corrections Policies and Procedures.

Adjustment Committee’s disciplinary findings or penalty assessments. Instead, the only issue on appeal is whether the Corrections Department properly substituted meritorious good time credit after it was determined Jordan lacked good time credit.

“Good time” credit was explained in *Watkins v. Fannin*, 278 S.W.3d 637, 640-41 (Ky.App. 2009), as follows:

The Kentucky Legislature delegated to the Department [of Corrections] the discretionary authority to award “good-time” credit to reduce a prisoner's sentence. Pursuant to [KRS] 197.045(1), a prisoner “may receive a credit on his sentence ... *to be determined by the department* from the conduct of the prisoner.” KRS 197.045(1) (emphasis supplied). Conversely, “[t]he department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.” *Id.* (emphasis supplied)

CPP 15.3(II) addresses the procedures for the Department of Corrections’ award of good time and meritorious good time credit, including the Commissioner’s final approval of recommendations. *See* CPP 15.3(II)(A)(2). According to CPP 15.3(V),

- A. All statutory good time shall be forfeited before meritorious good time is forfeited.
-
- C. Meritorious good time awarded under this procedure may be forfeited if the inmate is convicted of a major violation.

Here, Jordan does not dispute that he committed two major violations. *See* CPP 15.2, Category VII(1). Because Jordan had no statutory good time available for forfeiture, and because he was convicted of major violations, it necessarily follows that the forfeiture of meritorious good time was permissible in accordance with both CPP 15.3(V)(A) and CPP 15.3(V)(C). The trial court did not err by dismissing Jordan's petition seeking declaratory relief.

The Lyon Circuit Court's order of dismissal is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Michael Jordan, *Pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Angela E. Cordery
Justice and Public Safety Cabinet
Office of Legal Services
Frankfort, Kentucky