

RENDERED: NOVEMBER 13, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000471-MR

TIMOTHY D. ROUSE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 08-CI-01334

KENTUCKY DEPARTMENT OF
CORRECTIONS AND THOMAS
SIMPSON, WARDEN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND VANMETER, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

LAMBERT, SENIOR JUDGE: Timothy Rouse appeals from the February 24, 2009, order of the Franklin Circuit Court dismissing his action against the Kentucky Department of Corrections. The trial court did not err in the dismissal.

At all times relevant to this appeal, Rouse was an inmate at the Kentucky State Penitentiary (“KSP”). On June 3, 2008, during a routine search of Rouse’s documents, correctional officer Charles Roberts discovered multiple pages of forged legal documents ordering Rouse’s release from prison. A disciplinary report was filed and read to Rouse. Rouse was then charged with escape, a violation of CPP² 15.2. The charge was later amended to forging documents to facilitate early release. A disciplinary hearing was held on June 9, 2008, and Rouse was found to be guilty of the violation. As a result, he was penalized with 90 days of disciplinary segregation and the loss of 180 days of good time. Rouse appealed to the DPS Warden and his appeal was denied.

The day after the earlier violation, June 4, 2008, Rouse was again found to be in possession of a document containing a falsified notarization. A second disciplinary report was filed and read to Rouse. Rouse was then charged with obtaining services under false pretenses, a violation of CPP 15.2. A disciplinary hearing was held on June 9, 2008, and Rouse was found to be guilty of the violation. As a result, he was penalized with 45 days of disciplinary segregation and the loss of 60 days of good time. Rouse’s appeal was denied by the KSP Warden.

² Corrections Policy and Procedure.

On August 14, 2008, Rouse filed a petition for declaration of rights and declaratory relief in the Franklin Circuit Court. Rouse claimed that he was denied due process of law with respect to his ability to call witnesses at his disciplinary hearing. He also claims that the charges against him were changed without proper notice. On January 26, 2009, Rouse filed a motion for default judgment. That motion was denied. Thereafter, the Kentucky Department of Corrections filed a response and a motion to dismiss pursuant to CR³ 12.02. The trial court granted the motion to dismiss. This appeal followed.

Our standard of review for a trial court's dismissal of a complaint pursuant to CR 12.02 is as follows:

The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883-84 (Ky. App. 2002) (internal quotation and citation omitted).

The United States Supreme Court has set forth, and Kentucky has adopted, standards for satisfying due process of law in prison disciplinary cases.

Those criteria are:

- 1) advance written notice of the disciplinary charges; 2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present

³ Kentucky Rules of Civil Procedure.

documentary evidence in his defense; and 3) a written statement by the factfinder (sic) of the evidence relied on and the reasons for the disciplinary action.

Webb v. Sharp, 223 S.W.3d 113, 117-18 (Ky. 2007) (quoting *Superintendent, Mass. Correctional Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974))). Courts grant “wide latitude” to prison authorities in handling disciplinary cases. *Goble v. Wilson*, 577 F.Supp. 219, 221 (D.C.Ky. 1983). The court in *Wolff*, 418 U.S. at 566, 94 S.Ct. at 2980, noted that it would be useful for a hearing committee 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[,]” but it is not mandated. Notably, the disciplinary reports for both Rouse incidents were signed by Rouse and failed to indicate that witnesses were requested. Contrary to Rouse’s claim, there was no due process violation in this regard.

Finally, we address Rouse’s argument that his charge was amended without allowing necessary time to prepare a defense. Although the charge of escape was amended to a lesser charge of forging documents to facilitate early release, no evidence was presented against Rouse other than that which was originally indicated by the disciplinary report. Rouse received timely written notice of the disciplinary charges and the evidence relied upon. He was given an opportunity to present evidence in his defense. There is no prohibition against

amending a charge during a disciplinary proceeding, provided a proper factual basis is disclosed and the inmate is not misled.

For the reasons stated above, we hold that the trial court was correct in its determination that Rouse was not entitled to relief. Accordingly, the February 24, 2009, order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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